THE CROOK COUNTY JOURNAL

An Independent Newspaper

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OFFICIAL PAPER OF CROOK COUNTY.

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THURSDAY, MARCH 24, 1904.

AFTERMATH.

We are satisfied there would have been no contest in the second district over the nomination for congress if Mr. Moody had not planned a campaign of retaliation because Mr. Williamson was nominated and elected two years ago. It seems that he has used his utmost endeavors to debar Mr. Williamson from having a second term, and had lieutenants and benchmen to do his bidding in every county in Eastern Oregon. Two years is ample time to mature obstruction tactics under an able manager. The U. S. land office, in this city, has given its patronage only to those papers which were opposed to Mr. Williamson, and, in some instances, where the Republican paper favored Mr. Williamson, the land notices were published in a democratic organ. Even where settlers had designated the newspaper, and paid in advance for the publication—thus making it somewhat in the nature of an excuted contract—the money has been forced to be refunded to go into the coffers of Democratic prints. In this manner the Republican officials have helped support newspapers who have always been opposed to the administration of President Roosevelt, and will be in the Democratic column this year. Of course, this was not Republiconism; but it was anti-Williamson, and that answered the sole pupose of the manager.

These land office organs have never missed an opportunity to distort facts against Mr. Williamson and in favor of Mr. Moody. Even in the indictment against Mr. Moody by the U. S. grand jury, these papers stated the acquittal by order of the court was a complete vindication of his innocence; but, on the witness stand, the gentleman's own statement admitted the substance of the charges. The Chronicle never published anything in regard to this indictment that was not substantiated by Mr. Moody's testimony on the trial, and refused to go outside to get evidence that had not been made public in the court.

The battle has been fought and won by Mr. Williamson. He will be renominated and re-elected to a second term in congress, and a glance over the field may be instructive. It has been charged that the Chronicle has made a personal fight against Mr. Moody. This is not true in a single instance. It has been known for a long time that this gentleman was making plans to defeat Mr. Williamson for the renomination, and this against a precedent that had been established in this state for more than twenty years. This was combatted, and his plans and objects made public. The intelligent support of our congressman made this necessary. On the part of the opposition it was retaliatory to attempt to defeat Mr. Williamson for renomination. The Multnomah factional figgt should not have been transferred to Eastern Oregon for the same conditions do not exist. But to heal the wounds received in the defeat two years ago, revenge was uppermost in the mind of the ex-congressman, and the land office patronage and other agencies were employed to accomplish his purpose. He has failed, and it is hoped that in the manipulation of politics hereafter he may be actuated by higher motives than personal revenge on a successful opponent.—Dalles Chronicle.

It is almost superfluous at this time to call the attention of the primaries to the fact that the second district is represented by one of the ablest men who has ever gone from Oregon to congress. So much has been said in favor of Mr. Williamson and the masterful way he has taken hold of the national and local affairs in his present office that additional words are not needed. Those who attend the primaries Saturday will show their appreciation of the fact in a substantial delegation to the convention.

Additional Locals

George Rodman and wife, of Culver, were registered at the Prineville Wednesday.

George Schlecht left this morning for his home at Deschutes after a week's business visit in the city.

J. B. Merrill and daughter, of Haystack, are in the city. Mr. Merrill is transacting business in connection with his stock interests.

The services at the Union church next Sunday will be conducted by the pastor of the Presbyterian church. All not worshiping elsewhere are cordially invited to be present.

Ranchers on upper Crooked river report the water to be higher than it has ever been before. Considerable damage has been done to the fences in the vicinity of the stream which has shown no disposition to keep within its banks.

E. T. Slayton and E. S. Dobbs started a bunch of 165 head of cattle for Shaniko this morning. The herd, which is from the J. H. Gray stock of Herefords, is one of the best which has ever left the county. They were purchased by Mr. Butler, buyer for the Union Meat company of Portland, the price being $4.50 per hundredweight.

