

**THE ITEMS**

**COUNTY OFFICIAL PAPER**

SATURDAY NOVEMBER 13, 1902.

GENTRY vs. P. L. S. CO.

Department of Interior.

Washington, October 27, 1902.

To the Commissioner.

Sir:—April 15, 1898, F. A. Hyde filed selection, under the act of June 4, 1897, for certain unsurveyed lands designated, according to what would be their description when surveyed, as the SW $\frac{1}{4}$ SW $\frac{1}{4}$ , Sec. 18, and the NW $\frac{1}{4}$ NW $\frac{1}{4}$ , the E $\frac{1}{2}$ NW $\frac{1}{4}$ , and SW $\frac{1}{4}$ NE $\frac{1}{4}$ , Sec. 18, T 27 S., R. 42 E., W. M., Burns, Oregon, in lieu of certain lands situate within the limits of the Sierra Forest Reserve, in the State of California. October 5, 1898, Hyde filed two other selections, under the same act, one for what would be, when surveyed, the SW 1-4, of the NW 1-4, of said section 19, T 27 S., R. 42 E., and the other for what would be, when surveyed, the E $\frac{1}{2}$  of the SW 1-4 of said section, in lieu of certain lands situate within the limits of the Cascade Range Forest Reserve, in the State of Oregon.

The selections were filed at the instance and for the benefit of the Pacific Live Stock Company, and the selected lands were subsequently conveyed by Hyde to said company.

The approved plat of the government survey of the township in which the selected lands are situated was filed in the local office March 26, 1900.

May 15, 1900, James Gentry applied to make homestead entry for the W $\frac{1}{4}$ NW 1-4 and N $\frac{1}{4}$ SW 1-4 of said section 19, T. 27 S., R. 42 E. His application was rejected by the local officers because of the prior selection by Hyde, embracing the lands applied for except the NW 1-4, SW 1-4 of said section. No appeal was taken from such rejection. The conflicts between the homestead application and the selections embraced in the NW 1-4, NW 1-4, of section 19, covered by the selection of April 15, 1898, and the SW 1-4, NW 1-4, and NE 1-4, SW 1-4, of said section, covered by the selections of October 5, 1898.

June 8, 1900, Gentry filed protest against the selections, to the extent of the lands he had applied for, wherein he alleges, in substance and effect, that on or about October 21, 1894, he settled upon the lands in controversy with the view to claim the same under the homestead laws, and with the intention to make homestead entry therefor when surveyed, that he erected a dwelling-house on the lands, and ever since the date of his settlement has been continuously in the possession thereof, residing upon, cultivating, and improving the same.



**Growing Old**

ought not to mean growing weak and feeble. It does not mean weakness or feebleness for those who eat with good appetite and sound digestion. It is of the utmost importance that old people should retain the power to digest and assimilate food which is the sole source of physical strength. When age brings feebleness it is generally because of the failure to assimilate the nutrition contained in food.

Dr. Pierce's Golden Medical Discovery cures diseases of the stomach and other organs of digestion and enables the perfect digestion and assimilation of food. It invigorates the liver and promotes general physical well being.

"It is with gratitude we acknowledge what Dr. Pierce's medicine has done for grandmother's good. In fact it has cured her," writes Mrs. Carrie Rankin, of Perryburg, Ohio. "She had been doctored with several physicians but found no relief until Dr. Pierce advised her what to do. She has taken only three bottles of Golden Medical Discovery and is entirely well. She suffered with pain in kidneys, bladder and liver for ten years, and her limbs were swollen with dropsy so that she could hardly walk. My grandmother's name is Mrs. Caroline Hennen, her age is 71 years. I will gladly answer all letters of inquiry."

Sick people are invited to consult Dr. R. V. Pierce by letter, free. All correspondence is held as strictly private and is never confidential.

Dr. Pierce's Pleasant Pellets regulate the bowels.

and was residing thereon when the selections by Hyde were filed; and that after the lands were surveyed he applied to make homestead entry thereof, but his application was rejected for conflict with said selections.

