

Lake County Examiner

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LAKEVIEW, LAKE COUNTY, OREGON, THURSDAY, MAY 14, 1908.

NO. 20

AFFIRMS DECISION OF REGISTER

Contest Case of Withers vs. C. H. Dusenberry

INSUFFICIENCY OF RESIDENCE

Dusenberry States That He Will Carry the Case Up To the Secretary of the Interior

Chester L. Withers v. Charles H. Dusenberry, involving H. E. No. 3312 Cancelled. Recommendation of Register affirmed.

Register and Receiver, Lakeview Oregon.

Sirs:—April 22, 1907, Chester L. Withers filed in your office his duly corroborated affidavit of contest vs. homestead entry No. 3312, made November 9, 1904, as amended February 18, 1906, for N half NE quarter, E half NW quarter of Sec. 33, T. 35., R. 17 E., by Charola H. Dusenberry, alleging that he "for more than six months last past has wholly abandoned said lands, and now continues to so abandon the same, and does not now reside upon said land; that said entryman has wholly failed to comply with the homestead laws since making said entry."

Pursuant to notice, both parties with counsel appeared before you on June 10, 1907, and tendered testimony.

On November 12, 1907, the Receiver decided in favor of the defendant and the Register decided in favor of the plaintiff. From the Register's decision an appeal was filed.

It seems that the defendant was laboring under the impression that he did not have to make any effort to comply with the homestead law until his application to amend his entry was allowed. He claims that he was not notified that the amendment was allowed until July 30, 1906, when he immediately started to the land and commenced his improvements.

"Pending a decision on an application to amend an entry the claimant should comply with the law." (Syllabus) in Wass v. Millward, 5 L. D., 349.

When this contest was initiated, the improvements on the land in controversy consisted of a small log house, with a shake roof, a floor of shakes, laid on the ground, and no further improvements were made thereon until after notice of contest was served, except a small patch of about a quarter of an acre was plowed in the fall of 1906, and sowed to rye.

Defendant claims to have built his cabin in August, 1906, and only remained there a few days, with a camp outfit. But before he left the house in the fall he had dishes and cooking utensils there sufficient for more than five or six persons. He had no bed there, but he had an old set of bed springs, and some bed clothes, and a sheet iron stove.

It appears that defendant is a land locator, with headquarters at Klamath Falls, and when trying to locate parties on land in the section of the country near his homestead he used his cabin as a stopping place.

It appears from the testimony in behalf of the plaintiff, that the land lies at a high elevation where the snow falls are very deep all winter; that the land is rough, broken, and lies on a steep hill-side; that it is covered with a heavy growth of yellow pine timber, estimated at about 2,000,000 feet. Defendant admits that there is about one and a half million feet. There are a few small glades on the tract, and defendant claims—that with comparative small expense 25 or 30 acres can be made good grazing or tillable land, but the witnesses in behalf of the plaintiff state that the glades do not consist of more than 7 or 8 acres in all that could be profitably prepared for cultivation, and that the rest of the land is chiefly valuable for timber, and if cleared at a heavy expense it would not be valuable for agricultural purposes.

The opinion of the Register is, "that the homestead entry should be cancelled, for the reason that the contestee has not complied with the homestead laws as to residence, culti-

vation and improvements; that he is not acting in good faith to procure this land for a home, but for other purposes; that owing to the high altitude and character of the land it is unfit for agricultural purposes or grazing, but is more valuable for its timber; that he has used his claim, as a kind of headquarters when out locating other parties on timber land in the vicinity or neighborhood of this claim now involved in this controversy; that his residence on the land was the exception and not the rule.

A careful analysis of the testimony shows that the Register's opinion is warranted.

Said entry is therefore held for cancellation, subject to the right of appeal.

You will so notify the parties.
Very Respectfully,
S. W. Proudft
Assistant Commissioner.

