

CUT THE PAPER ON CREASE ABOVE

Lake County Examiner

VOL. XXII.

LAKEVIEW, LAKE COUNTY, OREGON, THURSDAY, APRIL, 4 1901.

NO. 13.

Hon. Binger Hermann's DECISION IN FULL in Warner Cases.

Exhaustive Review of the Celebrated Case in Litigation 15 Years.

HITS STRAIGHT FROM THE SHOULDER

The Commissioner Holds That the State of Oregon and All Those Claiming Under it, Have no Right or Title to the Lands in Dispute.

The Claims of the State of Oregon and the Warner Valley Stock Company are Held as Naught, are Rejected and Cancelled, and the Lists are Held for Cancellation in General Office.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., March 2, 1901.

J. L. Morrow et al.
vs.
Warner Lake
State of Oregon and
Warner Valley Stock Co.,
(Consolidated
Contests.)
(Reconsideration.)

Register and Receiver, Lakeview, Or.

Gentlemen:—In this controversy, which, under various forms has been before this office and the Secretary of the Interior for the past fifteen years, the State of Oregon and the Warner Valley Stock Company allege that the lands are of a character contemplated by the Act of September 28, 1850 (9 Stat., 519), and more to the State of Oregon under the Act of March 12, 1860 (12 Stat., 3), while J. L. Morrow and numerous other settlers deny that said lands

were "swamp and overflowed" on March 12, 1860, and assert that they are subject to appropriation under the general land laws of the United States. The lands involved herein are situated in townships 39 S., R. 24 E., 39 S., R. 25 E., and 40 S., R. 24 E., W. M., Warner Valley, Lake county, Oregon, and in the main form a part of what was returned as the bed of Warner Lake by the surveys of James H. Evans and Byars and Gray, the former embracing fractional townships 39 S., R. 24 E., and 39 S., R. 25 E., Contract No. 222, executed May 21, 1875, and the latter fractional township No. 40 S., R. 24 E., Contract No. 329, executed June 17, 1879. The part of the land involved herein that was returned as a part of the bed of Warner Lake by Evans and Byars and Gray and was surveyed by John H. Neal under Contract 524, executed May 3, 1887. Said lands are more particularly described as follows:

SEC.	T. 39 S., R. 24 E.	NAME.	ENTRY.	DATE.
1	Lots 2 and 3 (vacant)	C. Tonningson	T. C. 1917	March 12, 1860, (Can)
2	Lot 4	vacant		
3	Lot 5	vacant		
4	Lot 6	vacant		
5	Lot 7	vacant		
6	Lot 8	vacant		
7	Lot 9	vacant		
8	Lot 10	vacant		
9	Lot 11	vacant		
10	Lot 12	vacant		
11	Lot 13	vacant		
12	Lot 14	vacant		
13	Lot 15	vacant		
14	Lot 16	vacant		
15	Lot 17	vacant		
16	Lot 18	vacant		
17	Lot 19	vacant		
18	Lot 20	vacant		
19	Lot 21	vacant		
20	Lot 22	vacant		
21	Lot 23	vacant		
22	Lot 24	vacant		
23	Lot 25	vacant		
24	Lot 26	vacant		
25	Lot 27	vacant		
26	Lot 28	vacant		
27	Lot 29	vacant		
28	Lot 30	vacant		
29	Lot 31	vacant		
30	Lot 32	vacant		
31	Lot 33	vacant		
32	Lot 34	vacant		
33	Lot 35	vacant		
34	Lot 36	vacant		
35	Lot 37	vacant		
36	Lot 38	vacant		
37	Lot 39	vacant		
38	Lot 40	vacant		
39	Lot 41	vacant		
40	Lot 42	vacant		
41	Lot 43	vacant		
42	Lot 44	vacant		
43	Lot 45	vacant		
44	Lot 46	vacant		
45	Lot 47	vacant		
46	Lot 48	vacant		
47	Lot 49	vacant		
48	Lot 50	vacant		
49	Lot 51	vacant		
50	Lot 52	vacant		
51	Lot 53	vacant		
52	Lot 54	vacant		
53	Lot 55	vacant		
54	Lot 56	vacant		
55	Lot 57	vacant		
56	Lot 58	vacant		
57	Lot 59	vacant		
58	Lot 60	vacant		
59	Lot 61	vacant		
60	Lot 62	vacant		
61	Lot 63	vacant		
62	Lot 64	vacant		
63	Lot 65	vacant		
64	Lot 66	vacant		
65	Lot 67	vacant		
66	Lot 68	vacant		
67	Lot 69	vacant		
68	Lot 70	vacant		
69	Lot 71	vacant		
70	Lot 72	vacant		
71	Lot 73	vacant		
72	Lot 74	vacant		
73	Lot 75	vacant		
74	Lot 76	vacant		
75	Lot 77	vacant		
76	Lot 78	vacant		
77	Lot 79	vacant		
78	Lot 80	vacant		
79	Lot 81	vacant		
80	Lot 82	vacant		
81	Lot 83	vacant		
82	Lot 84	vacant		
83	Lot 85	vacant		
84	Lot 86	vacant		
85	Lot 87	vacant		
86	Lot 88	vacant		
87	Lot 89	vacant		
88	Lot 90	vacant		
89	Lot 91	vacant		
90	Lot 92	vacant		
91	Lot 93	vacant		
92	Lot 94	vacant		
93	Lot 95	vacant		
94	Lot 96	vacant		
95	Lot 97	vacant		
96	Lot 98	vacant		
97	Lot 99	vacant		
98	Lot 100	vacant		

