

# The Bend Bulletin

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FRIDAY MAY 1, 1903

## Proofs Before New Commissioner.

In view of the fact that some have felt disposed to question the validity of proofs taken before the new United States Commissioner in cases that were advertised for hearing before either of the former commissioners, Palmer or Keed, Commissioner Lawrence has compiled the following statement, which was posted at his office Monday morning and is given out for the information of those whom it may concern:

"In a circular issued from the General Land Office at Washington July 17th, 1889, on 'Rules to be Observed in Passing on Final Proofs', the following occurs as paragraph 5:

"5. Where final proof is taken before an officer not named in the advertisement, it may be accepted if otherwise sufficient, provided the proof is taken at the time and place designated in the printed notice, or within ten days thereafter under the exceptions provided in Rule 1 [which pertains to the manner of initiating public land contests]; and provided further, that both the officer advertised to take such proof and the officer taking the same, shall officially certify that no protest was at any time filed before him against the claimant's entry."

"Thus final proofs 'taken before an officer not named in the advertisement' seem clearly to be recognized by the General Land Office. Otherwise this provision would not be made for taking them. The requirement that the officer advertised to take such proof shall certify that no protest against the claimant's entry was filed before him seems to contemplate cases in which such officer does not lose power to act—is not disqualified through expiration or withdrawal of authority.

When one ceases to have authority to receive filings or contests or proofs, all matters in his hands pertaining to them are presumed to be transmitted to the proper land office, where they will receive due attention, in connection with proofs taken by the new official, if there be protest not filed with him.

"In 'Revised Rules of Practice,' approved July 15, 1901, Rule 33 pertains to 'Oral Testimony before Officers other than Registers and Receivers,' and the first paragraph provides that in the discretion of Registers and Receivers testimony may be taken near the land before a United States Commissioner at a time and place to be fixed by them in the notice of hearing. The last paragraph of the Rule reads as follows:

"When an officer designated to take testimony under this Rule, or when an officer designated to take depositions under Rule 27 [pertaining to the power of Registers and Receivers to designate other officers to take depositions] cannot act on the day fixed for taking the testimony or deposition, the testimony or deposition, as the case may be, will be deemed properly taken before any other qualified officer, at the same place and time, who may be authorized by the officer originally designated, or by agreement of parties, to act in the place of the officer first named."

The paragraph set forth above seems to contemplate that protestants, if there be any, shall appear at the time and place mentioned in the published notice of hearing, when protestant and claimant may

agree to submit their matters before a qualified officer not named in the advertisement. If no protestant appear, of course the claimant may proceed with his proof and it "will be deemed properly taken," as the rule plainly declares. On the other

hand, the conclusion seems to be fairly indicated that failure to appear at the proper time and place before such "other qualified officer" would operate as a default.

J. M. LAWRENCE,  
 United States Commissioner.

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