HOT SPRINGS RESERVE IN ARKANSAS.

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

IN ANSWER TO

A resolution of the House of 22d January last, relative to the Hot Springs reserve in Arkansas.

FEBRUARY 8, 1867.—Laid on the table and ordered to be printed.

To the House of Representatives:

I herewith communicate a report of the Secretary of the Interior, in answer to a resolution of the House of Representatives of the 22d ultimo, requesting information relative to the condition, occupancy, and area of the Hot Springs reservation in the State of Arkansas.

ANDREW JOHNSON.

WASHINGTON, *February* 7, 1867.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., February 7, 1867.

SIR: In answer to a resolution adopted by the House of Representatives on the 22d ultimo, requesting the Secretary of the Interior to communicate "all the information to be obtained from the records and files of his department relative to the condition, occupancy, and area of the Hot Springs reservation, in Hot Springs county, State of Arkansas," I have the honor to submit a report of the 6th instant from the Commissioner of the General Land Office, accompanied by a diagram and sundry papers.

I am, sir, very respectfully, your obedient servant,

O. H. BROWNING, *Secretary.*

The PRESIDENT.

DEPARTMENT OF THE INTERIOR,
General Land Office, February 6, 1867.

SIR: I have the honor to return herewith the resolution of the House of Representatives of 22d ultimo, referred to this office, calling on the Secretary of the Interior "to communicate to this House all the information to be obtained from

the records and files of his department relative to the condition, occupancy, and area of the Hot Springs reservation, in Hot Springs county, State of Arkansas."

As an answer to the resolution, and as containing a history of the proceedings in the matter, I respectfully submit herewith copies of the following papers:

1. Report dated 27th April, 1860, of the Commissioner of the General Land Office to the Secretary of the Interior.

2. Secretary of Interior's decision of 7th June, 1860.

3. Report of the Commissioner of the General Land Office of 31st January, 1861, to Hon. J. R. Barrett, Committee on Public Lands, House of Representatives.

4. The accompanying diagram shows the location and extent of hot springs, "together with four sections of land, including said springs, reserved for the future disposal of the United States," and which are interdicted from being "entered, located, or appropriated for any other purpose whatever," by the third section of the act of 20th April, 1832, Statutes, volume 4, page 505.

With great respect, your obedient servant,

JOS. S. WILSON, *Commissioner.*

Hon. O. H. BROWNING,
Secretary of the Interior.

GENERAL LAND OFFICE,
April 27, 1860.

SIR: A motion has been made before this office by John Wilson and Henry May, esqrs., as attorneys in behalf of the heirs of Ludovicus Belding, (see their arguments, marked A and B,) for a patent upon Washington, Arkansas, certificate No. 6,545 for southwest quarter section 33, township 2 south, range 19 west, upon which are situated the hot springs. I have the honor to submit said motion and the papers for your consideration and decision, with the following observations:

It is hardly necessary to say that this office has no power to decide upon said motion, when it is considered that the claim of said heirs, as well as the claims of all others before him, were finally adjudicated and rejected by Secretary Stuart, as will appear from his communication to this office, dated October 10, 1851. I propose now to lay the motion, with the papers, before the head of the department, the same power that exercised the final action in the case, as already mentioned, together with a report, comprising a brief history of the facts in the case, and the views of this office in reference to said motion for a patent. In this report it is not deemed necessary to go behind the action of this office submitting the case to Secretary Stuart, which will be seen on reference to Commissioner Butterfield's letter of August 26, 1851, copy herewith marked C. If, however, the department should desire a more full and explicit detail of the facts and proceedings in the case anterior to the time of submitting the same to Secretary Stuart, it will be found in the paper herewith marked D, signed by George C. Whiting, esq., at that time chief clerk of the department.

