

THE LAND GRANT HOLDINGS

(Continued from page 1.)

the Oregon & California land grants, that favored the public; namely, that the lands should be sold at a price not exceeding \$2.50 an acre, only to actual settlers and in tracts of not more than 160 acres to each purchaser. These suits will involve close to 3,000,000 acres, held by the railroad and by persons who have bought from the railroad in violation of the terms of the grant.

The resolution also directs the Department of Justice to start suits to enforce the rights of the United States as to the wagon road grant between Coos Bay and Roseburg, where 92,000 acres of land are held by the Southern Oregon Company—a group of non-resident landlords, chiefly William W. Crapo, William J. Rotch, Elijah Smith, president, and Prosper W. Smith. These men are residents of New York and Boston. According to the terms of this grant, made in 1868, the lands were to be sold for not more than \$2.50 an acre and in tracts of not more than 160 acres to each purchaser.

Both the Southern Pacific and the Southern Oregon Companies refuse now to sell the lands at \$2.50 an acre, and the railroad refuses to sell at any price. Both companies have sold large areas in bulk, ignoring the 160-acre limit, and at prices frequently much in excess of \$2.50 an acre. The railroad has made such sales to others than actual settlers.

Suits against the two companies have already been begun in the United States Circuit Court by would-be purchasers, who offer \$2.50 an acre. Fourteen suits have been filed against the railroad by A. W. Lafferty, attorney for actual settlers in Columbia County. One has been filed against the Southern Oregon by T. S. Minot, attorney for the 86 claimants of 17,000 acres in Coos County, and another of the same kind will shortly be filed for 10 other claimants.

The Fulton resolution is understood to have the sanction of the Administration and to have come originally from B. D. Townsend, the special Government Attorney who probed the railroad grant last summer and fall. Townsend believed a resolution by Congress necessary as a preliminary to a Government suit, since otherwise the Government suit might be thrown out of court. Dispatches from Washington say that Senator Fulton is hopeful of the adoption by Congress. Then it may be expected that the Government will begin the suits. This will explain some part of the Government's delay in acting against the railroad and the Coos Bay Company.

The delay has made many persons impatient and caused them to wonder if the work of Townsend would end in any achievement. Townsend seems to have been busy in Washington the last three or four months drafting the Government's bills of complaint.

Two Suits to Be Filed.

The government will file against the railroads two sets of complaints—one against the owners of large holdings purchased from the railroad in violation of the terms of the grants. It is expected to file two complaints against the Coos Bay Company and holders of big tracts acquired from this grant. The suits in equity will ask either for forfeiture of the land remaining in the railroad's possession, or for a decree ordering its sale by the railroad in compliance with the terms of the railroad grant. The proceedings against the purchasers of land will be based on the contention that the deeds are void because attempting to convey title in violation of the law.

Consternation has reigned among purchasers of the land since it became known that they were to be swept up in the Government's dragnet. This has brought much satisfaction to the railroad, which is glad enough that it is not to be alone in the Government's endeavor to force the railroad to comply with the terms of the land grants. Among the biggest purchasers are C. A. Smith, in Coos; J. M. K. Wingate, in Douglas; Bond-Kelly Lumber Co. in Lane; A. B. Hammond, Hammond & Winton and Hammond Lumber Company, in Tillamook; Curtis Lumber Company, in Linn; Olson Land Company, in Tillamook, and C. S. Hopkins, in Klamath and Jackson.

Numerous other persons and companies hold railroad land of 1600 acres and more who are wondering if they will be defendants. The Government suits promise to involve big interests and to make one of the biggest anti-trust suits in the United States.

Retains Big Lawyers.

The importance which the railroad attaches to the matter is shown by the railroad's securing eminent legal counsel—John C. Spooner, ex-Senator of Wisconsin, and John B. Milburn,

of New York, W. F. Herrin, of San Francisco, chief counsel of the Southern Pacific, will contribute his services, also W. D. Fenton, of Portland, local attorney for the Southern Pacific.

The Fulton resolution was reported by the Judiciary committee of the Senate, of which Fulton is a member, as a substitute for the Tillman resolution. It appears that Tillman offered his resolution, calling for information why the government was not taking action against the railroad, at the very time the Fulton substitute resolution was in preparation.

