

BONAPARTE SETS FORTH HIS CASE

Speaks Before House Public Lands Committee on Full-ton Resolution.

ANXIOUS FOR IT TO PASS

Department of Justice Has Conducted Thorough Investigation Into Oregon and California Grant and Methods of Violation.

OREGONIAN NEWS BUREAU, Washington, March 21.—The Government's attitude toward the Oregon & California land grant was fully set forth by Attorney-General Bonaparte in his recent hearing before the House committee on public lands. The Attorney-General, while not entering into detail, discussed the case in its general aspects, and his utterances are of unusual importance. The following extracts from the testimony before the committee give a comprehensive idea of the contentions of General Bonaparte:

We found that there were substantially three stages in the course which the railroad company had taken with regard to these lands. You will see that at no time did they pay any attention at all to the restrictions contained in the grant, so far as I can find out; and I do not mean that every sale was in violation of the grant, but the railroad company at no time seems to have attempted to comply with the law of the National Legislature. In the earlier years they sold in variable quantities, not generally, for a price in excess of \$2.50, because the land was worth then not more than \$2.50, but with no special regard to whether the amount was 160 acres or more or less. Presumably, however, during that time, for the greater part, they sold to actual settlers for the purpose of settlement.

The Chairman—They then probably sold the lands to be settled upon that were agricultural lands, or at least, were in demand for that purpose.

Sold Later for Speculation.

Mr. Bonaparte—That were in demand for that purpose. That was a mistake, to tell the truth, during the early years, and they sold pretty much what they could sell. Then came a time when they became a subject of speculation, and they sold, or agreed to sell, and made contracts to sell in large tracts, and at prices largely in excess, in many cases, of the \$2.50. Then, at a later time, which corresponded with the acquisition of the road by what is generally known as the Harriman interests, after which they refused to sell at all, and that is the present attitude of the railroad company today, as I understand it. I think that it is under an obligation to anybody, and refuses to do so, and it is said that this is a serious impediment to the development of the country for various reasons.

Now the Department of Justice, deeming it its duty as far as possible to carry out the policy laid down by Congress, had determined that in these three classes of transactions the different methods of dealing would be needed. That in cases where the evident purpose of the Government had been substantially complied with, and where it was reasonable to be supposed that the land had been sold for purposes of settlement, the compliance with the requirements that the exact amount of land should not be exceeded might be with a reasonable degree of latitude. In those cases where it was evident that the sale had been made in flagrant disregard of the purpose of the act, to speculators in timber lands, and sold precisely for the purposes which Congress did not want it sold for, in those cases such action should be taken as would most appropriately enforce the conditions contained in the original act of Congress; and that in the third class of cases, where the railroad company was holding on to this land and refused to do anything about it, proceedings should be taken as would enforce a compliance with the evident intention of the law, which was that the land should be sold, because of course at the time that act was passed it did not probably occur to anybody that the railroad company would not sell the land, but that they would sell it as rapidly as they could, and while the language was negative in form, we understood it implied a positive duty on the part of the railroad company to sell; and it was found that for all of these purposes it was very important to be in a position to assert, in case we deemed it inadvisable, that these lands, wholly or in part, had been a matter of strict law forfeited to the United States by failure on the part of the railroad company to comply with these subsequent contracts, all of which, of course, were conditions that could not be waived by the issuing of the patents because they were things that were to be done after the patent had been issued.

The Government could not possibly, by issuing a patent, waive the fact that after it got title to it the railroad company should sell it in larger tracts or for a higher price and to a different class of persons. That being the situation of affairs, there was introduced in the Senate a resolution calling for information as to this subject-matter, and also directing that some action should be taken for the purpose of enforcing the rights of the Government in the premises, and that resolution having been referred to a Senate committee, and the information having been furnished, the resolution was amended at the suggestion of the Department so as to come before you in its present form.

Protect All Rights.

Now, with respect to this amendment, I want to suggest to the committee that there is no purpose in this resolution, and this resolution would be altogether ineffective to carry out the purposes if it were introduced there is no purpose in it giving anybody of any legal or equitable defense which he may have to the claim of the Government if the land is forfeited. If anybody, these constituents of Mr. Fordney or anybody else, shows that he has a legal or equitable defense to suit for a forfeiture, he will have just as much right after the passage of this resolution as he would have before, except so far as action by Congress may be necessary to justify any application for a forfeiture when it depends upon a violation of the terms of the Congressional grant.

