

thereafter, during their pendency, segregate the land from other disposition. In the adjudication, however, of such selections, it will be necessary that the land department satisfy itself that there were no such prior and existing rights or claims, and the Commissioner of the General Land Office will take appropriate steps and issue any necessary instructions to accomplish this end.

BERING SEA COMMERCIAL COMPANY.

Instructions, April 21, 1915.

ALASKA LANDS—RESERVATIONS ALONG NAVIGABLE WATERS.

The provision in the act of May 14, 1898, reserving eighty rods between claims located along navigable waters in Alaska, relates solely to the forms of entry or disposition mentioned in that act, namely, homestead entries, soldiers' additional entries or scrip locations, and entries for trade or business, and does not prevent the allowance of an entry for trade or business within less than eighty rods of a mission claim.

JONES, *First Assistant Secretary:*

I am in receipt of your [Commissioner of the General Land Office] letter "A" (C. A. O.) of June 30, 1914, concerning an application by the Bering Sea Commercial Company to purchase a certain tract containing 3.39 acres of land, situated in Akutan Harbor of Akutan Island, Alaska, as a trade and manufacturing site under the acts of May 14, 1898 (30 Stat., 409), and March 3, 1903 (32 Stat., 1028).

It appears that in August, 1907, a survey of the Russian-Greek Church mission claim, located upon the shore of Akutan Island, Alaska, fronting upon navigable waters, was made, the survey being approved November 12, 1908. May 19, 1909, the survey upon which the application of the Bering Sea Commercial Company is based, was made. The tract desired as a trade and manufacturing site is in close proximity to the survey of the mission claim, being less than four chains distant. The Bering Sea Commercial Company claims occupation of the tract for purposes of trade and business by it and its predecessors in interest since 1874. This occupation is somewhat challenged in a report by a special agent of your office, who also states that a part of the tract is occupied by natives adversely to the Bering Sea Commercial Company. The company, however, claims that the occupation of the natives is not adverse to it. The lands were reserved by Executive order No. 1733 of March 3, 1913, as a preserve and breeding ground for native birds, for the propagation of reindeer and fur-bearing animals, and for the encouragement and development of the fisheries. You desire instructions upon the following questions:

(1) Is Survey No. 765 on a reserved area and should there be eighty rods between it and the mission survey? (2) Is the land unoccupied by natives and therefore subject to disposition, or must it be reserved for such natives? (3) Have the Bering Sea Commercial Company and its predecessors been in possession of the land since 1874

and is it occupying the land in good faith for purposes of trading and manufacture?
(4) What effect has the Executive Order of March 3, 1913, upon this application?

The act of May 17, 1884 (23 Stat., 24), provided, in section 26, that persons in the district of Alaska should not be disturbed in the possession of any lands actually in their use or occupation, or then claimed by them, but the terms under which such persons might acquire title to such lands were reserved for future legislation by Congress.

The first law permitting purchase of lands for the purpose of trade and business was contained in sections 12 and 13 of the act of March 3, 1891 (26 Stat., 1095). These provided in brief that any citizen of the United States, 21-years of age, or association of such citizens, or a corporation incorporated under the laws of the United States or of any State or Territory, might purchase public land in their possession and occupied for purposes of trade and manufacture, not exceeding 160 acres as nearly as practicable in a square form, at \$2.50 per acre. No restrictions were there made as to the amount of frontage that might be taken upon the shores of navigable waters, nor any limitation of area as between claims. The present applicant, however, did not apply under that law.

The present law permitting the purchase of land in Alaska for trade and business is that contained in section 10 of the act of May 14, 1898 (30 Stat., 409). This section allows the purchase of one claim only, not exceeding 80 acres, by any one person, association or corporation, at \$2.50 per acre. It also provides:

And ingress and egress shall be reserved to the public on the waters of all streams, whether navigable or otherwise: *Provided*, That no entry shall be allowed under this act on lands abutting on navigable water of more than 80 rods: *Provided, further*, That there shall be reserved by the United States a space of 80 rods in width between tracts sold or entered under the provisions of this act on lands abutting on any navigable stream, inlet, gulf, bay or seashore.

It then permits the Secretary of the Interior to grant the use of the areas reserved for landings and wharfs.

The act of May 14, 1898, therefore, requires that between tracts sold or disposed of under its provisions, which abut on navigable waters, a space of 80 rods in width shall be reserved. It is accordingly necessary to inquire as to what particular methods of sale or entry are contained in the act of May 14, 1898. The only other forms of entry or sale provided for in that act are those contained in section 1, which extends the homestead laws of the United States and the rights incident thereto, including the right to enter surveyed or unsurveyed lands under soldiers' additional homestead rights, to Alaska. The section contains the following proviso:

Provided, That no entry shall be allowed extending more than 80 rods along the shore of any navigable water, and along such shore a space of at least 80 rods shall be reserved from entry between all such claims.

