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OUR WATER RIGHTS

BY F. G. HAVENS

The action of the General Land Office in rejecting final proofs on lands in this Valley on account of an insufficient showing of ownership of water rights by the claimants has given rise to considerable alarm and much discussion among those interested. The rulings were generally such as to leave the claimant much in the dark as to just where he does stand. The fact that the land office recognizes the right of the entryman to mortgage his entry before final proof, and protects the mortgagee in such cases by refusing to permit the entrymen to even relinquish his land back to the government, unless the mortgage is satisfied, caused many to feel that the ruling could not be taken on the ground that the water stock was not fully paid for, and therefore must go to the root of the water right itself. The following ruling in the case of the final proof of Felix G. Havens, assignee of I. W. Gleason, is a case in point:

WASHINGTON, D. C., March 21, 1906. Register and Receiver, Los Angeles, California.

Gentlemen: D. L. E. No. 1118 (F. C. No. 167 May 12, 1904,) was made on May 22, 1900, by Irving W. Gleason, for the N $\frac{1}{2}$, Sec. 20, T. 16 S., R. 13 E., S. B. M., 320 acres, and was amended by letter "G" of September 24, 1900, to the E $\frac{1}{2}$ of NW $\frac{1}{4}$ and NE $\frac{1}{4}$, Sec. 22, and W $\frac{1}{2}$ of NW $\frac{1}{4}$, Sec. 23, T. 16 S., R. 13 E., S. B. M., 320 acres. Said entry as amended was canceled by relinquishment as to the E $\frac{1}{2}$ of NW $\frac{1}{4}$, Sec. 22, W $\frac{1}{2}$ of NW $\frac{1}{4}$, Sec. 23, T. 16 S., R. 13 E., S. B. M., on December 3, 1900, leaving the entry intact as to the NE $\frac{1}{4}$, Sec. 22, T. 16 S., R. 13 E., S. B. M., containing 160 acres, which was assigned on the same day to Felix G. Havens.

On May 12, 1904, the assignee made final proof before the Register, and final receipt and certificate No. 167 issued the same day.

With the final proof papers is found a cross-examination deposition by claimant in which the following question and answer appear:

Question: Have you mortgaged the land embraced in this entry or assigned the water stock appurtenant to the same? If so, state to whom and for what purpose?

Answer: At the time I became the assignee of Irving W. Gleason for this land, the entry was mortgaged to the California Development company, to secure the payment of the balance on the purchase price of the water stock for the irrigation of the land, and the water stock was assigned to the same company as collateral security. I assumed the obligation entered into by said Gleason and have made all payments as they fell due, both on principal and interest, reducing the indebtedness \$320.00.

The land is still mortgaged and the water stock still assigned, but the interest of the California Development company has been assigned to George C. Hunt, of 1247 Ingraham St., Los Angeles, California. Mr. Hunt holds the mortgage against the land and the assignment of the water stock to secure the unpaid balance of \$720.00. There is no other indebtedness either on the land or the water stock. The water stock is worth \$20.00 per acre or \$3200.00 and the land and water stock together are worth \$8000.00. I, therefore, owe less than ten per cent. of the value of the land and water stock.

Claimant states that he is not making proof on this entry either directly or indirectly for the benefit of any person other than himself, and that he has not sold, assigned or transferred his claim to said land or agreed to do so.

In his final proof deposition claimant stated that:

The water stock bought from I. W. Gleason cost \$12.50 per share for 160 shares of which amount I have paid \$7.75 per share, and the annual interest. Balance due is \$4.75 an acre or \$760.00 in all. I am now paying out at the rate of \$160.00 each year and interest at 5 per cent.

The water right relied on by claimant is evidenced by a duly certified copy of a certificate of stock from which it appears that Felix G. Havens, the claimant, was, on December 3, 1900, entitled to 160 shares of the capital stock of the Imperial Water company No. 1, which

are attached to the land embraced in the entry of claimant.

For the purpose of more fully showing the right of applicant to the use of water to permanently irrigate and reclaim the land embraced in the entry, reference is made by claimant to documents filed in the case of final proof in the case of Clara C. Drais, assignee of John M. Reuck, being D. L. E. No. 1253, Final Receipt and Certificate No. 110, issued March 29, 1902, and Patent issued March 12, 1903, consisting of a certified copy of the water appropriation notice, made by the California Development company and recorded in San Diego county, the Articles of Incorporation of the California Development company, the Sociedad de Yrrigacion y Terrenos de la Baja California, Sociedad Anonima, and Imperial Water company No. 1; also By-Laws of the Imperial Water company No. 1, which show the right of the stockholders of said water company to participate in the benefits accruing to the corporation by reason of its various contracts and the right of the individual stockholder to receive water sufficient to perpetually irrigate the land by virtue of being a stockholder in said water company.