Something akin to consternation was created among the local cattlemen recently by the receipt of the news that R. N. Stanfield, a Morrow county stockman who formerly bought cattle in this county, had suffered the loss of several head of cattle from black tongue. This disease is perhaps the most dreaded by cattlemen, and such a report is usually the signal for a general effort to keep the herds in good condition. Steps have been taken by some of the cattlemen in the eastern part of the county to combat any invasion of the dread disease in that section.

Some Timber Facts.

(Continued from page 1.)

the fact that in many instances parties who have taken timber claims have mortgaged their claims in order to procure the purchase money; there is nothing in the statutes forbidding that in a case of a homesteader mortgaging his claim before issuance of final certificate, it was held by the department in 8 L. D., 243, that "a homesteader may, before issuance of final certificate, for any purpose not inconsistent with good faith, mortgage his claim."

Now, if a homesteader can mortgage his claim before final certificate is issued to him, and it has been held that he has the right to mortgage his claim for the purpose of procuring the money to prove up and to commute his entry, where there was no collusion or prior agreement to sell, why should not a timber claim applicant, who desires to avail himself of his right to take up a claim and who has not the ready money to pay for the claim, have the right to take up a timber claim and pay for the same with the money borrowed, and for which he mortgages his claim as security, after he has made the entry, provided he has made no contract or agreement to sell or take up the claim for any other party than himself prior to application or entry? Surly, the timber and stone act was not passed for the rich man only, for the man with the ready money, and if an entryman has the right to sell his claim after he has made his proof, why can he not mortgage the same? Both are conveyance and alienations.

It often occurs, and it is but natural, that locators of timber claims cruise certain valuable timber tracts in contiguous bodies especially where the timber is fine and well situated, and knowing that it will be easier for them to locate parties on such tracts. Parties who desire such claims, mainly such as reside in the same community, using perhaps the same locator, go in groups, partly for company and partly to save expense, and naturally desire to be located in close proximity, and generally become witnesses for each other in making their respective proofs, and likely are aware of the fact that bodies of timber lands located closely together will find a readier market than if they were scattered, and in that manner it often occurs that parties from the same locality are in many instances located in pratically a solid body, and naturally look towards a good sale of their respective claims, and such parties might have certain purchasers in view and in that way can rightly take up a timber claim, provided such claimants have not entered into a prior agreement or contract to sell or not acting as a "proxy" for another in taking up the claim, and simply know of such prospective purchasers, either by hearsay, newspaper advertisements or in a direct way through locators, cruisers or others; and in the case of United States vs. Budd, alluded to by the secretary of the interior in the Donahue case above referred to, it is held by the supreme court of the United States, the highest tribunal in the land, "that a person interested in buying timber lands might go into a community and announce his desire to purchase timber claims, and persons knowing of this desire might rightfully go upon and purchase lands from the government and afterwards transfer them to the buyer or speculator without violating the provisions of the act, provided the entryman had no prior agreement or contract, direct or indirect, expressed or implied, with the purchaser or any party representing him, and that the entryman did not act as a tool or a "proxy" for the purchaser in taking up the timber claim—in other words, in loaning his name for the purpose of making the entry."

In the case of United States vs. Detroit Timber & Lumber company [circuit court, W. D., Arkansas, July 31, 1903; 124 Fed. Rep., 393], suit to cancel patents to lands entered under the timber and stone act, it was held "The rule that one who alleges fraud must prove it by satisfactory evidence, which is more than a bare preponderance and sufficient to overcome the presumption of fact in favor of the honesty of the transaction, applies as well to suits in equity as to actions at law, and with especial force to suits by the United States to cancel patents to lands which have been issued in conformity to the prescribed rules in regulations of the land department.

"The fact that a lumber company lent money without security to persons to enable them to enter and pay for land under the timber and stone act, in the expectation that when the entrymen obtained title it would be enabled to buy the timber from such lands by reason of the fact that it had the only mill in the vicinity, does not render the entries invalid for fraud, where there was no agreement for the sale prior to entries, but each man was free to keep the timber or to sell it to others; nor are such entries invalid as made on 'speculation,' because the persons making them did so with the intention of selling the timber for their own benefit.