Upon the protest a hearing was had in August, 1900, at which both Gentry and the Pacific Live Stock Company, successor in interest to Hyde, appeared and submitted testimony. The local officers disagreed in their opinions upon the evidence. The receiver found in favor of Gentry, and recommended that the selections be rejected to the extent of the conflicts with his claim. The register found in favor of the company, and recommended that the selections be allowed to stand.

By decision of December 16, 1901, your office reversed the finding of the register, affirmed that of the receiver, rejected the selections as to all the lands embraced therein, and held that Gentry had shown himself entitled to make homestead entry for the lands claimed by him. The decision bases the rejection of the selections upon the stated ground that the lands were not subject to selection under the act of June 4, 1897, when the selections were filed, for the reason that they were not vacant lands within the meaning of said act, but were at the time occupied either by Gentry, the homestead claimant, or by the Pacific Live Stock Company.

The company, in the name of Hyde, the selector, has appealed to the Department.

After careful examination of the voluminous record of the hearing, and of the briefs of counsel, the Department is clearly of the opinion that the allegations in Gentry's protest, to the effect that he settled upon the lands in controversy in October, 1894, as a claimant thereof under the homestead laws, and that he thereafter continuously remained in possession of, resided upon, and cultivated and improved the lands as such homestead claimant, and was so residing thereon when the selections by Hyde were filed, have not been sustained. There is conflict in the evidence in some particulars, but where such conflict occurs the very decided preponderance is against the protestant, and upon the whole evidence his claim and contention are found to be utterly without merit.

It is shown that the Pacific Live Stock Company occupied and improved the lands in question with other lands adjacent thereto, known together as the "Rinehart Springs Ranch," for many years prior to the hearing, having in or about the year 1889, for the sum of \$1,200 purchased the possessory right and improvements of one Sullivan, who had previously located upon and improved the lands and was at the date of such purchase occupying the same. The company was engaged in the live-stock business, and had upon the lands a house, used as a dwelling for its employes, corrals and sheds for its stock, a reservoir and water ditch, the latter about half a mile in length, from 150 to 200 acres enclosed, and 30 or 40 acres cleared, irrigated, and cultivated to alfalfa, from which about 75 tons of hay were harvested annually. The cost of the improvements, including those purchased from Sullivan, is variously estimated at from \$3,000 to \$6,000. The company secured the selections to be made for its benefit. Under such circumstances the occupancy and improvement of the lands by the company would not invalidate the selections or constitute an objection to their approval. In the case of Myrick v. Thompson, the Supreme Court had under consideration the act of July 17, 1854, which, among other things, authorized the location of Sioux half-breed scrip upon "unoccupied lands."

It was there held—  
The provision authorizing the scrip to be located upon "unoccupied lands" was evidently framed for the benefit and protection of occupants of the lands, and that if the occupant saw fit, as the plaintiff did in this case, to locate the scrip upon land occupied by himself, there could be no objection to the location, as the occupant might waive his right to object and abandon his occupancy, and that if he did, the effect would be to restore the premises to the condition of unoccupied land.

What the occupant might lawfully do himself in such a case, he might lawfully permit authorize, or procure another to do so. So, in this case, the Pacific Live Stock Company might procure the selections to be made by Hyde in its interest, or might waive its right to object and permit him to make the selections in his own interest. In so far as your office decision held otherwise, it was erroneous.

