

**MOTION FOR REVIEW.**

(continued from 1st page.)

ever been construed to have the legal effect to reserve and except such lands from the scope of the Grants so made, and such lands so applied for under the Pre-emption Act of September 4, 1841, or July 17, 1854, were ever held for the exclusive use and benefit of the parties so making such Pre-emption Application therefor, (if living) or their Heirs, Administrators, or Legal Representative (if deceased) and we respectfully submit, that it was Error for you not to have so held in your said decision of March 16, 1903.

3. In the Stipulation entered into by respective Counsel in this case on May 2, 1899 (part of the res gestae before you on March 16, 1903), it was specially provided, that the right to object, even to the introduction of evidence; tending to establish the character of any Lands reserved, pursuant to any Act of Congress approved prior to March 12, 1860, was reserved, in order that the validity of any such Objection, if made; and the ruling of the Local Land Office thereon, might be subject to review on Appeal, as are other matters in similar cases. This objection was duly made before you.

But your said decision fails in toto to review or to take any cognizance whatsoever of any Lands, claimed by us to have been reserved pro tanto from the Oregon Swamp Land Grant of March 12, 1860, by the operation of the claims made to portions thereof by those persons claiming same prior to March 16, 1903, under the Pre-emption Act of September 4, 1841, or July 17, 1854. On the contrary, your said Decision seemingly wholly overlooked all of the same.

Although the mere filing in the Local Land Office for any of said Lands under the Pre-emption Act of September 4, 1841, and July 17, 1854, may not constitute a sale, or a disposal thereof, yet we submit, and respectfully insist that such Filings in the proper local Land Office and now of official Record in said Office coupled with actual settlement, made under the Pre-emption Acts of September 4, 1841, or July 17, 1854 did, and do constitute Reservations of said lands pro tanto, and Reservations sufficient to except and exclude all the same from Patents, to be legally earned by, and to be properly issued to the State of Oregon, under said Swamp Land Grant of March 12, 1860.

There was before you for your consideration on March 16, 1903, among other papers, copy of our Printed Motion for Review of the Decisions of the Hon. Com. G. L. O. herein; of October 11 and 19, 1892, filed by us with him on November 10, 1892, which contained on pages 75, 76, 77, 78 & 79 thereof the Description of 37 Pre-emption claims made to portions of these lands, under the Pre-emption Acts of September 4, 1841 or July 17 1854, giving the Number of each particular D. S., the exact description of the Lands so claimed therein respectively, and by whom made and claimed, and the respective Dates when so made and claimed, which for your further and exact information we now here reproduce as follows, to wit:

N. M. Frakes, H. B. Stephens, S. B. Swan, A. D. Frakes, W. S. Thompson, L. D. Frakes, G. F. Maupin, Jno. T. Maupin, A. C. Willey, Emma Nesham, A. N. Bennett, Jesse Morrow, Henry Broddus, Amos Boyd, Confirmed by Secretary's decision, Alex. Cameron, John W. Morrow, S. K. Hilderbrand, Joseph A. Morrow, M. E. Gordon, A. G. Oldham, W. M. Harvey, Geo. Wilson, S. M. C. Moore, Chas. Willey, Chas. Combs, A. F. Tonningsen, Wm. A. Moore, L. M. Frakes, John Wall, R. L. Maupin, J. O. Kafader, Sam'l Moore, J. C. Dodson, T. J. Dodson, George W. Jones, Andrew Frakes, Patrick C. Kyne.

No. 14 of said List of 37 Pre-empt-

ion claim of Amos Boyd, in favor of whose Heir, in your said Decision, you have discriminated and ordered the Patent to issue to said Heirs, for the lands so described in Boyd's said D. S., No. 3380, but only because said Heirs had therefore been permitted to make cash payment for the Lands so claimed by said Boyd.

But you ignored in toto the fact, that other Pre-emption claimants have heretofore made full and final proof for the lands which they claim respectively, under the Pre-emption Act of September 4, 1841, or July 17, 1854, many of which are now, and long prior hereto have been; of record in the G. L. O. and all suspended from approval; and payment therein not only not allowed to be made, but because, only, of Oregon's Swamp Land Claim thereto, includes those which were before you on March 16, 1903.

These Pre-emption claimants for many years prior to March 16, 1903, were prevented by the subordinate officers of your Department from making full payment (though full payment in sundry cases may possibly have been tendered to the proper Local Land Officers, for some or all of said Lands so claimed herein respectively) and such payments refused to be accepted or received only because of the Swamp Land Claim thereto by the State of Oregon and its Grantees. Is there no Law of Justice anywhere along the line to be meted out to these Pre-emption claimants? Shall Appellants be, in effect, declared by your said Decision to profit by these erroneous and illegal Acts of your subordinate officers, first by depriving, and in effect denying these Pre-emption claimants from making full payment for said Land respectively, when they had the legal right to do so, and, second, their failure to so pay to be pleaded hereafter as valid reasons why said Pre-emption claimants should not now, or as soon as may be, put into possession of valid evidence of Legal Title, to wit, Patents for the Lands claimed by them respectively?

5. We respectfully ask you, Mr. Secretary, while considering this Motion for Review, to take Judicial Cognizance of the fact, that the Local Land Office, at Lakeview, Oregon, with all its Official Records, Maps, Files and Papers, was totally destroyed by Fire on May 23, 1900, and possibly it may be, that said destruction may have included some of the Pre-emption cases involved herein.

6. Wherefore, Mr. Secretary, we now respectfully move you as follows, to wit:

First. That your Decision of March 16, 1903, in so far as same relates or refers to lands herein claimed under the Pre-emption Act of September 4, 1841, or Act of July 17, 1854, may be modified by declaring: That that portion of your said Decision shall not be carried into effect until you are first officially, fully and finally advised in regard to each and every one of all the Pre-emption claims, made prior to March 16, 1903, to any portion of said lands, under the Pre-emption Act of September 4, 1842, or July 17, 1854.

Second. That you may modify your order to the Hon. Com. G. L. O. in your said Decision of March 16, 1903, to prepare and submit to you, New Swamp Land Lists, embracing such of the lands in controversy as properly pass to the State under your said Decision, by declaring: abundant caution; that said Lists shall not include any Lands claimed prior to March 16, 1903, under the Pre-emption Act of September 4, 1841, or Act of July 17, 1854, as same appeared of record or on the files of his office on March 16, 1903, either as subsisting Pre-emption claims, or Filings for Pre-emption claims, or Pre-emption claims or Filings which had been cancelled prior to March 16, 1903, because of any Oregon Swamp Land Claim thereto, under said

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