

(continued from first page.)

1865 to 1867, used such expression as that: "It was then a lake or swamp covered with swamp grass, tule and water weeds." "It then had the appearance of a true marsh." "The water which overflowed this land was part of Warner Lake or Marsh." "It had the appearance of a marsh or lake." "It was tule lake or swamp." "It was tule marsh and water interspersed." "I considered it a marsh." "It was all covered with water and a growth of tule swamp grass growing on it." The general tendency and substance of their testimony is not that the valley was occupied by the waters of a lake continuous throughout the year and over the whole basin, but that it was flooded "when the streams were full," that the land was covered by a rank growth of swamp vegetation, that the water was lower in the fall and the vegetation so dense that the water could not be seen in the fall and winter except in low places, and that such conditions were permanent from year to year of ordinary rain or snow-fall.

The swamp land claimants offered parts of Fremont's journal of his expedition through this valley, wherein he says, commencing December 25, 1842:

"We encamped on the valley bottom where there was some cream-like water in ponds, covered by a clay soil and frozen over."

"December 28. Our general course was again south. The country consists of larger or smaller basins, into which the mountain waters run down, forming small lakes; they present a perfect level from which the mountains rise immediately and abruptly. Between the successive basins the dividing grounds are very slight, and it is probable that, in the seasons of high water, many of these basins are in communication. At such times there is evidently an abundance of water, though now we find scarcely more than dry beds."

There are also referred to a series of maps, twenty-nine in number, including the region of this valley; (1) One prepared in 1838 by Colonel J. J. Abert, U. S. Engineers, from information furnished by Hudson Bay explorers and traders and one in 1844 by M. Mofras, attaché of the French Legation to Mexico, compiled probably from similar sources of information. These maps concur in showing a chain of four distinct lakes in this locality lying in a northeast and southwest direction, called by Mofras "lacs des plants," lakes of plants or vegetable growth, and, according to Abert, connected by "Plants river." Upon Mofras's map is shown a trail called "Route des wagons des Etats Unis au Oullamet," the United States wagon road to the Willamette, crossing the valley between the second and third of the "lacs des plants." (2) Maps of 1844 of Colonel Abert (Sen. Ex. Doc. 196, 28th Cong., 2d Sess.) and 1848 by Charles Preuss, an assistant to Fremont, show the chain of four lakes, the second from the north being named "Christmas Lake," with two unnamed farther south, and show Fremont's trail. (3) In 1849 a sketch map by Lieutenant Williamson, one of Captain Warner's exploring party, was made, showing his route through this valley and is still preserved in the War Department, and one in 1855, a map of Lieutenant Williamson and Abbott showed Fremont's and Warner's trails through the Warner Valleys, the first of these showing six small lakes and the latter five by which the northernmost one is named "Christmas Lake," lying in the regions bounded by 42 deg. and 44 deg. 30 min. and by meridians 119 30 min. and 120. On the latter map are also two more lakes lying in the same chain north of 42 30 min., making a chain of seven. These constitute three general classes independent in origin. In 1851, Mitchell's New Atlas, in 1855, Bunnell's "New Map of California, Oregon and Washington," and in 1856 Black's Atlas of North America (Edinburgh) were published, apparently compiled from the foregoing as authorities, not from original sources. (4) In 1854 to 1857 a map was prepared by Lieutenant O. K. Warren, topographical engineer, U. S. Army, "from authorities, explorations and other reliable data," under orders of the Secretary of War, of the region from the Mississippi to the Pacific Ocean, to accompany the report on explorations for a railroad route, showing "Christmas Lake" and four other lakes southerly from it, one being very small. In 1858, the Bureau of Topographical Engineers by order of the Secretary of War, prepared a map of Oregon and Washington for military purposes, showing in the same region a like chain of lakes. (5) In 1857, "Stanford's Map of the United States" (Rogers & Johnson, English, publishers) was prepared "from state documents and unpublished materials" by Prof. Rogers, of Boston, and Keith Johnson, F. R. S. E.,

geographer to the Queen, showing in this region a chain of four lakes, the two southerly being small the third named "Christmas," and the northernmost being considerably larger. (6) In 1860, 1861, 1865 and 1866, the several surveyors general of Oregon prepared diagram maps, connected with the reports of surveys of public lands. See Sen. Ex. Doc. No. 1, 2d Sess., 36 Cong.; H. R. Ex. Doc. No. 1, 37 Cong., 3d Sess.; H. R. Ex. Doc. No. 1, 38 Cong., 1st Sess.; C. L. D. Map of Oregon, 1865. The former three of these maps show a chain of four separate lakes in the valley, and the latter seven, of which three are very small. In the maps of 1863, and 1865, "Christmas Lakes" first appears as given to the whole chain.

