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FRIEND TO SETTLERS.

Reasons Why Binger Hermann Would not Yield His Convic- tions to Retain His Office

A great deal is being said about the strained (?) relation between President Roosevelt and Hon. Binger Hermann, the popular candidate for Congress from this district.

This buncombe amounts to nothing and is merely campaign material used by the opposition. The following is a very truthful statement written by Harry L. Holgate, formerly of The Astorian, and published in the Corvallis Gazette:

"The operation of the National Land laws is to figure in the present First Oregon Congressional District campaign. Just why this is so is not exactly clear. Neither Mr. Hermann nor Mr. Reames, nor even our own Mr. Ingalls can be, in reason, blamed for those laws which have done much for the West and which have also given an opportunity for much fraud. These frauds have been accomplished under the various administrations and will continue as long as the land laws remain as they are.

"In the matter of the conduct of the local land officials, it will be remembered that the commissioner of public lands has not the power to appoint or remove them and the several Oregon local land commissioners, who have recently summarily retired, were appointed by a Federal Judge, who happens to be a Democrat. No one thinks of holding Judge Bellinger responsible for the alleged official misconduct.

"Mr. Hermann, when Commissioner, urged Congress constantly, but vainly, to so amend the laws that the frauds could not be practiced.

"Among the other realities that the opposition to Mr. Hermann will not discuss in connection with his administration of the land office, is the fact that of the \$12,000,000 to \$15,000,000, which was handled by the office during his incumbency, not one cent was lost through defalcations or carelessness.

"To those familiar with the situation it seems odd that the friendly relations between the President and Mr. Hermann should be questioned, for were those relations other than very friendly Mr. Hermann would not have retained his office so long after Mr. Roosevelt's accession to the presidency. It is very unusual for a bureau chief to remain longer than the department desires, and Mr. Hitchcock has for several years urged Mr. Hermann's retirement. Their difference was not personal, but was based upon several matters of policy in which Mr. Hermann had the support of the West. Mr. Hermann did not care to yield his convictions, even to retain his office. That those unpreventable land frauds were not an issue is shown by the fact that Mr. Hermann's assistant was made his successor.

"Of really more importance to Oregon than a Congressman's relations with the Administration is his relationship with Congress, and probably no Oregonian who reads and thinks will deny that no man in the State, other than Senator Mitchell, is closer to the influential members of Congress than Binger Hermann. Of especial importance to Oregon at this time is the fact that Mr. Hermann is on the most pleasant terms with Speaker Cannon."

Motion For Review

In re J. L. Morrow et al.,
Appellees,
vs.
The State of Oregon and
The Warner Valley
Stock Company,
Appellants.
Lakeview
Land
District,
Oregon.

MOTION FOR A REVIEW OF THE DECISION OF THE HON. SECRETARY OF THE INTERIOR, RENDERED ON MARCH 16, 1903, IN THE ABOVE ENTITLED MATTER.

HON. SECRETARY OF THE INTERIOR,
WASHINGTON, D. C.
MR. SECRETARY:

Now come J. L. Morrow et al., by John Mullan and Joseph K. McCammon, their Counsel and Attorneys, and the United States by John Mullan their Attorney, Appellees in the above entitled matter, and respectfully move you to review, reconsider, and vacate or modify so much of your said Decision rendered therein on March 16, 1903, which in any wise relates to Lands claimed in these cases, either under the Pre-emption Act of September 4, 1841 (5 U. S. Stats., 453) or Act of July 17, 1854 (10 U. S. Stats., 305) except any of that which relates to the claim of the Heirs of Amos Boyd, and to claims similar thereto, and as grounds for this Motion, they now respectfully submit to you as follows to wit:

1st. In your said decision of March 16, 1903, you state as follows, to wit:

"The Act of March 12, 1860, supra, extending to Oregon the Grant of September 28, 1850, supra provided that 'The Grant hereby made shall not include any lands which the Government of the United States may have reserved, sold, or disposed of (in pursuance of Law heretofore enacted) prior to the confirmation of the Title to be made under the provision of the said Act.'"

It is thereunder contended that lands to which a right of settlement or filing under the pre-emption Law of September 4, 1841, had attached, before the issuance of Patent, under the Swamp Land Grant, are excluded from that Grant.

