

# Lake County Examiner

VOL. XXI.

LAKEVIEW, LAKE COUNTY, OREGON, THURSDAY, NOV. 22, 1900.

NO. 46.

## THE WARNER LAND DECISION REVERSED

### Text of Commission's Opinion Given to the Local Land Officials

#### SETTLERS NOT PERTURBED OVER VERDICT.

**Captain John Mullan, Washington Attorney For the Settlers, is Still Confident of Victory in the End, and the Settlers, Believing in the Rightness of Their Cause, Feel Hopeful of Winning Finally.**

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
WASHINGTON, D. C., Nov. 6, 1900.

J. L. MORROW ET AL.

VS.

STATE OF OREGON  
AND WARNER VALLEY  
STOCK COMPANY.

REGISTER AND RECEIVER, LAKEVIEW,  
OREGON: Sirs—The lands involved in  
this case are mainly embraced in ap-  
proved swamp-land lists numbers 30 and  
31, the approval of which lists was re-  
voked and canceled by departmental de-  
cision of March 2, 1893.

[The Commissioner here gives a list of  
the lots and pieces of lands included in  
lists 30 and 31, which we omit owing to  
its voluminousness.—ED. EXAMINER.]

In the case of Morrow et al. vs. State  
of Oregon, decided May 13, 1899, 28 L.  
D., 300, the Secretary vacated depart-  
mental decisions of December 19, 1893;  
October 10, 1894, and August 4, 1896,  
and set aside all decisions respecting the  
character of said lands, or any of them,  
therefore rendered by the Depart-  
ment, this office or the district land  
office, and directed that a hearing be  
held before you, after due notice to the  
State and its grantees, and all adverse  
claimants, to be conducted in accordance  
with the stipulation, in writing, filed by  
counsel for the respective parties, May  
4, 1899; and, that in addition to the  
lands embraced in lists 30 and 31, said  
hearing and proceedings shall extend to  
and include any and all lands described  
in the stipulation of May 4, 1899.

The following tracts of land are not  
included in said approved lists, but are  
embraced in the written stipulation:

Tracts in township 39 south of range  
24 east; township 40 south of range 24  
east; township 39 south of range 25  
east; township 39 south of range 25  
east. [Description of lands given in  
the decision omitted here on account of  
its voluminousness.—ED. EXAMINER.]

The N $\frac{1}{2}$  of SW $\frac{1}{4}$  and SW $\frac{1}{4}$  of SW $\frac{1}{4}$ ,  
section 10, T. 33 S., R. 26 E., were in-  
cluded in approved list No. 31, but are  
omitted from the stipulation. It is also  
found that the SE $\frac{1}{4}$ , N $\frac{1}{2}$  of SW $\frac{1}{4}$  and  
SW $\frac{1}{4}$  of SW $\frac{1}{4}$ , section 3, T. 40 S., R. 24  
E., included in the stipulation, were  
patented to the state as swamp land  
March 25, 1890.

By departmental decision of December  
19, 1893 (17 L. D., 571), which decision  
was vacated by the decision of May 13,  
1899, supra it was held that the lands  
included in lists 30 and 31 were, in the  
main, covered by the waters of an ap-  
parently permanent lake, and the ques-  
tion as to whether said lands were, in  
1869, in a permanent lake, appears to  
have been the contention at the trial  
had before you in compliance with the  
instructions contained in the decision of  
May 13, 1899, and in the stipulation of  
May 4, 1899.

The hearing for the case was set for  
July 17, 1899, on which day the parties  
appeared and proceeded to trial, which  
terminated August 23, 1899, after which  
written and oral arguments were pre-  
sented. On February 8, 1900, you ren-  
dered an opinion that the land involved  
was, on March 12, 1860, the bed of an  
apparently permanent lake. From your  
decision an appeal was filed.

Township 39 S., Ranges 24 and 25 E.  
were first surveyed in June, 1875, by  
James H. Evans, the plats of which  
were approved January 3, 1876, and T.  
40 S., R. 24 E., was first surveyed in  
August, 1879, by Byars and Gray, the  
plat of which was approved November  
19, 1879. A considerable portion of  
each of the townships is shown by such

surveys to be in what is designated as  
Warner Lake. In August and Septem-  
ber, 1887, a resurvey of the townships  
was made by John H. Neal and the plats  
of such survey were approved June 1,  
1888. The surveys of Neal were made  
in compliance with instructions con-  
tained in departmental decision of Jan-  
uary 17, 1887 (5 L. D., 399). The lands  
in the townships in question returned by  
Mr. Neal, which were shown by the  
former surveys to be in the lake, amount-  
ed to 9,913.36 acres in T. 39 S., R. 24 E.;  
9,279.29 acres in T. 40 S., R. 24 E., and  
2,801.70 acres in T. 39 S., R. 25 E., and  
the lands involved in the case under  
consideration are, in the main, those  
disclosed by the survey of Neal. The  
testimony in the case consists of the  
evidence of a number of witnesses in-  
troduced at the hearing, together with a  
large number of exhibits, being copies  
of the testimony or extracts therefrom,  
introduced at former hearings involving  
certain pieces of the lands.