The opinion of the learned judge is a very exhausting one and goes at length into the merits of the case, and referring to the decision of the supreme court in the case of United States vs. Budd he states:

"That language is just as applicable to this case as it was to the Budd case. Moreover, in the Budd case it was shown by positive proof than Montgomery had promised at least one entryman in advance of the entry that he would pay him a bonus of $125 and all costs and expenses if he would enter a tract of land and convey it to him. No such fact is developed in this case, but the court said in that case that fact in itself was not sufficient to show that the land in controversy in the Budd case had been obtained in the same way in the face of positive testimony to the contrary. In the Budd case neither one of the defendants appeared as a witness, nor did the notary who took the acknowledgement of Budd's deed to Montgomery, nor did White or Rockwell, the two witnesses to the application for purchase of the land. In the case at bar every person interested, except perhaps two or three of the entrymen, who could not be found, have testified positively and emphatically that every allegation of fraud in the bill of complaint is untrue."

Th court in making a resume of the case states as follows: "There are many circumstance in connection with the transaction which are suspicious in their nature and tend to create the belief that the Martin-Alexander Lumber company understood, were satisfied, felt sure that the lands would ultimately come into their possession. I have no doubt in my own mind from all the facts, that it did so believe, and if it had not so believed that it would not have advanced the money to the entrymen in order that they might enter the land. As intelligent business men, Martin and Alexander knew that at that time there was no one else who could cut and use the timber but themselves; they knew that the lands were not homesteads, nor susceptible of being made homesteads; they knew that when the patents were issued the lands were not exempt from execution; they knew if necessary they could sue upon the notes and recover judgment and sell the land; they knew it was to the interest of the men who had entered them to sell the timber, and they knew that in making the entry the object of the parties was to sell the timber, because the land was not fit for cultivation; they knew that the entrymen expected to get more for the timber than the land was worth, because Copeland (an employe of the Martin-Alexander Lumber company) had told the entrymen [who were nearly all employes of the company] what amount of timber was on the land and what could be gotten for it at that time, and that more could be realized from the timber than it would take to enter the land; that their company could afford to pay more for the timber, because their mill was already located in closer proximity to it than any other mill; they knew also that the persons to whom they had loaned the money were honest men, that they had no resources out of which to pay back the borrowed money; they knew, therefore, that in all probability they would ultimately get the timber, and that they could purchase it without any fair competition with others.

"Assuming all these things to be true, and that their motive for lending the money and assisting in making the entries was with the hope of ultimately getting the timber, which one of these acts is either violative of the letter or spirit of the timber and stone act? This precise question was before the supreme court of the United States in United States vs. Budd [144 U. S. 154], in which case Judge Brewer delivering the opinion of the court, quoting from the opinion of Mr. Justice Miller in the Maxwell land grant case [121 U. S., 381], laid down the following rule: [Here comes a quotation from that decision.]"

The court further says: "The facts in this case are not stronger in favor of the government than they were in the Budd case; indeed, in the opinion of the court, they were not so strong. In that case Mr. Justice Brewer said, in referring to the lands purchased by Montgomery:

"It simply shows that Montgomery wanted to purchase a large body of timber lands, and did purchase them. This was perfectly legitimate and implies or suggests no wrong. The act does not in any respect limit the dominion which the purchaser has over the land after its purchase from the government or restrict in the slightest his power of alienation. All that it denounces is a prior agreement; the acting for another in the purchase," etc.

The attention of the readers is also called to the decision of the United States court of appeals in Hoover vs. Salling, 110 Federal Reporter, 45.

All that is to be considered in timber and stone entries is that such entries are made in good faith for the own exclusive use and benefit of the entryman; that there existed no collusion, prior agreement or contract by which the entry should go in whole or in part to the benefit of any other person than the entryman, and, in other words, that the entryman had made the entry for himself, and not as a proxy, a tool for some one else.