

prima facie case. Usually that is the geologist who says, "I saw the ground, there are no diggings on it, there is no ore exposed, I did not find the monuments, there weren't any monuments up. I went to all the places referred to in the location notice or patent application and I didn't find anything there, and, therefore, I recommend against his getting a claim."

That is what the geologist says. He gets on the stand and he testifies to that effect.

Then the claimant is entitled to put on his evidence that "I was there on a certain date, I had erected the monuments. If they are not there, somebody knocked them down."

Senator ALLOTT. May I inquire of the Solicitor just a moment? Mr. Barry, have you reached such a place in your thinking and study of this matter that you have any recommendations of directions in which Congress might proceed in order to clear this matter up?

Mr. BARRY. No; I think I could not do that because the matter has not come up in the Department of the Interior, and I would have to have the advice of the other agencies.

I would like, however, to comment on the statement that Mr. Lynch is reported to have made yesterday. He suggested that there be a legislative taking.

Senator ALLOTT. Yes; that is what he did.

Mr. BARRY. All right.

Now, that is one way by which you could, let us say, take away the speculative expectations and so forth of the people who are claimants right now in order to clear up this land so that we could go forward with our program.

There are disadvantages in it. For one thing, Congress has traditionally left these matters for the determination to our Department, the Land Department. This is a department which over the years has acquired an expertise, a tradition, a literature, and everything else that makes it particularly well equipped to determine whether a claim is valid or not, to judge the validity of mining claims and their conformity with the law.

To leave this matter to the commissioners of the Court of Claims would be giving it to people who did not have that expertise. This is an "administrative tribunal" sort of situation. You could have the legislative taking by saying that the Department of the Interior should determine whether the claim is valid, and then allow the claimant to go to the Court of Claims if his claim has been declared valid to have a determination made of its value. He would recover that amount from the United States in the Court of Claims.

The disadvantage of that approach is that it would not save any money, because we would still have to make this determination of validity or invalidity. We would still have to give him his day in court. We would still have to have the hearings and experts and the examinations and so forth. I really do not think it shows any promise of a successful operation.

Mr. DOUGLAS. Mr. Chairman, may I make another comment?

Senator MOSS. Yes, Senator Douglas.

Mr. DOUGLAS. I do not want to get into a debate with Mr. Barry here. He said on the one hand that the Bureau of Land Management