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M. FITZMAURICE.....EDITOR.

WEDNESDAY.....Jan. 10, 1900

THE COMPANY WINS.

U. S. Supreme Court Decides E. O. L. Co. Cases Against The Settlers.

A dispatch from Washington, received on Monday, announced that the United States Supreme Court had at last handed down a decision in The Eastern Oregon Land Company cases. The decision is in favor of the Company, and its effect will be to deprive a large number of settlers in this and other counties of valuable tracts of land. In fact some of the best land in Sherman county will, under this decision, pass from the settlers to the Company.

The cases in question are entitled, "Eastern Oregon Land Co. vs. Messinger & Wilcox."

These suits were originally brought in the U. S. circuit court in Portland to obtain decrees cancelling United States patents issued to defendants, Messinger & Wilcox, purporting to convey to them certain lands described in the complaint of the Eastern Oregon Land Co., the plaintiff. The lands in controversy are within the limits of the grant of lands in place made to the State of Oregon, by the Act of congress approved on February 25, 1867, to aid in the construction of a military wagon road. They were claimed by defendants, to be within the overlapping limits of the grant to the Northern Pacific Railroad Company. Judge Gilbert decided in favor of the settlers, but was reversed by the Court of Appeals in San Francisco, and now that court is sustained by the U. S. supreme court.

Summary of the Facts.

By an Act approved July 2, 1864, congress granted to the Northern Pacific Railroad Co., to aid in the construction of a railroad from Lake Superior to Puget Sound, with a branch, via the Columbia River, to Portland, by the most eligible route, every alternate odd section of public land, not mineral, to the amount of twenty alternate sections to the mile on each side of said road through the territories of the United States, and ten alternate sections a mile on each side of said road whenever it passed through a state, and whenever on the line thereof the United States had full title not reserved, sold, or granted, or otherwise appropriated, and free from pre-emption or other claims or rights at the time the line of said road should be definitely fixed and the plat thereof filed in the office of the Commissioner of the General Land Office.

On March 16, 1865, the then secretary of the Interior, received from Josiah Perham, the then president of the Northern Pacific Railroad Company, a map, known as the Perham map, which purported to be a map of the main line of the Northern Pacific Railroad Company from Lake Superior to Puget Sound; but it is claimed that said map was not accepted or filed by the Secretary of the Interior, not being in accordance with the laws of the U. S. and the regulations of the Land Department; and same was rejected.

On the 25th day of February, 1867, congress passed, and the president approved an Act granting to the State of Oregon, to aid in the construction of a wagon road from Dalles City, on the Columbia river, to a point on Snake river opposite fort Boise, in Idaho Territory, the alternate sections of public land, designated by odd sections, to the extent of three miles in width on each side of said road, excepting and reserving from said grant and the operation of said Act only lands theretofore reserved or appropriated.

On October 20, 1868, the legislature of the State of Oregon granted to The Dalles Military Road Company all lands, rights of way, rights and privileges pledged to the State of Oregon by Congress, and designated The Dalles Military Road Company, as the company to receive said grant. Prior to June 23, 1869, The Dalles Military Road Company surveyed and definitely located the line of its wagon road between the points and upon the route designated in the Act of Congress and in the Act of the Legislative Assembly of Oregon; and completed said road, and the same was approved and accepted by the Governor of the State of Oregon.

On May 31, 1876, The Dalles Military Road Co., for $125,000, sold said land grant to Edward Martin, and thereafter The Eastern Oregon Land Co. became the owner of said lands by mesne conveyances from the said Martin.

On December 18, 1869, the Commissioner of the General Land Office, by order of the Secretary of the Interior, withdrew from sale the odd numbered sections three miles on each side of said wagon road, as delineated and shown on the map of definite location thereof, theretofore filed with the Governor of Oregon and with the Secretary of the Interior, together with the certificate of said governor certifying that said road had been built in all respects as required by law.

Congress, by an Act approved June 19, 1874, entitled "An Act to authorize the issuance of patents to lands granted to the State of Oregon in certain cases," provided that in all cases where lands have been granted by congress to the State of Oregon to aid in the construction of wagon roads, and the certificate of the governor should show that any such road had been completed according to law, patents should be issued in due form to the State of Oregon for such lands unless the state should by public Act have transferred its interest in said lands to any corporation in which case the said lands were to be patented to such corporation.

By a joint resolution of congress of May 31, 1870, congress authorized the Northern Pac. R. Co. to locate and construct under the provisions and with the privileges, grants and duties provided for in its act of incorporation, its main road to some point on Puget Sound, via the valley of the valley of the Columbia river, with the right to locate and construct its branch from some convenient point on its main line across the Cascade mountains to Puget Sound.