The NE 1/4 of SW 1/4 and SW 1/4 of SW 1/4, Sec. 10, T. 33 S., R. 26 E., were included in approved list No. 31, but were omitted from the stipulation. It is also found that the SE 1/4, NE 1/4 SW 1/4 and SW 1/4 of SW 1/4, Sec. 3, T. 40 S., R. 24 E., included in the stipulation, were patented to the State as swamp land, March 25, '90. September 16, 1899, the Warner Valley Stock Company filed a waiver or disclaimer of any intent or purpose to prove the swampy character of Lot 12, Sec. 19, T. 40 S., R. 24 E., embraced in the homestead entry of T. B. Wakefield. During the year 1886, and prior thereto, this office received a number of complaints from alleged settlers within the boundaries of what was returned as Lake Warner by the respective surveys

provisions of the Act of March 12, 1860. The charges of fraud against certain officials of this Government, and those claiming as the grantees of the State of Oregon, being pressed so vigorously and the demands of the alleged settlers being repeated with such persistence, special agent Charles Shackelford, was directed to investigate the alleged irregularities and frauds, and by letter of June 20, 1886, he submitted an exhaustive report, which in the main related to conditions said to exist in Warner Valley, Oregon.

He stated that in 1870 the Legislature of the State of Oregon passed a law authorizing its citizens to purchase without limit as to acreage, the lands granted to said State by the Act of March 12, 1860 (12 Stat., 3), and that one named individual, and a few others in secret compact with him, fled with the State Board of Land Commissioners of Oregon to purchase nearly one-half of the State as swamp land. Their filings include mountain ranges, sagebrush plains, lava beds, lakes and deserts, surveyed and unsurveyed.

He made direct and specific charges against a number of United States officials, including former special agents, deputy surveyors and local officers, indicating that all these officers were members of the "swamp ring," who acting conjointly with the agents of the State of Oregon, had made fraudulent returns, reports, etc., in the matter of swamp land surveys, and inspection in the field, selection, etc.

The importance of this report, which has formed the basis for all subsequent action, seems to justify a further quotation from it, as follows:

These selections embrace hundreds of thousands of acres of dry, arable land, situated in valleys or on hillsides and mountain ranges, all withdrawn from settlement. Other selections have been made by different parties in the same reckless manner. The chief object appears to have been to secure control of all the water frontage, as well as all approaches to water in Eastern Oregon, and to obtain all the grass lands in that section of the State, for the purpose of sales to cattlemen. The survey of what is called Lake Warner, near Deep Creek, in T. 39 S., R. 24 E., was made in 1875 by the late Register of the Lakeview Land Office, who reported a false meander of that part of the so-called lake, and embraced within the meander lines over one thousand acres of good arable land, much of it requiring irrigation, upon which number of settlers have constructed their cabins and are living in the lake on dry land. The meander corners and meander lines show unmistakable evidences of fraud. I found a like condition of affairs near Dog Out ranch, at the southern end of the so-called lake, where nearly two thousand acres of land, now occupied by settlers, have been fraudulently included within the meanders of the alleged lake by surveyors. In a survey made in 1879, I found the homes of fifteen or twenty settlers on land reported by surveyors as within and part of Lake Warner in Townships 39 and 40 S., R. 24 E., Will. Mer.