On October 10, 1851, as before stated, Secretary Stuart decided that the heirs of Belding had no right to the land for which a patent is now asked under the provisions of the act of May 29, 1830, because that act had expired by limitation before the land was surveyed in 1838, and that they had no right under the act of July 14, 1832, because, prior to its passage, to wit, on April 20, 1832, Congress passed an act "that the hot springs, in said Territory, (of Arkansas,) together with four sections of land including said springs, as near the centre thereof as may be, *shall be reserved for the future disposal of the United States, and shall not be entered located, or appropriated for any other purpose whatever.*"

In deciding against the validity of the New Madrid location and Cherokee

pre-emption claims, on account of said reservation, the Secretary said that the act of 1832 "not only reserves the hot springs and the adjacent four sections of land for the future disposal of the United States, but absolutely prohibits, in the clearest and most emphatic terms, its entry." He further says that "it is difficult to conceive language more explicit than this, or more positive. It was obviously the purpose of Congress to sever these four sections, including the hot springs, from the mass of the public domain, and place them in such a condition that they could be reunited to it or otherwise disposed of only by the action of Congress."

In reference to the claim of the heirs of Belding in virtue of the act of July 14, 1832, the Secretary says that "the reasons assigned against the repeal of the act of April 20, 1832, by the act of March 1, 1843, apply with equal force against its repeal by the act of July 14, 1832." He then cites the case of Peyton *vs.* Mosely, 3 Monroe, 77, where other doctrine is held by the court sustaining his views, which applies to the question as to whether the act of reservation was repealed by the act of July 14, 1832, as contended by the attorney of said heirs, and in this connection further remarks that "the act of April 20, 1832, *had express relation to the lands in which the hot springs were situated;* that of July 14, of the same year, had *not*. It had reference to *persons* rather than to *lands*, and to construe its general language as repealing the *express* provisions of that of April 20 would not be giving to both acts that operation which, in my opinion, is entirely proper and consistent with the doctrine of the court in the case of Peyton and Mosely, and that of Gear *vs.* The United States, in 3 Howard, before referred to." After the Secretary's decision, to wit, on the 14th of October, 1851, an application was made by the attorney of said heirs for permission to make an entry of said claim "in order that they may be placed in a proper position for the assertion of their rights hereafter in the courts," stating that of course, under the decision of the Secretary, they should not ask for a patent. The application was refused by this office, and an appeal from that action taken to the Secretary, who, on the 21st of November next thereafter, addressed this office a letter, stating that he had concluded that it would be proper and in accordance with precedent to permit the heirs of Belding to make an entry under the acts of May 29, 1830, and July 14, 1853, and directed this office to instruct the register and receiver accordingly. The Secretary qualified his decision directing an entry as follows: "Said entry will remain subject to the same power of revision and control by the General Land Office and this department as may be lawfully exercised over any ordinary entry. The government will still hold the ultimate power of protecting its own rights, while the claimants will merely be placed in a position to contest the adverse claims of others to the same land." Pursuant to this decision the local officers were directed by letter from this office, dated November 25, 1851, to permit the entry under the conditions imposed by the Secretary, and the certificate No. 6,545 herewith was accordingly issued. Upon this certificate William H. Gaines *et al.*, heirs of Ludovicus Belding, instituted judicial proceeding in Arkansas against John C. Hale for the possession of the land, where, after several years' litigation, the possession was awarded to said heirs by a judgment obtained in the supreme court of Arkansas, from whence the case was brought by writ of error before the Supreme Court of the United States, and has been decided by the latter against the right of Hale, sustaining the decision of the court below as to the right of possession only in favor of the heirs of Belding. The attorneys of said heirs have filed in this office, as the basis of their motion, a printed brief and the record of the decision of the Supreme Court in the case of John C. Hale, plaintiff in error, *vs.* William H. Gaines *et al.*, heirs and legal representatives of Ludovicus Belding, deceased, which are herewith presented. The result of a very careful examination of the opinion of the court is that we find the question of title narrowed down to the heirs of Belding and the United States, all other parties to the suit having been ruled out by the court. It has been

shown that prior to permitting said heirs to enter the land, their claim had been rejected by the Secretary, and that such is now the unrevoked judgment of the department; that the entry per certificate No. 6,545 was permitted by the Secretary for a special limited purpose, viz., to enable said heirs to prosecute their action of ejectment for the *mere possession* of the land in the courts of Arkansas.

