

# LAND RULINGS OF IMPORTANCE

## DIGEST OF RECENT DECISIONS

### Law Points Affecting Homestead and Desert Entries as Decided by the Secretary of the Interior and Condensed for Bulletin Readers.

The following is a digest of recent important law points as decided by the Secretary of the Interior, affecting land cases:

#### Homesteads.

Credit for military service under section 2305 Revised Statutes applies only to residence and not to any cultivation that may be specifically required.

Section 4 of the act of Feb. 19th, 1909, requires, among other things in making final proof on entries under the revised statutes, proof also of cultivation of specific portions of the entry from year to year.

Obviously the specific requirements of said act as to cultivation cannot be affected by the previously enacted section 2305 R. S., allowing credit as to residence on homestead entries for military service.

#### Isolated Tract.

Under the provisions of the act of April 30th, 1912, isolated tracts can be sold and entered with a reservation to the Government of the coal rights. In such case the entryman should signify his willingness to accept a limited patent.

#### Practice.

In a contest between two entrymen, who in good faith settle upon two adjoining homesteads simultaneously, their rights will be equitably adjusted by the department. In the above case, the department follows the reasoning in Williams vs. U. S. (138 U. S. 514), and overrules the case of Summers vs. Roberts (23 L. D. 201.)

It has often been held by the department that, where an entry has been erroneously allowed in violation of the rule of approximation, said entry may remain intact subject to consideration by the Board of Equitable Adjudication, when it is shown that such entry could not be reduced with-

out forfeiture of the improvements of claimant.

Information as to proposed restoration of land will not be given out in advance of the publication of executive orders affecting such lands, not even to those asserting claims, as such information might embarrass the department in its adjudication of such claims.

A preference right obtained through the successful outcome of a contest of a public land entry is not assignable.

The law does not provide either expressly or by implication that this preference right could be exercised either directly or indirectly by another even though the third person had obligated himself after obtaining patent to the land to convey the title thereto, in whole or in part, to the successful contestant. The statute contemplated a personal proceeding and a personal reward.

#### Desert Lands.

There is nothing in the act of June 25th, 1910 inconsistent with the allowance of a preference right to a successful contestant.

The preference right is a reward offered to one who has expended his money and time in obtaining cancellation of an unlawful holding of public lands. However, only one farm unit can be entered under such preference right.

The construction of an artesian well for reclamation purposes is construction of irrigation works within contemplation of Sec. 3 of the act of March 25th, 1908 and failure, after diligent effort, to obtain water by means of such attempted artesian well, without fault on the part of the entryman, is sufficient ground for an extension of time.

#### NOTICE FOR PUBLICATION.

Department of the Interior, U. S. Land Office at The Dalles, Oregon, August 27th, 1912.

Notice is hereby given that Jeanette Mitchell Gardner, one of the heirs and for the heirs of James A. Mitchell, of Los Angeles, California, who, on October 17th, 1906, made homestead entry, No. 15361, serial No. 04009, for sw<sup>1</sup>/<sub>4</sub> sw<sup>1</sup>/<sub>4</sub>, sec 17, ne<sup>1</sup>/<sub>4</sub> ne<sup>1</sup>/<sub>4</sub>, sec. 19 and n<sup>1</sup>/<sub>2</sub> w<sup>1</sup>/<sub>4</sub>, section 20, township 19 south, range 11 east, Willamette Meridian, has filed notice of intention to make final five year proof, to establish claim to the land above described, before the Register and Receiver of the U. S. Land Office at Los Angeles, California, and her witnesses before H. C. Ellis, U. S. Commissioner, at Bend, Oregon, and F. A. Bishop, U. S. Commissioner at Hood River, Oregon, on the 5th day of October, 1912.

Claimant names as witnesses: Frank O. Minor, Louie H. Minor, Levi D. West, and George A. Jones, of Bend, Oregon, and John I. West, of Hood River, Oregon.

C. W. MOORE, Register.

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#### SUMMONS.

In the Circuit Court of the State of Oregon for the County of Crook.

A. C. Lucas, Plaintiff, vs. Ralph Patterson, Mary Patterson, Jesse L. Somrall, W. E. Guerin, Jr. and Alex Holbrook, Defendants.

To W. E. Guerin, Jr., above named Defendant.

You are hereby required to appear and answer the complaint of the plaintiff filed against you in the above entitled suit and Court, within ten days from the date of the service of this summons upon you, if served within Crook County, State of Oregon, or if served within any other County within this state, then within twenty days from the date of the service of this summons upon you, or if not served within the State of Oregon, then on or before Thursday, the 24th day of October, 1912. And you are hereby notified that if you fail to appear and answer, for want thereof the plaintiff will take decree and judgment against you for the relief prayed for in the complaint on file herein, to-wit: That the plaintiff have judgment against the defendants Ralph Patterson and Mary Patterson for the sum of \$450 with interest thereon at the rate of 10 per cent per annum from the 16th day of February, 1911, until paid, and for the further sum of \$75 as attorney fees and for the costs and disbursements of this suit. And for a decree and judgment to the effect that the said mortgage described in said complaint herein be foreclosed according to law and the practice of this Court, and that the said premises described therein, to-wit: The W<sup>1</sup>/<sub>2</sub> of the SE<sup>1</sup>/<sub>4</sub> and the E<sup>1</sup>/<sub>2</sub> of the SW<sup>1</sup>/<sub>4</sub> of Section 14 in Township 21 South of Range 10, E. W. M., in Crook County, State of Oregon, together with the tenements, hereditaments and appurtenances thereto belonging, be sold by the Sheriff of Crook County, Oregon, in the manner provided by law and according to the practice of this court, and that the proceeds of such sale be applied to the payment of said judgment herein

prayed for, and that the over-plus, if any remain, be paid to the persons legally entitled to the same. And that the mortgage, lien and interest of the defendants Jesse L. Somrall and W. E. Guerin, Jr., is subsequent to and subject to the lien, mortgage and interest of the plaintiff. And that the defendants and all persons claiming interest by, through or under them or either of them be forever barred and estopped from having or asserting any right, title or interest in or to said premises, or any part thereof, or any redemption or right or equity of redemption, except as prescribed by law, and for such further relief as to the Court may seem meet and just in the premises.

This summons is published in The Bend Bulletin, a weekly newspaper of general circulation, published at Bend, Crook County, State of Oregon, for six successive weeks, commencing with the issue of September 11, 1912, and ending with the issue of October 23, 1912, by order of the Honorable H. C. Ellis, County Judge of Crook County, State of Oregon, made and entered on the 11th day of September, 1912.

Dated and published first time September 11, 1912.

VERNON A. FORBES, Attorney for Plaintiff.

#### NEW CROOK COUNTY MAPS.

The Bulletin has in stock a number of the new Crook county white print maps, showing all roads, rivers, irrigated lands, towns, township and section lines. The maps are larger and more comprehensive than any other maps and are carefully printed on heavy white paper. They retail at \$1.00 each, postage 10 cents.

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