

RAILROAD LANDS SITUATION

Explanation of the \$2.50 per Acre Matter now Attracting Attention Thru State of Oregon.

This article was published some weeks ago and the Times has had so many inquiries regarding it and calls for extra papers that it is re-publishing for the accommodation of our readers.

How to force the Oregon & California railroad and the Southern Pacific to disgorge their land-grant areas in western Oregon at \$2.50 an acre, in accordance with the terms under which the railroad accepted the lands from the national government, is a perplexing question, and lawyers have many diverging opinions as to the solution. Meanwhile seekers of the land are resorting to the method nearest within their reach, of seizing the lands and thus forcing the railroad into the courts to oust them or bringing suit in the courts themselves to compel the railroad to sell.

The lands were granted by the acts of congress passed in 1866-70 as a subsidy for aiding construction of lines of railroads from Portland to California and from Portland to McMinnville, and for guaranteeing construction bonds. Congress gave, instead of cash bonus a land bonus, which it intended should be converted into cash, under specified terms. These terms were contained in the following proviso of an act of May 10, 1867: "Provided further, that the lands granted by the acts aforesaid shall be sold to actual settlers only, in quantities not greater than one quarter section (160 acres) to one purchaser, and for a price not exceeding \$2.50 an acre," and also in section 4 of a congressional act of May 4, 1870, as follows: "And be it further enacted, that the said alternate sections of land granted by this act, excepting only such as are necessary for the company to reserve as depots, stations, sidetracks, woodyards, standing ground and other useful uses, in operating the road, shall be sold by the company only to actual settlers, and at prices not exceeding \$2.50 an acre."

The railroads accepted these terms, and their acceptance is on record, that the Oregon & California have been filed with the interior department April 9, 1870, as to the act of April 10, 1869, under which more than nine-tenths of the granted lands now held by the Oregon & California and Southern Pacific were obtained from the government—about 6,000,000 acres. An additional 500,000 was obtained by the Oregon Central railroad (West Side), under act of May 4, 1870. Several years later the Oregon Central assigned its rights and claims to the Oregon and California.

The lands were received by the two railroads from the national government, on condition that they should be disposed of according to certain specified terms. The railroads agreed to these terms. The terms virtually put the lands in trust with the railroads as trustees agreed to dispose of them to actual settlers at not more than \$2.50 an acre.

The national government did not, then, give the railroads fee simple title to the lands, or absolute ownership in them, as the railroad attorneys now claim. It made the railroads its agent for disposing of the lands. It could itself have sold the lands and turned the proceeds over to the railroads as bonds, but, for obvious reasons allowed the railroads to take the lands and dispose of them.

In trust the government placed the odd-numbered sections twenty miles on each side of the tracts, retaining the even-numbered sections. The railroad lands were not to be sold for more than \$2.50 an acre. And the government declared that the lands retained in the public domain should not be sold less than \$2.50 and acre—thus making the obvious purpose of keeping up to price of the railroad lands and protecting the railroads. The original granting act of July 25, 1866 under which the Oregon & California obtained its bonds declared: "And the sections and parts of sections of land which shall remain in the United States, within the limits of the aforesaid grants, shall not be sold for less than double the minimum price (\$1.25) of public lands when sold." The act of May 4, 1870, under which the Oregon Central (West Side) obtained its grants, declared that its lands "shall be disposed of only to actual settlers at double the minimum price for such lands."

The clear purpose of the acts of congress was to promote the settlement of the country. Congress wanted to put the lands into the hands of the actual settlers. It tried to avoid creating monopoly in the lands. It denied to the railroads the right to dispose of them as they chose. It withheld from them the right to collect a price greater than \$2.50 an acre—thus imposing on the retained areas the same or similar terms as upon the railroad lands.

In fighting the efforts of the would-be settlers to obtain the lands, the Southern Pacific will contend that it holds absolute title, which gave it the right either to sell at whatever price it wishes or to refuse to sell at all.

Railroad attorneys will put up a mass of subterfuge and sophistry to defeat the efforts of such persons to obtain lands. They will insist that an actual settler can be only a person who resided on the lands at the time that the grant was made, and that such persons have ceased to exist since that time.

The many applications for railroad land throughout western Oregon are pursuing a course they should have taken years ago. The question will go to the courts for adjudication. It may go there in various ways—in suit of the railroad to oust trespassers, in action of would-be purchasers to compel the railroads to sell at \$2.50 an acre; in action by the government to compel observance of the terms of the grant

or wrest the unsold lands from the grasp of the railroad; or by suit of the government, under an act of congress yet to be passed, to restrain the railroads from selling on any other terms than those prescribed by the terms of the original acts and reiterated by the new law.