Gentry went to the lands in October 1894. He claims to have had an agreement or arrangement with the company to the effect that the ranch was to belong to him, and that the company was to pay him \$25 a month for the alfalfa hay raised there and for the use of pasture for its stock, and was to furnish every thing needed to run the ranch, men to help him in the work, and supplies for his own subsistence and the subsistence of the men to be employed by the company to assist him. The evidence considered as a whole, plainly shows, however, that Gentry went upon the lands as an employe of the company; that his duties were to look after and care for the company's stock and other property, to maintain its possession, and to do such other work on the ranch as he was able to do. Being well advanced in years and otherwise infirm, he was physically unable to perform hard labor. For his services he was to receive a salary of \$25 a month and was to be furnished all necessary supplies for his subsistence. He worked for the company, under this agreement or arrangement, until some time in the spring or summer of 1898 (the date was not definitely shown), when the relations between himself and the company became strained, and he announced to some of the latter's employes and others an intention to claim the lands and to appropriate them to his own use. He continued, however, during the cultivating and harvesting season of 1898, to occupy the company's house and to use the company's supplies, furniture, team, farming utensils, and other property on the place. In the fall of 1898, against the company's protest, he sold the crop of alfalfa for that year and appropriated the proceeds to his own use.

The custom of the company was to pay its employes, including Gentry, in time checks, drawn monthly. Gentry would frequently leave his checks in the company's keeping, sometimes for six months or more, and would call for them when he needed money. His name was continued on the company's pay-roll until May 31, 1899, and monthly time checks were drawn in his favor, as usual, up to that date, and he called for and got the checks drawn in his favor up to and including November, 1897. Some time in 1898, probably in August or September, Gentry called for the time checks drawn in his favor after November 1897, but in view of the difficulty which had arisen between him and the company with respect to the ranch, and of his announced intention to claim the same as his own property, the company declined to deliver the checks, and filed them away until the difficulty should be settled.

The lands were surveyed in the field in August, 1896, and thereafter Gentry built a small shack in side the company's enclosure and adjacent to a stock corral. This, he states, was his first act of settlement. The shack was a poor affair, with no floor, without any stove or other arrangement for heating or cooking purposes, and was utterly unfit for habitation. It was constructed of four posts set in the ground to which boards were nailed to form one side and one end. The other side was formed by the fence of the stock corral, made of posts and brush or willow branches, to which some canvass was added, and probably one or two boards. The other end was left open. Gentry was a witness at the hearing, and on cross examination was asked, "What kind of a

house did you build?" He answered, "Eight by twelve; lumber. Most of the winter I covered the cabin with an old tent I had there; and I had lumber there." He was further asked, "How much lumber did you have in the house—how many boards?" His answer was, "I think there is about seventeen or eighteen; I never counted them; I never counted the boards." In another part of his testimony he stated that there was "about eighteen or twenty-five planks," an inch thick and a foot wide, some of them sixteen feet long and some not so long. When asked how much he paid for the lumber he hauled to the place, he answered: "Well, I will tell you how I got the lumber; I loaned a man a horse to ride on all day and gave him a saddle blanket for the lumber." One of the witnesses for the company testified that, counting pieces and all, there were probably twenty boards in the shack; that they were of old lumber, and looked as though they had been used before, as nails had been driven in them and taken out. Considered in the light of all the circumstances and conditions existing at the time, Gentry's building of this shack was in no sense a bona fide act of settlement, but a mere pretense. No one could have lived in it during the winter which generally prevails in that section of the country in winter, and Gentry did not attempt to do so. Whenever necessary to his comfort, he continued to occupy the company's house after the building of his shack, and especially during the winter of 1898-9. Presumably, he did his cooking there, as he had no stove or cooking utensils of any kind of his own on the place.

It appears from a stipulation by the parties, which is made a part of the record, that in July, 1899, Gentry was put off the lands, under an order of court made in a suit in equity brought by the company in June of that year to enjoin and restrain him from interfering with its possession of the premises; that he remained away until July 1900, about a month prior to the hearing; that the suit was ultimately dismissed by decree of the court in which it was brought, and that, on appeal to the Supreme Court of Oregon, the decree of dismissal was affirmed June 18, 1900.

It seems to have been found by the court, in that suit, in substance and effect, that Gentry was employed by the Pacific Live Stock Company to go upon the Rinehart Springs ranch to live there, with the understanding that he was to hold the lands for the benefit of the company, and, when surveyed, was to acquire title thereto under the homestead laws and convey the same to the company when his title was perfected. Upon such finding Continued on Third page.