The face of the certificate itself defines, by reference to the authority for issuing it, the special purpose for which it was permitted. Does the judgment of the Supreme Court in any way contravene or alter the decision of the department rejecting the claim of said heirs; or do those heirs stand before the department in the precise position they occupied before judicial proceedings were commenced?

In the opinion of this office, they now stand remitted by the decision of the Supreme Court to the same position in which they stood (so far as the government is concerned) before judicial proceedings were instituted, possessing no better right to a patent on the special certificate No. 6,545, *now*, than they did then. For the court expressly declares that "as between the titles of the United States and Belding's heirs the State courts did not decide, but only that the outstanding title in the United States could not be relied on by the defendant in this action; nor is the validity of the entry of Belding's heirs drawn in question in this court."

The Supreme Court by its decision only affirmed the decision of the court below, and consequently there is no decision as to the title between the United States and the heirs of Belding.

The points presented and argued by the counsel upon the motion under consideration, not being in the nature of exceptions to any action had by this office, and addressing themselves directly to the superior power, the department itself, whose final action in the premises has already been noticed, are briefly stated as follows, without comment:

John Wilson, esq, of counsel for said heirs, presents—

1st. That all claims adverse to that of the heirs of Belding have been rejected. That the claim of Percifull being in contravention of the Indian right of occupancy, no pre-emption right could accrue.

2d. That the decision of the Supreme Court in the case of Hale, plaintiff in error, *vs.* Gaines *et al.*, disposes of Hale's claim on every point, holding the same to be invalid and properly rejected by the State courts.

3d. That this decision relieves the land of every claim except that of said heirs. That the right given by the act of 29th May, 1830, was not limited to surveyed lands, but extends to every settler on the public lands, or his heirs, who cultivated the land in 1829, and the failure to prove up within one year from 29th May, 1830, was not a forfeiture of the claim, for the reason that the land was not surveyed, and because forfeiture was not declared by the act for failure to enter from such cause. That the act of 14th July, 1832, revived the act of 1830, and all existing rights acquired under it That the pre-emption proof of said heirs was filed in accordance with the requirements of the act of 1832, within one year from the approval of the plat.

4th. That the register and receiver being constituted by law a tribunal to hear and determine the facts, and having decided in favor of said heirs upon said facts, their decision cannot be impeached.

5th. That the right vested in said heirs on 29th May, 1830, has remained so vested ever since, and as an entry was ordered by the secretary, and all the agents of the government have acted with full authority, the action and sale are valid.

6th. The act of April 20, 1832, reserving the hot springs, with four sections, does not legally or constitutionally apply to the tract claimed by the heirs of Belding. That Belding's pre-emption being covered by law, is a legal right, and Congress could not have intended to impair legal rights.

7th. That the decision of Secretary Stuart to the effect that the claim of Beldings, under the act of 29th May, 1830, not having been entered within the limit prescribed by the act, was barred by the act of 20th April, 1832, reserving the land prior to the passage of the act of 14th July, 1832, has been virtually overruled by his successor, Secretary McClelland. That the Secretary, the Attorney General, and Commissioner entertained no doubt of the power of the department to issue a patent for the New Madrid claim under the general confirmatory act of 1843, notwithstanding the reserving act of 20th April, 1832. The reserving act therefore can no more interpose a barrier to the issuing of a patent for the Belding claim than for the New Madrid claim; with this difference, the Supreme Court has decided that the act of 1843 does not apply to this particular case. That the act of 1832 *does* apply to all claims under the act of 1830. The Supreme Court having decided, however, that the New Madrid locations are void, therefore no claim exists to the land except in Belding's heirs.