The Chairman—Right there, Mr. Bonaparte, if you will allow me. Under this resolution as drawn by your department could the court take into consideration the equitable rights of purchasers for value and in good faith, if there be such, whose purchases were, as a matter of fact, beyond the limitation of the 160

acres, or could you under this resolution protect such purchasers even though strong equities were found to exist?

Mr. Bonaparte—The courts would, unquestionably. There is no doubt that the courts, if they have any equities—those equities are not affected by the terms of this resolution; but there is some confusion on that point, in fact. As you are aware, a forfeiture may be declared by an act of Congress, and if it is declared by an act of Congress then that wipes out all the equities, defenses or modifications made to the proceeding in the court. This is not intended to do that. This is intended to enable the courts to pass upon the question of the forfeiture, and they would do it just as freely if this resolution were not passed, except that it removes the question which has been raised as to whether or not there is any authority on the part of the executive department of the Government to declare a forfeiture without Congressional action.

The Chairman—My thought was this: If, when a proceeding is undertaken under the resolution, it should clearly develop that certain sales had been in excess of the 160 acres to an individual or corporation, and therefore in violation of the statute, could a court of equity, after determining those facts, then protect the holder of such title or protect the equitable rights of any such purchaser? Would the court not be compelled to either forfeit or regulate specific performance? A forfeiture, of course, deprives such purchasers of all rights and values. The requirement of specific performance, depriving them equally by the operation of the fact that they could not get in as against other claimants, and assert the right to take up perhaps 2000 or 3000 acres of land in 190 tracts.

Courts to Protect Equities.

Mr. Bonaparte—If they had any equities the court would protect them. The answer to that is that they have not got any equities. They have right before them a matter of law, limiting the right of this corporation to make conveyances. Now, if there is anything in what has been said as to estoppel or laches or any thing of that sort, the courts can protect them; but if there is not, then, of course, the courts cannot do that. But I was going to make a suggestion, Mr. Chairman, which I think will perhaps relieve the difficulty which you suggest, viz., if Congress at this time sees fit to ratify a transaction of this character, of course it can do it, but it ought to do it with knowledge of what the facts are in the cases in which it ratifies it.

Now, after these suits have been brought, and it ought not to be determined a day by any means, and after you, or perhaps a subsequent Congress finds out just what are the merits of these contentions, then if you see fit, not as a matter of right, but as a matter of generosity or public policy, and I am not prepared to argue there is not a ground for that, then if you see fit, you might, by these irregular purchases of public lands, and in fact they were actually more than irregular, they were illegal, that would be entirely within your rights of course. But I submit to you that something which should be done after you know what you are dealing with, and that a resolution which merely gives the authority to the Attorney-General, or instruction to ascertain the rights practically of the United States in the premises, should not be embarrassed by anything which refers to the real actions that should be taken by the courts, or afterwards.

Suppose, for example, this land is forfeited and title re-vested in the United States. It then becomes perfectly competent for you to direct that in view of the peculiar circumstances of the case such people as have acquired title to it in good faith, as they say, who really, from failure to go back to the original source of their title, that is to say, to the law under which this was granted, that such people as have done that should not be frozen out of their title by a mistake. If you will allow me, I will also say it seems to me that there is a considerable difference in a case like this, between a purchase made by an actual settler for the purpose of settlement which perhaps was 200 or 250 acres instead of 160 acres, or where he pays perhaps \$2.75 or \$3 instead of \$2.50, and a purchase made by a man who buys thousands of acres and pays five or six times as much as the price mentioned by Congress, because in the first instance there is evidence of compliance in the beginning with the essential purpose which Congress had in imposing this restriction, while in the other there is a plain, open disregard.

The Chairman—However, the equities would hardly be disturbed, would they, by reason of the larger payment made, that is, the equity of the man who paid \$2.50 would hardly be greater under the same conditions than those of the man who paid \$10 or \$12?

Mr. Bonaparte—Well, of course the equities, if you mean by that as they would appear to a court of equity, they would be disturbed, but as it appears to the National Legislature as a matter of public policy, the case of the acquisition of land by persons who comply with purposes of the proviso stands on a different footing; although they might exceed its terms, it stands on a different footing from acquisitions of land by persons who are in no manner complying with the purpose which Congress had in view in imposing that condition.

The Chairman—The chairman is asking these questions as a layman, therefore, they may not be very intelligible to a lawyer, but for my own information I was desirous of getting this information as to the effect that might be had under this resolution, and as to whether or not a court could do anything else than either declare a forfeiture or require specific performance.