**CASTORIA**

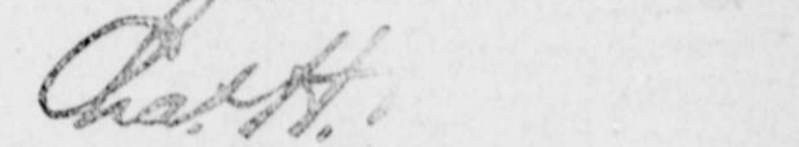
The Kind You Have Always Bought, and which has been in use for over 30 years, has borne the signature of *Dr. J. C. Ayer* and has been made under his personal supervision since its infancy. Allow no one to deceive you in this. All Counterfeits, Imitations and "Just-as-good" are but experiments that trifle with and endanger the health of Infants and Children—Experience against Experiment.

**What is CASTORIA**

Castoria is a harmless substitute for Calomel, Opium, Paregoric, Drops and Soothing Syrups. It is purely vegetable and contains neither Opium, Morphine nor other narcotic substance. Its age is its guarantee. It cures Colic, Wind, Coils, It relieves Teething Troubles, Stomach and Bowel Complaints, and Flatulency. It assimilates the Food, regulates the Stomach and Bowels, giving healthy children. It is the Children's Panacea—The Mother's Friend.

GENUINE CASTORIA

Bears the Signature



The Kind You Have Always Bought  
In Use For Over 30 Years.

The ITEMS, 1.50 per year

**Harney Valley Brewery**

L. WOLDENBERG, SR., Proprietor.

The services of a brewer of long years' experience has been secured and the product of this Brewery is of the best grade in the Inland Empire. Place a trial order and you will not be disappointed. BURNS, — — — — — OREGON

**The Windsor Bar**

The bar is supplied with none but the very best brands of Wines, Liquors and Carbonated drinks, and the Choicest Cigars. Your patronage solicited. Courteous treatment to all. Corner north of postoffice. CALDWELL & BYRD, Proprietors.

**NEW-YORK TRIBUNE FARMER**

For sixty years the NEW YORK WEEKLY TRIBUNE has been a national weekly newspaper, read almost entirely by farmers, and has enjoyed the confidence and support of the American people to a degree never attained by any similar publication. THE

**NEW-YORK TRIBUNE FARMER**

is made absolutely for farmers and their families. The first number was issued November 7th, 1901.

Every department of agricultural industry is covered by special contributors who are leaders in their respective lines, and the TRIBUNE FARMER will be in every sense a high class, up to date, live, enterprising agricultural paper, profusely illustrated with pictures of live stock, model farm buildings and homes, agricultural machinery, etc.

Farmers' wives, sons and daughters will find special pages for entertainment. Regular price \$1 per year, with THE MS (1.50). Address THE MS, Burns Or.

**PATENTS GUARANTEED**

Our fee returned if we fail. Any one sending sketch and description of any invention will promptly receive our opinion free concerning the patentability of same. "How to obtain a patent" sent upon request. Patents secured through us advertised for sale at our expense.

Patents taken out through us receive special notice, without charge, in THE PATENT RECORD, an illustrated and widely circulated journal, consulted by Manufacturers and Investors.

Send for sample copy FREE. Address, **VICTOR J. EVANS & CO.,** (Patent Attorneys), Evans Building, - WASHINGTON, D. C.

**NOT A BELIEF BUT A CURE**

**PERRIN'S DYSPEPTIC**

ointments and suppositories will not, positively cannot—do more than relieve you. It requires an internal remedy to remove the cause and effect a permanent cure. Ask your druggist for Dr. Perrin's Booklet on the subject.

**TRY A Marlin THIS TRIP**

100 YARDS OF THE BEST TRAPNET

The Upgrade with high power magnets in the 37-40 lbs. With Stainless Steel Barrel with 2100 ft. Pressure Cartridges. This net has a swiftness of over 50 ft. per second with a 100 ft. per second great killing power.

THE MARLIN FIRE & MFG COMPANY NEW HAVEN, CONN., U. S. A.