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CLAIMANT IS LOSER

Final Proof on Timber Lands Practically Impossible.

Secretary Hitchcock Gives New Interpretation to "Speculation"—Script Holders Favored.

The recent ruling made by Secretary Hitchcock, of the Department of the Interior, revising and regulating the mode of procedure in the making of final proof on timber land applications, is significant and of far reaching consequence to the timber interests of the state, but more particularly to the individual applicants for the purchase of these lands. While the enforcement of the ruling has the apparent purpose of requiring compliance with the general land laws of the government, a strict enforcement of Secretary Hitchcock's instructions will practically accomplish the withdrawal of all government timber land from entry.

Since all government lands are intended for purchase by individuals for their benefit and the development of the land, the recent decisive ruling by Secretary Hitchcock on this subject, practically closing these lands to entry and settlement by disinterested claimants, naturally pre-supposes some plan for the disposal of these lands other than that contemplated by the general land laws.

A new interpretation to the term "speculation" has been given by Secretary Hitchcock in connection with the timber and stone land act of 1878. It is held that any one who takes up a piece of timber land, expecting at any future time to dispose of the same at a consideration in advance of what the land actually cost, is a speculator within the meaning of the law. Upon this disclosure, in connection with the examination of an applicant for the purchase of such land, the application is rejected and dismissed.

Under this ruling by the department, the only persons who are permitted to purchase these lands, are those who will swear that they own land in the vicinity of the timber land, for the purchase of which they have made application, and that they desire the timber for personal use. The only person who can conscientiously swear that he needs the timber for his own use, is a rancher so far removed from a mill or place where lumber is sold, that he cannot buy sawed lumber. On the other hand, if the applicant admits that he expects to manufacture the timber into lumber and sell it at a profit, it is held that his purpose is speculation, which disqualifies him as a lawful purchaser and excludes him from the benefits of the timber and stone land act.

A strict construction of the department's ruling makes it practically impossible for the applicant to make final proof on timber land, for the purchase of which he has made application in regular form. If the applicant now gains title to timber land, in making final proof he must either perjure himself and disclose his roguish designs or he must reveal a pitiable mental condition. It is not believed that the purpose of the law contemplates the placing of the applicant in either of these positions.

Under the old procedure, the only questions asked of the applicant were those touching on his nativity and residence in this country, the nature and probable value of the lands represented in the application and the declaration that he had not sold or transferred his claim to the land after making a statement, that he had not, directly or indirectly, made any contract or agreement, in any way or manner, with any person whomsoever, by which the title he might acquire from the government of the United States might inure, in whole or in part, to the benefit of any person except himself; that the entry is made in good faith for the appropriation of the land to his own use, and not for the use and benefit of any other person; that no other person, firm or corporation has any interest in the claim or the timber on the land upon which he had made application. The usual form of cross-examination of the applicant by the register and receiver of the local land office included questions as to residence, occupation, circumstances under which the claim was filed upon, and whether or not the applicant furnished, unaided, from his own earnings, the money that was required to meet the expenses of filing on the land. The witness for the claimant is also cross examined by the land officials as to his acquaintance with the person making the filing; what he knows of the financial condition of the applicant, and further if he knows from his own knowledge whether or not the applicant has enough money of his own to pay for the land without mortgaging it. Formerly this was the extent of the examination of the applicant and his witness.

But under the present programme the applicant is taken in charge by a special inspector as soon as the regular form of examination and proofmaking has been complied with. He is taken into a private office, unaccompanied by his friends or attorney, and is then put through a cross-questioning that would reflect credit on the criminal department of any police station. The proceedings are conducted strictly on the star-chamber order. Absurd and irrelevant in the extreme are many of the questions fired at the witness, who, if he admits in any way that he might at some time accept more for the property than it actually cost him, his claim is vitiated. The decision is final so far as the local office is concerned, and the only right remaining to the individual is an appeal to the land commissioner at Washington, and since the order calling for this form of procedure emanated from the secretary of the interior, the applicant stands a poor chance of getting a reversal of the decree of the lower office.