Neither Settlement, nor filing under the Pre-emption Law, nor such Settlement and filing constituted a Sale or disposal of the land by the United States, such as excluded it from this Grant (Yosemite Valley case 15 Wall 77), Ham vs. Missouri (18 How., 126), Conger vs. Roberts (1d. 173), State of Utah (22 L. D., 418).

The pre-emption claim of the Heirs of Amos Boyd is for a portion of these lands. Boyd's pre-emption filing was cancelled July 25, 1892, in the Contest of the State against the same, but that decision was set aside December 19, 1893 (17 L. D., 571) and July 16, 1895. Upon the submission of proof and payment of the purchase price, Boyd's Heirs were allowed to make pre-emption Cash Entry, and patent certificate was issued to them.

This perfection of the Entry constitutes a Sale and disposal of the lands embraced therein (Carroll vs. Safford, 3 How., 441, 461; Stark vs. Starrs, 6 Wall., 402, 418; Aspen Consolidated Mining Co. vs. Williams, 27 L. D., 1, 16) and being made under a Law (Acts September 4, 1841, 5 Stats., 453, and July 17, 1854, 10

Stats., 305), enacted prior to March 12, 1860, and also made prior to the Confirmation of Title in the State under the Swamp Land Act (State of Minnesota, 27 L. D., 416, 419), the lands embraced in such Cash Entry are Excluded from the Grant, and the Entry should be passed to patent, if it be otherwise regular.

If any other pre-emption entries shall be regularly perfected prior to the issuance of Patent to the State, the lands covered by such Entries will likewise be excluded from the Grant to the State.

The Homestead, Desert Land, and Timber Culture Laws, under which some individual claims are asserted, were all enacted after March 15, 1860, and therefore constitute no basis for the exclusion of lands from the Swamp Land Grant.

For the reasons herein given, your Office Decision of March 2, 1901, rejecting the claim of the State is reversed, and all of the claims adverse to the State, excepting that of the Heirs of Amos Boyd, and any other existing pre-emption claims which have been, or may be perfected before this Decision is carried into effect, are hereby rejected.

It is further requested that you submit for approval a New Swamp Land List embracing such of the lands in controversy as properly pass to the State under this Decision."

In the foregoing extract, from your said Decision of March 16, 1903, Mr. Secretary, you commented upon so much of the Swamp Land Grant, and Exceptions contained therein, made by Congress to the State of Oregon by its Act of March 12, 1860, as relates to sales and disposal of lands (in pursuance of any Law enacted by Congress prior to March 12, 1860) prior to the confirmation of the Title to be made under the provision of the said Swamp Land Grant—which is the issuance of the Patent,—and also upon the legal effect of all thereof, and decided that Filings and Settlements either Separated or combined, do not constitute Sales of Land, but your said Decision does not make any reference whatsoever, to lands reserved by the Government of the United States' in pursuance of or by the operation of the Pre-emption Act of September 5, 1841 (5 U. S. Stats. 543) or Act of July 17, 1854 (10 U. S. Stats. 305).

We do not deny that Congress has the power to do all those things which the U. S. Supreme Court say it actually did, in the cases you cite in your said Decision, wherein the Grants made were absolute, without any reservation or exception or condition whatsoever, but what we do deny is, that Congress did those same or similar things in the case of the Oregon Swamp Land Grant of March 12, 1860, but on the contrary in said Grant—Congress sought to protect and did amply protect therein, all actual Settlers located on these lands, up to the date of actually issuing Patents to said State by virtue of the limitations and restrictions contained therein.

When Congress extended to Oregon the provisions of the Swamp Land Act of September 28, 1850, it did so, but not so as Congress passed it on September 28, 1850, but on the

contrary Congress coupled it with sundry limitations and restrictions, to wit, that if any lands of the class of lands so then granted to the State of Oregon, had been reversed, (in pursuance of any Law enacted by Congress prior to March 12, 1860) prior to the date of the issuance of the Patent therefor to said State, or if any lands of the class of lands so then granted to the State of Oregon had been sold (in pursuance of any Law enacted by Congress prior to March 12, 1860) prior to the date of the issuance of the Patent therefor to said State, or if any lands of the class of lands so then granted to the State of Oregon, had been disposed of (in pursuance of any Law enacted by Congress prior to March 12, 1860, prior to the date of the issuance of the Patent therefor to said State, that then, and in all such cases, when Patents were ready to legally issue, all the lands found to have been so reserved, so sold or otherwise so disposed of, were, we respectfully submit legally and properly to be excluded from Patent, under the Oregon Swamp Land Grant of March 12, 1860.

