GOVERNMENT VICTORIOUS IN FAMOUS LAND GRANT SUIT

Judge Wolverton Decides Against Southern Pacific On All Points and the Squatters as Well

Portland Telegram, April 24: Federal District Judge Charles E. Wolverton decided this morning that the Southern Pacific and the Oregon & California railway companies must forfeit to the United States Government about 2,400,000 acres of land, which is valued at from $40,000,000 to $75,000,000.

After one of the most impressive legal combats ever waged in the history of America, the court rules that an empire in Oregon cannot be bottled by the railroad interests. Taking the plain words of the act of Congress granting the land for railroad construction aid, the court holds that Congress intended this land should be sold to bona fide settlers in tracts not greater than 160 acres to the individual, and at a price not exceeding $2.50 per acre. Every argument and contention made by the railroad company has been defeated in its fight with the government.

While deciding in favor of the Federal Government, Judge Wolverton decided against the several thousand intervenors in the case. He holds that they have acquired no right whatever by either settling on the land or tendering the maximum sum per claim specified by law. The effect of this portion of the decision is that the grant lands affected cannot be secured by any individual until the President or Congress again opens it to entry or sale. The 67 entrymen who had gone upon the land as settlers before the suits of the Government were commenced, also lose their claim, and are heldto have gained no advantage whatever by their period of settlement. Something more than 5000 intervenors have filed applications to get a portion of the land, but their supposed rights are brushed aside, leaving the entire tract open to disposition by Congress, as if it had never been offered to the railway interests as a grant.

Judge Wolverton's decision was on a demurrer to the bill of compaint of the Government, and on demurrers to the bills of the intervenors and cross-complainants. This decision cleary embraces about all the law points that can ever be raised this side of the Supreme Court. Yet the railway interests have a right to file an answer, and go to trial upon the facts, but the facts are admitted, and the law as handed down will control until affirmed or reversed by the United States Supreme Court. Attorney W. D. Fenton, chief of local counsel for the Southern Pacific, asked for ninety days in wnich to answer, which time was granted by Judge Wolverton.

The decision is for an absolute forfeiture of all title claimed by the railway interests. The 67 locators who were represented by Congressman A. W. Lafferty had urged specific performance, and their bill of complaint was to make the railway company carry out the terms of the act granting the land. The intervenors, numbering more than 6000, took the view that the grant was a trust and that tender of the maximum charge permitted by the law for the land made it compulsory upon the railway people to give deed to them. But the court rules neither of these contentions is sound and that the proper procedure is forfeiture, which means that the land would be absolutely retsored to the public domain, and that it could not be secured by private individuals until either the President or Congress again restores it to entry in such form as may be decided upon.

Mr. Townsend believes that the land will never be reopened for entry, except on act of Congress, which act, of course, would not be taken until after the Supreme Court affirms the decision of the lower court. While he recognizes that the President could restore the lands to entry, he does not think the chief executive will do so, but will put the whole matter of redisposition up to Congress.

If the theory of Mr. Townsend is correct, and it is accepted locally as the highest authority obtainable, there will be no rush for the rich holdings which the court this morning ordered should be restored to public domain.

In Mr. Townsend's summary of the land directly involved, he said that there was 21,000,000 acres of patented land, most of which was included in the East Side grant, and 293,000 or more acres of land to which the railway company had not yet asked patent, but which was claimed, making the total, claimed and yet unsold by the railway company approximately 2,400,000, acres.

Oregonian: Two-thirds of the 23,000,000 acres involved in the Government's suit to cancel patent are rocky and not fit for cultivation, and the other third is timber land, according to W. D. Fenton, counsel for the Southern Pacific company. Mr. Fenton said last night that about 100,000 persons from Maine to California claim they have a right to become actual settlers on this land, and to acquire title upon payment of $2.50 per acre.

"The idea is broadcast," he continued, "that the land is valublae for homes and that the railroad company is obstructing the development of the state. As a matter of fact the largest part of the land is not valuable for homes. Two-thirds of it could not be sold for $2.50 per acre, because there is nothing on it except rocks and chaparal.

"In Jackson county alone, of the 5000 acres probably a third is not fit for settlement.

"For the first thirty years after the land was granted to the rariload company it was offered to the public at less than $2.50 per acres. It could not be sold even at that low figure. Nobody wanted it. Those who did buy were timber speculators and they don't want anything except land which will run several million feet to the claim. All this talk about 'homes' and 'actual settlers' is the merest pretext. Two-thirds of the land could not be sold for $2.50 an acre to day. The rest of it is valuable for the timber.

The only question there is for adjudication is whether the amendment of Congress to the original land grant is a condition subsequent or a covenant. We have eliminated the so-called settlers, which removes a good deal of rubbish from the case.

"We have taken 90 days in which to file our answer to the Government's suit, but we have not yet decided whether to go to the United States Circuit Court of Appeals on the demurrer to the complaint or to answer. If we file an answer we will take testimony in the case before an examiner and the transcript will go to the higher court. We have no testimony which would change the opinion of Judge Wolverton. Of course we are disappointed because of the decision. But there are 12 men who are yet to pass upon the law question involved—the three Judges of the Apellate Court and the nine Justices of the Supreme Court.

Arthur I. Moulton, associated with A. W. Lafferty as counsel for the cross complainants, said last night: "We intend to keep our record clear in the case and to appeal it. We will delay our appeal, however, until the whole case goes to the higher court. We feel that the decision is really a victory for our side, for if the Government ever acquires legal title to the land again, the rights of actual settlers, we are sure, will be protected, if not by the court by Congress itself. The 65 actual settlers we represent ought not to be ousted, and we do not believe they will be. We do not represent any of those who have filed their intention to settle, but who have not done so. Our suit was on file before the Government brought its suit against the railroad company, and we feel that our action was one of the causes of the Government filing suit to cancel the patent of the railroad company for non-compliance with the provisions of the law granting the land."

His First Voyage.

The old sailor came along with a bucket of tar.

"What are you doing?" gasped the seasick passenger feebly.

"Pitching the deck, sor," responded the salt, with a deep sea salute.

"Pitching the deck? Great Scott! Isn't it pitching enough already?"—Chicago News.

A Serious Predicament.

"How can he afford to keep an automobile?"

"He can't, but he has to keep one to prevent people from finding out that he is too hard up to afford it."—Chicago Record-Herald.

Hugging a Delusion.

Willie—Father, what does hugging a delusion mean? Father—Well, my boy, young Mr. Strong is an instance. He thinks your sister Clara is only twenty-two!

'Tis far better to love and be poor than be rich with an empty heart.—Lewis Morris