Springer Visits Lakeview

G. Springer, Democratic candidate for Joint Senator from this senatorial district, whose home is at Culver, Crook county, visited Lake County the past week. He arrived in Lakeview Saturday and spoke to the people that evening, in the M. E. Church. Mr. Springer is an ardent supporter of Statement No. 1. He is a pleasant gentleman to meet. Mr. Springer will no doubt receive the support of his party who believe in Statement No. 1.

Mr. Springer's wife accompanied him on his trip over the district. They visited Pine Creek Sunday and returned to Lakeview Monday. They will visit Klamath county from here.

At the County Road Supervisors' convention last week, it was decided to purchase a road building machine for each district in the county. One has already been ordered for Silver Lake.

Regarding the county seat question, The Examiner this week, refers its readers to the action of the county court, published in another column, under the heading of County Court Proceedings.

F. M. Miller and Mrs. V. L. Snelling returned from San Francisco Sunday. Mr. Miller says they saw the fleet come in and that it was a grand sight. Mrs. Miller did not return she having remained at Burke's Sanitarium near Santa Rosa, with Mrs. Dewey. They will return in June.

D. P. Browne, secretary of the Warner Valley Stock Co., and C. B. Parker, foreman, came over to Lakeview last Sunday from Adel. Mr. Brown informed us that he had intended starting for Bly to meet C. A. Cogwell the next day, when he received a telegram announcing Mr. Cogwell's death.

SHORT TERM CIRCUIT COURT

Docket Will Be Cleared Up This Week

Circuit Court convened Monday morning, Judge H. L. Benson presiding. The jury was discharged, with the exception of one, from which to draw a new jury should any case now not known of come up, as there was not a single jury case on the docket. The divorce cases were tried first. Decrees were granted in the cases of Mrs. Green and Mrs. Morris.

The death of C. A. Cogwell, attorney for the Warner Valley Stock Co., upset the program as to those cases. Judge Benson was requested by Attorney-General Crawford to hear the arguments in the State of Oregon vs. the Warner Valley Stock Co., in Portland during recess, which the judge consented to. Attorney Covert of Portland is expected to take up the other cases where Mr. Cogwell left off, and it is not known at this time what disposition will be made of the cases at this term.

The docket was cleaned up yesterday and court adjourned.

Mrs. Floyd Robertson was granted a divorce Tuesday.

All other cases were continued. Mr. and Mrs. Wm. V. Mong and their excellent theatrical troupe finished a week's engagement in Lakeview last Sunday afternoon with a matinee. They repeated "The Clay Baker" by request. The Mong company gave perfect satisfaction while in Lakeview. They left Monday for Klamath Falls, and will play one night at Bly and one night at Bonanza.

County Court Proceedings

IN THE COUNTY COURT OF THE STATE OF OREGON
FOR THE COUNTY OF LAKE

In the matter of the Petition of W. L. Powers, F. A. Watkins et al. For removal of County Seat from Lakeview, Oregon, to Paisley, Oregon.)
This cause having been Submitted upon the evidence and Stipulation on file herein, and the Court having examined the several names in the petition, and also the application of certain persons whose names appear upon same petition to have their names taken from the petition and the trial of cause being concluded, and the Court not being fully advised at this time, hereby continue the cause to Saturday 2 o'clock tomorrow May 9, 1908.
Date May 8, 1908.
B. Daly, Judge.
H. R. Heryford Com.

IN THE COUNTY COURT OF THE STATE OF OREGON
FOR THE COUNTY OF LAKE

In the matter of the petition of W. L. Powers, F. A. Watkins, et al. for an election to be had for the removal of the County Seat from Lakeview, Oregon, to Paisley, Oregon.)
ORDER OVERRULING DEMURRER TO THE JURISDICTION OF THE COURT.

