

IMPORTANT HOMESTEAD DECISION

Secretary Teller Decides a Case of Great Interest to the Northwest—A Railroad Company and a Settler Involved—Decision Against the Settler.

WASHINGTON, Special Telegram, Oct. 22.—The secretary of the interior to-day rendered a very important decision in the case of the Southern Minnesota Railway Extension company against Augustine Kaufman, on appeal by the company from a decision of the commissioner of the general land office. The case directly involved the title to the northwest quarter of Sec. 17, township 104, range 24, Worth county, Minn., but indirectly involved the title to a million acres or more in that State and many millions more elsewhere contained in various railroad land grants. The commissioner permitted Kaufman to make a homestead entry of his tract. The secretary reversed the commissioner's ruling. Every Minnesota railroad and other land grant railroad companies are interested in the result of the principles involved in the secretary's decision. The decision recites:

The land described is within the ten-mile or primary limit of the grant of July 4, 1866 (14 Stat. 47), making the grant of lands to the said State to aid in the construction of railroads therein. The grant was accepted by the State Feb. 25, 1867, at which time it became effective. May 24, 1864, J. A. Hovey made homestead entry 1776 of the tract in question which remained in act until May 27, 1872, when it was canceled. Kaufman settled upon the land in October, 1867, and since then has lived upon and cultivated the same. His improvement thereon are valued at \$700. In June, 1872, he applied to enter the land as a homestead and paid \$18 for fees and commissions. The local officers informed him that they would send him a receipt as soon as Hovey's entry was canceled. Some months after paying such fees, not receiving the receipt, he wrote to your office, and in reply was informed that the land had been awarded to the said company. On March 6, 1876, the tract was certified to the State of Minnesota for the benefit of the railroad above named. You hold that the certification was erroneous, because Hovey's entry exempted the land from the operation of the grant, and that, since the land must be conveyed by patent, it is still under the control of the land department, and direct that Kaufman be allowed to make complete final homestead proof. The case thus presents for my consideration

TWO IMPORTANT QUESTIONS: First—Was a patent necessary for the purpose of vesting title, or did the title, by virtue of the grant and the act of certification, pass to the State for the use of the said company?

Second—If the lands having been awarded to the company and certified to the State in 1876, should your office, when the facts disclosed by the record, now proceed to make another adjudication and disposition of the land?

The language of the grant before cited is that of a present grant: "That there be, and is hereby, granted to the State of Minnesota." The general rule undoubtedly is that title to the public lands of the United States shall pass by patent. Probably the most marked exception to this rule is that of a congressional grant in present. In Wilcox v. Jackson (13 Pet. 516) the court says: "We think it unnecessary to go into a detailed examination of the various acts of congress, for the purpose of showing what we consider to be true in regard to the public lands, but, with the exception of a few cases, nothing but a patent passes as a perfect and consummate title. One class of cases to be excepted is where an act of congress grants land, as is sometimes done in the words of the present grant." When the language imports a present grant it is well settled that the title passes by the act and attaches to the grant, and such title becomes complete and perfect when preconditions and conditions are given to the particular tract by selection or location of the land. Although the grant is a present one, it is undoubtedly competent for congress to put a limitation upon the title, and direct at what time and in what manner it should vest. It becomes necessary, therefore, to examine the acts relating to the grant in question, for the purpose of ascertaining whether there are any provisions relating to the operation of the words of present grant. Sec. 4 of the act of July 4, 1866, provides: "That the lands hereby granted shall be disposed of by the interior department for the purpose aforesaid, and in the manner following, to-wit: When the secretary of the said State shall certify to the secretary of the interior that any section of ten consecutive miles of said road is completed in a good, substantial and workable manner, a first-class railroad, then the secretary of the interior shall issue to the State patents for all the lands in the alternate sections or parts of sections designated by odd numbers, situated within twenty miles of the road so completed and lying terminus to the said completed section of ten miles, and not exceeding 100 sections for the benefit of the road having completed."