Three Lines of Procedure Open.

Mr. Bonaparte—There are three lines of action which the Department has considered in this connection. One was the forfeiture of the land. The other was the enforcement in some form, forfeiture itself is the most convenient form, of the performance of the contract. What means is forfeiture is the most convenient form, because the United States could then sell the land itself just as it intended the railroad company to do. The third one was regarding the railroad company as the trustee to the Government for the excess of purchase money which it had received, and obliging it to account to the Government for the amount.

Mr. Hall—In that connection, if you see fit to advise the committee, would you like to have your views upon it whether it is the desire of the Department to treat this as a proceeding for specific performance, or in the nature of a forfeiture, in the first place, there are two elementary propositions involved. First—The question of whether the railroad company complied with the conditions on its part, so that the Government was justified in making the transfer of the land to the railroad company, and secondly, the question of the right of the railroad company to sell this land without regard to these limitations contained in the act of April 30, 1868. Now is it the purpose of the Department to consider the question of the right of the railroad company to sell this land without regard to these limitations contained in the conditions, so as to justify the conveyance made to the railroad company, and then to consider the question of the right of the railroad company to sell this land without regard to these limitations contained in the conditions, or is it the policy of the Department to treat this as a forfeiture, or in the nature of a forfeiture, and seek to accomplish an entire forfeiture?

Mr. Bonaparte—Well, the matter has been very carefully considered, and it was our expectation to assert an alternative ground of relief—first, to submit to the court the question of whether the

land was forfeited; second, if it was forfeited, could we even though what was left of it? Of course we cannot force a sale of what the railroad company has parted with, but as to what they have not parted with, can we make them account for it?

Mr. Hall—That of course is upon the theory of specific performance.

Mr. Bonaparte—On a theory something like specific performance. It is not, of course, technically speaking, specific performance. The question which you refer to, as to whether or not the railroad company had so far complied with the conditions as to authorize the issuance of the patents to them, would really not enter into the transaction, because the matters of which complaint was made were conditions subsequent. Those were precedent to the railroad company acquiring the title, since the railroad company had to have the title, of course, in these circumstances, to be able to sell the land to bona fide settlers in quantities not exceeding 160 acres.

Mr. Hall—That is the proposition that I referred to first—that there had been a substantial compliance by the railroad company so far as the construction of its line is concerned—and not the second, this subsequent condition which you mention.

Other Railroads Involved.

Mr. Bonaparte—That is not the point; that is not the difficulty in regard to the construction of the line at all. The patents were issued. Whether they were in correct form or not is another question, and I do not think it is very material, but the patents were issued under the terms of the act, when the railroad company had qualified itself to receive them and had selected the land. But the things of which complaint is made in regard to the railroad company were things that happened subsequently to its acquiring the title entirely, and which, in the nature of things, must have so happened, because it could not sell the lands until it had got title to them.

It was suggested to me—and it is not apart from the matter we have under discussion—it has been suggested to me that there are other railroads in the same condition as the one, and that it might be advisable to amend the resolution so as to make it more general in its terms. I respectfully state to the committee that I think that is not advisable. This particular matter has been the subject of a very careful inquiry by the Department of Justice. We think we are very sure of our ground, and we have no doubt that in this case Congress ought to take substantial action in the line of this resolution. It is true that some complaints have been made as to certain other railroads, but we think if those are to be dealt with it would be advisable to have them dealt with in a separate resolution, so that there may be no room for possible objections to matters which have been so fully investigated as this one.

Mr. Hammond—Do you have in mind the Northern Pacific Railroad Company?

Mr. Bonaparte—That was the one immediately called to my attention. I received a communication, and I think some of the members of the committee have also, from some gentleman who complained of the Northern Pacific Company likewise, and there are some other companies that are in more or less the same position.

Mr. Hammond—If I understood you, you stated that your department had made an investigation and had advised us that you do not deem it well to incorporate such an amendment in this resolution.

Mr. Bonaparte—You mean I do not advise that you put in any other railroad in this resolution?

Mr. Hammond—I understood you to say that there had been some examinations of the conditions attending the other railroads and that—

Mr. Bonaparte—No; I did not mean to say that. The Department had not advised us fully on that point as it ought to be before it makes any such recommendation.

Mr. Townsend—This Oregon and California business we have very thoroughly investigated, but the other matters we have not. While we have had some general information on the subject, it has not been the subject of any investigation.

Mr. Reynolds—You oppose such an amendment as is suggested by Mr. Fordney?

