

SETTLERS LOSE THE LAND

Supreme Court Passes Upon the Much Discussed Boyd County Cases.

STATE'S TITLE TO THE LANDS IS GOOD

Court Also Passes on Two Irrigation Cases and Asks for More Briefs in Bonacum-Murphy Case.

(From a Staff Correspondent.)

LINCOLN, Jan. 18.—(Special.)—By a decision of the supreme court the state of Nebraska is entitled to 2,200 acres of land in Boyd county, and the settlers thereon must be ejected. The principal contentions of former Land Commissioner Follmer regarding the rights of the state are upheld by the court. The settlers who claimed the right to hold the land obtained no satisfaction whatever. The act of the legislature, passed in 1861, to authorize the state land commissioner to deed the land in question to the government, so that it could be deeded to the claimants is declared void. Land Commissioner Follmer contended that the land belonged to the school fund of the state and the legislature had no power to dispose of it. The court sustained this contention.

The state had selected this land in lieu of other lands due from the government, and after the selection had been made and approved the claimants alleged that they had settled on the land before the state had possession under the United States homestead law. The state, through Land Commissioner Follmer, asserted that the claimants never had any right to settle upon the land, it being a portion of the Fort Randall military reservation. The state attempted to begin suits in various courts, and a disagreement between Attorney General Prout and Land Commissioner Follmer as to the best method of procedure, Attorney General Prout began an action in objection. Commissioner Follmer being prevented from appearing in the suit. The claimants filed an answer first of a general denial and second of fact touching the source of title and ownership of the state. A general denial was filed. Chief Justice Holcomb, who wrote the opinion of the court, says "the issues arising under the allegations of the answer and the denial are not of the nature of a claim and well defined as it seems to us they might be and such as would conduce to a more intelligent disposition of the controversy."

Settlers Still Have Hopes. Some attorneys believe that the records in this case are such that the Boyd county claimants have good hope of winning on appeal to the federal courts.

Chief Justice Holcomb's opinion, speaking of the act of congress granting to the state portions of the lands within the military reservation as school indemnity lands says: "The grant became absolute when the state became bound by the terms of the grant and its selection within the time limit of the lands granted for the purpose named as therein provided."

Of the rights of settlers the court says: "A person settling upon such land under such circumstances is technically a trespasser and cannot acquire valid preference right thereby, as against the state's right to select lands as indemnity school lands as in said act provided."

It is shown that the act of congress of 1861 recognized only the right of individual settler who was in actual occupation of a portion of a military reservation prior to January 1, 1861, in good faith for the purpose of securing a home. The act of 1862, which granted the right of homestead to lands within an abandoned military reservation in no way impairs the right of the state to select indemnity school lands. It is not competent for the legislature to provide for the disposition of school lands to which the state has acquired a right of absolute title otherwise than as authorized and directed by the constitution. The act of the legislature passed in 1861 for the relief of the parties therein named is in contravention of sections 1 and 8 of article xv of the constitution and is therefore void.

Holding on Irrigation. The supreme court established a precedent in irrigation law by holding that parties who, having appropriated waters for irrigation purposes pursuant to law and continue the use of water under such appropriation for more than seven years cannot be enjoined from the continued use of such right by a lower riparian owner whose mill privilege may be injured thereby. His remedy is an action for damages. This is the decision in the case of Joseph H. Cilne, appellant, against F. H. Rose and others, appellees. The case was appealed from Hitchcock county. The former judgment is vacated and the judgment of the district court is affirmed.

More Briefs in Bonacum Case. In the case of Bishop Bonacum against Father Murphy the parties to the suit are asked to file additional briefs. The litigation resulted from the expulsion of Father Murphy from his charge at Seward. The court wants additional information on the ownership of the property involved and the spiritual or ecclesiastical status of the defendant.

McCook Case Reversed. In the appeal of the McCook Irrigation and Water Power Company against Charles G. Crews the original judgment of the district court granting a perpetual injunction was affirmed. A controversy arose between the water company and the upper riparian owners, who wished to divert and use the waters of the river for their own use. The company sought to restrain the riparian owners by injunction and this the supreme court sustains. The company, declares the court, has a vested right in the water and the same being the legal right of the land owners further up the stream.

Pure Food Law Sustained. The supreme court has sustained the pure food law prohibiting the adulteration of milk. The conviction of William J. Lansing of Lincoln, accused of selling formaldehyded milk, is affirmed in an opinion filed in the morning. Adulteration of milk is held to be diluting it with any inferior or poisonous substance. In this case the formaldehyde was added as a preservative.