This brings the cartographic publications to the period covered by the oral testimony, and further mention of subsequent maps of the region is unnecessary, except that to notice that in 1875, "The Commercial Atlas of the United States," containing "Crom's Railroad and Township Map of the State of Oregon," is the first that shows a continuous body of water, or lake extending through the valley called Christmas Lake, which is substantially followed by the General Land Office maps of 1876 and 1879, while other maps show a chain of separate lakes, instead of a connected body of water.

Several maps conclusively show that the cartography of 1875, 1876 and 1879, was erroneous. The valley has a slope of eighteen feet from the mouth, or forks of Deep Creek, in Sec. 29, Tp. 39, S. R. 24 East, to the "Stone Bridge" near the north line of Sec. 24, Tp. 37, S. R. 24 East, a distance of about 14 miles on a straight line, and nearly thirty-three feet from the same lower point to the head of the marsh, near the southwest corner of Sec. 19, Tp. 40, S. R. 24 East, a distance of about 19 miles on a straight line. For a permanent body of water or lake, to exist extending from either of the above fixed points to the stone bridge, the water must have had a depth of eighteen or thirty-three feet. No evidence of such fact exists. On the contrary the French map of 1844, showed that the valley could be crossed by wagons at or near the point now known as the "Stone Bridge." Fremont crossed it, lower down, in 1843, above the lower lakes, or the many official maps of his route and explorations are all false. The Oregon Central Military Wagon Road, in 1863, crossed at or near the place indicated by the old French map, and Colonel Drew, at the same place, about August 1st, 1864, he having a company of fifty men, two heavy wagons, an ambulance and camp force.

The "Stone Bridge" as it is termed in the testimony, is a ford at the narrows of the marsh where the bed of the morass has been covered with stones, bundles of tules and flags so as to admit of its passage. Another similar ford, about a mile south of this, was known as "Little Stone Bridge." The witness Peterson crossed the stone bridge in 1867. Judge Hale crossed the marsh on foot nearly opposite the mouth of Deep Creek in the fall of 1875. In the fall of 1868 the water was only two to two and a half feet deep at the stone bridge and had a current of two to three miles an hour when General Crook was there. The surveying party of the Oregon Central Military Wagon Road Company crossed the Stone Bridge in August or September, 1865. In June, 1890, the water at the Stone Bridge was too deep to permit passage without swimming and had a current of fifty feet per minute. Such facts, independently of proof of fall by levels, show that no continuous lake existed throughout the extent of the morass.

Had there been a permanent lake, in length thirty miles and several miles in width, the shore must have left beaches or shore lines upon the sides of the valley at elevations that the waters for any considerable period maintained. The evidence fails to show any such beaches, except an ancient one mentioned by Professor Russell in his "Geographical Reconnaissance in Southern Oregon" in 1881, 1882, page 459 "at an elevation of 225 feet above the surface of the present Playa Lakes;" also another beach or water line mentioned by some of the witnesses as containing fragments of tules and swamp grasses observed by them at a flood period, when the water was up among the sage brush at the upper end of the marsh. As sage grows only on arid land, the fact that the waters were then at a height covering land where sage brush was growing shows that this elevation of the waters was a stage of temporary and unusual flood—not that of a permanent lake.

The agricultural claimants contend the swamp land grants was confined to lands inundated by overflow of large rivers and does not extend to such valley lands as these. The act of September 28, 1850, is not in terms confined to lands subject to overflow of large streams. The third section of the act provides that the Secretary of the Inter-

Do Not Look At Them

Unless your eyes can stand the strain of seeing the Swellest Line of

Dress Goods and Trimmings

ever brought to the town of Lakeview.