My examination thus far justifies the conclusion that the reports of Messrs. and in regard to swamp and overflowed lands are unreliable, inaccurate and corrupt, and that Special Agent's report and acts are part and parcel of the conspiracy entered into by and his confederates to defraud the United States out of large tracts of land, and that the attempted bribery of Surveyor-General the false surveys of the public domain, the perjury committed in proving up swampy and overflowed condition of mountains and elevated sagebrush plains; the procurement of the issuance of false certificates of sale by the State Officers in Oregon; the bribery of Special Agent; the procurement of the issuance of certificates of the Interior Department authorizing the issue of patents on the faith of the corrupt reports of said by the State of Oregon without any consideration; the sale by the said to his secret partner, of all his fraudulent titles to alleged swamp land and the sales by the said of the titles to said land all constitute links in the chain of a conspiracy to defraud the United States of the said lands.

In this quotation names of persons are omitted and blanks substituted. By letter of December 16, 1886, this office transmitted to the Department, the applications of the several alleged settlers and recommended; that the public surveys be extended over the so called lake in townships 39 and 40 south, ranges 24 and 25 east, or over so much thereof as it is practicable to survey, so that the several claimants to the land may have opportunity to present claims in the usual manner. The recommendation of this office was accompanied by the foregoing report of special agent Shackelford, and the Department considering said recommendation with the said report and applications, directed not only that the lines of survey be extended in Townships 39 and

40 S. Ranges 24 and 25 E., but throughout the length and breadth of what is termed Warner Lake so much thereof as is practicable. In commenting on that report, Acting Secretary Muldrow said: In fact, his report clearly indicates that there is no lake to be found as located by the Government surveys. * * The settlers cannot, for the want of survey, get their claims of record, and it is stated that the swamp land claimants threaten them with suits in ejectment as trespassers. (See Lake Warner 5 I. D. 367.)

Pursuant to the orders above given, this office directed that the survey be extended and on May 3, 1887, contract No. 329 was entered into between this government, acting through Surveyor-General of Oregon and Deputy Surveyor John H. Neal, whereby the latter undertook to extend the lines of the Public surveys over so much of Lake Warner as may be practicable. Said contract was approved by the Commissioner of this office on May 28, 1887, and the survey was made in the field during the late summer and autumn of 1887. With the exception of a small meandered lake (Pelican) the area of which was given as 444.31 acres, the lines of survey were extended in their entirety through what had been returned as the bed of Lake Warner in T. 39 S., R. 24 E., 39 S., R. 25 E., and 40 S., R. 24 E., though the field notes showed much open water in places. 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 2,801.20 acres in T. 39 S., R. 25 E. The plats of the survey were approved June 1, 1888.

December 29, 1888, the Surveyor-General of the State of Oregon, transmitted to this office, with his approval thereof, selection list No. 61 of swamp and overflowed lands, made under the provisions of the Act of March 12, 1860, by the State of Oregon. Said list included each and every tract, by smallest legal subdivisions surveyed by Deputy Neal in T. 39 S., R. 24 E., 39 S., R. 25 E., except sections 16 and 36. In his letter transmitting the said list of selections, the Surveyor-General reported that he had received a letter from Mr. Jerome Knox, attorney-at-law, at Lakeview, Oregon, transmitting a description of locations made by actual settlers in T. 39 and 40 S., R. 24 E., with a view of exempting said locations from adverse selections by the State. He stated further that the matter was one not coming within the jurisdiction of his office, and that the letter and list of locations were there-with enclosed.

The settlers claiming under the different laws of the United States adverse to the State of Oregon and its grantees, and the character of their claims were given supra in describing the land involved herein. There has been continued litigation between said settlers and the alleged grantees of the State of Oregon before the land Department, in the local state courts and in the local federal courts, ever since the lands embraced in the Neal survey in said townships were declared subject to appropriation. In fact prior to the approval of said survey, the litigation threatened, mention of which was made by the Department in its judgment ordering a resurvey (5 I. D. 367) materialized in suits of replevin brought by R. F. McConaughy against J. N. Willey and many others, to recover by Willey and the other defendants in the respective cases, from the land of McConaughy.

McConaughy claimed title under deed from the State of Oregon and alleged that the State derived title from the general Government under the provisions of the Act of March 12, 1860 (12 Stat., 3). Willey defended by alleging that on May 28, 1885, he then being a qualified settler under the preemption laws, settled upon said land, established residence, made improvement and maintained possession thereof intending to acquire title under the provision of the preemption laws, and that the land at date of settlement was vacant, unsurveyed public land of the United States. The matter of said suits having been called to the attention of this office, Commissioner Sparks on February 11, 1887, addressed a communication to Secretary Lamar, recited the facts as the same had been presented to this office, called attention to the Department order of January 17, 1887, directing that a survey be made of said lake, etc., and earnestly recommended that the Hon. Attorney General be requested to direct the U. S. District Attorney for Oregon, to intervene in the cases referred to, for the purpose of protecting the interests of the United States in these lands and to spare no effort to prevent the acquisition of the same under fraudulent claims.

