

NEW DECISION FAVORS MINERS

By a decision in a contest between mineral and agricultural claimants in Montana, which has been affirmed by the General Land office at Washington, an important modification has been made in the requirements which a mineral land claimant is obliged to meet in order to prevail. The decision is one of the most important rendered by the land office for some time, and the position taken by the officials is bound to give satisfaction to mining men.

Heretofore, the rule has been that where a controversy existed between persons in reference to a piece of land, one claiming it under an agricultural entry and the other under a mining location, the mining claimant in order to prevail was required to show that the land produced "mineral in paying quantities as a present fact." Thus it was made necessary for a mineral claimant to possess a paying mine in order to establish his right.

By the new rule the mining man is given more leeway. Instead of making it absolutely necessary to have a paying mine, the mineral contestant can prevail where a showing is made that mineral actually exists in sufficient quantity and value to justify a reasonable and competent person in expending time and money in exploring and developing it, and where the prospector is actually working the ground and showing his confidence in it by expending his time and money in development work.

The decision was rendered several months ago by the Helena office, the commissioner's letter affirming it just being received. The rule was established in the contest case of the Noble Gold Mines Company, Limited against John F. Smith, involving two mining claims of the company, situated within the limits of the homestead entry of Smith, and which was decided in favor of the contestant.

"Many of our best paying mines," says the decision, "at some period of their existence would not have been able to withstand a contest by an agricultural claimant, under a strict construction of the old rule."

"It has always been the policy of the government to encourage the prospector to investigate the mineral character of the land, and develop the mineral values contained therein, and, as shown by the non-mineral affidavit required in all agricultural entries, the intent is that no possible mineral land shall be acquired by an agricultural entry."

"Under these conditions we do not believe that the above rule is applicable where a showing is made that 'mineral exists in sufficient quantity, and of sufficient value, to justify a reasonably competent and experienced person to expend time and money, in exploring and developing the same,' and 'where the prospector is actually working the ground and showing his confidence in the value of the property for mining purposes as well as his good faith in the matter, by expending his time and money in such exploration and development work.'

"It can be said to be the invariable rule in Montana (which we believe is the same in other mining districts,) from actual demonstrations made, that the paying mines were, at the time of their location,

mere prospects, and did not show actual demonstrated values, but only such a value as justified further exploration and development, and that such value was, in some instances, only shown and demonstrated by deep exploration and development and the expenditure of a large sum of money. And, under these circumstances, it would have followed, as a natural consequence, that they could not have been sustained as 'producing mineral in paying quantities as a present fact' at the time of their location or for a considerable period thereafter, if it had become necessary to establish their mineral character in conformity with the rule as against an agricultural claimant."

In affirming the decision the commissioner said: "It is not necessary that it be shown that the mine at the date of the hearing was a paying one; for the reasons above stated your decision is affirmed."

BLAKE-M'FALL CO. VS. THE WHITE SWAN MINES

In the circuit court yesterday, in the case of the Blake-McFall company vs. the White Swan Mines Company, limited, a motion was entered to vacate the judgment previously entered in the sum of \$2,000 on the assigned claim of Emmett Callahan and asking that the defendant be permitted to file its answer to that portion of the plaintiff's complaint and make a defense thereto. The motion was made by C. A. Johns, attorney for the defendant.

In support of the motion C. H. Stuller, secretary of the White Swan Mines company, filed a voluminous affidavit stating that there was collusion between Balliett, Hill and Callahan, officers and directors of said company, to defraud the stockholders; that the books of said company do not show that it at any time owed or was responsible for the claim of \$2,000 to Callahan for services and that no contract, expressed or implied, was ever made by the defendant with said Callahan; that the stockholders of the company were ignorant of the action brought and judgment rendered, although the affiant, Stuller, notified Balliett, the president; that at the stockholders' meeting in San Francisco, June 7, 1904, a large majority of the stock was represented and it was unanimously agreed that said claim was unjust; that the company has a complete defense against said claim of \$2,000; that it appears from the records of the company and from the books and records of Letson Balliett now in possession of affiant, that the stockholders who were present and represented at the annual meeting on the 7th day of June, 1904, have paid into the treasury of the company defendant nearly \$300,000; that all of the assets of the company consist of its interest in what is known as the White Swan Mines in Baker county, Oregon, upon which the said judgment is a lien.