This cause coming on to be heard upon the demurrer of V. L. Snelling and Harry Bailey, protestants to the jurisdiction of the court, and the court having duly considered the same, and being fully advised, and it being the judgment of the court that the subject of the proceedings are under the jurisdiction of the court, and that the petition should be considered, upon its merits, both upon the facts and the law;

It is, therefore, ordered, that the demurrer be, and the same is hereby, overruled.
The removal of a county-seat being a matter of local concern, boards of county commissioners or supervisors or county courts have jurisdiction to hear and determine applications for removal, upon presentation to them by petition in the proper manner. The decision of such tribunal as to the sufficiency of the petition is judicial, and is conclusive until set aside or reversed upon appeal, writ of error, certiorari, or other method provided for direct review, 11 Cyc. 37.

IN THE COUNTY COURT OF THE STATE OF OREGON,
FOR THE COUNTY OF LAKE

In the matter of the petition of W. L. Powers, F. A. Watkins et al. for an election to be had for the removal of the County Seat from Lakeview, Oregon, to Paisley, Oregon.)
ORDER OVERRULING DEMURRER TO THE SUFFICIENCY OF PETITION AND TO POINT OF ITS BEING FILED TOO LATE.

This proceeding coming on regularly, to be heard upon the protest and demurrer of V. L. Snelling and Harry Bailey, to the sufficiency of the petition and to the point of it being filed too late, and the court having heard the argument of counsel, W. A. Wilshire and W. Lair Thompson, appearing for the protestants, and F. J. Powell, appearing for petitioners, and the court having been fully advised, and desiring to determine the cause upon its merits:

While it is evident, under the law, that the time has expired in which legal notice of the proposed special election could be given, it is not the province of this court to summarily defeat the purpose of the petition by setting the same aside. It is, therefore, ordered, that the protest and demurrer be, and the same are overruled.

IN THE COUNTY COURT OF THE STATE OF OREGON,
FOR THE COUNTY OF LAKE

In the matter of the petition of W. L. Powers, F. A. Watkins, et al. for an election to be had for the removal of the County Seat from Lakeview, Oregon, to Paisley, Oregon.)

This matter coming on regularly to be heard and considered, upon the objections of T. J. Powell, attorney for petitioner, to the application of W. P. Vernon and J. W. Fine and others, requesting their names to be taken from the petition and not to be considered by the Court, and the court having carefully reviewed the authorities, it is clearly the design of the law to permit an elector, at any time prior to final action, to withdraw from the petition, and if he request his name to be stricken from the list, it is, in the light of the reason of the statutes and its import, the duty of the court to give the voter an opportunity to express his will at any stage of the investigation before it becomes final.

A signer of a petition for the removal of a county-seat may withdraw his name from the petition at any time before final action by the county board thereon:

Slingerland v. Norton, 59 Minn., 351.
State v. Polk County, 88 Wis., 355.
Loude v. Baron County, 80 Wis., 380,
all cited in 11 Cyc., 372.

Where a petition is presented to the board of county commissioners of a county for the removal and relocation of a county seat, the commissioners should strike the names of all persons therefrom who make application to have their names stricken off before final action is taken upon the petition. If this is not done, the signers of the petition who asked their names to be stricken off should not be counted by the board of commissioners in determining the number of petitioners for the removal and relocation of the county seat.

State v. Eggleston, 10 Pac. 3.

Finally impressed by this view of the law, the objection is overruled.

IN THE COUNTY COURT OF THE STATE OF OREGON,
FOR THE COUNTY OF LAKE

In the matter of the petition of W. L. Powers, F. A. Watkins, et al. for an election to be had for the removal of the County Seat from Lakeview, Oregon, to Paisley, Oregon.)
The court having overruled the demurrer and protest of V. L. Snelling and Harry Bailey interposed herein, the several objections and motions of T. J. Powell, attorney for petitioners, made to the consideration of same, are disposed of and rendered nugatory.

IN THE COUNTY COURT OF THE STATE OF OREGON,
FOR THE COUNTY OF LAKE

In the matter of the petition of W. L. Powers, F. A. Watkins, et al. for an election to be had for the removal of the County Seat from Lakeview, Oregon, to Paisley, Oregon.)