Reference is also made to the affidavit of the engineer of the California Development company as to the efficiency and capacity of the system to permanently supply the various mutual water companies with sufficient water to perpetually irrigate the lands within the several districts according to the terms of their respective contracts.

All of the documents above mentioned are specially referred to in connection with this proof and made a part thereof.

The objection to the title of claimant to the water stock relied upon is that it is not an absolute title in claimant as the said stock has been mortgaged, leaving in claimant not an absolute title thereto, but a title that is liable to be destroyed upon claimant's failure to comply with the terms of the mortgage.

It will be necessary for claimant to show that he has an absolute right to sufficient water to successfully irrigate the land.

The land embraced in said entry is found to be in a township and range of which the Secretary of the Interior was authorized by the Act of July 1, 1902, (32 Stat., 728.)

If the requirements of this letter are complied with in due time, the evidence will accordingly be examined with a view to holding the entry unapproved for patenting until said resurvey is accepted and the plats thereof filed and approved, in order that the description of the land may be corrected to agree with the new survey.

Notify the claimant and all known persons in interest of the contents hereof, and that unless he furnishes the evidence required above, or appeals herefrom within 60 days from notice, his entry and final certificate hereby held for cancellation will be canceled without further notice from this office.

In serving notices observe the directions of 29 L. D., 649.

Claimant's postoffice address is stated to be Imperial, California.

Very respectfully,
W. A. RICHARDS,
Commissioner.

It will be observed that the commissioner went over the reference statement which was filed by the claimant with his final proof, and recited its contents, in a way that intimated that it was a matter of controversy and entered into the defect in the water right.

Previous to the receipt of this ruling of the land office, we had not heard of any similar action in any case, so we at once wrote to the Commissioner of the General Land Office, frankly stating what conditions were in the Valley at that time and pointing out the injustice of requiring entrymen on these lands to pay obligations that are not due, in order to secure title to their lands. We also recited that the water

delivered in this Valley is not under control, and that the California Development Company delivering canal system is incomplete. Therefore, their part of the work not having yet been finished, and our obligations not yet being due, we contended that we should not be compelled to pay for what we could not get in order to be permitted to keep our lands. We also asked the question direct if we would have an absolute right to sufficient water to successfully irrigate the land if we should pay off the mortgage on the water stock, explaining the character of the water stock in order to get a clear statement on the matter. In reply to our letter, the Commissioner of the General Land Office, under date of May 1st, 1906, sent us the following letter:

WASHINGTON, D. C., May 1, 1906.
Mr. Felix G. Havens,
El Centro, California.

Sir: I am in receipt of your letter of April 12, 1906, in regard to D. L. E. No. 1118 (F. C. No. 167, May 12, 1904,) Los Angeles, California series, made May 22, 1900, by Irving W. Gleason, for the N $\frac{1}{2}$ Sec. 20, T. 16 S., R. 13 E., S. B. M., 320 acres, amended by letter "G" of September 24, 1900, to the E $\frac{1}{2}$ of NW $\frac{1}{4}$ and NE $\frac{1}{4}$, Sec. 22, and W $\frac{1}{2}$ of NW $\frac{1}{4}$, Sec. 23, T. 16 S., R. 13 E., S. B. M., 320 acres, canceled by relinquishment as to the E $\frac{1}{2}$ of NW $\frac{1}{4}$, Sec. 22, W $\frac{1}{2}$ of NW $\frac{1}{4}$, Sec. 23, T. 16 S., R. 13 E., S. B. M., on December 3, 1900, and assigned to you on the same day.

By office letter "G" of March 21, 1906, said entry was suspended and it was held that it would be necessary for you to show that you had an absolute right to sufficient water to successfully irrigate the land.

It seems that the water right relied on was evidenced by a duly certified copy of a certificate of stock from which it appeared that you were, on December 3, 1900, entitled to 160 shares of the capital stock of the Imperial Water company No. 1, which were attached to the land embraced in the entry.

In a cross-examination deposition with the final proof you stated that the entry was mortgaged to the California Development company to secure the payment

of the balance on the purchase price of the water stock, and that the water stock was assigned to the same company as collateral security.

It was held in said office letter "G" of March 21, 1906, that:

"The objection to the title of claimant to the water stock relied upon is that it is not an absolute title in claimant as the said stock has been mortgaged, leaving in claimant not an absolute title thereto, but a title that is liable to be destroyed upon claimant's failure to comply with the terms of the mortgage."

In your said letter you state, that in your final proof you explained the scheme on which the right, or privilege of using water under the Imperial canal system is based, and that you filed a reference statement in which the documents, affidavits and records filed in the final proof of Clara C. Drais D. L. E. No. 1253, F. C. No. 110, were specially referred to and made a part of your record. You state, however, that the events of the past three years have practically nullified the statements made in those documents and that instead of the water being diverted from the Colorado river in American territory and conducted through Mexico and delivered to your water company, the California Development company has turned the river from its old channel in Mexico and its entire flow is now pouring through the Valley and they are apparently powerless to control it at all.