Accompanying the motion and affidavit above recited, the White Swan company, limited, filed its answer in the above entitled cause denying that it is now or ever was indebted to the plaintiff in the sum of \$2,000 or any other sum or amount upon an assignment of a claim and indebtedness for work or services rendered by Emmett Callahan for said defendant. Denies that

there is now or ever was due or owing or wholly unpaid to the plaintiff from defendant upon the foregoing or any agreement or contract the sum of \$2,000. Denies that on or about January 8, 1904, or ever, so far as known to the defendant, said Callahan or any one for value or otherwise sold or assigned or transferred all or any of his right, title or interest or claim in and to the said sum of \$2,000 or any sum or amount to the plaintiff.

Prays that plaintiff may have judgment for the amount prayed for in his first cause of action only and that as to the second cause of action (the Callahan claim) the defendant may have judgment for its costs and disbursements of this action.

The opening up of this case may result in the reduction of the amount of liens against the White Swan Mines company.—Democrat.

MANAGER BELLMAN BACK FROM ALASKA

Manager Bellman, of the Turnagain Arm company, owning placer ground in Alaska and the California mine here, returned today from the northern diggings, where he has been for some weeks past looking after the company's interests there.

He says that the washing season will be very short in Alaska this year, as even spring had not eventuated when he left ten days ago, snow remaining on the ground far down the coast range. His company had begun hydraulic work before he left, and the prospects are good for a big cleanup.

As to the intentions of the company regarding the California for the immediate future, Mr. Bellman, immediately after his arrival, stated that he knew nothing, as he had not heard a word from headquarters at Minneapolis on the subject since he left there the first of June.

MAGNOLIA MINE AGAIN UNDER BOND

Grant Thornburg drove out to Sumpter yesterday, where he met his partners in the ownership of the Magnolia, and papers were signed granting a bond and lease on the property to W. J. Elmendorf. The terms of the bond are not given, though they are very satisfactory to the owners.

Mr. Elmendorf made an examination of the mine a few weeks ago. That the results of that examination were satisfactory to him is evidenced by the fact he is back to secure the property.

One of the provisions of the bond provide, that work shall be started in thirty days and shall be continuous during the life of the contract.

The Magnolia is one of the best known mines in eastern Oregon and mining men generally will be pleased to see it reopened. The opening of the Magnolia will mean much to Granite, as it is but four miles from here and naturally tributary to this place.—Granite Gem.

Exam'ning Different Districts.

F. D. Fuller, general manager of the Sumpter smelter, and Jno. G. Kirchen, the smelter assayer, started this morning for the Greenhorn

country, after spending Wednesday and Thursday examining the many properties of the Granite Creek district. They are making a canvass of the mining camps of eastern Oregon. Before returning to Sumpter they will visit all the prominent mines and prospects in the Alamo, Greenhorn, Susunville, Quartzburg and Prairie City districts. Mr. Fuller expresses himself as being greatly pleased and surprised at the amount of high grade shipping ore that can be obtained in his district for the smelter.—Granite Gem.

WORK AT BUCKHORN AND BLUE BIRD

Hon. George J. Barrett, of Granite, is in town today looking after some important mining matters. Mr. Barrett is superintendent of both the Blue Bird and Buckhorn, operated by Wheeler & Company, of New York, and is also interested in the properties.

He is pushing development work on each. The Blue Bird mill is to be finished at an early day. Millwright Potter, of Baker City, who has charge of the mill construction, will be there in a day or so to complete setting the machinery. As previously stated, plans for a mill on the Buckhorn are under advisement, and it is altogether likely that a plant will be installed on the property this fall.

Mr. Barrett took over the Wolverine group not long ago, as was also mentioned, and he has a force of men at work there doing development.

LEDGE ENCOUNTERED AT NINE STRIKE

Word comes from the Nine Strike, owned by Joe Mikel, W. H. Gleason and others, in the Cracker Creek district, that the ledge has been encountered and there is an unusually good showing.

In addition to the main crosscut, which is in now over 300 feet, another tunnel has been started some 600 or 700 feet further down the mountain. The property is located on the Cracker Creek mother lode, about 1,000 feet from the North Pole.

VALLEY QUEEN ORDER FOR HOIST PLACED

Tom C. Gray, superintendent of the Valley Queen, came down from the property last night, en route to Spokane, to make arrangements for the hoisting plant which is soon to be erected on the property. Mr. Gray will confer with machinery people and it is probable that the order will be placed at once.

While the Valley Queen had its deposits in the Bank of Sumpter, and will probably be loser on account of the failure to an extent unknown, the fact will not affect the development of the property in any degree. It will go on just the same as ever.

Mr. Gray says that Colonel Livermore and party are still fishing in Lake Baldy, that they have chartered the dory, Valley Queen, and are meeting with unprecedented success.