

MINING CLAIM--SURVEY--CONFLICTS.

DROGHEDA AND WEST MONROE EXTENSION LODE CLAIMS.

The survey of a mining claim, whereby record conflicts with prior surveys are made to appear which are alleged to have no existence in fact, can be approved by the surveyor-general only when it is determined, agreeably to the principle of the case of *Sinnott v. Jewett*, what conflicts therewith, if any, must be recognized, and the conditions are shown accordingly.

Paragraph 147 of the mining regulations (31 L. D. 474, 498), as amended August 8, 1904, cited and quoted.

Acting Secretary Ryan to the Commissioner of the General Land
(S. V. P.) *Office, August 11, 1904* (F. H. B.)

Charles Horning and The Kansas-Burroughs Consolidated Mining Company have filed motion for review of departmental decision of August 30, 1902 (unreported), in the above-entitled case. Substantially stated, the facts and history of the case are as follows:

November 23, 1899, the surveyor-general for Colorado, upon the application of Horning, issued an order to a United States deputy mineral surveyor for the survey of the Drogheda and West Monroe Extension lode mining claims, embracing lands in unsubdivided township 3 south, range 73 west, 6th P. M., Nevada mining district, Gilpin county, Colorado. The survey (No. 13654) was executed November 25-27, 1899, and forwarded to the surveyor-general for his examination and approval.

January 26, 1901, the surveyor-general returned the survey without his approval, because of apparent conflicts with prior surveys, accompanied by a letter wherein he stated the grounds for his action and gave directions to the deputy mineral surveyor as follows:

From an examination of the case it appears that the relative position of the survey with the conflicting claims is not properly shown; that is, the position of the claims as indicated in the field notes and upon the preliminary plat filed with the case may be as staked upon the ground, but office records show the conflicting claims to have been surveyed, which was made the basis for the description contained in the several patents issued thereon, and this office cannot at this time accept the report showing the positions of the claims other than described in the several patents.

* * * * *

You are therefore directed to re-examine your work, and advised that it is your duty to comply with the practice and regulations of the Department by showing the relative position of your survey with the conflicting surveys, as approved and patented.

For your information and guidance in the case I enclose herewith a diagram tracing, showing the relative position of these surveys in accordance with the records of this office.

Thereupon Horning and the Kansas-Burroughs company, the latter asserting an interest in the Drogheda and West Monroe Extension claims, appealed to your office.

By decision of March 26, 1901, your office sustained the action of the surveyor-general to the extent of his refusal to approve the survey under existing conditions, but stated, in effect, that if the appellants would secure the surrender and relinquishment to the United States of the outstanding patents which embrace conflicts with or overlaps upon the Drogheda and West Monroe Extension claims, as represented upon said survey, in so far as such patents are based upon surveys alleged to be erroneous because not in accord with the claims as staked and marked on the ground, new patents would be issued in lieu of those surrendered, upon new and correct surveys of the claims being furnished, and that republication and reposting of notice would not be required.

An effort appears to have been made to carry into execution the plan suggested with respect to the surrender of the patents, but without avail. Among other things, the Kansas-Burroughs company filed a list of patented and surveyed claims, stated to be owned or controlled by it, among which are most of the claims with which the survey here in question was found by the surveyor-general apparently to conflict. Finally, in a letter addressed to your office by the attorney for Horning and the Kansas-Burroughs company, it was stated that it was found, after considerable expenditures, to be impracticable to surrender the outstanding patents, and that it was therefore desired to appeal.

An appeal to the Department from the decision of your office was accordingly taken. In the departmental decision aforesaid, after stating the case substantially as above, it was said and held, so far as necessary now to be considered, as follows:

The appellants assert that said survey was made to accord with the Drogheda and West Monroe Extension locations as staked and marked on the ground; that the surveys upon which the conflicting outstanding patents are based, respectively, were not made in conformity to the several patented locations as staked and marked on the ground; that hence the conflicts between the Drogheda and West Monroe Extension, and said patented claims, as located on the ground, are not correctly represented in the patents; and that such result was brought about by errors and mistakes in the surveys of the patented claims, and not by any error or mistake in the survey here in question. Upon the theory that the existing conditions are in fact as thus represented, it is contended that the survey should be approved and accepted as a basis for patent proceedings, even though admitted to embrace lands already included in the outstanding patents.

Even if all that is claimed by the appellants with respect to the facts in the case be true, it is clear that the survey cannot be approved, so long as the patents to the

conflicting claims remain outstanding, unless it shall be amended to show the conflicts with the patented claims as described in the patents. The patents were issued upon approved surveys and in conformity with such surveys. The land department has no jurisdiction or authority, after patent to a mining claim has been issued, to correct errors or mistakes in the survey upon which the patent is based. Certainly not in such a case as this, where to correct the alleged errors or mistakes in the former surveys would involve such changes in the surveys as to render them out of harmony with and materially different from the descriptions contained in the patents issued upon said surveys. Nor has the land department jurisdiction or authority to issue a patent for lands included in a patent already issued and which is still outstanding (see Mono Fraction Lode Mining Claim, 31 L. D. 121). The decision of your office, in so far as it sustains the refusal of the surveyor-general to approve the survey in question, is therefore affirmed.

