58TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1885.

# EXPLORATION AND PURCHASE OF MINES WITHIN THE BOUNDARIES OF PRIVATE LAND CLAIMS.

MARCH 24, 1904.—Referred to the House Calendar and ordered to be printed.

Mr. SCOTT, from the Committee on Mines and Mining, submitted the following

## REPORT.

[To accompany H. R. 1954.]

The Committee on Mines and Mining, to which was referred the bill (H. R. 1954) to authorize the exploration and purchase of mines within the boundaries of private land claims, beg leave to report:

That they have had the same under consideration, and now unanimously report the same back to the House with the recommendation that the same do pass with the following amendments:

In section 1, line 5, after the word "confirmed" and before the word "by," insert the words "or hereafter confirmed."

In line 6, after the word "claims," strike out the remainder of the line and all of line 7, to and including the word "thereof," and insert "and which did not convey the mineral rights to the grantee by the terms of the grant, and to which such grantee has not become otherwise entitled in law or in equity."

And as reason for this report the committee respectfully states that it has examined into the law, facts, history, and conditions which it was claimed made the passage of such a bill necessary and desirable, and find:

That Congress passed an act, commonly known as the Court of Private Land Claims act, on the 3d of March, 1891 (26 Stat. L., 854), for the settlement of private land claims situated principally in the Territory of New Mexico, but some few being in Colorado and Arizona. The titles to these private land claims had remained in an unsettled condition ever since the acquisition of New Mexico and surrounding land from Mexico by the treaty of Guadalupe-Hidalgo in 1848.

The act of Congress referred to creating the Court of Private Land Claims is a very lengthy one and provides with great detail for the organization of the court and the presentation to it of all claims and the manner of procedure, and then goes on to say what the court shall confirm to the claimants and what it shall not confirm.

A bill similar in import to the one now being considered (H. R. 9050) was introduced in the Fifty-seventh Congress, and after having been referred to this same committee and an elaborate hearing had thereon a report was called for by the committee from the Department of the Interior. That Department reported adversely upon the bill by the following letter:

DEPARTMENT OF THE INTERIOR,
*Washington, June 19, 1902.*

SIR: As requested in your communication of June 2, 1902, the Department has considered House bill No. 9050, the object of which is to "authorize the exploration and purchase of mines within the boundaries of private land claims," and begs leave to submit the following report upon the same:

The first section of the bill is as follows:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That hereafter all gold, silver, and quicksilver deposits, or mines, or minerals of the same, on lands embraced within any land claim confirmed by the decree of the Court of Private Land Claims, or as to which a suit for confirmation shall be pending in any court having jurisdiction thereof, are hereby declared to be free and open to exploration and purchase, under the mining laws of the United States, the local mining laws and regulations, and such regulations in addition thereto and consistent therewith as may be prescribed by the Secretary of the Interior from time to time, by citizens of the United States and those who have declared their intention to become so."

By the other sections of the bill certain modes of procedure are proposed for carrying into effect the provisions of the first section.

The proposed legislation is based upon section 13 (third subdivision) of the act of March 3, 1891 (26 Stat. L., 854, 860), entitled "An act to establish a Court of Private Land Claims, and to provide for the settlement of private land claims in certain States and Territories," and where it is provided:

"No allowance or confirmation of any claim shall confer any right or title to any gold, silver, or quicksilver mines or minerals of the same, unless the grant claimed effected the donation or sale of such mines or minerals to the grantee, or unless such grantee has become otherwise entitled thereto in law or in equity; but all such mines and minerals shall remain the property of the United States, with the right of working the same, which fact shall be stated in all patents issued under this act. But no such mine shall be worked on any property confirmed under this act without the consent of the owner of such property until specially authorized thereto by an act of Congress hereafter passed."

After careful consideration of the subject, the Department is of opinion that only mines of gold, silver, or quicksilver, or minerals of the same, known to exist within a confirmed private land claim at the date of its confirmation, and not the property of the grantee by the terms of the confirmed grant, or otherwise, in law or in equity, were by said act declared to remain the property of the United States, the working of which mines, after confirmation of the grant, and without the owner's consent, was to be provided for by future legislation. This construction appears to be a reasonable one and one which it seems to the Department will effectuate the purposes of the act.

Considerations of equity and justice, as well as the stability of titles based upon decrees of confirmation rendered by the court of private land claims, and patents issued in pursuance thereof, require that there shall be a time with respect to which such titles must be considered as settled. This could not be so if the view should obtain that all lands in claims confirmed by the court, and patented by the Government, are nevertheless to be free and open to exploration for gold, silver, and quicksilver deposits, or mines or minerals of the same, under the mining laws of the United States, as the bill in question proposes to declare. It is not believed that such was the intention of Congress in the enactment of the above-quoted provision of the act of March 3, 1891.

