

LAND MONOPOLY

(Continued from page 8.)

three miles wide on each side, this land to be offered for sale in quantities of not more than 160 acres to one purchaser, and at a price not exceeding \$2.50 an acre—the proceeds to be spent in building the road and thus opening the country. To put this plan into effect Congress passed the act of 1866.

It will be seen that there was no intention of allowing all the lands thus set apart to pass into the hands of one person or company. The act set up guards against the creation of the land monopoly that has been created. The act of 1866 laid specific injunctions on the trustees, which became a part of the land laws of the United States.

Congress did not intend the road company to acquire all or any of the lands of the grant, for they state, in execution of the trust "shall sell the same to any one person only in quantities not greater than one quarter section." It is contended on behalf of the state, that the state could not grant the entire trust estate to the road company, for the latter could not be the party entitled to them.

The parties entitled to them were individuals of a numerous class, or the public. Consequently it is contended that the road company was excluded as a sole beneficiary entitled to the lands.

Was It a Breach of Trust? Instead of selling the lands to individuals at \$2.50 an acre, in tracts not larger than 160 acres to one purchaser, the Oregon & California Railroad Company refuses to sell to individuals, thus barring great areas from settlement.

This is in violation of the act of Congress providing that "any one" might acquire the land by paying \$2.50 an acre, the money to be devoted to building the road. The idea that one company or person could acquire all the lands is expressly negated by the provisions of the act of Congress limiting the sales to 160 acres to any one person. Only by disposing of the lands to many persons could they discharge the trust and relieve the lands of the trust imposed upon them.

It is reported that people of southwestern Oregon are also filing on land of the Southern Oregon Land Company, hoping in spite of a decision of the late Judge Bellinger to compel that company to sell it to individual settlers at \$2.50 per acre, as it is hoped by the claimants to Southern Pacific land to enforce that corporation to do so. The lands of the Southern Oregon Land Company are in a different position, however, from those held by the Southern Pacific company. In the case of the former lands the grant was made to the state as a trustee, the lands to be given to a company that would build a wagon road from the Rogue River valley to Coos Bay.

The state certified that a company had built the road, and on the state's certificates patents were issued, and the lands have since been transferred to a body. Judge Bellinger held that the provisions as to the price of lands and amount to be sold to one person were mere incidents to the grant;

that the certification by the state was a disavowal of the trust in these respects, and if a trust existed; that the plaintiff was a beneficiary of the grant and so had no standing in court, and that the great lapse of time since the grant was made—34 years—was a bar to the action.

It is to be presumed that notwithstanding the case of the Southern Pacific lands is not on all-fours with that of the Southern Oregon Land Company, much the same arguments, except the state's part as a trustee or agent, will be used in support of the railroad's position as against the numerous claimants who are now seeking to gain possession of these lands under the terms of the grant. If this action had been taken a few years ago we could have had no hope that it could be maintained itself in the courts, but there is growing up a disposition on the part of the courts to take a somewhat different view of many matters relating to corporate rights and privileges from that which obtained some years ago. Courts, as well as, if not to so great an extent or so quickly as legislative bodies, respond to public sentiment; and no judge can fail to see and know at once that as a matter of equity and real naked right, as between corporation and people, the railroad company wrongfully withholds those lands from the people.

Beyond any doubt the railroad corporation has for more than a third of a century continually and persistently violated the terms of the grant and neglected and refused to perform its plain, clear part of the contract with the people. But it will be said that these particular claimants have no special interest, have no standing in court, that only the government can act—and many other legal arguments will be made.

There can be no doubt what the intention of Congress was in making the Oregon & California railroad land grant. The law distinctly declared that the land should be sold to settlers at \$2.50 an acre, and the debate showed plainly and clearly that inasmuch as the railroad would enhance the value of the land, it was thought the settler could afford to pay double the price charged by the Government—that is \$2.50 an acre—for the land within the grant. Thus, the country would get the railroad and the settler would get the land enhanced in value by the road, yet at a low price.

The timber lands were not esteemed of great value then, but have become of great value since. But the grantee—the railroad—treats the lands as its own, which it may sell or not; and if it sells, it may make any price it pleases. Of some of these lands a single quarter section must seem to be worth \$20,000.

The claim as to these lands doubtless runs straight with the current of general thievery, under the common claim that every individual or corporation has a right to make as much as he can out of the Government and people, by hook or crook, no matter how.

It goes on the assumption that it is the age of thievery; of which indeed there are multitudinous proofs. Municipal franchises, land grants, timber steals, are examples. One is reminded of the fierce invective of Timon, after his discovery of the propensity of mankind:

"I'll example you with thievery: The sun's a thief, and with his great attraction

Robs the vast sea; the moon's an arrant thief, And her pale fire she snatches from the sun.

The sea's a thief, whose liquid surge resolves

The moon into salt tears; the earth's a thief That feeds and breeds by a composture stolen

From general excrement; each thing's a thief

The laws, your curb and whip, in their rough power

Have uncheck'd theft."

The argument is that since thievery is general, it has its rights and sanctions. Yet the pessimism is somewhat extravagant for our time, since now there is an awakening of public conscience.

But it is awakening somewhat late. Most of the goods are gone.

Congressman Hawley at the session of the Willamette Valley Development League, at Forest Grove on June 27, spoke at some length upon what he termed the greatest factor in retarding Oregon and particularly Western Oregon's development—the railroad grants, and the withholding of these immense tracts from settlement and development by the railroad company. He fully discussed the early organization of the railroad company in this state, and its acceptance of this grant, to which, he stated, the railroad people have no right or title and who have failed to comply with the provisions of the grant.

He said he had been informed by Secretary Bonaparte that the provisions of this grant could and would be enforced as soon as the necessary information regarding it could be obtained by the department, a special agent now being in the state, quietly securing this information. He pre-

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dicts that at no distant day the enforcement of the provisions of the railroad grant in Oregon will give the people much relief in the restricted land sections of the state and greatly promote new developments. He said our people are not antagonistic to the railroads, but had shown their appreciation of them to such an extent that they had overwhelmed them with patronage and business, and that the railroad people have no cause to complain on this score.

Mr. Hawley said legislation should be enacted to prevent railroads from engaging in other business than the transportation of freight and passengers. Their engaging in coal mining, lumbering, etc., is unfair competition in these common industries.

Mr. Hawley closed his remarks by expressing his intention to work vigorously for the enforcement of the provisions of the railroad grant, and at all times to avoid any prosecution or unfair treatment of the railroad people, declaring he had no quarrel with them.

It cannot be successfully denied but what courts are somewhat influenced in their decisions by public opinion. And with the public sentiment aroused as in the present case, it will be a potent factor in the decision of the court.

Taking into consideration of fact, that in similar railroad land grants in Wisconsin and Michigan the courts compelled the railroad companies to conform to the terms of their grant, and the terms of their grants were

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identical with the Oregon & California railroad, there is no good reason why the courts in the case of the Oregon & California Railroad companies should not do likewise. Nor is this all. Attorney General Bonaparte, in a response to a letter to the Secretary of the Interior asking that a law be drafted to be presented to congress to compel the railroad companies to comply with the terms of their grant, says: In effect:

"There is plenty of law in the statutes now to compel the railroad companies to comply with the plain intention of congress." And that the machinery of his department would be exerted to the utmost to force a compliance of the terms of their grant.

Attorneys Farrin & Farrin have taken up the matter for upwards of 200 applicants in Coos County. The Attorney General of the United States has been notified.

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Lawyers.

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Attorneys at Law

City Attorney, Dep District Attorney
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