The Oregonian of recent date says in a leading editorial: "The purpose of congress and of the people of Oregon, who besought congress to pass the granting acts, has been thwarted many years, by flagrant breach of railroad faith. The reign of broken pledges and greedy grab of non-resident landlords should end. Oregon aspires to a nobler destiny than striving for the pleasure and profit of those barons. Congress and the people mapped out a brighter future. The blight has lain too long. Repudiating the \$2.50 an acre price limit, fixed by congress on sale of lands granted to the Oregon & California Railroad company as bonus for a road from Maryville, California to Portland, Oregon, the company claim the right to charge in excess of that figure, whatever they wish. The railroad magnates refuse to sell at the \$2.50 fixed price, claim fee simple title in the lands to do with as they please, and deny the claim of would-be purchasers that the acts of congress give such persons the right to acquire any part of the land at any price whatever, unless the possessors are willing to sell.

The land now in possession of the Oregon & California Railroad company, a corporation organized and existing under and by virtue of the laws of the state of Oregon. Their repudiation of the terms of the grant has continued many years. Now finally more than 200 hundred residents of the Coos Bay region have started suits to release the monopoly grip and admit settlers and others desirous of acquiring the land, as the granting acts intended they should, and of developing the country.

The would-be purchasers are joining the general movement throughout western Oregon for enforcement of the original terms of land grants. Up to this time the possessors of the granted land have managed to ward off other attempts to compel them to conform to these terms. They have been so successful at this that they have grown confident of their ability to repudiate perpetually the original terms of the grants and establish absolute title for themselves.

The Coos Bay lands, amounting to a total variously given between 60,000 and 90,000 acres, were awarded July 25, 1869, and the act amendatory thereto. The lands were a subsidy for construction of a railroad from Maryville, California to Portland, Oregon, in order to open communication between Portland and San Francisco.

The grant consisted of three sections of land, or 1,920 acres, for every mile of road, being odd-numbered sections "to the extent of three sections in width on each side of said road."

The land was given in lieu of cash bonus, and was to be converted into cash, by selling to settlers. The selling price of the granted lands was limited by the following proviso in section 1 of the constitutional act: "Provided further, that the grant of lands hereby made, shall be upon the condition that the lands shall be sold to any one person, only in quantities not greater than one quarter section, for a price not exceeding \$2.50 an acre."

Bills Killed in Senate.
At the last session of the Oregon legislature bills to confer on any individual the right of the state to sue for compliance with the granting acts and to require the circuit court, after due legal process to order conveyance of title to applications for land within ten days, were introduced in the senate by Malarkey of Multnomah and in the house by Chase of Coos. The two bills were both slain in the senate by Elijah Smith and allied corporation interests.

The Malarkey bill died in the senate committee on public lands—Sichel Scholfield, Beach and M. A. Miller of Linn. The Chase bill, after passing the house against but one negative vote, was adversely reported by the senate committee and indefinitely postponed.

When congress passed the granting act, the country lying between Maryville, California and Portland, Oregon, was not settled and contained no roads leading either to San Francisco where there was communication with the outside world, or to Portland, where there was ocean commerce. A road needed, therefore, through this great intervening area, in order to open it up for settlement and to establish communication between two important parts of the country.

Reason For the Grant.
No few settlers could afford to open a road either way, but a large number of them, by contributing a small sum of money each, could raise sufficient funds to do the work. The scheme was devised by having congress withdraw from entry half the lands on each side of the road, assigned by odd-numbers, in a strip 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 on building the road and thus opening the country. To put this plan into effect congress passed the act of 1869.

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 creation of a land monopoly that has been created. The act of 1869 laid specific injunctions on the trustees, which became

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WANTED—Girl bookkeeper for general merchandise store. Address box 209, Marshfield, Ore.

WANTED—An elderly lady to cook for eating club of eight men. Address Box P, North Bend.

WANTED—Good farm and dairy hand. Wages \$40.00 per mo. and board. E. L. Bessey. Phone 208.

WANTED—Two heavy teams to hauling for Plat B wharf, on contract or six dollars per day. L. D. Kinney.

WANTED—Man and wife or widow woman, no objections to child; or good girl for general house work. Apply Mrs. F. Rogers, Coos River. Phone 207.

FOR SALE—Eight-room house and lot on Mead street, just north of M. E. church. Price, \$1800, cash. J. S. Edmunds, North Bend, or F. L. Sumner, Marshfield, Ore.

WANTED—Anybody having goods to store call at Taylor's Piano House on Broadway, near C. street. Large warehouse just completed. Terms reasonable.

WANTED—By Mrs. J. A. Goodwill, a few summer boarders; parties wishing a day on South Coos river can get dinner. Phone 20x8. Launch Tioga leaves 8:00 a. m. daily.

WANTED—Man to work by the day manual labor, apply at Going & Harvey Co.

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Mrs. L. M. Perry will have her fall opening of millinery on Saturday, September 7. All the latest and most up-to-date styles will be found on sale. Prices the very lowest.

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