This view is strengthened by the declaration in the act that no such mine shall be worked on any confirmed claim without the consent of the owner thereof until specially authorized by a future act of Congress. What Congress had in mind evidently was the reservation and future working of mines of gold, silver, or quicksilver, existing within the limits of a confirmed claim at the time of confirmation. The act deals with gold, silver, and quicksilver mines and minerals of the same; that is, minerals of the mines. To properly come within the designation of mines the existence of the minerals referred to must have been known at the date of the decree of confirmation.

It is not in terms declared that no allowance or confirmation of any claim shall confer any right or title to minerals of gold, silver, or quicksilver, not known to exist in the land at the time of confirmation of the claim, and which may be discovered after confirmation and patent. To so construe the act would tend to disturb and render uncertain all titles issued upon decrees of confirmation made by the Court of Private Land Claims. It can not be considered that Congress contemplated a result so unreasonable and so manifestly out of harmony with all previous legislation relating to the disposal of the public lands, in the absence of language plainly and unmistakably expressive of such intention. There is nothing in the statute which requires or would warrant such a construction.

The future legislation contemplated by the act relates only to the working of "mines or minerals of the same," that is, to develop claims and the minerals therein—mines and minerals, which had been discovered at the time of confirmation and not to minerals which were then wholly unknown and which may be found many years after the confirmation and after the issuance of patent by the Government. Legislation making provision for the working of all mines of gold, silver, or quicksilver, which were known at the date of the confirmation of any claim to exist within its limits, and which were not conveyed to the grantee by the terms of the grant, and to which he has not become otherwise entitled, in law or in equity, would, in the judgment of the Department, be appropriate legislation.

Many private land claims have been finally adjudicated and patented under the act of March 3, 1891. To hold that the titles thus granted by the Government are liable to be in whole or in part subverted and rendered nugatory by future discoveries in the patented lands of valuable deposits of gold, silver, or quicksilver, as would have to be done to support the bill under consideration, would be in direct contravention of what has come to be regarded as settled law, supported by a long line of judicial and departmental decisions, that when a person once establishes his right to a patent from the Government for a portion of the public domain, he thereby acquires a vested interest in the land to which title is sought; and if the land is not then known to contain valuable deposits of minerals, no discoveries of minerals thereafter made therein, either before or after the actual issuance of patent, will in any manner affect his right to a patent for the land or his right to and exclusive ownership of all such subsequently discovered minerals. It is not believed that by the act of March 3, 1891, Congress intended to make so grave a departure from long-established principles and precedents governing the disposal of the public lands.

For these reasons I can not approve the proposed bill.

Very respectfully,

E. A. HITCHCOCK, *Secretary.*

Hon. FRANK M. EDDY,
*Chairman Committee on Mines and Mining, House of Representatives.*

When the present bill was introduced another hearing was had upon it, during which the Delegate from New Mexico made an elaborate argument in its favor, and the committee again, after making some slight suggested amendments in the bill, sent it to the Department of the Interior for its views. The Department again reported adversely upon the bill by the following letter:

DEPARTMENT OF THE INTERIOR,
*Washington, March 19, 1904.*

SIR: The Department has considered H. R. 1954 (Fifty-eighth Congress), with the suggested amendment to section 1 thereof, referred to in your communication of February 26, 1904.

This section if amended as proposed would read as follows:

"That hereafter all gold, silver, and quicksilver deposits, or mines, or minerals of the same, on lands embraced within any land claim confirmed, or hereafter confirmed, by the decree of the Court of Private Land Claims, and which did not convey the mineral rights to the grantee by the terms of the grant, and to which such grantee has not become otherwise entitled in law or in equity are hereby declared to be free and open to exploration and purchase under the mining laws of the United States. * * *"

In your communication you say:

"This amendment is taken from the second paragraph of page 4 of letter inclosed, it being stated that legislation of this character would be appropriate, in the judgment of the Department."

The letter of the Department referred to is dated June 19, 1902, and was written in response to a communication of June 2, 1902, from the House Committee on Mines

and Mining (Fifty-seventh Congress), requesting a report on H. R. 9050, which was similar in purpose and, except as to the suggested amendment, similar in terms to that of H. R. 1954.

The Department, in its letter of June 19, 1902, for the reasons therein stated, and for other reasons not deemed at the time necessary to mention, declined to approve said H. R. 9050, and, among other things, stated in paragraph 2, page 4:

"Legislation making provision for the working of all mines of gold, silver, or quicksilver, which were known at the date of the confirmation of any claim to exist within its limits, and which were not conveyed to the grantee by the terms of the grant, and to which he has not become otherwise entitled, in law or in equity, would, in the judgment of the Department, be appropriate legislation."