It is asserted by appellants, in substance and effect, in support of their motion for review, that in the prior surveys, made as the claims involved were found to be located and marked upon the ground, the errors complained of occur merely in the returned courses and distances of the tie lines thereof to section corners described in the patents, whereby conflicts with the Drogheda and West Monroe Extension claims are made to appear which do not exist on the ground. The case involves the question presented and decided in, and is in that respect controlled by, the recent case of *Sinnott v. Jewett*, decided by the Department July 12, 1904 (33 L. D. 91), in which the requirements under the law and official regulations with respect to the designation of a particular tract for patent purposes are set forth, and in which it is held (syllabus):

In case of variance between the *locus* of a patented mining claim as indicated by the tie line described in the patent, from a corner of the claim to a corner of the public survey or a United States mineral monument, and as defined upon the ground, the land department will regard as constituting the patented claim, and will not receive further application for patent to, the tract of land embraced in the survey and bounded by the lines actually marked, defined, and established on the ground by monuments substantially within the requirements under the law and official regulations and corresponding to the description thereof in the patent.

The case at bar presents the opposite of the situation presented in the *Sinnott-Jewett* case, in this: In the latter no conflict between the two surveys there in question appeared by the records of the surveyor-general, but a conflict in fact was alleged by the patentee to exist; whilst in the former the conflicts apparent upon the official records are asserted to have no existence in fact as the claims concerned are laid and were surveyed upon the ground.

The field notes of the Drogheda and West Monroe Extension survey, and the report of the deputy mineral surveyor in that connection, with the record now before the Department, do not of themselves contain data sufficient to justify approval of that survey, with the omission therefrom of the conflicts apparent upon the present plats or connected sheets of the surveyor-general.

To the end that it may be determined in what shape the survey may finally be approved, it will be necessary that a further examination upon the ground be made by a deputy mineral surveyor, in order that the conditions existing thereon may be fully disclosed. When such examination shall have been made, the mineral surveyor will indicate (by diagram, if necessary) the exact relative situations of the various claims as marked and established on the ground, and fully and specifically describe in his report the positions and character of the monuments, if any, by which each claim which actually adjoins or conflicts, or which appears by the present plats of the surveyor-general to conflict, with the Drogheda and West Monroe Extension claims, or either of them, is marked, as well as any other visible evidence whereby any of such claims was by him identified on the ground.

If upon receipt of the required report of the mineral surveyor, it shall be found by the surveyor-general to so far comport with the descriptive reports and other essential portions of the approved prior surveys, on file in his office, as to enable him to determine with certainty, all the data considered, that the prior surveys are clearly defined and can be and have been identified upon the ground in such positions, as to embrace no portions of the apparent conflicts before mentioned, as asserted by appellants, the survey here in question, if in all other respects satisfactory, may be approved. If, on the other hand, the absence of essential monuments of any of the apparently conflicting surveys be reported or the claims therein embraced be not otherwise clearly and satisfactorily identified on the ground, or the later and earlier reports irreconcilably disagree in any material respects as to the *loci* or identity of the prior surveys (irrespective of course or distance of the tie or boundary lines thereof), or the showing as a whole be otherwise called in question, so that the surveyor-general is unable to determine that the conflicts, or any of them, now apparent do not exist in fact, as alleged, approval of the survey will be withheld pending a regular determination of the facts.

In the latter event, upon application therefor by appellants, a hearing will be ordered before the local officers of the land district in which the claims are situate, with due notice to claimants under such surveys as are or appear to be affected by the survey in question, at which full opportunity will be afforded for the submission of all available evidence touching the identity of the various surveys and respecting the conditions existing on the ground. The survey here in question, if found or made to conform to the showing there made and as the facts are finally determined, may be approved, if otherwise satisfactory; and the surveyor-general will thereupon adjust his records accordingly.

In this connection it may be stated that, for the guidance of all concerned, paragraph 147 of the mining regulations (31 L. D. 474, 498) was on August 8, 1904, amended to read as follows:

147. If an official mineral survey has been made in the vicinity, within a reasonable distance, a further connecting line should be run to some corner thereof;

and in like manner all conflicting surveys and locations should be so connected, and the corner with which connection is made in each case described. Such connections will be made and conflicts shown according to the boundaries of the neighboring or conflicting claims as each is marked, defined, and actually established upon the ground. The mineral surveyor will fully and specifically state in his return *how* and by what *visible evidence* he was able to identify on the ground the several conflicting surveys and those which appear according to their returned tie or boundary lines to conflict, if the were so identified, and report errors or discrepancies found by him in any such surveys. In the survey of contiguous claims which constitute a consolidated group, where corners are common, bearings should be mentioned but once.

