43D CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 263.

HOT SPRINGS RESERVATION, ARKANSAS.

MARCH 26, 1874.—Recommitted to the Committee on Private Land-Claims and ordered to be printed.

Mr. PACKARD, from the Committee on Private Land-Claims, submitted the following

REPORT:

[To accompany bill H. R. 608.]

The Committee on Private Land-Claims, to which was referred the bill (H. R. 608) extending the time for filing suits in the Court of Claims to establish title to the Hot Springs reservation, in Arkansas, report thereon as follows:

The descendants of Don Juan Filhiol claim title to a tract of land known as the Hot Springs tract, situated in the State of Arkansas. Their memorial shows that there are missing links of title, or at least such a cloud upon the title that they are induced to ask Congress either to confirm their title or to allow them thirty days to bring their suit in the Court of Claims to establish it.

A former act of Congress, June 11, 1870, gave these parties two years within which to bring their suit. They failed to bring it within the time; hence their application for the further extension of time.

In support of their claim, they say that their ancestor, Don Juan Filhiol, was an officer in the Spanish army in the war between Spain and England, and acted as the commandant of the post of Ouchita, in the province of Louisiana, then belonging to Spain; that, as a recompense for this and other military services, sundry grants of land were made to him, among the number the Hot Springs tract, by Don Estovan Miro, then Spanish governor-general of the province of Louisiana, and who was authorized to make such grants; that the grant to the Hot Springs tract bears date 12th December, 1787, but the original grant is not produced before the committee. The reason given for its non-production will be alluded to in another connection.

The memorial further states that Don Juan Filhiol sold said Hot Springs tract to his son-in-law, Narcisso Bourjeat, by deed dated November 25, 1803, and a copy of such deed is exhibited. That said Bourjeat resold said land to Don Juan Filhiol, by deed bearing date July 17, 1806, and a copy of such deed is produced.

It is further stated that Don Juan Filhiol was married in 1782; had three children; that his wife died before he died, and that he died in the year 1821, about eighty-one years of age, and that memorialists are his lineal descendants.

They further state that Grammont Filhiol, son of Don Juan Filhiol, has, from time to time, for the last fifty years, employed different agents and attorneys to prosecute their claim, but that they had either neg-

lected to do so, or they, by collusion with others, endeavored to secure the land for themselves.

The deed from Don Juan Filhiol refers to a grant from Don Estovan Miro, as the basis of the claim of Don Juan Filhiol. This recital, however, would only be evidence as between parties and privies to the deed, and would not be evidence to establish the existence of the original grant as against strangers and adverse claimants.

The original grant remains unaccounted for, except by a probability that is raised by circumstantial statements that it was burned at the time the old St. Louis Hotel was burned, in New Orleans, in 1840, or that it was sent to the governor-general of Cuba, or was sent to the home government of Madrid.

The memorialists have filed with the committee a paper purporting to be a copy of a copy of a grant answering the description of what they allege was the original. There is also a copy of a certificate and figurative plan, accompanying the supposed copy of the grant, made by Don Carlos Trudeau, surveyor-general of Louisiana, under the government of Miro and Carondelet.

The evidence of Lozare shows that Don Juan Filhiol during his life claimed the land. Other evidence shows that he leased the springs to one Dr. Stephen P. Wilson about the year 1819; but there is no evidence before the committee to show that Don Juan Filhiol, or any one claiming under him, ever had the actual possession of the land.

By the report of the Hon. Thomas Ewing, the Secretary of the Interior, June 24, 1850, Senate Executive Document No. 70, Thirty-first Congress, 1849–'50, vol. 14, it appears that the Interior Department had the whole subject of the Hot Springs before it, and to which reference is made for the detailed history.

We, however, may allude to the leading facts presented in the report:

One Francis Langlois claimed title to the "Hot Springs" by virtue of a New Madrid location certificate, dated November 26, 1818, pursuant to the act of Congress, February 17, 1815, for the relief of the citizens of New Madrid County, Missouri Territory, who suffered by the earthquake.

S. Hammond and Elias Rector applied to the surveyor of public lands for the State of Illinois and Territory of Missouri for an entry or donation of land to include the Hot Springs, on the 27th January, 1819.

The widow and children of John Perceval, filed in the office of the Interior Department, in 1838, or some year prior thereto, a caveat to suspend the issuance of a patent to any other claimants, and setting up a claim for themselves under the pre-emption act of 1814, and showing by proof that John Perceval had possession of land as early, perhaps, as 1814, and held the possession to the time of his death; and that his widow and children, by themselves or tenants, had held the possession up to the filing of their caveat.

About the year 1841 Ludovicus Belding and William and Mary Davis set up a claim to the land.

On the 1st March, 1841, Congress passed "An act to perfect the titles to the lands south of the Arkansas River, held under New Madrid locations and pre-emption rights, under act of 1814."

These lands had not been subject to location and pre-emption prior to 24th August, 1818, the date of the Quapaw treaty which extinguished the Indian title.

On the 26th April, 1850, Hon. S. Borlan, as agent of Grammont Filhiol, set up a claim of title to the Hot Springs, based upon the Spanish grant before alluded to, and applied to the Department for time to pre-

pare and present the claim. This was the first time the claim was brought legally to the notice of the Government.