You suggest that you have doubts as to whether you would have an "absolute right to sufficient water to successfully irrigate the land" if you did pay off the mortgage on the stock in Imperial Water company No. 1, in view of the fact that this stock is not appurtenant to your land, but is only attached to it, and that it is personal property and is taken as collateral by the banks, and is issued to land owners and made attached to specific tracts of land, and is also issued to non-land owners and not attached to anything.

It seems, from your statement, that the non-land owner, holding stock on speculation, the non-irrigating landowner and the farmer with the irrigated ranch all pay the same assessments, and that the water stock is sold for the assessment, if it is not paid, in each case alike, and when so sold is taken off the land to which it is attached, and the land then no longer has a right to water.

Accordingly it seems to you that this "water stock" scheme falls short of the

requirements that the right to the use of water for irrigation should be appurtenant to the land, as under this scheme even if it were successful and the California Development company controlled the flow of the water, it would be possible to prove up on several pieces of land one at a time, and use the same water stock on each tract.

You conclude your letter with the statement that these questions are of vital importance to every one in the Imperial Valley, and you trust that they will receive consideration and that it will not be possible for anyone to criticize this office for any action that may be taken in the premises.

Your attention is directed to the instructions of the Secretary of the Interior to this office issued on February 17, 1904, and reported in 32 L. D., 456, wherein it is stated that among the essential facts which must in all cases be clearly established by the proofs is that the entryman has an absolute right to sufficient water to successfully irrigate the land. Under these instructions this office can only require a compliance with office letter "G" of March 21, 1906, as aforesaid, subject of course, to the right of appeal to the Honorable Secretary of the Interior, as was stated in said letter.

In regard to your query as to whether the water right would be absolute if the mortgage should be satisfied, you are advised that if the water right relied upon is acquired in accordance with the laws of the State of California it will be sufficient. In this connection your attention is directed to section 324, 552 and 1412 of the Civil Code of the State of California, as enacted in 1872, and amendments thereto (James H. Deering's edition, 1903.)

Very respectfully,
W. A. RICHARDS,
Commissioner.

From this letter it will be seen that the action of the commissioner in ruling as he has in rejecting the final proofs in this Valley, is taken in enforcing the instructions of the Secretary of the Interior issued to him on February 17th, 1904. These instructions are as follows:

Desert Land Cultivation—Final Proof Instructions:
Final proof under a desert land entry

Continued on 8th page

WHERE MORE THAN

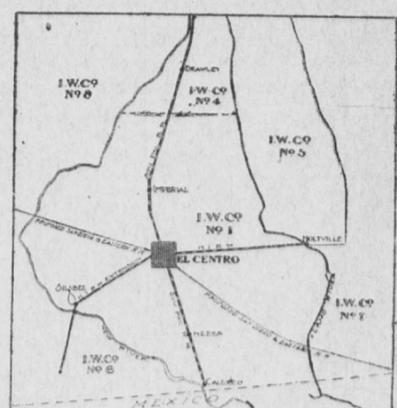
\$ 200,000

IS BEING SPENT

The town of El Centro was started in the fall of 1905 and is now about six months old. It is located in the center of the best part of the Imperial Valley, and is destined to become the metropolis.

The following improvements now completed, or under way, make a record to be proud of:

Ice and Cold Storage Plant (Brick)	\$75,000
Hotel El Centro (Brick)	30,000
Transformer Station and Power Lines	20,000
Opera House Block (Brick)	40,000
Cement Sidewalks	10,000
Water Works System	10,000
Electric Light Plant for El Centro	5,000
S. P. R. R. Depot	6,000
Holt Block (5 brick stores)	15,000
Machine Shop and Equipment	2,500
Hotel Franklin	5,000
Hardware Store	2,000
El Centro Cantaloupe Association Packing House	2,000
Peterson Building (Brick)	1,200
Fuller's Residence	1,500
Three Cottages	3,000
El Centro Land Co's Office	800
Blinn Lumber Co. Yards	2,500
Fuller & Aten's Office	600
Grading Streets, Etc.	1,000
Total	\$232,100



EL CENTRO

Will become the

METROPOLIS

of the

IMPERIAL VALLEY

More money has been spent in buildings and permanent improvements in El Centro in the last five months than in any other town in the Imperial Valley in five years. Come and see for yourself.

This is the town of

PROGRESS

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El Centro Land Co.

Farm Lands for Sale **D. H. CHAPLIN,**
Insurance General Agent
Notary Public El Centro, California

For information regarding El Centro and the Imperial Valley, and its opportunities, address

D. H. CHAPLIN
GENERAL AGENT EL CENTRO LAND CO.
EL CENTRO, CALIFORNIA