It is not intended hereby to suggest that conflicts with prior approved surveys, if any, upon which applications for patent have not been filed or patents issued, may not be included in an application for patent filed by appellants as claimants under the later survey; but that the survey here in question can be approved only when it is determined, agreeably to the principle of the Sinnett-Jewett case, what conflicts therewith, if any, must be recognized, and the conditions are shown accordingly.

The decision under review is modified to conform hereto, and the record is returned for further proceedings in accordance herewith.

8276

WSP ✓

"N"

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

WASHINGTON, D. C., June 10, 1907.

Handwritten signature/initials

ADDRESS ONLY THE
COMMISSIONER OF THE GENERAL LAND OFFICE

Drogheda and West Monroe

Extension Lode Claims.

)
:
)

Quasi Contest No. 2028.

Denying motion for approval of
Survey No. 13644.

5

United States Surveyor-General,

Denver, Colorado.

Sir:

November 3, 1899, upon application by Charles Horning, an order was issued out of your office to George W. Schneider, Mineral Surveyor, for the survey of the Drogheda and West Monroe Extension Lode claims, embracing lands in township 3, South (unsubdivided), of range 73 west, which was executed November 25-27, 1899, and forwarded to your office for approval.

January 26, 1901, the survey was returned by your office to the Surveyor without approval, on the following grounds:-

"From an examination of the case it appears that the relative position of the survey with the conflicting claims is not properly shown; that is, the position of the claims as indicated in the field notes and upon the preliminary plat filed with the case may be as staked upon the ground; but office records show the conflicting claims to have been surveyed, which was made the basis for the description contained in the several patents issued thereon, and this office cannot at this time accept the report showing the positions of the claims other than described in the several patents.

"You are therefore directed to re-examine your work, and advised that it is your duty to comply with the practice and regulations of the Department by showing the relative position of your survey with the conflicting surveys, as approved and patented."

From which Horning and the Kansas-Burroughs Consolidated Mining Company, the latter claiming an interest in said lode claims, appealed to this office.

March 26, 1901, your action was affirmed to the extent of your refusal to approve said survey, but it was stated in effect that if appellants would secure the surrender and relinquishment to the United States of the outstanding conflicting erroneous patents, new patents would issue upon new and corrected surveys without re-publication and re-posting. It being found impracticable to secure the surrender of the outstanding patents, the parties appealed to the Department, which on August 30, 1902, affirmed the decision of this office in so far as it sustained the refusal of your office to approve the survey, without prejudice, however, to the right of claimants to yet secure the surrender of the said outstanding patents, in which event new and corrected patents would issue only after due publication and posting of notice; which was on review modified, August 11, 1904, (33 L. D., 183), directing that a further examination on the ground and report thereon be made by a mineral surveyor in order to determine in what shape the survey of said claims may be approved by your office, concluding with specific instructions dependent upon the nature of the report to be received, which was promulgated to your office August 22, 1904.

March 30, 1906, you were called upon for report, to which you responded May 3, 1906, inclosing evidence of service of said Departmental decision on the parties, and transmitting therewith a written request from counsel for the applicant for an extension

of ninety days time within which to comply with the requirements of the Department aforesaid, which was granted by letter of May 29, 1906.

May 24, 1907, you reported that notice of the extension of time granted as aforesaid was given to claimant's attorney by registered mail June 2, 1906, as evidenced by the registry return receipt filed therewith; that on July 25, 1906, claimant filed in your office application for an order for an amended survey, accompanied with duplicate certificate of deposit of \$5 for office work, which you issued the same day; that on November 12, 1906, you called on the mineral surveyor-designated to make the amended survey- for report; that on November 14, 1906, he reported in substance that the Rocky Mountain National Bank of Central City, Colorado, had become the owner of said lode claims, and the president thereof directed him to proceed no further in the matter, as the claims had been abandoned, and that in reply to a letter addressed by you to the president of said bank in relation to the matter, you were advised under date of May 22, 1907, as follows:-

"After the Rocky Mountain National Bank came into possession of the above named properties (Drogheda and West Monroe lodes, Survey 13644) it was found that there was too little vacant ground available in the surveys to warrant going forward with the application for patent, hence the same is abandoned."

In view of the foregoing, and it appearing that all parties claiming to be interested in said lode claims have been duly notified of the requirements prerequisite to the approval of the survey of said claims, and default having been made, your action declining to approve the survey of said claims becomes final, and the case is accordingly closed.

Note same on your records, and advise the parties in interest hereof.

Very respectfully,

Board of Law Review,

By

E. J. Finney

MDT

R. B. Ballou
Commissioner.