The railroad grants, two in number, were made by the Government in acts passed between 1866 and 1870, for aiding construction of a railroad from Portland to Ashland, starting on the east side of the Willamette river, and from Portland to McMinnville, running on the west side. According to Townsend's report, the "provisions of the grant restricting the sales have never been respected. Substantial violations of the terms of the grants occurred from the very beginning."

The land of the Southern Oregon Company was granted pursuant to an act of 1868, giving over land to the State of Oregon (which passed it on to the Coos Bay Wagon Road Company, subject to the terms of Congress), to aid construction of a wagon road from Roseburg to Coos Bay.

History of the Grant.

The land patented to the wagon road company was 105,000 acres. In 1875 the 35,533 acres of the land were sold by that company to John Miller, alias Ambrose Woodroof, for \$1 an acre, and by him were transferred on June 22, 1875, to Collis P. Huntington, Charles Crocker, Leland Stanford and Mark Hopkins for \$35,000. On March 27, 1882, Huntington, Stanford and Hopkins conveyed their interests in the purchase to Crocker, who, on December 20, 1883, conveyed the whole to William H. Besse. Seven days later Besse transmitted it to Russell Gray, who, on January 5, 1884, passed it on to the Oregon Southern Improvement Company.

In 1887 the land was transmitted on a mortgage foreclosure, to William J. Rotch and William W. Crapo, who immediately organized the Southern Oregon Company to take the land, which still professes to own it in fee simple.

Meanwhile, on January 7, 1884, the Coos Bay Wagon Road Company, holding 61,143 acres remaining, sold them to William H. Besse for \$91,715, by warranty deed, and he, on June 4, 1884, sold by warranty deed to the Oregon Southern Improvement Company.

Grant is Violated.

Both the Southern Pacific and the Southern Oregon Company will be attacked by the Government, on the ground that they have violated the terms of the grant by ignoring the "condition subsequent"—that is, the condition attached to the grant, subject to which they received land from the Government, as to \$2.50 an acre price, and actual-settler and 160-acre limitations. Should the court order the land forfeited to the Government, it will become a part of the public domain, to be disposed of as Congress may determine. Should the court order fulfillment of the condition subsequent by the two companies, the land claimants who have brought suit against them will probably have first claim to the land they seek.

This advantage is evidently that which they have in view. The burden of the prosecution will rest on the Government and they will be in a position to get first benefits from its success.—Oregonian.

ACTS AS A BLIGHT ON OREGON'S DEVELOPMENT

Claims There Is Abundant Ground For Bringing Suit In Open Violation of Terms.

WASHINGTON, Feb. 18.—The substance of the report of B. D. Townsend on his investigation of the Oregon & California Railroad land grant was made public today for the first time, and shows in a general way the facts on which the Government will base its suit to compel the railroad company either to comply with the law or forfeit its title to the grant. The report is so full and explicit as to require no explanation. The following extracts are made:

"The provision of the grant restricting the number of sales have never been respected. Lands have been sold to any person, whether settler or speculator, in as large quantities as possible and at the highest price possible. In making sales the railroad company has always observed the laws of supply and demand and has never obeyed the law of Congress. Substantial violations of the terms of the grant occurred from

the very beginning. Among the first conveyances executed in 1872 several instances occur where land was sold at prices largely in excess of \$2.50 per acre, sometimes as high as \$10 per acre. In 1874 three instances are found of conveyances to a single purchaser of quantities exceeding 1000 acres each. These violations continued throughout the history of the grant.

Sells to Timber Speculators.

"When the Southern Pacific system secured control of the land grants the first thing they did was to organize an effective land department. Land examiners and timber cruisers were employed and a force set to work to ascertain and appraise the value of each specific tract of land contained in the grant; this had never been done before.

"About 1890 some of the old and experienced timbermen of Michigan, Wisconsin and Minnesota were attracted by reports as to the timber lands of Oregon. There suddenly arose a tremendous demand for lands by wealthy timbermen and speculators in the East. The railroad company was quick to see its opportunity to profit by disposing of lands contrary to the terms of the grant. It immediately began to make sales in quantities ranging from 1000 to many thousand acres.

Only Gives Quit-Claim Deeds.