The suggested amendment does not meet the objections which influenced the Department in withholding its approval of H. R. 9050, nor, in its opinion, does such amendment render H. R. 1954 "appropriate legislation" within the purview of section 13 (third subdivision) of the act of March 3, 1891 (26 Stat. L., 854, 860), entitled "An act to establish a Court of Private Land Claims, and to provide for the settlement of private land claims in certain States and Territories." This subdivision reads as follows:

"No allowance or confirmation of any claim shall confer any right or title to any gold, silver, or quicksilver mines, or minerals of the same, unless the grant claimed effected the donation or sale of such mines or minerals to the grantee, or unless such grantee has become otherwise entitled thereto in law or in equity; but all such mines and minerals shall remain the property of the United States, with the right of working the same, which fact shall be stated in all patents issued under this Act. (But no such mine shall be worked on any property confirmed under this Act without the consent of the owner of such property until specially authorized thereto by an Act of Congress hereafter passed.)"

It is plainly manifest from the above language that Congress intended to except from private land grants only such lands upon which, at the time of confirmation, there were known to exist mines which contained gold, silver, or quicksilver; and, in view of the language in said concluding sentence, it is evident that the operation of the mining laws was intended by Congress to be withdrawn from lands so excepted, and, without the consent of the owner of a confirmed private grant, the claimant of a mine of gold, silver, or quicksilver on land so excepted can not work the same "until specially authorized by an act of Congress."

Legislation by Congress which undertakes to confer upon citizens of the United States, and those who have declared their intention to become such, the right to enter upon lands within a confirmed private land grant for the purpose of exploring or prospecting the same for gold, silver, or quicksilver, not known to exist thereon at the date of the confirmation, would not be "appropriate legislation" within the purview of said subdivision. The proposed H. R. 1954, amended as suggested, does undertake to confer upon citizens and others the right to enter upon, prospect, and explore any part of a private land grant for gold, silver, or quicksilver, not known to exist at the date of confirmation, and for this reason alone the Department could not approve the proposed bill. But it is objectionable for other reasons. It undertakes to confer upon private parties for other than public purposes the right of eminent domain.

While it is now settled law that the Federal Government may exercise the right of eminent domain over private property within the States or Territories, so far as it is necessary to the enjoyment of the powers conferred upon it by the Constitution (see Kohe et al. *v.* United States, 91 U. S., 367), yet it is equally well settled that neither Congress nor a State legislature can confer such right for purely private purposes. (Mills on Eminent Domain, secs. 10 and 11.) If private parties are legally given the right, by act of Congress, to work mines of gold, silver, or quicksilver on confirmed private land grants, ways of necessity to and from the mines will, by operation of law, exist over the lands surrounding said mines. (Tiedeman on Real Property, enlarged edition, sec. 609.)

Very respectfully,

E. A. HITCHCOCK,
*Secretary.*

Hon. WEBSTER E. BROWN,
*Chairman Committee on Mines and Mining, House of Representatives.*

Notwithstanding those two adverse reports upon the bill by the Department of the Interior, the committee is of the opinion that it should pass with the amendments above suggested.

The committee is unable to agree with the construction put upon the third subdivision of section 13 of the act of Congress of March 3,

1891, creating the Court of Private Land Claims, as such construction is above set out in the communication from the honorable Secretary of the Interior. The committee believes that the said subdivision of said act of Congress was intended to mean and does mean that all the minerals of the character described in the act, in every private land claim where such reservation of minerals was made in the Government, is still the property of the Government; and it is of opinion that whenever any claimants for a land grant submitted himself to the jurisdiction of the Court of Private Land Claims he was bound by its decree which reserved the minerals to the Government, with the right to work the same by legislation subsequently to be passed.

Congress promised the people living in the vicinity of these land grants that it would permit them, by legislation at some future day, to avail themselves of these mineral lands. It is the opinion of the committee that if such prohibition had not been made citizens might have proceeded to avail themselves of such mineral ground in the usual way without interruption.

The committee can not agree with the Department of the Interior that the effect of this bill would be to permit the taking of private property for private use, but, on the contrary, it is of opinion that the taking of these mineral lands is the taking of public property for the widest kind of a public use—that is, the benefit of the entire citizenship of the United States.

In any event the bill is equitably worded and makes ample compensation to the owners of the surface ground for the use of such portion as may be necessary to the working of any mine, and the bill itself prevents prospectors from entering upon cultivated ground or within inclosures for the purpose of searching for minerals.

The committee is also of opinion that the passage of an act such as this is will result in the final settlement of this question, which appears to be of very grave importance to the communities where these private land claims are situated, in that the first test case that is brought to the court of last resort will forever settle the question as to whether or not the contention of the Department of the Interior is right, that the reservation made in the subdivision of the Court of Private Land Claims act, above referred to, means only mines that were known at the time of the issuance of the patent, and which were particularly described and specifically excepted from the patent itself.

The committee, taking this view of the matter, considers the passage of this legislation as a righteous act, and therefore respectfully recommends that the bill do pass.

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