The points presented and argued by Henry May, esq., in behalf of said heirs, are fully covered by those of Mr. Wilson already noticed. Henry M. Rector, esq., appearing in his own behalf, objects to a patent being issued to the heirs of Belding, and presents the following grounds of objection:

1st. That the heirs of Belding have no title against the government, but by repeated decisions their claim has been rejected; that neither the courts in Arkansas nor the Supreme Court have adjudicated the title as between the heirs of Belding and the United States.

2d. That the decisions of the executive departments rejecting the claim of said heirs is in no way affected by the decisions of the courts.

3d. That, in view of her own rights, it would be an act of folly for the government to pass a title to any one till by judicial or legislative action the executive departments are overruled in their decision.

4th. That Belding's heirs, as an inducement to permit them to enter the land, expressly stipulated that they did not expect, nor would ask for, a patent; that they only desired the entry to place them on a proper footing in court.

5th. That there are superior outstanding equities asserted by other parties and now under consideration by the courts; and that, therefore, the executive authorities should withhold the legal title *in trust* until the proper owner shall have been judicially ascertained; that he (Mr. Rector) has filed a bill in the Hot Springs chancery court, asserting title to the hot springs, under the New Madrid location of Langlois, in which the heirs of Belding have been made parties, with a prayer for perpetual injunction against the judgment obtained in the Supreme Court, and that the injunction has been granted.

6th. That the application for a patent should be denied—1st, because there is no decision, executive or judicial, recognizing title in Belding's heirs against the United States; 2d, that admitting, as between *them*, Beldings have the title, still the court of chancery has so far found title in others superior to that of Beldings.

The papers more immediately connected with the present motion and this report, and among them the argument of Henry M. Rector, esq., will be found in a separate bundle, appropriately designated. All the other papers connected with the case, consisting of testimony, correspondence, briefs, and arguments of attorneys, &c., making a very large package, are also herewith transmitted, according to the schedule herewith, descriptive of each paper.

I have the honor to be, with great respect, &c.,

JOS. S. WILSON, *Commissioner.*

Hon. JACOB THOMPSON,
Secretary of the Interior.

DEPARTMENT OF THE INTERIOR,
Washington, June 7, 1860.

SIR: Herewith I return the papers submitted with your report of the 27th April last, and enclose the arguments since filed in this department, upon the application of the heirs of Ludovicus Belding for a patent upon their entry, of 19th December, 1851, by special certificate No. 6,545, of the southwest quarter of section 33, township 2 south, of range 19 west, Washington district, Arkansas, embracing the hot springs.

A controversy has been going on for many years before this department, and recently in the courts of Arkansas and the Supreme Court of the United States, in relation to the title to this tract of land. Rector and others claim under certain locations of a New Madrid certificate, and an alleged pre-emption right in the heirs of John Perciful, and Gaines and others, on the other hand, as heirs of Ludovicus Belding; and the latter are at present the applicants for a patent. Their entry was allowed under a special order of Secretary Stuart, dated November 21, 1851, made on a suggestion of Attorney General Crittenden, (who, however, does not appear to have had the case before him regularly for his advice,) although the same Secretary had, under date of October 10, 1851, in an elaborate opinion, decided against the recognition of all the claims that had then been set up, or are now before me, on the ground that the quarter section in controversy had been reserved by the act of Congress of 20th April, 1832, and no right to the land had vested in any of the claimants prior to that reservation.

