LAND GRANT DECISION MAKES CONGRESS FINAL ARBITER

OREGONIAN NEWS BUREAU, Washington, June 26.—In again "putting it up to Congress" finally to settle the Oregon and California land grant controversy, and to determine exactly how the unsold lands shall be disposed of, the United States Supreme Court, through Justice McKenna, handed down the longest opinion rendered at the term which closed last Monday. From beginning to cold this has been a case of unusual volume. In bringing the case to the volume. In bringing the case to the

volume. In bringing the case to the Supreme Court, a bound record of 17 printed volumes, embodying many thousands of pages of testimony, was unloaded on the court; elaborate briefs were filled by all interested counsel; unusual time was allotted for the argument of the case, only to have Justice McKenna facetiously comment that the case "in its main principles is not of great compass."

However, the opinion of the court fills 35 printed pages, or something like 14,000 words, of which 5000 words in the provision for the case, and 2000 words to the opinion of the court fills as printed pages, or something like 14,000 words, of which 5000 words in the case, and 2000 words to the opinion of the court in the case, and 2000 words to the opinion of the court did in the case, and 3000 words to the opinion of the court sustains not a single party; the railroad's right to \$2.50 an acre for all unsold land is established, but beyond that the railroad is assured nothing; the Government counsel that in their alternative plea they did not ask for enough; the interveners and cross-complaints are thrown out of court, and told to go to Congress for relief, and finally, the railroad company is forbidden to sell any more of its lands until Congress says how those Government lost its prayer for a decree for forfeiture, and the court then tells Government counsel that in their alternative plea they did not ask for enough; the interveners and cross-complaints are thrown out of court, and told to go to Congress for relief, and finally, the railroad company is forbidden to sell any more of its lands until Congress says how those lands shall be disposed of. Therefore it is up to Congress to say whether the lands shall be sold by the Government or by the railroad; at what price and under what terms they shall be and told to go to Congress for relief, and finally, the railroad company is forbidden to sell any more of its lands until Congress says how those lands shall be disposed of. Therefore it is up to Congress to say whether the lands shall be sold by the Government or by the railroad; at what price and under what terms they shall be sold—if a sale is authorized—or whether some other disposition shall be made of them. There is just one restriction placed upon Congress; it is must, in some way, see that the railroad, gets its \$2.50 per acre; beyond that, it can dispose of the lands in any way that it may elect. Congress can protect the squatters and the claiments or it can ignore them. But only through Congress can those who sought to buy from the railroad, and who failed, get title. They have no rights which the courts respect. The lights which the courts respect the light of the company was part of the action of the lands are discounted to handle, as indeed are all arguments which attempt to assign the exact or relative in ducements to conjoint purposes. In the attempt to assign the exact or relative in ducements to conjoint purposes. In the attempt to assign the exact or relative in ducements to conjoint purposes. In the attempt to assign the exact or relative in ducements to conjoint pur

PERTINENT EXTRACTS FROM OPINION BY SUPREME COURT IN OREGON & CALIFORNIA LAND GRANT CASE.

A direct and simple description of the case would seem to be that it presents for judgment a few provisions in two acts of Congress which neither of themselves nor from the context demand much efforts of interpretation or construction. But the case has never been considered as having that simple directness. This curious situation is presented: The Government joins with the railroad in opposing the contentions of the cross-complainants and interveners. Both of the latter units with the Government in contesting the position of the railroad, but join with the railroad against the Government's assertion of forfeiture. The cross-complainants attack the claim of the interveners, and the State of Oregon, through its Attornel-General, without definitely taking sides in the controversies, declares it to be to the interest of the state and expresses the hope that the lands now withdrawn by the railroad shall be "subject to settlement and improvement as contemplated by the provisions of the grant, in order not only that those vast areas of the state may be improved, but also that the lands may not be withdrawn from taxation, thus depriving the state, and especially the 18 counties in which they are situated, of a large proportion of their resources from direct taxation." The interest and hope expressed seem like a prayer against the Government's contentions.

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In the first grants to railroads there were no restrictions upon the disposition of the lands. They were given as aids to enterprises of great magnitude and uncertain success and which might not have succeeded under a restrictive or qualified aid. However, a change of times and conditions brought a change in policy, and while there was a definite and distinct purpose to aid the building of other railroads, there was also the purpose to restrict the sale of the granted lands to actual settlers. These purposes should be kept in mind and in their proper relation and subordination.