On the 13th day of August, 1870, the officers of th Northern Pacific Railroad Company filed a map or plat of the general route of its road, in the office of the Commissioner of the General Land Office, and presented the same to the Secretary of the Interior, showing among other things the general route of said road, following the Columbia river from Wallula, in the then Territory of Washington, to a point on the northern side of said river opposite Portland, Oregon.

The Secretary of the Interior accepted said map and directed the commissioner to withdraw, on account of the grant to the Northern Pacific Railroad Co., from sale, pre-emption, homestead or other disposal, the odd numbered sections not sold or reserved, or to which prior rights had not attached, within 20 miles on each side of the route of the said Northern Pacific Railroad Co.

The line of the road of said N. P. R. Co. between Portland and Wallula, to a point opposite Portland, (it is alleged) was never surveyed; it is also alleged that the line of said road between said points was never definitely located or fixed by the Company; that no map of definite location was ever filed in the office of the Commissioner of the General Land Office or in the Interior Department; that the Northern Pacific Co. never constructed any portion of its said road between the town of Wallula and the City of Portland.

Congress by the Act of September 29, 1890, resumed title to all lands theretofore granted to aid in the construction of railroads opposite to and conterminous with the portion of railroad not constructed and completed; and some time after the passage of said Forfeiture Act, to-wit: about June, 1893, the Secretary of the Interior claiming that the odd sections of the public land on the south side of and within 40 miles of the line of the general route of the Northern Pacific Railroad, between Wallula and a point on the north side of the Columbia river opposite the city of Portland, as said line was designated on the map of the general route of the road of said N. P. R. Co., filed August 13, 1870, had been granted to the Northern Pac. R. Co. on July 2, 1864, and that said odd sections were reserved and excepted from the grant made on Feb. 25, 1867, to the State of Oregon, and therefore under the Forfeiture Act of Sept. 29, 1890, reverted to and became public lands open to settlement and sale under the land laws of the United States.

In pursuance of the foregoing action of the Secretary of the Interior in throwing open said odd sections to settlement, the defendant Wilcox on September 28, 1894, purchased and obtainted a patent from the United States for the land in controversy; and also in the same year defendant Messinger obtained a patent for the other tract in controversy.

The defendants claim that at the time of the passage of the Act of congress on February 25, 1867, the lands in controversy were not public lands subject to grant by congress, inasmuch as they had prior to that time, to-wit: on the 2d day of July, 1864, been granted by the U. S. to the Northern Pacific Railroad Co.; and that therefore as to these lands The Dalles Military Road Co. took nothing by the Act of congress of February 25, 1867, or by the Act of the Legislative Assembly of the State of Oregon of Oct. 20, 1868.

The U. S. Circuit Court (Judge Gilbert, Portland, Or.,) held that the lands in controversy, being within 40 miles of the line of the Northern Pacific Co's road, as shown upon its map of general route, were not PUBLIC lands subject to grant by congress on February 25, 1867, and that consequently neither the State of Oregon, nor The Dalles Military Road Co. took any title to or interest in said lands by said Act, and therefore, said court dismissed The Eastern Oregon Land Company's Bill of Complaint asking for the cancellation of the patents in question.

From the foregoing decision an appeal was taken to the U. S. Circuit Court of Appeals for the 9th Circuit, (San Francisco,) which court reversed the decision of the lower court.

The E. O. L. Co. claims that if it had been true that the lands in question were excepted from the grant to the State of Oregon in February, 1867, as claimed by the defendant settlers, yet under the provisions of Section 5 of the Act of congress entitled "An Act to provide for the adjustment of land grants made by congress to aid in the construction of RAILROADS, and for the forfeiture of unearned lands, and for other purposes," approved March 3, 1887, the Eastern Oregon Land Co. would be entitled to purchase said lands from the U. S., being a bona fide purchaser thereof, without notice of any claim of the Northern Pacific Railroad Co. to said lands; that said E. O. L. Co. received no notice or knowledge of the application of the defendants to purchase said lands from the U. S., and had no opportunity to apply to purchase the same under the provisions of Section 5 aforesaid.

A case placed yesterday in the hall of American history in the National Museum, represents three generations of soldiers. Erastus A. Capron, who was killed at the battle of Cherubusco, during the Mexican war; his son, Capt. Allen Capron, who recently died from the effects of a fever contracted in the Cuban campaign; and his grandson, Capt. Allen K. Capron, who was killed at the battle of Quasimo, in the Cuban campaign. He was killed while giving a drink of water from his own canteen to a wounded Spanish soldier. The ingrate shot and mortally wounded him. While dying, he said: "Don't mind me, boys, but go on and fight."