In 1854 the whole case was before Attorney General Cushing, on the reference, by my predecessor, to him of an application by Rector, as assignee of Langlais, for a patent upon the location of the New Madrid certificate. That officer, on the 20th August, 1854, pronounced an opinion sustaining Secretary Stuart's decision of October 10, 1851, and condemning the subsequent allowance of an entry of the land by Belding's heirs. (See Opinions of the Attorneys General, vol. 6, p. 697.) One point, however, in favor of Rector's claim, was reserved by Mr. Cushing, viz, as to the validity of the James I. Conway survey of July 16, 1820, but this survey has since been declared invalid and unauthorized by the Supreme Court of the United States, at the December term 1859, in the case of John C. Hale *vs.* Wm. H. Gaines and others.

Thus it is shown that all the claims of the contesting parties have been heretofore adjudged to be invalid, and that nothing has been declared by the Attorney General or the Supreme Court which is inconsistent with the decision of October 10, 1851. That decision appears rather to have been vindicated and sustained. On a review now of the questions involved in the case, I concur in the decision of Secretary Stuart. Moreover, I am of the opinion that this department had no legal authority in 1851 to allow an entry of the land by the heirs of Belding or any one else. The issuance of Washington certificate, No. 6,545, was against law, and that certificate has no validity as against the United States, and should not have been allowed. By allowing it this department was placed in an attitude hostile to the act of Congress of 20th April, 1832, which assumed that the land belonged to the United States, and forbade its entry, location, or appropriation for any purpose, until some future disposal by the United States; that is, by authority of the national legislature. The counsel for Belding's heirs, on applying for the entry in 1851, after Secretary Stuart's decision adverse to their right, said that "it was the question of reservation which they wished to try in the courts." But in the litigation which has since arisen, this question was not in issue before the courts of Arkansas or of the United States, and I do not see how it can come in issue and be decided by litigation between parties, neither of whom have a valid title, though, under the laws of Arkansas, one may have a right of possession in preference to others.

This case having been repeatedly brought before this department and fully considered, and the several claims to the land having been repeatedly rejected

for reasons which have been concurred in by each succeeding head of the department through a series of years, I think the time has now arrived at which it is no longer proper to delay a vindication of the position of the department by appropriate action. The entry of Belding's heirs should therefore now be cancelled, the invalidity of all the subsisting claims to this quarter section declared, and the land held subject to such disposal as Congress may see fit to direct should be made of the same.

The request of the counsel for the heirs of Belding to withdraw their application after the same had been fully argued by them, and carefully examined by me, cannot for the same reasons be received with favor, and is overruled.

Very respectfully, your obedient servant,

J. THOMPSON, *Secretary.*

The COMMISSIONER *of the General Land Office.*

GENERAL LAND OFFICE,
January 31, 1861.

SIR: In answer to your letter of the 22d instant, accompanied by the petition of the "heirs of Ludovicus Belding, deceased," I have the honor to state that the several claims to the lands known as the "hot springs," including the southwest quarter of section 33, township 2 south, range 19 west, Washington land district, Arkansas, have heretofore been fully considered. The heirs of Ludovicus Belding claim the right to pre-empt, and to possess and enjoy as their property, the above tract of land, in virtue of a settlement and cultivation by Belding in 1829, in accordance with the provisions of the act of 29th May, 1830, which act required the settler to prove up and pay for his land within one year from the date of the act. Such entry was not made within the time prescribed, because the land was not surveyed before the expiration of said year. After the expiration of the year, the act of Congress passed 20th of April, 1832, reserved said land for the future disposal of Congress. The act of 14th July, 1832, revived the act of 1830, and this is the act under which said heirs claim. Divers claims had been asserted before the Land Office at Washington to this land, consisting of a New Madrid location, under which John C. Hale now claims, a pre-emption under the act of 1830, called the Percifull claim, and another called a Cherokee pre-emption claim, all of which were alluded to and disposed of by the Supreme Court decision of Hale *vs.* Gaines *et al.*, hereinafter mentioned. In 1851 a thorough investigation was had into the merits of all the claims before the district office, and the testimony and papers were duly transmitted to this office.

