

MINING CLAIM-PLACER-LEGAL SUBDIVISIONS.

ROMAN PLACER MINING CLAIM.

Lands not embraced in the application for patent for a mining claim, and in the published and posted notice and other proceedings, can not be embraced in the entry.

The smallest legal subdivision of the public surveys provided for by the mining laws is a subdivision of ten acres, in square form; and such laws do not contemplate that in the location and entry of placer mining claims rectangular tracts of five acres may be recognized and treated as legal subdivisions.

Secretary Hitchcock to the Commissioner of the General Land Office,

(F. L. C.)

November 16, 1905.

(A. B. P.)

February 3, 1901, the Diamond Fire Brick Company made entry for the Roman placer mining claim, survey No. 14,524, Pueblo, Colorado. The claim, though located upon surveyed lands, does not conform to the United States public-land surveys, or to the system and rectangular subdivisions of such surveys. For this reason your office, by decision of July 8, 1903, directed that the company be required to conform the entry to the public surveys, on pain of the cancellation thereof in the event of default.

The company was notified accordingly, and, in response, filed what it terms an "amended application to purchase," wherein the claim is attempted to be described in tracts which, with two exceptions, contain only five acres each, though in rectangular form, as, for instance, the "S. $\frac{1}{2}$ of the NW. $\frac{1}{4}$ of the NE. $\frac{1}{4}$ of the NE. $\frac{1}{4}$," and so on.

By decision of February 15, 1904, your office refused to accept the so-called amended application to purchase for the stated reasons, (1) that the lands are described in five-acre tracts, and not according to legal subdivisions, and (2) that, as so described, portions of the lands lie outside of the boundaries of the claims as located and entered. The company has appealed to the Department.

The claim as entered is without pretense to conformity with the public surveys. Its shape is such as finds no warrant whatever in the mining laws; and the refusal of your office to permit the entry to pass to patent was manifestly right. The chief contention of the company, in its endeavor to sustain the entry as it now stands, is that to have conformed the claim to the public surveys would have necessitated the inclusion of lands not placer in character. There is nothing in this contention. If it be assumed that the adjacent lands are not placer, as alleged, the laying of the lines of the location in conformity with the public surveys, which may be done to embrace tracts as small as ten acres in area, in square form, would not require the inclusion of adjacent non-placer lands to such extent as to affect the validity of the location for that reason. (Hogan and Idaho Placer Mining Claims, 34 L. D. 42.)

Your office was also right in refusing to accept the showing made by the company in its attempt to conform the claim to the public surveys. Lands not included in the application for patent, the published and posted notice and other proceedings, cannot be embraced in the entry. This is plain, and in view thereof, and of the fact as appears from the record that the claim cannot otherwise be conformed to the public surveys, it is clear that the defects therein are, for this reason, incurable.

Nor is there any authority under the mining laws for making entry and obtaining patent for a placer claim composed of tracts as small as five acres in area, though in rectangular form. The law on this subject is found in sections 2329 to 2331, inclusive, of the Revised Statutes, which sections are as follows:

Sec. 2329. Claims usually called "placers," including all forms of deposit, excepting veins of quartz, or other rock in place, shall be subject to entry and patent, under like circumstances and conditions, and upon similar proceedings, as are provided for vein or lode claims; but where the lands have been previously surveyed by the United States, the entry in its exterior limits shall conform to the legal subdivisions of the public lands.

Sec. 2330. Legal subdivisions of forty acres may be subdivided into ten-acre tracts; and two or more persons, or associations of persons, having contiguous claims of any size, although such claims may be less than ten acres each, may make joint entry thereof; but no location of a placer claim, made after the ninth day of July, eighteen hundred and seventy, shall exceed one hundred and sixty acres for any one person or association of persons, which location shall conform to the United States surveys; and nothing in this section contained shall defeat or impair any *bona fide* preemption or homestead claim upon agricultural lands, or authorize the sale of the improvements of any *bona fide* settler to any purchaser.

Sec. 2331. Where placer-claims are upon surveyed lands, and conform to legal subdivisions, no further survey or plat shall be required, and all placer mining claims located after the tenth day of May, eighteen hundred and seventy-two, shall conform as near as practicable with the United States system of public-land surveys, and the rectangular subdivisions of such surveys, and no such location shall include more than twenty acres for each individual claimant; but where placer-claims can not be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands; and where by the segregation of mineral land in any legal subdivision a quantity of agricultural land less than forty acres remains, such fractional portion of agricultural land may be entered by any party qualified by law, for homestead or preemption purposes.