"In 1891 it changed all its forms of deeds and contracts and has ever since refused to execute anything but the quit-claim form of deed, except where it had by prior contract obligated itself to do otherwise. This is a most unusual circumstance. The title of the railroad company consisted simply of a grant from the United States. It immediately determined to take advantage of that opportunity, wholly ignoring the conditions of the grants and sought protection against responsibility for these violations of law by the adoption of the quit-claim form of conveyance. This policy was pursued by the company without restriction until 1902, during which period approximately 400,000 acres of land were sold to timbermen and speculators, in quantities exceeding 1000 acres to each purchaser.

Stops Sales Entirely.

"Late in 1902 the railroad company adopted a new policy and permanently withdrew all of its lands from sale. There then remained in its hands approximately 800,000 acres, most of it in violation of the terms of the grant, it resolved upon the plan of asserting an absolute, unqualified and permanent estate in the balance of grants in its own favor. Various excuses for this step have been given from time to time. In a public speech at Oakland during September, 1907, Mr. Harriman admitted that this policy was intended to be permanent.

"Of 813,908 acres sold by the railroad company, only 127,418 acres were sold within the limitations of quantity and purchase price prescribed by the grant, and 515,928 acres were sold in quantities exceeding 160 acres, of which 363,991 acres were conveyed or sold to 38 purchasers since the year 1897.

Used to Retard Development.

"The grants placed in the hands of a single proprietor nearly one-half of the lands of Western Oregon, subject to conditions, however, intended to insure distribution of land in small quantities among the producing class. Notwithstanding these conditions, the greater portion of the land still remains in the hands of a single proprietor, which refuses to sell it, develop it or improve it, simply holding it to share the benefits which shall result from the labor of others. The greater part of the land sold went into the hands of proprietors of the same class.

"That the present railroad interests are deliberately using the land grant for the purpose of retarding the development of Western Oregon cannot be asserted as a fact; but it is certain that its policy has this direct effect, and it is not difficult to understand that a selfish purpose may be subserved thereby. In this connection it is proper to consider that the Oregon & California Railroad Company is now part of a well-organized transportation system which controls the commerce of approximately one-third of the United States. So far as Western Oregon is concerned, this railroad system not only holds an absolute monopoly of transportation but through manipulation of the land grant, practically controls production.

Checks Railroad Competition.

"The following facts are significant: The present transportation facilities of Western Oregon are taxed to their full capacity in handling the products of the country. If the railroad should abandon its present policy and dispose of its land grant to those who would develop it and subject it to productive industry, it is certain that the increased production of the country would be so greatly in excess of the present transportation facilities that competing transportation lines would be attract-

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L. D. Foote

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ed to the state. It is equally certain that, with the Southern Pacific interests controlling substantially one-half the land, no other transportation company, however fortunate, is likely to venture into that territory to engage in competition with a system which virtually controls not only transportation, but also production.

"More than four-fifths of the land grant now held by the railroad company is situated in Southern Oregon. At the time the railroad withdrew its lands from sale in 1902, Southern Oregon was developing rapidly. It was largely this development which taxed the capacity of existing transportation facilities. The sale of lands was stopped and the development of Southern Oregon was checked.

Great Increase in Value.

"The total assessed valuation of the land grant for the year 1907 was approximately \$18,000,000, whereas prior to the year 1902 the assessed valuation had never exceeded \$2,000,000. Of the total taxes paid by the railroad company on account of its land grant, from 1870 to the present time, more than one-half has been paid since 1902.

"If the conditions of the grant had been observed under no circumstances could the railroad companies have enjoyed a bounty exceeding approximately \$8,000,000 from the disposition of the lands which it has received. It has already realized approximately \$4,500,000 and now asserts absolute ownership to property the assessed valuation of which is \$18,000,000.

Grants Thwarts Own Purpose.

"At the expiration of 40 years after the enactment of the grant, 2,000,000 acres of the lands granted are vested in a single proprietor, with no public obligation and virtually controlling the commercial destiny of a large portion of Oregon. This is the very evil which the provisions of the grant were destined to avert. Yet that condition now exists, with the assertion of a legal right to make it permanent.

"It is confidently believed that substantial remedies exist in favor of the Government. It is the purpose of the Department of Justice to enforce these remedies. It is respectfully suggested, however, that discussion of their form be deferred for presentation before the court to which the cause shall hereafter be addressed."

SENATE DEBATES LAND GRANT

Fulton Leads in Movement to Have Suit Begun.