Congress, in harmony with its intention to the actual settlement upon the Public Domain, in enacting the Oregon Swamp Land Grant of March 12, 1860, sought and intended by the aforesaid limitations and restrictions contained in said Grant, (which is always to be construed strictly against the Grantee therein) to protect all actual settlers on any of said Lands, claiming any portion thereof under the Pre-emption Act of September 4, 1841, or Act of July 17, 1854, up to the very time of issuing Patents to said State for the Lands which Congress intended to be granted to said State, under its said granting Act of March 12, 1860.

The Swamp Land Grant to the State of Oregon, we respectfully submit, did not, and does not, vest Title in said State in and to any lands, intended to be granted under said Granting Act of March 12, 1860, until the Patents issue therefor, up to which time your Jurisdiction is Supreme and exclusive herein, and like Grants of lands made by Congress to Railroad Companies, where Title vests in the Grantee to Lands intended to be granted, only, upon the definite location on the ground of the line of the Route of such Railroads, wherein, prior and up to said said times so fixed in the Granting Acts, the Settler in the case of the Swamp Land Grant to Oregon, and in the case of the Settler, within the lateral limits of such Railroad Land Grants to Railroad Companies, claiming any portion of said lands under the Pre-emption Laws (before they were repealed) could make proper application in due form at the proper Local Land Office, to enter, prove up and pay for same—within the time or times prescribed by law, and the Rules and Regulations granted by your department, up to the very moment of time when Title to the lands so vested in said Grantees. Such Pre-emption Applications for said lands, when they became matters of official record in the proper Local Land Office, have

(continued on 4th page.)

RAILROAD

Now Comes the Report That the
N. C. O. Will Soon be On Its
Way to Lakeview, Oreg.

Decided activity is being shown of late by the Nevada, California & Oregon Railroad Company toward projecting its line into South Central Oregon territory. This line has for a long time been contemplating an extension of its line northward to Lakeview, from which point it can tap section farther north.

The line extends from Reno, Nev., in a slightly northwesterly direction to Madeline, Cal. The now occupied territory is very productive and a good business country from a railroad standpoint. The extension to Lakeview presents no engineering difficulties, but is an extremely easy route.

The line has already been surveyed and as planned will go through a productive section and through one rich in agricultural resources. A little north of Madeline is Alturas, a small farming town that offers good inducements to the proposed line. Beyond this the line will follow along the east shore of Goose Lake to Lakeview. This is as far as the road is planned for the immediate future, but there is a plan on foot to extend it farther north, possibly to Lakeview with the Columbia Southern or own.

From Lakeview there are several routes suggested, either one of which offers wonderful advantages and promising business to the road. There is a possibility that the line will be projected to Burns, to tap the rich ranching country around this town. There is also a promise that the line will go to Klamath Falls, which has been mentioned as the terminus of the line that is about to be built from Madeline.

Whichever town will be chosen as the terminus of the road will give this line an undisputed field for business, unless some of the northern lines build south as far as the California boundary. This will give San Francisco practically the monopoly of the trade in South-Central Oregon and possibly farther north. That this condition is not desired by the Portland business men is without question.

San Francisco business men are behind the new line and are forcing the project ahead as fast as possible, in order to get on the inside in the Oregon business. This invasion of the Portland territory is looked upon here as critical, and business men are beginning to consider what can be done. The Columbia Southern proposes to go 100 miles south this year, but this is not far enough to retain the control of the extreme southern business, which can be made greater than that at present controlled. Portland business men are now considering it is necessary to aid the Columbia Southern in its southward movement and to encourage it to go still farther than now planned. They argue that there is plenty of capital here to build the road to the California line and thus retain Oregon's business for Oregon's wholesalers.

A California railroad man, who is in the city today, quietly looking up the conditions here, intimates that the Nevada, California and Oregon road will begin its northward move in a very short time and when once begun, the San Francisco wholesalers will not let it stop until they have an opportunity to secure more business in the section indicated. There is plenty of capital behind the line, he says, and it is going through with dispatch when work actually begins. Just when that will start is not known at present but he suggested that it may be at any time.