None of the witnesses introduced at  
the hearing knew the land in 1869,  
though one of them claimed to have  
known the land in 1864 and another in  
1866.

Peter Peterson first saw the land in  
that vicinity in May or June, 1864; he  
saw it from the mountains, and he was  
in the immediate vicinity in July, 1864.  
He testifies that it was then a tule marsh  
interspersed with open streaks of water.  
When he first knew it there were great  
beds of old tules, the accumulation of  
years, with new growths springing up.  
Such was the growth all over the marsh  
in 1864. He never saw the water so  
high as it was then. The water would  
recede with the approach of the dry  
season.

D. R. Jones first knew the land in Oc-  
tober, 1866, and what was designated as  
a lake by the early surveys had the ap-  
pearance of an extensive tule marsh.  
The winter of 1866-67 was a severe one,  
and there was high water the following  
season. He thinks the width of the  
marsh was from three to five miles.  
The tules had the appearance of having  
grown for ages, had fallen down and  
lapped over and been intertwined with  
new growth, forming a mat of old stuff  
and vegetation from one to four feet  
thick.

W. C. Hale knew the land from 1872  
to 1876; it was an immense marsh and  
not a lake; he testified that the marsh  
would overflow in the spring and con-  
tinue until about the 1st of July, when  
the water would gradually recede. The  
flow of the water in the marsh was to  
the north; that its flow was retarded by  
the dead tules forming or acting as a  
dam; that none of the land could have  
been cultivated in 1872 on account of its  
swampy character; that the soil is much  
more compact now than it was formerly,  
owing to the tramping of cattle, the  
burning of the old tules and the use of  
the waters of Deep creek for irrigating  
purpose.

There were several other witnesses,  
who, in the main, corroborated the tes-  
timony indicated above. Quite a num-  
ber of witnesses were introduced on be-  
half of Morrow et al., but it would ap-  
pear that the allegation that the land  
was in reality a lake in 1860, is based  
largely on the testimony of the State's  
witnesses, who appeared at former hear-  
ings. Such testimony appears some-  
what contradictory to that testified by  
the same witnesses at the present trial,  
and were it necessary, in deciding the  
present case, that such apparent con-  
tradictions should be harmonized, it  
would be difficult and impracticable.

It is shown, however, by the testi-  
mony of a practical surveyor, George S.  
Nickerson, that a line of levels was run  
from the southwest corner of section 18,  
T. 40 S., R. 24 E., to the stone bridge,

which is in section 24, T. 37 S., R. 24 E.,  
which line was run through the marsh,  
if possible, if not by the best practicable  
route. The distance was about twenty-  
nine miles and the water level at the  
stone bridge was 32.35 feet below the  
level at the starting point, the greatest  
fall being in the first five miles of 15.6  
feet.

It would be a physical impossibility  
for a permanent body of water, such as  
a lake, to have covered the land in ques-  
tion where the fall is so great as that  
shown by the levels run by the surveyor.  
It is probable that, in certain seasons,  
after a winter of unusual snowfall, the  
whole valley would be covered with  
water to a greater or lesser depth, but  
with the fall indicated such water must,  
of necessity, have soon sought its lower  
levels. The testimony adduced at the  
hearing, as also the plats of survey, show  
a small lake in T. 39 S., R. 24 E.,  
and another one in T. 38 S., R. 24 E.,  
though the large lake or lakes, now  
designated as Warner Lake, is still fur-  
ther north.

It is probable that the overflow in the  
valley continues for a shorter period of  
late years than it did formerly, but the  
reason therefor is supposed to be the  
tramping of cattle and hogs, which have  
pastured in the valley for the last twenty  
years or more. It is in evidence that  
during the seasons between 1876 and  
1890 some 7,000 or 8,000 cattle, and prob-  
ably as many hogs, were kept in the  
valley each season. In the winter sea-  
son the stock would range over the lake  
or marsh and would feed off the tules,  
roots and seeds. Were all the land in-  
cluded in a permanent lake it would  
seem impossible for such an immense  
number of live stock to exist upon the  
vegetation which might grow therein.