This matter having been duly tried and submitted upon the evidence taken and submitted on the 8th day of May, 1908, and the court having continued the cause to this time, and now being fully advised, after a thorough consideration thereof, upon such evidence adduced, finds that the petition for the removal of the County Seat of Lake County, State of Oregon, from the town of Lakeview, and the re-location thereof at Paisley, in said county, at the time the same was filed, contained five hundred and nine signatures of qualified electors and who were actual residents of said county three months immediately preceding the signing of same; and also the three following names each having a Red Ink line drawn across his name, J. W. Fine, D. Gregory, W. E. Scammon, which had been done prior to the time said petition was filed; that sixty-one of said electors, prior to the consideration of said petition, filed an application withdrawing their signatures therefrom and requesting that they and each of them be not considered as such petitioners for the removal of the County Seat; that from the evidence in the case it further appears to the satisfaction of the court that the whole number of votes cast at the annual election held in the county aforesaid on the first Monday in June, 1906, was seven hundred and sixty-one.

Now, therefore, considering the law and the premises, and in view of the insufficiency of the number of legal petitioners to authorize an election for the purpose of removing the county seat from its present site, and re-locating it at Paisley, in the County aforesaid, IT IS CONSIDERED, ORDERED AND ADJUDGED that the petition and the prayer therefor for such special election be, and the same is hereby, denied.

Done in open court this 9th day of May, 1908.
B. DALY, COUNTY JUDGE.
H. R. HERYFORD, COUNTY COMMISSIONER.

The ball game last Sunday between the High School and the Lakeview teams was one of the closest that has yet been played this season. The score tied in the sixth inning and remained so until the first half of the ninth when the Lakeview team scored one run. The High School then went to the bat and succeeded in scoring two runs, thus winning the game by a score of 6 to 7.

A fire occurred at Cedarville Monday night, which destroyed the Chas. Lamb hardware store, in which was located the telegraph office.

Wool In Cotton Sacks

The Merchants of Lakeview have received the following letter which relates to the shipping of wool. The letter is self explanatory and should serve to guide woolgrowers in packing their wool for shipment. The letter follows:

Likely, Cal., May 4th 1908.
To Lakeview Merc. Co.

Gentlemen:—The following is a copy of letter received by us recently, as to the shipment of wool, and as you good people are interested in that matter, we give you a copy of the same which is as follows:

"Reno Nev., April 25th 1908.
Alturas Forwarding Co.,
Likely, Cal.

Gentlemen:—Of course Likely is the principal shipping point on the line of our road for wool and these shipments are made through your company. It therefore devolves upon your Company not only to take measures to protect yourselves but also the N. C. O. Ry. The S. P. Co., will surely protect themselves at Reno by a close scrutiny and if there are rotten sacks as many have been in the past, they will surely say that such a sack is not fit for transportation and the result will be that the wool will be on our hands, and shippers will be on the rampage when they know it. Prevention is better than cure. So I will suggest that you state to the shippers in advance of shipments, that wool must be packed in SACKS that can stand transportation and handling at transfer; otherwise the S. P. Co., will refuse to receive the wool shipments.

It is not the correct thing to ship wool in second hand and rotten sacks and should appeal to shippers in that way alone.

Kindly give this your personal as well as your continual attention".
You will see from the above, that it will be to your advantage as well as ours, to have good sacks that we may not have to detain shipment for above reasons.

Yours very truly,
Alturas Forwarding Co.,
Per—C. A. Raker.

RAISE PRICE ON TIMBER

Sec. Garfield Will Act If Congress Does Not

If Congress at this session refuses to repeal the timber and stone act, Secretary Garfield will take matters into his own hands and put an end to the abuses that have been perpetrated under that law. Mr. Garfield is the first Secretary of the Interior to discover that the timber and stone act does not arbitrarily fix the price of timber land at \$2.50 per acre, but merely fixes that as the minimum price at which timber land shall be sold.