War office reports say that Gen. Young has discontinued the pursuit after Aguinaldo, as his command was worn out with mountain-climbing. The Filipino chief had only two soldiers with him at last accounts.

Flypps—"Do you get paid for your jokes?"

Scribble—"Certainly; do you think I write them for fun?"

A precinct meeting of the people's party at Coquille City, a center of populism, was so small that it ended in a social chat.

How hard up some Democrats are for something to advocate is shown by their efforts to make politics out of public sentiment towards the South African war.

We are sending everything abroad—even preachers. Dr. Sunderland, a Unitarian minister, who has had churches in Ann Arbor, Mich., and Oakland, Cal., has accepted a call to go to England and occupy the pulpit in a London church.

It does not necessarily follow because the U. S. government gave Germany a strong hint that it would not be allowed to buy the Danish West India Islands that we will buy them ourselves, although that will probably be done eventually, but not at a fancy price.

Seizures of foreign steamers by British cruisers, may end in a general European war. The Germans are much excited over the seizure of their vessels, and would most likely call England down, but France, although no friend of England's, is the bitter enemy of Germany, and only awaits the moment when a quarrel between the two powers will enable her to act.

What's the difference between W. W. Astor, who was born an American but has become a British citizen, and P. E. Burroughs, an Englishman, who has resigned the position of British consul at Kansas City, which he held for six years, to become an American citizen. One was a multi-millionaire.

A correspondent wants to know "for what reason and for why" Great Britain is fighting the South African republics. We cannot possibly enter into the whole question, and all the particulars of the dispute—many of which are in dispute. But for a short answer we will say that the British seem to be fighting the Boers for the reason that the Boers declared war on the British.—Morning Oregonian.

Gustav Theikuhl, formerly a clerk in the Patent Office, but who resigned his position to secure the troops for the Transvaal, and by securing about three thousand men awakened the ire of Uncle Sam to the extent of keeping the Secret Service agent on his track, to see that no complications arose between America and Great Britain, is supposed to have sailed from Baltimore on Saturday with 900 picked men. He had a passport from the State Department for himself.

Ex-Attorney General George E. Chamberlain's head is level on the fusion proposition. In an interview recently at Pendleton he is credited by the East Oregonian, in reply to the question as to whether he favored fusion this year, as having said: "Well, I think not. I believe the democratic party in Oregon had better go it alone next year, and stand or fall under our own banner. We have tried fusion, have fought shoulder to shoulder with populists and silver republicans, and where do we find ourselves? With a complete disorganization; with no party except in name; with the task before us of again building up an organization, just as though we had never had a democratic party in Oregon."—Portland Dispach.

News from South Africa leaves the situation in much the same condition as it was last week. Accounts of minor British victories relieve the tension somewhat, and give England an opportunity to be thankful for small mercies. General French seems to be the man of the hour, and has demonstrated that there is at least one British officer that looks before he leaps, and is sagacious enough to avoid frontal attacks. The troops from Canada and New South Wales have been given a chance to break a lance for Merry England under Colonel Pitcher. They have acquitted themselves remarkably well, capturing a Boer laager, guns, ammunition and 40 prisoners. Not that their raid has done much to materially change the general aspect of affairs, but these small victories are better news for England than defeats. It is about time we heard of a substantial Boer victory. Hitherto their tactics have been to stand on the defensive and trust to ambush and a judicious display of the white flag at opportune moments for their successes If they have the English so demoralized as we are led to believe, why don't they take a British position. The English are not making much headway towards Pretoria or Bloemfontein, but they are a long way from being driven into the sea, and the Boers are a good step from Capetown, which they were to march to and take as soon as war was declared.

The growing popularity of American corn in all parts of the world, is illustrated by the November statement of the export of breadstuffs, just issued by the bureau of statistics. It shows a larger quantity of corn exported in the eleven months ending November, 1899, than in the corresponding month of any preceding year, and at a higher rate per bushel than in any year since 1895.

Old Farmer (tending thrashing machine, to applicant for job)—"Ever done any thrashing?"

Applicant (modestly)—"I am the father of seventeen children."

SUMMONS.

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

Lelia Arminie Finley, plaintiff, vs. George L. Finley, defendant.

To George L. Finley, the above named defendant:

In the name of the State of Oregon: You are hereby required to appear and answer the complaint filed against you in the above entitled court and cause by the first day of the term of court following the expiration of the time prescribed in the order for the publication of this summons, to-wit: on or before Monday, the 26th day of March, A. D. 1900, that being the first day of the next regular term of the above entitled court; and if you fail to so appear and answer said complaint, for want thereof the plaintiff will apply to the court for the relief prayed for in her complaint, to-wit: For a decree that the bonds of matrimony now existing between the plaintiff and yourself be dissolved and forever annulled, for plaintiff's costs and disbursements herein, and for such other and further relief as may seem to the court just and equitable.