We shall be led into error if we conclude that because the railroad is attained it was from the beginning an assured success and that it was a secondary and not a primary purpose of the acts of Congress. There is much in the argument of the defendants that the aid to the company was part of the National purpose, which this court has said induced the grants to the transcontinental railroads. And we may say that the policy was justified by success. Empire was given a path westward and prosperous commonwealths took the place of a wilderness.

If the provisor were ignorantly adopted as they are asserted to have been; if the actual conditions were unknown, as is asserted; if but little of the land was stable, most of it covered with timber and valuable only for timber and not fit for the acquisition of homes; if a great deal of it was nothing but a wilderness of mountain and rock and forest; if its character was given evidence by the application of the timber and stone act to the reserved lands; if settlers neither crowded before nor crowded after the railroad, nor could do so; if the grants were not as valuable for sale or credit as they were supposed to have been and difficulties beset both uses, the remedy was obvious. Granting the obstacles and infirmities, they were but promptings and reasons for an appeal to Congress

We have seen that one company falled under the burdens which it assumed. The other company took it up and struggled for years under it and its own burden. It may, indeed, have finally succeeded by a disregard of the provisos. It might, however, have succeeded by a strict observance of them. We are not required to decide between the suppositions. We can only enforce the provisos as written, not relieve from them.

For the same reason we cannot at the instance of the Government give a greater sanction to them than Congress intended, nor give to cross-complainants and interveners a right which the granting acts did not Rejecting, then, the contention of the Government and the contentions of the cross-complainants and interveners and regarding the settlers clauses as enforceable covenant, what shall be the judgment? A reversal of the decree of the District Court, of course, and clearly an injunction against further violations of

In view of such disregard of the covenants, and gain of illegal emolument, and in view of the Government's interest in the exact observance of them, it might seem that restriction upon the future conduct of the railroad company and its various agencies is imperfect relief; but the Government has not asked for more.

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However, an injunction simply against future violations of the covenants, or, to put it another way, simply mandatory of their requirements, will not afford the measure of relief to which the facts of the case entitle the Government.

This, then, being the situation resulting from conditions now existing, incident, it may be, to the prolonged disregard of the covenants by the railroad company, the lands invite now more to speculation than to settlement, and we think, therefore, that the railroad company should not only be enjoined from sales in violation of the covenants, but enjoined from any disposition of them whatever or of the timber thereon and from cutting or authorizing the cutting or removal of any of the timber thereon until Congress shall have a reasonable opportunity to provide by legislation for their disposition in accordance with such policy as it may deem fitting under the circumstances and at the same time secure to the defendants all the value the granting acts conferred upon the railroads.

If Congress does not make such provision the defendants may apply to the District Court within a reasonable time, not less than six months, from the entry of the decree herein, for a modification of so much of the injunction herein ordered as enjoins any disposition of the lands and timber until Congress shall act, and the court in its discretion may modify the decree accordingly.

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to the Central Pacific Railway. But it is atlpulated that the statements "concerning the ownership and convoyance of the lands granted by said acts of Congress are made subject to the terms and provisions of said acts of Congress respectively, and all rights of the United States thereunder—the tille to said lands not being an issue in the suit at bar." Why these facts were stipulated it is hard to guess, but it is certain they cannot be given effect against all other facts stipulated. It will be observed the stipulation is concerned only with the California & Oregon & California Railroad. The explanation of the Government is, therefore, correct that the Oregon part of the grant was by the grant itself treated as substantially distinct from the California part and that the Oregon part has always been claimed, we grant itself treated as substantially distinct from the California part and that the Oregon part has always been claimed, and enjoyed by defendant, the Oregon part has always been claimed, and enjoyed by defendant, the Oregon part has always been claimed, and enjoyed by defendant, the Oregon part has always been claimed, and enjoyed by defendant, the Oregon part has always been claimed, and enjoyed by defendant, the Oregon part has always been claimed. The same reason we cannot at the interaction to them than Congress intended, are the provisor of the granting acts did not concerned to.

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Further Violations Prohibited.

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