In pursuance with said recommendation, steps were taken looking to the protection of the interest of the government in said suits and Lewis L. McArthur, the United States Attorney for Oregon, appeared therein as the representative of the Government. January 28, 1888, Hon. A. H. Garland, Attorney General transmitted to the Secretary of the Interior, report from Mr. McArthur, showing that he duly appeared at said trials; that on January

16, 1888, said court, through Deady, Judge, rendered decision in favor of the defendants.

The court held that the purchaser from the State took, subject to the determination by the Secretary of the Interior, of the character of the land—whether it was swamp and overflowed, and that it did not appear that such question had ever been passed on by the Department of the Interior. Continuing the Court said: Having reached the conclusion that the plaintiff cannot maintain this action, it is necessary to pass on the question, whether this land is swamp or not. And I do not regret it. For in my judgment no one is qualified to decide the question in a case like this, where apparently there is room, in the present condition of the land, for difference of opinion, without having a view of the premises and surroundings.

Much of the testimony is given by interested parties and is very conflicting. The difficulty is still further enhanced by the fact that the inquiry is, as to the condition or character of the land on March 12, 1860, rather than the present time. * * For more than a quarter of a century, the land department has left the question to be wrestled with in a sporadic way under the swamp land grant and the preemption and homestead acts, at a great sacrifice of money, time and probably veracity.

It does not appear that the matter of title to said land was further prosecuted in the federal courts from the decision of Judge Deady, cited above, but as before stated, since the approval and filing of the plats of the Neal survey there has been almost constant litigation in the local courts of Oregon, as well as contests pending in this office. Injunctions and other writs have been issued at the instance of those claiming as grantees of the State of Oregon, against those claiming under the timber culture, desert land, preemption and homestead laws, and the fifty or more claimants under the settlement laws have nearly all had individual contests before the land Department; thousands of pages of testimony were taken in these cases, and many of said cases were pending or had been closed adversely to the settlers, when on March 21, 1892, and on November 16, 1892, clear lists 30 and 31, of Oregon Swamp Land Selections, embracing to a large extent all the land involved herein, were submitted to the Department with the recommendations of this office, that the same be approved; and on April 9, and December 3, 1892, respectively, said lists were approved by Secretary Noble, as inuring to the State under the said acts of September 28, 1850, and March 12, 1860. December 28, 1892, the settler claimants, by resident counsel, applied to the Department for the exercise of its discretionary power over the land embraced in said clear lists No. 30 and 31. January 8, 1893, Secretary Noble directed this office to submit a report as to the matters and things represented in the petition of said settlers, and directed that no patents should issue for said lands, without further instruction. This office having by letter K January 24, 1893, complied with the said departmental order of January 9, 1893, the assignees of the State of Oregon having, in the meantime filed application for the patent, and the settler claimants having also filed supplement statements, accompanied by numerous exhibits, Secretary Noble on March 2, 1893, considered the showings made in behalf of the respective parties, together with the aforesaid report of this office, stated that had the charges and allegations made by the settler claimants been before him prior to the approval of said lists No. 30 and 31, he would hardly have approved the same, without further examination, etc., and that in order the consideration of said case might not be prejudiced by his action approving said lists in the absence of full and accurate information, he revoked and cancelled his approval of said lists 30 and 31, and directed this office to take such steps as were necessary to make said cancellation and revocation formally effective. He directed further that this office make full report in the matter and transmit to the Department all papers, etc., that the same may be fully considered and proper directions given in the premises.

By letter K March 13, 1893, this office submitted further reports as directed by the departmental order of March 2, 1893, and transmitted therewith papers, files, etc., and by letters K March 27, April 6, and April 19, 1893, this office transmitted plats of survey and additional documents, papers and files to the Department. December 19, 1893, Secretary Smith having before him, in addition to the papers, files, reports, and petitions, etc., hereinbefore specified, the affidavits, statements and briefs filed by the respective parties subsequent to March 2, 1893, considered the questions involved and rendered judgment to the effect that on March 12, 1860, the land involved herein was a part of the bed of Lake Warner, a permanent body of water, and that it was therefore not of the class and character contemplated by the said Act of September 28, 1850, as extended to the State of Oregon by the Act of March 12, 1860. He took official notice of the fact that a great many contests arising

from the fact that the land involved herein was a part of the bed of Lake Warner, a permanent body of water, and that it was therefore not of the class and character contemplated by the said Act of September 28, 1850, as extended to the State of Oregon by the Act of March 12, 1860. He took official notice of the fact that a great many contests arising