This summons is served upon you by publication thereof, by order of the Hon W. L. Bradshaw, Judge of said court, duly made and entered of record on the 23d day of December, 1899. The first publication of this summons is made January 3d, 1900.

J. B. HOSFORD,
Attorney for Plaintiff.
j3w7t

In the County Court of the State of Oregon for Sherman County.

In the matter of the estate of J. J. Eaton, deceased.

To all whom it may concern:

Notice is hereby given that by order of the county court in and for said county and state, duly made and entered of record, the undersigned has been appointed executor of the estate of J. J. Eaton, deceased; and all persons having claims against said estate are hereby required to present the same with the proper vouchers therefor to said executor at the law office of J. B. Hosford, in the city of Moro, in said Sherman county, Oregon, within six months from the date of this notice.

Dated at Moro, Oregon, this 10th day of November, 1899.

B. S. KELSAY,
Executor of the estate of J. J. Eaton, deceased.
n15t5

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

Thomas J. Miller, Jr., Plaintiff, vs. Mittie Miller, Defendant.

To Mittie Miller, the above named defendant:

In the name of the State of Oregon: You are hereby required to appear and answer the complaint filed against you in the above entitled court and cause by the first day of the term of court following the expiration of the time prescribed in the order for the publication of this summons, to-wit: on or before Monday, the 26th day of March, A. D. 1900, that being the first day of the next regular term of the above entitled court; and if you fail to so appear and answer said complaint, for want thereof the plaintiff will apply to the court for the relief prayed for in his said complaint, to-wit: For a decree that the bonds of matrimony now existing between the plaintiff and yourself be dissolved, that said plaintiff be awarded the care, custody and control of Dora Lee Miller, the minor child of said plaintiff and yourself; and that plaintiff have and recover from you, the said defendant, his costs and disbursements made and expended in this suit; and for such other and further relief as to the court may seem equitable and just.

This summons is served upon you by publication thereof, by order of the Hon. W. L. Bradshaw, Judge of said Court, duly made and entered of record on the 3d day of October, 1899, the same being the regular October, 1899, term of said court.

The first publication of this summons is made October 11th, 1899.

J. B. HOSFORD,
Attorney for Plaintiff.
o11t7

Contest Notice.

DEPARTMENT OF THE INTERIOR,
United States Land Office,
The Dalles, Oregon, Dec. 18, 1899.

A sufficient contest affidavit having been filed in this office by Jonathan Toot, contestant, against homestead entry No. 6441, made Feb. 7, 1898, for N ½ N W ¼ of Section 30, and W ½ S W ¼ of Section 19, Township 4 S, Range 18 E, by Pearl D. McCune, contestee, in which it is alleged that: said Pearl D. McCune has wholly abandoned said tract; that he has changed his residence therefrom for more than six months since making said entry; that said tract is not settled upon and cultivated as required by law. Said parties are hereby notified to appear, respond and offer evidence touching said allegation at 10 o'clock a. m. on Feb. 3, 1900, before Wm. Henrichs, county clerk, at his office at Moro, Oregon, and that final hearing will be held at 10 o'clock a. m. on Feb. 17, 1900, before the Register and Receiver at the United States Land Office in The Dalles, Oregon.

The said contestant having, in a proper affidavit, filed Dec. 11, 1899, set forth facts which show that after due diligence, personal service of this notice can not be made, it is hereby ordered and directed that such notice be given by due and proper publication.

JAY P. LUCAS, Register.
d27w6t

The Portland-Chicago Special.

Commencing out of Portland August 10th train No. 2, and continuing daily, a Buffet Library Car of the latest build will be placed in service. The library car embraces a spacious smoking saloon, furnished with easy chairs, writing desks, a well-selected library of standard and popular books, guide-books and current periodicals, a well-stocked buffet, a barber shop, and an apartment for baggage. The Oregon Short Line will on August 10th inaugurate modern dining car service, giving after that date uninterrupted dining car service for the O. R. & N. connections for east and west-bound through passengers via Granger or Ogden. New chair cars of latest pattern are to be added to the present through service of Pullman Palace and Pullman Tourist Sleepers, making an entirely vestibuled train, equal, if not superior, to many of the extensively advertised limited trains in the east. For rates and further particulars inquire of I. J. KEFFER,
Agent C. S. Ry., Moro, Or.

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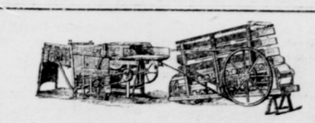

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