

# Land Decision Creates Interest

The following article appearing in the Oregonian recently has created a great deal of talk in this country as it is alleged to be an almost parallel case with the Southern Oregon land case which has been in the courts recently.

**Selling of Granted Lands**  
Opinion of land commissioner Ballinger on bonus railroad lands of the Southern Pacific in Oregon.

"The company (Southern Pacific) is therefore without authority to sell (granted under congressional acts of 1866-70, as bonus for constructing the railroads from Portland and the California state line and from Portland to McMinnville), to any other persons (than settlers), in any other amount (than 160 acres to each purchaser), or for a greater price (than \$2.50 an acre), than that prescribed in the proviso, and any conveyance which the company has attempted to make on a sale made in violation of this statute, would not be sustained by the courts.

That the Southern Pacific company can be forced by the courts to sell its railroad grant lands in this state according to the terms of the acts of congress, is the opinion of R. A. Ballinger, Commissioner of the General Land Office, given by letter to W. C. Hawley, representative in congress for the Oregon First district.

According to Commissioner Ballinger no further legislation by congress is needed to put in the hands of the people of this state the power which they have thought they needed in order to break up the 3,000,000-acre land monopoly of the railroad, compel it to open the lands to sale, and to force it to sell the lands only to actual settlers, in tracts of no more than 160 acres to each purchaser and at a price not exceeding \$2.50 an acre.

These plain limitations on the possession of the lands are contained in an act of April 10, 1869, by virtue of which the Oregon Central railroad (East Side line) and its successor, the Oregon & California railroad, obtained free from the government as a bonus for building the

railroad from Portland to the California state line some 6,000,000 acres of non-mineral land; and in an act of May 4, 1870, by virtue of which the Oregon Central railroad (West Side line) secured some 500,000 acres for the railroad between Portland and McMinnville.

**Railroad's Thrifty Bends.**  
The United States gave odd numbered sections of land, ten on each side of the track, to the amount of 12,800 acres for each mile of road. The total acreage for the 360 odd miles of track, to the California line, on account of thrifty bends in the route, amounted to the figures mentioned.

The two lands grants now possessed by the Southern Pacific have been disposed of in large tracts in violation of the acts of congress, until less than half the original acreage remains in possession of the railroad. The lands were sold in larger tracts than 160 acres to each purchaser and frequently at more than \$2.50 an acre and the purchasers in these cases have not been actual settlers.

Representative Hawley has taken the matter up with Secretary of the Interior Garfield, Land Commissioner Ballinger and Attorney-General Bonaparte, endeavoring to find means to hold the railroad strictly to the terms of the grants. The Washington authorities have evinced large interest in the matter. Secretary Garfield has given Mr. Hawley to know that he will afford every facility of his department to accomplish the end aimed at. Attorney-General Bonaparte has told Senator Bourne

and Mr. Hawley he sees no reason why the terms should not be enforced and has asked them for specific information, which they are now gathering, of violations of the acts of congress. Commissioner Ballinger wrote the following letter to Representative Hawley, March 19 of this year:

**Commissioner Ballinger's Letter.**  
In reply to your letter of the 7th inst., addressed to the Secretary of the Interior and handed to me for attention, you are advised that the act of 1866 (14 Stats. 239), made a grant of lands to the California and Oregon Railroad company upon the performance of certain acts by the company within a specified time. The prescribed conditions not having been met by the company, the time for the performance was extended by the act of 1869 (16 Stats. 47.)

Although the company failed to comply with the terms of the grant within the time specified, they were subsequently complied with before a forfeiture, and the title to all the lands within the grant consequently vested in the company (see *Schulenberg vs. Harriman*, 21 Wall. 44) subject only to the covenant expressed in the proviso of the act of 1869, which declares "that the lands granted by the act aforesaid shall be sold to actual settlers only in quantities not greater than one quarter section to one purchaser and for a price not exceeding \$2.50 per acre." As soon as title vested in the company the jurisdiction over the lands passed from the executive branch of the government, and the enforcement of the proviso rests with the courts through appropriate action by either settlers entitled to purchase or the government acting through the department of justice.

The power of congress to prescribe the proviso, cannot in my judgment, be questioned in view of the fact that it was made in consideration of the

extension of the time granted to the company, and the company is therefore without authority to sell these lands to any other person, in any other amount, or for a greater price than that prescribed in the proviso, and any conveyance which the company has attempted to make on a sale made in violation of this statute would not be sustained by the courts. Since the title passed from the

government subject only to the covenant created by the proviso, it is doubtful if congress has power to enact any law to compel a compliance with the terms of the proviso (see *Morgan vs. Rogers*, 79 Fed. 577) and the covenant can only be enforced in the courts.

**Representative Hawley's Work.**  
Representative Hawley has given a great deal of attention to this land

matter. It was one of the campaign issues in the election last year and Mr. Hawley, during his brief stay in Washington last February and March made good progress in bringing the matter to the attention of the administration. He considers it the most important question before the

(Continued on page 7.)

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