THE TEN CONSECUTIVE MILES. As aforesaid, when the completion of the said State shall certify that one other section of the ten consecutive miles shall have been completed as aforesaid. Then the secretary of the interior shall issue patents to the said State in like manner for a like number, and when certification of the completion of additional sections of ten consecutive miles of the said road are from time to time made as aforesaid, additional sections of lands shall be patented as aforesaid, until the said roads are completed, when the whole of the lands hereby granted shall be patented to the State for the uses aforesaid and none other; provided that if said roads are not completed within ten years from the acceptance of this grant the said lands hereby granted and not patented shall revert to the United States. I do not mean to be understood as expressing the opinion that the title would not in any instance pass by a congressional grant in present, although the act might provide for the issuing of patents. Such a provision, which would have the effect to place in the hands of the grantee evidence by patent of title, would not necessarily be inconsistent with the intention of congress to pass the title by the act itself. On the 13th day of July, 1866 congress passed a further "Act relating to lands granted to the State of Minnesota to aid in constructing railroad" (14 Stat. 47). Sec. 3 of that act provides: "That all lands heretofore granted to the Territory and State of Minnesota to aid in the construction of railroads shall be certified to the said State by the secretary of the interior, from time to time, whenever any of the said roads shall be completed, located, and shall be disposed of by the said State in the manner and upon the condition provided in the particular act granting the same as modified by the provisions of the act of July 4, 1866, and that so much of any act as conflicts with the provisions of the act is hereby repealed." This act contains no provisions relating to the issuing of patents for the lands granted, but provides that the secretary of the interior shall certify to the State the lands granted. The former act contains no provisions for certifying the lands to the State. When it is remembered that the certification of lands by the secretary of the interior to the State has long been recognized as a mode of conveyance, and that such certificates have been recorded and treated as sufficient conveyance and transfer of title, (a fact which was well known to congress), it can hardly be contended that it was the intention of the body to substitute that mode of transfer in place of conveyance by patent as provided in the act of July 4.

CERTIFYING AND PATENTING.

The secretary then dwells at considerable length upon the difference between certifying and patenting, and continues:

The act of Aug. 3, 1854 (10 Stat. 346, Sec. 2449, R. S.), provided "that in all cases where lands have been, or shall hereafter be, granted by any law of congress to any one of the States or Territories, and where the said law does not convey the fee simple title of such lands which have been, or may hereafter be, certified by the commissioner of the general land office under the seal of the said office, either as originals or copies of the originals, or records, shall be regarded as conveying the fee simple of all the lands embraced in such lists that are of the character contemplated by such act of congress and intended to be granted thereby. Such was the general law applicable to grants to States of the character of grants under consideration, when July 13, 1866, congress amended the act relating to lands granted to the State of Minnesota in the manner before stated, leaving out of the amendment the provision for patents and providing for only certifying the lands. When we apply to such amendment, as we must, the general law existing at the time applicable thereto, we find that such general law and the amendment are in complete harmony, and taken together they make the title complete by

the mode of certifying the lands. Upon the second proposition presented by this case I deem it only necessary to say that, it having been determined and adjudicated by the department as long ago as 1876 that the land in question passed to the State by virtue of the grant, and it having been so certified, the department cannot now proceed to make another adjudication and disposition of the land, even if the naked title did not pass by the act of certification. It is not claimed that there was any mistake or fraud in certifying the said land to the State. Such certification was in accordance with the decision and ruling then prevailing in your office and this department. Cases so adjudicated cannot be reopened and another disposition be made of the lands because a different rule may be found to prevail at a subsequent time. The lands having been certified to the State, such certification was evidence that the State was entitled to patents, if patents were necessary in order to convey the title. In such case it would clearly be the duty of this department to issue the patents, and when issued they would, by selection, take effect as of the date of certification and cut off all intervening claims. The right to a patent once vested is treated by the government, when dealing with the public lands, as equivalent to a patent issued. When, in fact, the patent does issue, it dates back to the inception of the right of the patentee, so far as it may be necessary to cut off intervening claimants. For the reasons stated, I reverse your decision permitting a homestead entry to be made for the land in question and if the entry has been made under your decision direct it to be canceled. Very Respectfully,
H. M. TELLER, Secretary.