More Elevator Bills. Senator Brady, secretary of the Nebraska Farmers' Co-Operative, has introduced a bill into the legislature to compel railroads to build sidetracks for the use of the farmers' elevators. A similar bill was introduced by Mr. Brady two years ago, but it failed of passage.

An annual session of the association was held in the university chapel at 10 o'clock. Nearly a hundred representatives were present, the meeting being taken up mostly in a discussion of the needs of the association. Various speakers were heard, and there were numerous suggestions for the improvement of the same. Most of the speakers favored a closer organization between the various independent elevators.

There are at present about 127 independent or farmers' elevators in the state, and a large majority of these belong to the same general class. The morning session of the meeting was held at the university chapel at 10 o'clock. Nearly a hundred representatives were present, the meeting being taken up mostly in a discussion of the needs of the association. Various speakers were heard, and there were numerous suggestions for the improvement of the same. Most of the speakers favored a closer organization between the various independent elevators.

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COMPLAINTS ARE RENEWED

Willis Land Company Attacks Work of Board of Review.

INCREASE OF MILLIONS IN ASSESSMENT

Well Known Firms and Individuals Asked to Come Before Board of Equalization and Show Causes.

(From a Staff Correspondent.)

On receipt of the assessment on the Willis land complaints a subpoena was ordered issued for H. S. McDonald, who was chairman of the last board of review and in a position to tell pertinent facts developed before that body. On receipt of the owner, the board refused the assessment on the Karbach block at Fifteenth and Douglas streets from \$180,000 to \$120,000, leaving it the same as last year. C. S. Montgomery, on behalf of the Cathedral chapter of the Episcopal Diocese of Nebraska, asked that the residence near Twenty-fourth and Dodge streets, used as a residence by Bishop Williams, be exempted from taxation. The matter was referred to the legal department for a ruling today.

Councilman Hoy announced his intention of requiring all complaints to be sworn as required by the rules and the declaration seemed to meet with the approval of his colleagues. OUTPUT OF PACKING HOUSES Large Increase in Marketing of Hogs as Compared with Previous Week. CINCINNATI, Jan. 18.—(Special Telegram.)—Prices current today: The movement of hogs to market has been liberal the last week. The total western packing was 60,000 compared with 53,000 the preceding week and 610,000 last year. Since November 1 the total is 6,720,000, against 6,650,000 a year ago. Prominent places appear as follows:

Table showing hogs marketed in various cities: Chicago (1,800,000), Kansas City (750,000), Omaha (400,000), St. Joseph (450,000), Indianapolis (350,000), Cincinnati (320,000), Omaha (280,000), Cedar Rapids (150,000), Sioux City (180,000), St. Paul (250,000).

Attention, Musicians! You are hereby notified to meet at our headquarters, 188 Harney street, Friday, January 20, 1905, 1:30 p. m. sharp to attend the funeral of Bro. August Rohrs. Fraternally, J. L. THIELER, Secretary.

FORECAST OF THE WEATHER

Fair today and tomorrow in Nebraska, Iowa, Kansas and South Dakota. WASHINGTON, Jan. 18.—Forecast of the weather for Thursday and Friday: For Nebraska, Iowa, Kansas, South Dakota, Wyoming and Colorado—Fair Thursday and Friday. For Missouri—Fair in west, clearing in the east portion Thursday; Friday, fair.

Local Record.

OFFICE OF THE WEATHER BUREAU, OMAHA, Jan. 18.—Official record of temperature and precipitation compared with the corresponding day of the last three years: Maximum temperature... 32 34 30 41 Minimum temperature... 10 14 19 23 Mean temperature... 20 24 26 28 Precipitation... 0.00 0.00 0.00 0.00

Station and State temperature per cent. Rain-fall. Bismarck, clear... 30 28 26 40 Chicago, cloudy... 34 26 31 41 Davenport, raining... 24 28 31 41 Denver, cloudy... 36 34 41 40

Temperature at 7 p. m. Maximum temperature... 28 30 34 41 Minimum temperature... 10 14 19 23 Mean temperature... 20 24 26 28

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SAFETY COMPANY ATTACKS WORK OF BOARD OF REVIEW.

Willis Land Company Attacks Work of Board of Review.

INCREASE OF MILLIONS IN ASSESSMENT

Well Known Firms and Individuals Asked to Come Before Board of Equalization and Show Causes.

(From a Staff Correspondent.)