Mr. Bonaparte—I think it would be inadvisable. I think it might interfere more or less seriously with the action taken, not only in regard to this particular matter which is referred to, but to the entire scope of the action contemplated by the Department. But, as I have said, the essential purpose of the opportunity later, after the facts are understood, for Congress to grant relief in those transactions, either as a matter of generosity or public policy, if there is any reason to grant relief to the persons involved.

Proper Method of Forfeiture.

The Chairman—Some questions were raised as to the sufficiency of the authorized forfeiture, whether the Congress can delegate to the Department of Justice to declare a forfeiture, or whether the forfeiture should be made by direct legal action to the courts.

Mr. Bonaparte—The precedents are a little unsatisfactory on the subject. There is some doubt on the subject. You are no doubt aware a forfeiture ought to be made either by legislative action, or a particular kind of judicial action, the exact nature of which is not very satisfactorily defined. The idea of a resolution is to authorize the courts to declare a forfeiture if they find that the element of a forfeiture exists. Congress says by this action, if those lands ought to be forfeited, then we forfeit them.

The Chairman—Would not that involve the idea of legislative discretion? Would not that be an attempt to take a legislative discretion to the courts?

Mr. Bonaparte—I think not. I think it is a legislative act. I think the authorities are to the effect that upon the legislation authorizing it, the courts can then declare it. However, if the committee thinks there is doubt upon that, the resolution could be strengthened. It really has been from consideration for these very equitable rights that have referred to that we have tried to give them their full day in court, so as to save everything.

Mr. Hall—it would be improper for the legislative body to attempt to declare a forfeiture if there were questions of fact to be considered in other words, if there were questions of fact to be adjudicated, then he must have his day in court or he would be deprived of his property without the process of law, and it would not involve the delegation of legislative power to give the courts the right to examine into these questions. On the other hand, the only case where it would be proper for a legislative body to declare a forfeiture would be where there would be no question of fact to be considered.

The Chairman—My impression is that our own state held in one or two instances that unless there was a legislative forfeiture the courts could not act.

Mr. Purdy—I should say it would be safe to provide that all lands disposed of contrary to the grant, and not in compliance with the grant, are hereby forfeited.

Mr. Bonaparte—There might be a question of fact, such a forfeiture as that stated in the terms Mr. Purdy suggests would unquestionably strengthen the form of the resolution, but I personally think that we avoid the very question which has been suggested by another gentleman of the committee, a question not simply a question of law, but a question of fact, upon that point, and we deemed it very advisable when this resolution was

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everybody a chance to establish anything they could against it and that is the reason why we have put this forfeiture in the present form.

Mr. Thompson—May I ask one question? I would like to get the view of the Attorney-General as to the present bill. I do not understand it.

Mr. Bonaparte—It is a bill to authorize the enforcement of a forfeiture by the courts in the present form. It is providing the facts exist. That is the theory of the resolution; or any other appropriate remedy should the necessity for it arise, from the possibility that we may be up against the fact that we have no other remedy than that of forfeiture. We would have thereby authority to go ahead, I personally think that we have the right to go ahead even without congressional action, even as to forfeiture, but there is room for a question upon that point, and we deemed it very advisable when this resolution was

path of this fast expanding metropolis."

While this man did passably well with his money, the incident only goes to show what he could have done with wise investment. The value of his land raised no more quickly than that of millions of other acres of similar quality elsewhere. The trouble simply was, he didn't own what somebody had to have to carry out an idea—HE WASN'T IN THE OTHER FELLOW'S WAY.

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the only performances given in Paris of "Die Goetterdaemmerung" and Dr. Strauss' "Salome," has approached the Senate with an interesting scheme. This is to use the history of water in the Palace of Versailles, built in 1770, for special operatic performances.

Famous representations were given there under Louis XV and XVI. Since 1870, it has been the property of the Senate, which sat there during the first years of the Third Republic. Countess Greffulhe's idea would be to make the Versailles theater a "French Bayreuth" which does not, however, mean that it would be devoted exclusively to Wagner. Classic operas, which neither the Grand Opera nor the Opera Comique manage to revive, and new works which wait years before production, would be performed in the French Bayreuth.

Scheme to Use Historic Theater in Versailles for Opera.

PARIS, March 21.—(Special.)—Countess Greffulhe, chairwoman of the Societe des Grandes Auditions de France, which has done much for music-lovers here, having, for instance, arranged

Eye Glasses \$1.00 at Metzger's.