After a careful consideration of all the  
testimony submitted in this case, I must  
hold and decide that the lands involved  
were not in 1860 covered by the waters  
of a permanent lake, and your decision  
is, therefore, reversed and the appeal  
sustained.

BERNIE HERMANN, Commissioner.

[In connection with the above, it may  
be well to add that the settlers of War-  
ner valley, who are deeply interested in  
the outcome of this land contest, which  
involves their homes and the work of  
the best part of their lives, are not cast  
down or in anywise troubled over the  
adverse decision, but, believing in the  
righteousness of their cause, are con-  
fident of victory when the case reaches  
the highest tribunal this side of Heaven.  
Captain John Mullan, the finished land  
lawyer and attorney for the settlers,  
shares the same feeling with his clients.  
—ED. EXAMINER.]

### PAISLEY PICK-UPS

A sprinkle of rain on Friday,  
Saturday, more storm threatened.  
Sunday, cool with a few spits of snow  
occasionally.

Dr. Witham made a professional visit  
to the residence of Jack Patton at Sum-  
mer Lake last week. Jack is the happy  
"Daddy" of a 10 pound boy.

The Woodmen and Women of Wood-  
craft of Paisley are to dedicate their  
new hall on Wednesday evening, Nov.  
28th, the dedication ceremony to be  
followed by a grand ball. See notice in  
this issue under heading "W. O. W.  
Hall Dedication." Woodmen and their  
wives of Lakeview are cordially invited  
and their presence is requested.

The first month of school was finished  
on last Friday and the work seems to be  
quite satisfactory.

Mrs. Ed Green is reported down with  
the measles.

J. R. McCormack and family paid a  
visit to Paisley during the Lakeview  
vacation. J. R. returned on Saturday  
to Lakeview leaving the family here for  
the present.

Rev. Craig of Klamath Falls, preached  
on Sunday night to a good sized and at-  
tentive audience. Rev. Craig is here  
for the purpose of looking over the pros-  
pect of organizing a lodge of the A. O.  
U. W.

The W. O. W. hall will be initiated  
with a Grand Ball on the night preced-  
ing Thanksgiving.

The hunters made another slaughtering  
of ducks on Sunday.  
Paisley, Nov. 18, 1900. OBSERVER.

## MANAGER DUNAWAY FULL OF ENERGY

### Will Extend the Nevada, California and Oregon Railway in Spring

#### THE ROAD NOT BIG ENOUGH FOR DUNAWAY.

**Coming North After More Business, as the Road is Losing Money in Al-  
lowing Stockmen to Drive Such a Long Distance For Transportation.  
New Manager Wants the Long Haul to Market.**

The Alturas Plaindealer is very happy  
and enthusiastic over what it believes to  
be a "dead shot" for a railroad to the  
shire town of Modoc. And appearances  
give justice to the enthusiasm of the  
editor, for if all reports are true General  
Manager Dunaway of the Nevada, Cali-  
fornia and Oregon Railway is going to  
revolutionize railway matters and show  
his ability as a railroad man by pushing  
the road on from Terro, "the ten thou-  
and dollar mountain of folly in the  
desert," to some desirable point north.  
Rumors are rife, as is common, regard-  
ing the extension—some saying, un-  
authoritatively, however, that the new  
manager is preparing to build 225 miles  
of road next year, while others think  
the extension will only reach Lakeview.

Only last week a rumor reached Lake-  
view that arrangements had been per-  
fected, and papers filed, to build the  
road to the Oregon and California state  
line at New Pine Creek, which would be  
the terminus for a time, at least. The  
Examiner firmly believes, however, that  
the N. C. & O. will build on until it  
reaches Lakeview where it will make  
its terminus. The Plaindealer feels as-  
sured in telling its readers that "the  
days of hauling freight to Alturas by  
wagon teams are about numbered. The  
snort of the steam horse will soon be-  
come a familiar sound to our ears. Al-  
turas will within a very short time be a  
shipping point for all this northern  
country." That paper further says:

"W. B. Lobner, general route agent  
for the Wells Fargo Express Company  
was in Alturas last Saturday attending  
to matters connected with the new office  
of that company which has just been es-  
tablished here with M. Pinkney as agent.  
In conversation with a Plaindealer repre-

sentative he said that he had been in-  
formed by Manager Dunaway of the  
N. C. & O. Railway Company that the  
road would be extended immediately  
and that the Company did not propose  
to have stock driven along the road  
when it could just as well be shipped in  
N.-C.-O. cars.