It is his contention that the Secretary of the Interior, under that law, has authority to demand a higher price where timber land is worth more, and he proposes, in the event that Congress does not act, hereafter to require timber entrymen to pay that appraised value for all lands taken under this law. Lands worth only \$2.50 will be sold at that figure, but lands worth \$10 to \$20 per acre will be sold at those figures, and lands of lesser value at corresponding prices.

There have been numerous conferences in the department about this proposed change, and it has been decided to take no action until after Congress adjourns, thus giving Congress an opportunity to act if it so desires.

Under the contemplated change it will be necessary to scale timber land as entered, to determine its value, but the increased cost of administration will be slight compared with the increased receipts from timber sales.—Oregonian.

GOOSE LAKE TO HAVE RAILROAD

Southern Pacific Co. Will Build Road at Once

THE GOOSE LAKE AND SOUTHERN

Incorporation Papers Filed In California With Capital Stock of Thirteen Million Dollars

A railroad company with \$13,000,000 capital has been incorporated to build a road from Lake County Oregon, to connect with the main line of the Southern Pacific at Anderson, a few miles south of Redding, California. It becomes apparent through this move that the Southern Pacific's plan is to draw Southern Oregon's traffic to San Francisco.

The incorporators of the new road are E. E. Calvin, general manager of the Southern Pacific's California lines; William Hood, chief engineer of Southern Pacific's system; W. F. Herrin, general attorney, and W. H. Scott.

The road will be known as the Goose Lake & Southern. Incorporation articles have been filed in the California counties through which the line will be built. From Anderson the line will run in a northeasterly direction and follow the Pitt river to the southern extremity of Goose Lake, thence proceeding along the east shore of Goose Lake to Lakeview, but with a strong probability that it will be built on northward to connect with the Oregon Eastern which is to be built by the Oregon Short Line from Vale to Natron.

The line from Goose Lake to Anderson California, will have a feeder 179 miles long, beginning at a point in Modoc county and extending through Lassen, Plumas and Tehama counties to Vina, a station between Red Bluff and Chico. It is said surveys and preliminary arrangements have been completed, and that construction work is expected to begin any day.

The result of this railroad in the movement of commerce of southern Oregon will be to place San Francisco on a strongly competitive basis for the trade of Lake, Harney and Klamath counties, and even as far north as Crook county should the surveyed line of the Oregon Eastern to Madras be built. The business of Lake and Harney counties would be especially accessible to San Francisco, for the Goose Lake Southern will have practically a water grade from Lakeview to Sacramento.

That the road will be built there is hardly room for doubt, as the incorporation provides a capitalization sufficient to construct and equip the entire 400 miles, and railroad companies do not file capitalization figures meaning nothing when they have to pay the fees that are exacted on capital stock. The line is believed to be the concluding move in a large game Mr. Harriman and associates are playing to keep the Gould lines out of southern Oregon and so retain the complete control of the immense territory that lies between the Columbia and Snake rivers on the north and the Southern Pacific and Union Pacific lines running from Salt Lake to San Francisco. The opening of the Oregon military road land grant, and its colonization by the Oregon Valley Land Company, is believed to have an important bearing on the proposed Goose Lake Southern. The grant has for years kept the southern Oregon country closed to settlement in the same manner that other large grants controlling every alternate section of land have clogged the progress of the country through which they run. The military road grant is 12 miles wide, and touches the northerly end of Goose Lake, includes the town of Lakeview, and embraces within its outward limits 600,000 acres of lands that are directly tributary to the proposed Goose Lake & Southern. So long as these lands were kept closed to settlers a railroad would have but a limited prospect for tonnage. Now that the grant is thrown open and is being sold in small tracts, the railroad will find in Lake and Harney counties an immense tonnage awaiting the operation of the line.—Portland, Oregon, Daily Journal May 6, 1908.