

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involved in this case are mainly embraced in approved swamp-land lists numbers 30 and 31, the approval of which lists was revoked and canceled by departmental decision of March 2, 1893.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 departmental 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, theretofore rendered by the Department, 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 N¹/₂ of SW¹/₄ and SW¹/₄ of SW¹/₄, section 10, T. 33 S., R. 26 E., were included in approved list No. 31, but are omitted from the stipulation. It is also found that the SE¹/₄, N¹/₂ of SW¹/₄ and SW¹/₄ of SW¹/₄, 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 apparently permanent lake, and the question 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 presented. On February 8, 1900, you rendered 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 September, 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 contained in departmental decision of January 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, amounted 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 introduced 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 October, 1866, and what was designated as a lake by the early surveys had the appearance 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 continue 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 testimony indicated above. Quite a number of witnesses were introduced on behalf of Morrow et al., but it would appear 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 hearings. Such testimony appears somewhat contradictory to that testified by the same witnesses at the present trial, and were it necessary, in deciding the present case, that such apparent contradictions should be harmonized, it would be difficult and impracticable.

It is shown, however, by the testimony 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 question 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 further 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 probably as many hogs, were kept in the valley each season. In the winter season the stock would range over the lake or marsh and would feed off the tules, roots and seeds. Were all the land included 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 Warner 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 confident 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 cliental.—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 Patin at Summer Lake last week. Jack is the happy "Daddy" of a 10 pound boy.

The Woodmen and Women of Woodcraft 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 attentive audience. Rev. Craig is here for the purpose of looking over the prospect 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 preceding 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 Allowing 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, California 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 thousand dollar mountain of folly in the desert," to some desirable point north. Rumors are rife, as is common, regarding the extension—some saying, unauthoritatively, however, that the new manager is preparing to build 225 miles of road next year, while others think the extension will only reach Likely.

Only last week a rumor reached Lakeview that arrangements had been perfected, 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 assured 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 become a familiar sound to our ears. Alturas 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 established here with M. Pinkney as agent. In conversation with a Plaindealer repre-

sentative he said that he had been informed 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 teamster informed a Plaindealer reporter that he was informed while at Terro that one or more carloads of tents, scrapers, tools etc. were to be unloaded there immediately for the purpose of beginning 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 substantiate the information, so we did not publish it."

Does This Mean Another Railroad?

A telegram from Eugene last Wednesday says that a force of engineers has begun the final survey for the Southern Pacific Company of the connection between 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 connection.

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 studying music.

Last Wednesday night when the court house bell rang, summoning the court and officers to the court room, all arrived 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 Friday. 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 community 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 recovered 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 telegraphed Operator Boyd yesterday morning that two feet of snow had fallen there, and "another foot in sight." Surprise valley has also had a heavy snow.