The officials of the Oregon City Land Office are exceedingly noncommittal on the subject, and will not discuss the recent ruling of Secretary Hitchcock. While it is claimed that the new ruling was first proposed by the Interior Department nearly a year ago, it has been recognized and enforced at the local land office for the last two months only, or since the arrival of Special Inspector Hobbs, who was transferred to this point from New Mexico.

It is known that in the last two months more than 50 per cent of the applications for final proof on timber lands at the Oregon City office have been rejected. In that length of time probably 200 claimants have appeared before the local office. The new ruling is not only being applied to entries upon which final proof has not yet been made, but many patents in this district are now held up at Washington because the applicants, relying on the decisions of the United States courts, have admitted in making their final proofs that at some future time they might dispose of their claims at a time they might dispose of their claims at a profit, or, in other words, receive for them more than $2.50 per acre, the amount paid the government for the lands. It has never before been held by the General Land Office that the words "exclusive use and benefit" could be construed to mean that a person could not reap the benefit of his claim at some future time by selling it at a profit. By the new construction, an entryman would have to use the timber in his own building operations or else build a sawmill and cut it into lumber, and then by a strict construction, he would be prevented from selling the lumber.

There is also a business aspect to the situation. Business men in this community are concerned in the ruling of the Interior Department, although many of them have not claims. Men having idle capital have lent considerable money to persons filing to supply the necessary purchase price of $400 for each claim. The cost to the applicant in locating on a timber claim amounts to about $430. Men making these loans have in many instances taken mortgages on the land for security. If the patents to the lands in which they are interested are refused, then their security will also be gone, and the money that has been advanced on the claim by the applicant will be appropriated by the government. Both the applicant for the timber land and the man who advanced him the money with which to defray the expense of filing on the claim feel that the ruling is unjust since it has always been held that the entryman has always had the right to mortgage or sell his claim after proving up, so long as there was nothing fraudulent in the transaction.

The majority of those who have filed on claims in this district and have not yet proved up will offer their proof and pay their money, relying on the former interpretation of the the word "speculation" being continued in force and the new rule being reversed. A number of cases that were rejected in the Oregon City Land Office have been appealed to the commissioner of the General Land Office, where Secretary Hitchcock's ruling will be tested at once. It practically repeals an act of Congress, and it is argued cannot stand a judicial test.

In providing this departure for the making of final proofs the general land office has failed to formulate a rule that will prevent the scripper from placing his scrip en this same land withdrawn from the individual purchaser, but allows the scripper to make 200 to 600 per cent on his purchase. Scrip is now valued at $5 per acre, and more scrip has been issued than there is available land. This fact tends to depreciate the market value of this negotiable paper, which at the same is valuable paper. Timber lands are readily worth from $12 to $20 an acre, so an idea may be gathered of the profit that is made by holders of scrip in seizing available timber lands.

The motive of the land department in providing this stringent examination of applicants in making final proof is an open question. Many do not hestitate to charge that the real motive is the cancellation of as many individual claims as can be made under this technical ruling in the interest of the large corporations and gigantic timber concerns which held the bulk of the scrip. Whatever may be the purpose aimed at, it is a certainty that if the new rule is upheld by the courts it will be but a short time until every acre of the government lands will be appropriated by wealthy lumber firms and scrip holders generally.

WEEKLY REPORT OF CROPS

Issued by Edward A. Beals of U. S. Department of Agriculture.

Light rains fell in the Willamette valley and along the coast during the early part of the week, but otherwise the weather throughout the state was dry and pleasant. The days were warm, but the nights, as a rule, were cool, and frost occurred in Eastern Oregon and in scattered localities of Southern Oregon on one or two mornings; they did no damage of consequence.

The weather was very favorable for threshing, and this work was actively pushed to completion. Prune picking and drying also made satisfactory progress. It will require about a week or ten days more to complete the prune harvest; the crop this year is an excellent one, both in quality and quantity. But little plowing or seeding has been done yet west of the Cascade mountains, owing to the dry condition of the soil. In the Columbia river valley and in some sections of the Grande Ronde valley the seeding of fall grain has progressed rapidly. More rain is needed in Western Oregon before fall plowing will become general.