In 1851 Commissioner Butterfield reported the case to Hon. Alexander H. H. Stuart, then Secretary of the Interior, who, on the 10th day of October, 1851, decided against all the claimants, including the heirs of Belding. The Secretary decided that the heirs of Belding had no right to the land under the provisions of the act of 29th May, 1830, because that act had expired by its own limitation before the survey of the land in 1838, and that they had no right under the act of 14th July, 1832, because the act of 20th April, 1832, reserved the land for the future disposal of Congress, and that therefore it could not be pre-empted under the act of 14th July, 1832. After the Secretary's decision, to wit, on 14th October, 1851, an application was made by the attorney of said heirs for permission to make an entry of said land, in order that they might be placed in a proper position for the assertion of their rights in the courts. The application being refused by this office, an appeal was taken to the Secretary, who directed that said heirs should make a special entry, qualifying his decision as follows, to wit: "Said entry will remain subject to the same power of revision and control by the General Land Office and this department as may be lawfully exercised over any ordinary entry. The government will still hold the ultimate

power of protecting its own rights, while the claimants will merely be placed in a position to contest the adverse claims of others to the same land."

Pursuant to this decision the land officers at Washington, Arkansas, permitted the entry, and certificate number 6,545, copy herewith, was issued. Upon this ccatificate William H. Gaines and others, heirs of Ludovicus Belding, instituted judicial proceedings in the State of Arkansas against John C. Hale for the possession of the land, where, after several years' litigation, the possession was awarded to said heirs by a judgment of the supreme court of Arkansas, from whence the case was brought by writ of error before the Supreme Court of the United States, and was decided there against the right of Hale, the said Supreme Court of the United States sustaining the decision of the court below.

In 1860 the attorney of said heirs filed in this office a motion for a patent on said entry, predicating their motion on the decision of the Supreme Court of the United States.

This office on the 27th April, 1860, reported the case to the late Secretary, Hon. Jacob Thompson, with its views as to said motion, which were in substance that the executive was powerless to comply with the application for a patent, for the reason that the land was reserved, still remained reserved by the act of Congress, and that the special certificate of entry, No. 6,545, had subserved the purpose for which it was issued, and that Congress alone had the power to dispose of the title to said land. The Secretary returned the case with his letter of 7th June, 1860, refusing to direct a patent to be issued, and directing the entry to be cancelled.

Before the entry was cancelled, however, proceedings by bill were commenced in the circuit court for the District of Columbia by said heirs with a view to restrain the cancellation of said entry, &c., and the Commissioner and Secretary having been notified thereof by the process of said court, and the case being still before the Supreme Court by writ of error from the circuit court, the entry has remained in abeyance, and now remains uncancelled.

The case is to be found in volume 22, page 144, Howard's Reports, and grew out of proceedings (as before mentioned) in the State courts of Arkansas, based upon said entry. The court, decided in substance, that it had no jurisdiction of the claim of Belding's heirs, because by the 25th section of the judiciary act of September 24, 1798, such jurisdiction is only given in cases of this kind where the decision of the highest court of the State is *against* the title, and in this case the decision of such court was in favor of the heirs of Belding. This relieves the case from all conflict so far as the executive is concerned, and, as stated in our report to the Secretary, "the result of a very careful examination of the opinion of the court is, that we find the question of title narrowed down to the heirs of Belding and the United States, all other parties to the suit having been ruled out by the court."

In his annual report for 1860 Secretary Thompson, after a brief allusion to his action in the case, recommends that the disposal of the four sections reserved (including the hot springs) be provided for by appropriate legislation. (See page 3, in copy of said report herewith.)

In conclusion, it only remains for me to say that the opinion of the late Secretary was against the legality of this claim, which is conclusive upon this office; but, should Congress be of a different opinion, the enclosed draught of a bill would, it is believed, accomplish the object intended in your letter.

Very respectfully, your obedient servant,

JOSEPH S. WILSON,
Commissioner.

Hon. J. R. BARRETT,
Committee Public Lands, House of Representatives.

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