WASHINGTON, Feb. 18.—The fact that the Department of Justice has made all preparations to begin a suit to enforce the terms of Government land grants in the State of Oregon was brought out in the Senate today, when Fulton, of the committee on judiciary, reported a resolution authorizing the department to bring such suits and asked for its immediate adoption. Heyburn asserts that hundreds of millions would be found to be involved if the proceeding were made general. The resolution was generally discussed by Senators, the only objection urged against it being based upon the idea that the Attorney-General was now empowered by law to do all that is sought by the resolution.

During the discussion Fulton announced that the department was ready to proceed and merely wanted the authority of Congress to meet any possible question that may be raised against the legality of the proceedings.

No Doubt of Violations.

The resolution also applies to the grant made for the construction of a telegraph line from Portland to Coos Bay and McMinnville, Or., under the act of May 4 1870. The resolution authorizes the Attorney-General to ascertain and enforce all rights in favor of the United States, if it appears that the lands are forfeited to the United States by the violation of the condition of these acts.

Fulton said there was no question

BEAUTIFUL ART STUDIES

—FREE—

We recently made a special deal whereby we can offer the people of Coos Bay some exquisite and beautiful Art Studies absolutely free. These pictures a few years ago would have been considered bargains at from \$1.00 to \$5.00 each. Today they would cost from 50 cents to \$1.50 in an art store.

The subjects are those of famous artists, the coloring is delicate and soft or bold and strong as required and done with a real artistic feeling. Framed they are an ornament to any home.

We recently made a large purchase of BORAXO, one of the most useful and necessary adjuncts for the bath, toilet and nursery. It is really a powdered form of soap, cleansing and pure and sanitary, transforming water so that it is delightful to the touch and healing to the skin. It may be used in washing the most delicate fabrics without hurt or damage. Nearly every woman knows the value of Borax and BORAXO is the highest and best form of this element. With every poultice carton selling for only 25 cents you receive one of these Art Studies Free.

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that the roads had violated the terms of these grants, as the violation had been admitted before the sub-committee.

Tillman explained that he had introduced the original resolution in view of what he had learned while on a visit to the Pacific Coast. He was satisfied railroads are now holding land from settlement worth millions of dollars.

The propriety and necessity of passing such a resolution was questioned by Foraker.

Fulton did not personally believe the resolution was necessary, but the Attorney-General wanted it and he thought it should be passed.

Congress May Forfeit Grants.
Nelson said the Supreme Court had decided that the forfeiture of such grants could be enforced either in the courts or by Congress.

"This resolution," he said, "is merely an expression that Congress prefers to have the court take action. Congress could only declare absolute forfeiture, but the court of equity could say to the railroads that if they proceed to comply with the terms of the grant their grants would not be forfeited."

Heyburn said the same conditions referred to in the resolution exist in all land-grant states, although only Oregon is referred to in the resolution. For 40 years the railroads, he said, had refused to comply with the terms of these grants. The settler could not proceed against the railroads to force them to comply with the terms of their grants to the land, because the proceeding could only be brought by the Government, which gave the grant.

"This question," he added, "involves millions of acres of land, worth hundreds of millions of dollars."

In reply to a question by Dixon, Heyburn said he thought the same limitation existed in the land grant

of the Northern Pacific Railroad Dixon, Fulton and Nelson did not agree with him in that statement.

The resolution, drawn by the Department of Justice to satisfy any doubt that might be raised as to its authority to proceed against the railroads, was offered as a substitute for the resolution recently offered by Senator Tillman. The resolution was placed on the calendar under objection by Senator Gallinger, who thought it could not be disposed of today.

The resolution directs the Attorney-General to prosecute suits to enforce the rights of the United States pertaining to land grants made to aid the construction of railroads and telegraph lines by the Southern Pacific Railroad Company in California and Oregon, involved in the act of July 25, 1866, and to the grant made to aid in constructing a military wagon road from Coos Bay to Roseburg, Oregon, under the act of March 3, 1869.

Fulton is confident that he will secure the early adoption of his resolution. The resolution as introduced is satisfactory to the Department of Justice, although contention was made in the general debate by Foraker, Nelson and Heyburn, who say that suit may be instituted by the Department of Justice without the direction of Congress. Senator Fulton believes the objections will be withdrawn and the resolution adopted.

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