A space of 80 rods accordingly is required to be reserved between all homestead entries or soldiers' additional rights, located along the shores of navigable waters. Under the act of May 14, 1898, therefore, the only requirement of reservation was of 80 rods between homestead entries, soldiers' additional entries, and entries for trade and business purposes.

Section 1 of the act of May 14, 1898, was amended by the act of March 3, 1903 (32 Stat., 1028). This act provides as follows:

That all of the provisions of the homestead laws of the United States not in conflict with the provisions of this act, and all rights incident thereto, are hereby extended to the district of Alaska, subject to such regulations as may be made by the Secretary of the Interior; and no indemnity, deficiency or lieu land selections pertaining to any land grant outside of the district of Alaska shall be made, and no land scrip or land warrant of any kind whatsoever shall be located within or exercised upon any lands in said district except as now provided by law; and, provided further, that no more than 160 acres shall be entered in any single body by such scrip, lieu selection or soldiers' additional homestead right; and provided further, that no location of scrip, selection or right along any navigable or other waters shall be made within the distance of 80 rods of any lands, along such waters, theretofore located by means of any such scrip or otherwise. . . . *Provided*, That no entry shall be allowed extending more than 160 rods along the shore of any navigable water, and along such shore a space of at least 80 rods shall be reserved from entry between all such claims.

This act, as to the location of scrip, selection or other rights, along the navigable waters or any other waters, requires a reservation of 80 rods from lands theretofore located by means "of any such scrip or otherwise." The term "scrip, selection or right," evidently refers to obligations on the part of the United States to grant a specific area of land to individuals in satisfaction of certain rights and does not refer to sales of public land.

The mission claim was made under the provisions of the act of June 6, 1900 (31 Stat., 330), section 27 of which provides:

The Indians or persons conducting schools or missions in the district shall not be disturbed in the possession of any lands now actually in their use and occupation, and the land at any station not exceeding 640 acres, occupied as mission stations among the Indian tribes in the section, with the improvements thereon erected by or for such societies, shall be continued in the occupancy of the several religious societies to which the missionary stations respectively belong, and the Secretary of the Interior is hereby directed to have such lands surveyed in compact form as nearly as practicable and patents issued for the same to the several societies to which they belong, but nothing contained in this act shall be construed to put in force in the district the general land laws of the United States.

The above act, it should be noted, contains no restriction as to the area that can be taken along shores of navigable waters, nor any reservation as to spaces between mission claims and other claims.

Considering the statutes as they stand, I am of the opinion that the reservation of 80 rods between claims mentioned in the act of May 14, 1898, relates solely to the forms of entry or disposition contained in that act, to wit, homestead entries, soldiers' additional

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entries or scrip locations and entries for trade and business. The purpose of the provision, no doubt, was to prevent the monopolization of harbor fronts or sites upon any navigable waters. This purpose would not be interfered with, by the location of mission claims nor the proximity of entries for trade and business to mission claims, as such mission claims are no doubt comparatively few in number and isolated. Your first question, therefore, is answered in the negative.

In order to determine the issues presented by questions 2 and 3, it will be necessary to have a hearing, as they present questions of fact.

The Executive Order of March 3, 1913, reserved and set apart the land for certain specified purposes. The order contains no clause excepting tracts upon which inchoate claims under the public land laws had theretofore attached. The claim of the Bering Sea Commercial Company, therefore, was not saved as against the withdrawal order.

You are instructed accordingly to order a hearing in order to determine the issues presented by questions 2 and 3, and should the evidence produced at such hearing disclose that the company's claim is *bona fide* and legal in all respects, the Department will consider the submission to the President of a modification of Executive Order which will permit of the allowance of the trade and manufacturing application.

The Department's prior instructions of February 18, 1915, are modified to the above extent.

KIOWA, COMANCHE, AND APACHE LANDS—HOMESTEAD ENTRIES.

INSTRUCTIONS.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., April 24, 1915.

REGISTER AND RECEIVER,
Guthrie, Oklahoma.

SIRS: The act of March 4, 1915 (Public, No. 338), entitled: "An act to validate certain homestead entries," reads as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all homestead entries heretofore erroneously allowed for the unused, unallotted, and unreserved lands of the United States in the Kiowa, Comanche, and Apache Indian Reservations, which lands were authorized to be sold under section sixteen of the act approved March third, nineteen hundred and eleven (Thirty-sixth Statutes at Large, page one thousand and sixty-nine), and under the provisions of the act approved June thirtieth, nineteen hundred and thirteen (Thirty-eighth Statutes at Large, page ninety-two), are hereby ratified and confirmed: Provided, That in addition to the land-office fees prescribed by statute for such entries the entryman shall pay \$1.25 per acre for the land entered at the time of submitting final or commutation proof.