That under these sections placer claims located since May 10, 1872, whether upon surveyed or unsurveyed lands, are required to conform as nearly as practicable to the United States system of public-land surveys, is settled by numerous decisions of this Department, (Miller Placer Claim, 30 L. D., 225; Wood Placer Mining Company, 32 L. D., 198—on review, *Id.*, 363; Hogan and Idaho Placer Mining Claims, 34 L. D., 42; Rialto No. 2 Placer Mining Claim, 34 L. D., 44; Laughing Water Placer, 34 L. D., 56.)

There is no difficulty in applying the principle to a claim upon unsurveyed lands. It is done by locating the claim in rectangular form, of lawful dimensions, and with east-and-west and north-and-south boundary lines. (Rialto No. 2 Placer Mining Claim, 34 L. D., 44; Laughing Water Placer, 34 L.

D., 56; Wood Placer Mining Company, 32 L. D., 363, 364-365.)

If the claim be upon surveyed lands, as is the case here, the matter of conforming the same to the public surveys, where not for some sufficient physical or other reason impracticable to do so, is accomplished simply by locating the claim according to the legal subdivisions of such surveys.

The smallest legal subdivision recognized by the public land laws, other than the placer mining laws, is a tract of forty acres—that is, a tract in square form constituting one fourth of a quarter section, or one sixteenth of a section, of land—except where by reason of a section being fractional its subdivision into smaller tracts may result in the formation of lots of irregular shape and dimensions, in which event such lots are considered legal subdivisions and are known and described with relation to the section by the numbers they respectively bear.

By the placer mining laws (Sec. 2330, *supra*) it is provided that “legal subdivisions of forty acres may be subdivided into ten-acre tracts;” and further, that “two or more persons, having contiguous claims of any size, although such claims may be less than ten acres each, may make joint entry thereof.” These provisions are intended to meet conditions, which not infrequently arise, peculiar to the assertion of placer claims, where the claimed placer deposits are limited in extent to tracts of much smaller area than forty acres. In such cases, it is provided: (1) that, a regular subdivision of forty acres may be *subdivided*, that is, reduced by subdivision, according to the system of public land surveys, to four tracts of ten acres each in square form, and (2) that in the event of contiguous claims of any size, though *less* than ten acres each, the persons, or associations of persons, asserting the same may make joint entry thereof.

Whether under the latter provision entry and patent may be obtained for a placer claim or claims aggregating less than ten acres is a question not now before the Department, and no opinion is expressed with respect thereto. It is sufficient for the decision of this case to say that the statute does not contemplate that in the location and entry of placer mining claims rectangular tracts of five acres may be recognized and treated as legal subdivisions of the public surveys. The smallest legal subdivision provided for by the statute is a subdivision of ten acres; and that must be in square form, else it would not be a subdivision according to the system of the public-land surveys.

The decision appealed from is accordingly affirmed.

As paragraphs 22, 23 and 24 of the mining regulations (31 L. D., 477-478) are not in entire accord with the views herein expressed, said paragraphs are hereby severally revoked and the following substituted in lieu thereof:

22. By section 2330 authority is given for subdividing forty-acre legal subdivisions into ten-acre tracts. These ten-acre tracts should be considered and dealt with as legal subdivisions, and an applicant having a placer claim which conforms to one or more of such ten-acre tracts, contiguous in case of two or more tracts, may make entry thereof, after the usual proceedings, without further survey or plat.

23. In subdividing forty-acre legal subdivisions, the ten-acre tracts must be in square form, with lines at right angles with the lines of the public surveys; and the notice given of the application must be specific and accurate in description.

24. A ten-acre subdivision may be described, for instance, if situated in the

extreme northeast of the section, as the "NE. $\frac{1}{4}$ of the NE. $\frac{1}{4}$ of the NE. $\frac{1}{4}$ " of the section, or, in like manner, by appropriate terms, wherever situated; but in addition to this description, the notice must give all the other data required in a mineral application, by which parties may be put on inquiry as to the land sought to be patented. The proofs submitted with applications must show clearly the character and extent of the improvements upon the premises.