The promised demand of the Willis Land company for increases in the personal assessments of prominent citizens and mercantile corporations has been presented to the Board of Equalization in the shape of ten complaints calling for an aggregate addition of \$7,361,004 to the assessment rolls. In some cases, notably those of Count John A. Creighton, E. A. Cudahy and the M. E. Smith company millions are asked for, where the Board of Review made the assessments in the thousands. Each complaint is made by Attorneys E. D. Pratt and John P. Breen for the land company and requests that the person or firm mentioned be required to appear before the board and show causes why the assessments proposed should not be made; also that all books showing amounts of stock as per inventories, bills and accounts receivable and payable, amount of fire insurance carried on stock and fixtures and money, stocks, bonds, etc., on hand and in the banks be brought in.

All to Be Cited. Resolutions have been prepared citing the Carpenter Paper company, Orchard & Wilhelm, Herman Koutzke and Count Creighton to appear Thursday afternoon at 2 o'clock, and the others at 3 o'clock Friday morning in conformity with the complaints. These the board adopted Wednesday afternoon. These are the persons and firms complained of, together with the present and proposed personal assessments:

Table showing personal assessments: Present Assessment, Proposed Assessment. E. A. Cudahy... 200,000 1,300,000; M. E. Smith Co... 1,000,000 5,000,000; J. L. Brantley & Sons... 150,000 500,000; Hayden Bros... 250,000 750,000; Faxton & Gallagher... 250,000 750,000; Carpenter Paper Co... 100,000 500,000; John A. Creighton... 100,000 500,000; Orchard & Wilhelm... 100,000 500,000; Herman Koutzke... 100,000 500,000.

News of Nebraska. SILVER CREEK, Jan. 18.—A movement is on foot to establish a system of electric lights here, with fair prospects of success.

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KINKAID HELPS DAKOTANS

Explains Result of His Land Bill Applicable to Western Nebraska.

SHOULD WORK AS WELL IN OTHER STATES

Senator Gamble Asks Government to Pay Indians Old Claim for Rescuing a White Family.

(From a Staff Correspondent.)

WASHINGTON, Jan. 18.—(Special Telegram.)—Congressman Kinkaid appeared before the house committee on public lands today in behalf of Congressman Martin's bill extending the privileges of the Kinkaid act to the Sioux reservation in South Dakota. Mr. Kinkaid stated that the law, so far as it had progressed in Nebraska, which made it an eminently satisfactory that a good class of settlers was being added to the population of the state and that he believed it solved the great problem as to the use of the so-called waste land of the nation in the arid region. In the course of his talk he read a letter from James Whitcomb, registrar of the land office at Broken Bow. Mr. Whitcomb took occasion to deny the statement that stockmen had rushed in cowboys prior to the passage of the law in order that they might get the benefit of the additional entry with the increased amount. Mr. Whitcomb said that the law had no foundation whatever, so far as shown by the records of the Broken Bow office.

Judge Kinkaid stated that 11,000 acres it became a law; that old homesteaders were taking advantage of the act in order that they might get the benefit of the additional entry with the increased amount. Mr. Whitcomb said that the law had no foundation whatever, so far as shown by the records of the Broken Bow office.

Secretary Hitchcock has reported adversely on the Martin bill, but it is believed that in both committees of the senate and house there is enough votes to report the measure favorably. His passage is another question.

Kinkaid Files Brief. Judge Kinkaid submitted to the supreme court today the brief of the defendants in error in the case of George Whittaker and others against Thomas McBride and William H. Killgore, violating the right to claim lands in the Platte river in Buffalo county. The attorneys in the case, E. C. Catkins and H. M. Sinclair, not being members of the supreme court, they asked Judge Kinkaid to present the brief out of professional courtesy. Judge Hamner, attorney for the plaintiffs in error, wired the court he would not be able to be present and asked for three days more in which to file his brief, which was granted.

Reward for Indians. Senator Gamble introduced two amendments which he proposed to press for consideration when the Indian appropriation bill reaches the senate. It appears that quite a number of Sioux Indians in 1862, near the mouth of Grand river, in Dakota, accomplished the rescue of Mrs. Julia Wright, Mrs. Emma Deesley and six children, who were prisoners in the hands of the Lone Lodge of the Sioux. In making this rescue these Indians sacrificed many lives of ponies, and for their services Senator Gamble's amendment proposes to reward them to the extent of \$300 each.

Personal Paragraphs. Senator Millard and Miss Millard will return from Newberry in the morning. W. L. Turner, cashier of the State bank of New Hampton, Ia., messenger bearing the electoral vote of that state, pulled down \$287 today, enough to insure him a visit to his old home in