Upon his arrival here from Terro last  
Sunday evening Jasper James, the team-  
ster informed a Plaindealer reporter  
that he was informed while at Terro  
that one or more carloads of tents, scrap-  
ers, tools etc. were to be unloaded there  
immediately for the purpose of begin-  
ning work on the extension of the road.  
We were informed two weeks ago that  
parties had been trying to procure stock  
for the work, but inquiry failed to sub-  
stantiate the information, so we did not  
publish it."

#### Does This Mean Another Railroad?

A telegram from Eugene last Wed-  
nesday says that a force of engineers has  
begun the final survey for the Southern  
Pacific Company of the connection be-  
tween the Springfield branch and the  
main line. The connection will be from  
Springfield to Henderson, a distance of  
about two miles, in which distance the  
Willamette River has to be crossed. A  
fine steel bridge will be built, which  
will be the principal expense of the con-  
nection.

This joining the main road with the  
branch which runs up the east side of  
the Valley from Woodburn, and the  
branch recently built to Wendling, is  
the ground for the rumor that it is  
the intention of the company to build a  
line through the southeastern portion of  
the state at no very distant day. This  
has been talked of for 15 years past.

### MODOC NEWS IN A NUTSHELL

From The New Era.

One of the prettiest weddings of the  
season took place at the home of J. W.  
Pope, near Canby last Saturday, at 12  
o'clock M., when Floyd M. Auble and  
Miss Bertie Pope were united in the  
holy bonds of wedlock, by Rev. Harry  
Perks.

Mrs. R. M. Russell, who has been  
visiting relatives in Sacramento and  
Lodi for several weeks, sent a large box  
of chrysanthemums to her sister Mrs.  
Gomez, last week, which were some of  
the most gorgeous and beautiful flowers  
of that class that we ever saw.

Chas. Oliver, Will Kirkpatrick and  
Albert Fleming, of Goose Lake valley,  
returned from the Sacramento valley last  
Tuesday. Mr. Oliver took a band of  
cattle down there some weeks ago, but  
was unable to sell them for the price he  
thought they were worth, so left them  
there on pasture for a while.

E. P. Sessions of Bidwell, was here  
last Monday on his way home from the  
railroad. Mr. Sessions recently took  
his daughter, Miss Cora Sessions to the  
city where she selected her a beautiful  
high grade piano. Miss Sessions spent  
several months below a year ago study-  
ing music.

Last Wednesday night when the court  
house bell rang, summoning the court  
and officers to the court room, all arriv-  
ed except County Clerk Smith and  
Court Reporter Rogers, who failed to  
show up. Upon their arrival Judge  
Harrington fined each \$25 or 48 hours in  
jail. The boys claim they were locked  
in the clerk's office and could not get  
out. They both went to jail.

### SURPRISE VALLEY NEWS NOTES.

From The Record.

The family of Mr. and Mrs. W. S.  
Stevens, of Eagleville, has had more  
than its share of sickness of late, and all  
from the dreaded typhoid fever. A few  
weeks ago Mrs. Gibson, their daughter,  
was taken down with the dreaded  
disease, then the illness of Miss Maud  
Stevens and little Pearl Gibson followed  
in turn by Everett and Jacob, their two  
sons, the latter of whom died last Fri-  
day. The disease seems to have taken  
the same run in Mr. George Penland's  
family some weeks ago, in which two  
deaths resulted. The bereaved ones  
have the sympathy of the entire com-  
munity in their sad misfortune.

Miss Gracie Rinehart returned this  
week from an extended visit to Mrs. W.  
Duncan. We are pleased to state that  
Miss Gracie has almost entirely recover-  
ed from her serious illness.

Chas. Cummins and wife returned last  
week from the lower country, where he  
took a band of cattle some time ago.  
The cattle were sold at good prices.  
Mrs. Cummins has regained her health  
and feels fine after her trip.

While some children were playing  
here yesterday one of them lighted a  
match from which the clothes of Mrs.  
G. L. Wright's little girl caught fire and  
before it could be extinguished the little  
one was badly, but not dangerously,  
burned about the body.

The telegraph operator at Alturas tele-  
graphed Operator Boyd yesterday morn-  
ing that two feet of snow had fallen  
there, and "another foot in sight."  
Surprise valley has also had a heavy  
snow.