THE PRICES at which we sell them, will save you the trouble of sending off, save you money, and besides that, you will see the Goods before Buying.

A . Part . of . Our . Clerks' . Salaries

is paid them to show goods whether you want to buy or not. We will thank you to assist in making them EARN THEIR MONEY by showing you these goods that we are making this Roar about

Lakeview Mercantile Co.

ior shall include in the lists "all legal subdivisions the greater part of which is 'wet and unfit for cultivation.'" The draft of the bill as first presented to the Senate might give color to such contentions, as it contained a provision that the Senate should adopt means "for the protection of said lands from overflow." But in its course through Congress its scope was so enlarged as to include "the whole of those swamp and overflowed lands, made thereby unfit for cultivation, which shall remain unsold at the passage of the third act."

It clearly makes the condition of the land, from whatever cause, not liable alone to inundation from the overflow of a large river, the criterion, and the act has always borne such interpretation. Michigan Land & Lumber Company v. Smith (159 U. S., 66-72.)

It is also insisted that the act of the surveyor in meandering these lands as a lake when approved by the proper authorities of the land department, established their character as a lake and excluded them from the grant. The view of the department upon this subject is well expressed in the decision of the Supreme Court of Iowa, in Carr v. Moore, (93 N. W., 52, 54,) where the Court said:

"But the action of the surveyor in meandering the shore line of the supposed lake cannot make it a lake unless it is one. We have held that if, by evident mistake on the part of the surveyor, a meander line is run where there is no body of water proper to be meandered, the title of the owners of lots or fractional subdivisions on the meander line does not extend beyond (Schlosser v. Cruickshank, 99 Iowa, 414, 65 N. W., 344; Schlosser v. Hemphill, 90 N. W., 842.) As to whether the land within meander lines is swamp land or not is not conclusively settled by the act of the surveyor. Rood v. Wallace, 109 Iowa 5, 79 N. W., 449. And, in general, to the effect that the running of the meander line does conclusively establish the character of area beyond the meander line, as to whether it is river, lake, marsh, or unsurveyed land, see Niles v. Cedar Point Club 175 U. S., 300, 20 Sapt. Ct. 125, 44 L. Ed., 379, Kenn v. Roby, 145 Ind., 221, 42 N. E., 1011.

This view also has support in French-Glenn Live Stock Co. v. Springer (185 U. S., 47, 53.)

The agricultural claimants further contend that the selection of school lands in lieu of lands claimed to have been lost in place as within "Warner Lake," estops the State from claiming the land in controversy as swamp land. An estoppel can be no broader than the representation made, upon which it arises. In selecting indemnity land, the only facts necessary to exist as right therefor were that the sections assigned as base for the selections were wanting, or did not pass to the State. What might be the fact as to the remainder of the township surveyed as land was immaterial. An immaterial, however false or mistaken, representation, never gives rise to an estoppel. While, therefore, the State, by selection

(continued on next page.)

S. F. Ahlstrom

Manufacturer of the

LAKEVIEW SADDLES

Recognized as the Best Vaquero Saddle

Wagon and Buggy Harness, Whips, Robes, Reatas,

Bits, Spurs, Quirts, Rosettes, Etc.

Repairing of all kinds, by competent men.

LAKEVIEW PLANING MILL

Sash, Blinds, Moulding, Window and Door Casings, Beehives and Furniture of all kinds made to order. Write for estimates on contract work & material

HANDLEY & CLENDENEN

HEREFORD STOCK FARM

Drews Valley, Oregon.

F. O. Bunting, Owner

Largest herd of registered Herefords in Oregon

Young Cattle for Sale.

LAUDOR ALAMO head of herd

LAKEVIEW Livery and Feed Stable

W. K. BARRY, Proprietor.

Horses Boarded by the day or month. First-class Turnouts and Saddle Horses. Our Specialty is the Quick and Safe Delivery of Passengers to All Points in the District.

HAY AND GRAIN FOR SALE

Proprietors of Barry's Opera House. Only Place in Lakeview For Holding Public Entertainments.