On the 20th April, 1832, Congress passed an act reserving the Salt and Hot Springs from entry or location, or for any appropriation whatever.

The Department of the Interior was much embarrassed in the disposition of these conflicting claims. The opinion of the Attorney-General was invoked. He decided in favor of the Langlois claim, on the 29th April, 1850, but it does not appear that the Filhiol claim was prepared for his action at the time. But before the patent could issue caveats were filed and suspended the issuance; and no patent has issued from the Government since that time.

It does not appear that any steps were taken for the settlement of these claims from the year 1850 to 1870. In 1870 Congress passed the act authorizing the different claimants to have their titles adjudicated in the United States Court of Claims, and allowing them two years to bring suits.

On the 26th day of May, 1824, (4 U. S. Stat., p. 52, sec. 1,) Congress authorized claimants to lands in Missouri, under any French or Spanish grant, concession, warrant, or order of survey, legally made, granted, or issued before the 10th March, 1804, and which was protected or secured by the treaty between the United States and France on 3d April, 1803, might petition the district court of Missouri and have such claims established.

By the fourteenth section of this act the same provision was applied to similar claimants in the Territory of Arkansas, and was to continue in force until 1830.

This act was revived by section one, act of June 17, 1844, (5 U. S. Stat., 676,) and continued in force five years from date of its passage.

The Supreme Court of the United States held these acts only conferred jurisdiction on the courts to hear and determine upon imperfect grants. (9 Howard, p. 127; 11 Howard, p. 609.)

It is contended that the Filhiol grant, assuming the existence of such grant, did not fall within the jurisdiction of the court, as it was not an "imperfect grant," but a perfect grant which had been lost, mislaid, or suppressed. The jurisdiction of the court being limited by statute, it, perhaps, would not have stretched the jurisdiction far enough to have set up and established the existence of the missing grant so as to give effect to it. The whole train of decisions on kindred questions show that the courts of the United States have confined themselves quite rigidly to the authority conferred by act of Congress.

On the 22d June, 1860, Congress passed an act for the final adjustment of private land-claims in the States of Louisiana, Florida, and Missouri, but by a singular omission did not include Arkansas. This act authorized the courts to determine the cases according to equity and justice.

In 1801 Spain, by the treaty of Saint Ildefonso, ceded the territory of Louisiana to France. By treaty of April 30, 1803, France ceded Louisiana to the United States, the United States claiming the river Perdido as the eastern boundary, while the Spaniards claimed the Mississippi as the western boundary, and held possession to the Mississippi, except the island of New Orleans, until 1810, when the United States took possession by force.

Spain continued to make grants and concession of lands to persons within the disputed territory until 1810, but both Congress and the courts declared all such grants made after the treaty of Saint Ildefonso

in 1801 actually void. These parties claimed also that the United States were bound to perfect any incomplete titles according to the stipulations of the treaty of cession of the Floridas by Spain February 22, 1819. But Congress and the courts in like manner held that this treaty did not embrace the disputed lands.

After Congress and the courts had been worried more than a half century with these claims, and the mind of Congress being affected with the idea that many of these claims rested upon a well-grounded equity, by the act of June 22, 1860, enlarged the jurisdiction of the courts to cases of *equity* as well as *law*.

Parties came in under this act and had their claims adjudged valid which had been previously adjudged void.

The case of the United States *vs.* Lynd (11 Wallace R., 632) embodies the history of the congressional and judicial proceedings in these cases.

This committee has been unable to perceive any reason why Congress did not extend the provisions of the act of 1860 to private land-claims in the State of Arkansas. To remedy the omission, however, Congress passed the act of 1870, which opened the doors of the Court of Claims to claimants from Arkansas, and within the two years allowed by the act the claimants have all commenced their proceedings, except the Filhiol heirs.

The committee might indulge in some criticisms on the want of due diligence on the part of the Filhiol heirs; but the want of diligence is more apparent than actual.

From necessity their appearance in court must be by attorney. They were timely in the employment of such attorney; but their attorney, as charged by them, was delinquent. Whether this delinquency of the attorney was from accident or design, we do not think ought to be visited upon the claimants as a forfeiture of their rights, whatever they may be.

There have been great embarrassments from the want of proper tribunals to determine the various perplexing questions growing out of private land-claims. The claimants could not be held responsible for the defects of these tribunals. Ancestors have spent their lives pursuing their claims through land-offices, through cabinet-offices, through Congress, and through the inferior and appellate courts without success, and have left their descendants to renew the contest under the disadvantage of loss or weakening of evidence from lapse of time.

After the purchase of the Floridas, in 1819, and the extinction of all the asserted claim of Spain to any part of the territory between the Perdido and Mississippi Rivers, and the extinction of Indian titles, Congress has manifested a liberal disposition by the passage of different remedial acts, (even extending to cases previously adjudicated, as in the Lynd case, 11 Wallace.)

Your committee, keeping in the line of this liberal policy, feel warranted in recommending the passage of the bill. They do so the more readily as the contest is still pending in the Court of Claims, where the rights of all parties may be finally settled by the judgment of the court.