The corn crop continues to do nicely, and some fields are now ready for the silo. Potato digging has begun, with variable yields. In some sections the crop is turning out well, while in others, especially along the coast, the average yield will be very light owing to blight and rot.

Stock is doing well and is generally in fine condition. A good rain would benefit pastures, but as a rule feed is plentiful, especially on the ranges. Some green feeding is being done in the dairy districts to keep up the supply of milk.

Beans are being harvested, with good results. The third crop of alfalfa turned out well, and was secured in good condition.

Pears and plums continue to yield satisfactorily and are being marketed as rapidly as possible. Apples are only fair, and in some counties they are dropping badly.

VALUES ARE BIG

Clackamas County Assessment Approximates $10,500,000.

Assessor Nelson Gives an Opinion as to Validity and Effect of the New Law.

The aggregate of the 1903 assessment roll for Clackamas county will approximate $10,238,186 as against $4,020,444 for last year, reports County Assessor Nelson who is computing the summary of the roll which will not be finished for a month. Instead of reducing the total of the valuations, the county board of equalization slightly increased the amount of the roll.

In view of the greatly increased property valuations represented on the roll, considerable local interest attaches to the controversy that is now pending as to the validity of any assessment that may be made on the roll as written by Assessor Nelson. It is the belief of Assessor Nelson that the new assessment law will be upheld by the supreme court.

If the law is held to be incorporative, Clackamas county occupies an interesting position. In preparing the roll this year, Assessor Nelson did not recognize the provision of the new law which does away with the exemption clause but allowed that deduction made for personal property. As a consequence he holds that if the new assessment law is declared invalid by the courts and the defect is not remedied by a special session of the legislature, then Clackamas county may proceed with the collection of taxes on the roll as prepared since the assessment has been made under the provisions of the old law, which will remain in force if the new statute is found to be irregular.

DEFENSE OF REFERENDUM.

Briefs Submitted to Supreme Court by Friends.

The "friends of the court" who will argue to sustain the validity of the initiative and referendum before the supreme court have prepared two briefs. The first submits that the declaration of emergency of the Legislature, placing in immediate effect the new Portland charter under the initiative and referendum was constitutional and valid. The second maintains that the initiative and referendum itself is constitutional and valid. Both submit that the decision of the circuit court of Multnomah in Kadderly et al vs. the city of Portland should be reversed.

The circuit court held that the ultimate decision as to whether a law is necessary for the immediate preservation of the public peace, health or safety "cannot be controlled or affected by any recitals in the bill" to that effect. "The elaborate provisions designed to afford the electors an opportunity of approving or rejecting measures adopted by the Legislative Assembly would prove of little value, were the construction adopted that the Legislative Assembly possesses the absolute power to decide in what cases the referendum power may be exercised by the people."

The first brief argues that the question of emergency is political and not judicial and is to be decided by the Legislature in every case and not by the courts. It sets forth also that the initiative and referendum does not apply to local laws.

The second brief submits that the amendment is a valid part of the constitution. It argues to three conclusions:

"First—The judicial department has no jurisdiction to pass upon the ratification of any amendment to the constitution; that power rests exclusively in the political department, composed of the legislative and executive departments of the state government. The initiative and referendum amendment is a part of the constitution because it has been submitted to the people by two consecutive Legislative Assemblies and ratified by a majority of the electors of Oregon.

"Second—The amendment was legally submitted and ratified under the legislative construction of Article XVII of the constitution and under the well-settled rules of law such legislative constructions is conclusive upon the court.

"Third—Assuming that the court has jurisdiction and that such legislative construction of Article XVII is erroneous, the amendment was legally submitted and ratified because no other amendment was legally pending either before the legislative assembly or before the people at the time the initiative and referendum amendment was proposed."

The circuit court held the amendment invalid because other amendments were pending when it was proposed.

The first brief is signed by Mayor Williams, J. B. Waldo, W. S. U'Ren, Senator John H. Mitchell, J. C. Moreland, Governor Chamberlain, Tilmon Ford, George C. Brownell, C. E. S. Wood and J. N. Teal. The second brief has the same signatures except that of Mayor Williams, who feels that his official position restrains him from participating in the argument over the initiative and referendum.

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