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DEPARTMENT OF INTERIOR.

General Land Office Washington D. C.

June 22, 1894.

United State vs. J. M. Dedman, D. L. E. No. 3, Lakeview series. Register and Receiver, Burns Oregon, GENTLEMEN—

CONTINUED FROM LAST ISSUE. The register is, therefore, in error in holding "that Dedman should be allowed to submit final proof for the said land etc."

While this failure to make the required final proof is a sufficient reason for denying the transferee's petition asking the reinstatement of said entry, yet a more conclusive and satisfactory disposition of the case may be made by a brief consideration of the charges and the testimony concerning them.

In order to understand the testimony descriptive of these lands it is necessary to refer to the adverse claimants. It appears that all of the lands embraced in the Dedman entry (640 acres) are now in possession of other parties and that the witnesses, in describing the different tracts, speak of the "Smith tract," the "Rowland tract," the "Cushman tract" and the "Kidd T. C. E." in the order named from the north to the south of said lands.

It appears from the evidence that these lands are situated in Diamond Valley; that their surface is, in the main, level and covered with a growth of various kinds of natural grasses with more or less sage brush, rose bushes, etc. that there are several streams of water traversing these lands, supplied by the melting snow in the mountains, that the water commences to flow in the streams in the spring and continues until August, in large volumes, often overflowing the banks which at ordinary stages of water are from one foot to three feet high, and that the soil being a sandy loam with a gravelly sub-soil is well moistened during when the streams are high. The streams and other bodies of water often found in so called dry channels seem to be happily distributed over this valley.

As the lands in question, the north branch of Kiger Creek flows across the Rowland and Smith tracts, Kiger Creek takes its rise in what is known as the gorge in Stein Mountain and flows in a northwesterly direction across the Cushman, Rowland and Smith tracts, the Cocomungo flows across the southern portion of the Kidd T. C. E.; the Bohn Creek in a northwesterly direction across the Kidd and Cushman tracts; and the middle branch of Kiger Creek flows across the Cushman tract, there are other streams, when the water in Kiger Creek overflows, running through what are called "dry channels" and contributing much moisture to these lands.

It further appears from the testimony of a number of witnesses that remunerative crops of hay, wheat and barley have been harvested from all of said tracts without artificial irrigation. Some of these witnesses had known this Valley and all the lands and streams in it from a date prior to Dedman's entry and testified that they had cultivated some of the tracts in controversy and similar lands in said Valley, with profit, without the aid of artificial irrigation and

without such aid the natural grasses yielded from a ton to a ton and a half of hay to the acre.

These facts seem to be conclusive as to the character of the land. It is true, a number of witnesses, on behalf of the defendant, testified that these lands were desert in character but it is observed that their testimony was based entirely on their opinions and not actual experience or close observation. The affirmative testimony, as to the lay of the land in this Valley, the multiplicity of the streams running through it, the natural luxuriant growth of the grass and production of crops, cannot be overcome or affected by the negative testimony of parties who never attempted to cultivate said land, or saw its grasses cut for hay or believed it would produce a remunerative crop without artificial irrigation. If these were the honest impressions of unbiased witnesses they would have no weight against actual facts and demonstrations to the contrary but, as suggested by the receiver in his decision "nearly all of them [defendant's witnesses] have been at some time under the employ of Peter French, who furnished the money to make the first and last payments upon the land and did all that was done towards reclamation, etc." In this connection it may be further said that the history of this case shows very clearly that this entry was made in the interest of Peter French. This was prima facie true, as shown by the record, when it was considered by the Department Feb'y. 23, 1893. In that decision it was held that this entry could be confirmed under section seven, act of March 3, 1891, and citation was made to the case of U. S. vs. Mallett et al. 13 L. D. 641, where the entry was refused confirmation "on account of a finding of fraud on the part of the transferee."

Inasmuch, however, as a hearing was ordered by the Department, in the decision which held French to be guilty of fraud, it may be claimed that one object of the hearing was to give him an opportunity to show his innocence. Concerning the correctness of this claim it must, at the same time, be said that the showing made at the hearing by Dedman and French does not satisfactorily explain the facts of record on which said departmental decision was based. Dedman made this entry Dec. 20, 1877, with money furnished by French, April 18, 1878, about four months after said entry and before any work had been on said land, Dedman deeded the same to French for a nominal consideration and removed from Oregon to California, where he remained until 1893, during this absence of sixteen years Dedman took no interest in said entry, never seeking or receiving any information concerning it, French has paid all the expenses of the litigation and all other expenses connected with these lands, yet Dedman and French testified that the latter was acting as the former's agent. This testimony is too unreasonable and inconsistent to have any weight. Dedman had conveyed, or at least supposed he had conveyed, every possible interest (if he ever had any,) in said land and utterly ignored his entry during his long absence, never had expended a cent in acquiring or improving the land, was in the employ of French just before the entry was made and at the

time of the hearing was living at French's house. Instead of French being at any time or in any sense the agent of Dedman, the reverse seems to be true. In all that Dedman has done in this matter, not excepting his testimony, he has, apparently, acted as the agent of French.

It follows from the foregoing facts and considerations that the petition for the reinstatement of said D. L. E. No. 3, must be denied.

The decision of the receiver is, accordingly, affirmed and that of the register reversed.

COMMISSIONER.

STOCK BRANDS.



FREE BRAND COLUMN.

Horse brand bar ten on left shoulder; Cattle brand ten on left hip and upper clip on both ears. T. A. McKinnon, Burns Ore.

Hardin & Riley, cattle branded V on left side Horse brand 7 on left side. F. O. Burns, Oregon

J. C. Foley, cattle brand = on right side Horse brand = on left shoulder.

J. A. Williams cattle brand, 11, on left rib horse brand 71 on right side. P. O. Riley Or.

Horses branded J on left stifle. Cattle brand, ed J on left hip. Marion Bunyard, P. O. Burns.

Cattle diamond on left hip; horses CV on left shoulder. Charles H. Voegtley, Burns Oregon

Horse branded P on right shoulder, cattle P on right hip. R. A. Hendricks, P. O. Lawen Or.

Horse brand 36 on left shoulder, also three dots, in shape of triangle, cattle brand same. E. E. Grout Burns Ore.

Miss Rosa Dickenson Horse brand anvil on left stifle. Cattle branded bar, R on left hip. P. O. Lawen Ore.

J. P. Dickenson cattle brand J P connected left hip. Horse brand anvil on left stifle. P. O. Lawen Ore.

Cattle brand figure 7 on either hip; mark light crop off each ear, slip in each ear, and walt on left jaw. Horse brand figure 7 on either hip. J. H. Bunyard, Burns Ore.

Gen. W. J. sh brand rounding W, on right stifle. P. O. Riley Ore.

Horse brand J on right stifle. James Russell P. O. Burns Ore

Horse brand bar-m on left shoulder; Cattle brand bar-m on left hip and ribs. Catherine Marshall P. O. Narrows Ore.

S. Lampshire & Sons cattle brand B connected, ear mark swallow fork in right ear under bit in left. P. O. Burns Ore

Cattle mark swallow fork in right ear all and underbit in left ear, brand Z connected on left hip; horse brand the same on left hip. Charles Zeigler, Burns Ore.

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