Gov. Ordway has pardoned Durham, who was convicted in 1878 for the murder of Chris Hoffman in the Black Hills, and sentenced to twenty-one years' imprisonment. The conditions are that he shall leave the territory and not return.

Foster and Gerald counties, have been organized.

At an election at Lakota, the township of Kane voted bonds to the amount of \$2,500 for the erection of a school house in Lakota.

Ira C. Bellows, who went from Manhattan to New York to defend his name from charges of embezzlement, pleaded guilty and got \$2,500 bail.

Railroad building is to be pushed vigorously next year in Dakota, the Northwestern and the Milwaukee being disposed to trespass on each others territory.

A. K. Nesbitt, postmaster of Neche suddenly left town and went to Manitoba. It was believed that he was a defaulter, but his cash account proved, on investigation, to be correct.

Julia Oslund has begun suit against her cousin, John Osland of Bismarck, for \$8,000 damages for seduction and breach of promise.

In September 195,000 bushels of wheat were marketed at Tower City, and receipts in October have averaged 10,000 bushels a day.

Judge West, late of Yankton, will settle in Fargo as deputy collector of internal revenue.

The government wing of the penitentiary at Sioux Falls, which has stood in statu quo for a year, only the area walls being completed, is to be completed at once, all the contracts having been let, under orders from the secretary of the interior.

Mr. F. Lowth, late county superintendent of schools, died at his home in Sioux Falls, on the 13th inst. Mr. Lowth was senior member of the late firm of Lowth & How, Owatonna, Minn.

Joseph H. Kelly, the man who attempted to kill Mr. Oliver for taking possession of his claim, had a preliminary trial at Fargo, and was held to the district court, bail being fixed at \$3,000. Not being able to furnish the bail, he was committed to the Cass county jail to await the action of the grand jury.

Four carpenters employed by Peter Ourlin, at Spirit Lake farm, near Jamestown, were poisoned by eating canned corn beef.

A Letter from Explorer Stanley.

Explorer Stanley has written a letter dated at Stanley Pool, Congo river, July 24, to a friend in Boston in which he says that his sudden departure from Europe was caused by a sensational telegram printed in the English papers that one of the stations had been attacked and the chief of the expedition badly wounded. Upon his arrival he found that the chief (who was heartily disliked) had been shot in the arm, but no station had been attacked. It seems that the station was partly broken up by the personal ambition of the younger men of the party, each of whom desired to succeed the chief. Mr. Stanley thinks that the station can be supplied with native help. The number of steamers and boats has been increased, and, altogether, he considers everything most encouraging. At Leopoldville there are two missions, the Baptist and the Livingstone-Congo missions, with quite imposing buildings.

Mr. Stanley says: Since I arrived on the Congo last December I have been up as far as the equator and have established two more stations; and, besides discovering another lake, Mantumba, have explored, for a distance of 100 miles or thereabouts, the river known on my map as the Ikembu, but which is really the Malunda. It is not as large as I stated in my book, but it is a stream of the size of the Arkansas, and is deep, broad, and very navigable. The big streams which I expect must drain the largest part of the south Congo basin must be higher up. Having become better acquainted with the country, I am really struck with the dense population of the equatorial part of the basin, which, if it were uniform throughout which, if it were uniform throughout would give 49,000,000. The number of products and the character of the people are likewise remarkable. The gums, rubber, ivory, camphor, wood and a host of things, would repay transportation, even by the very expensive mode at present in use. The people are born traders, and are, for Africans, very enterprising and industrious.

Mr. Stanley tells of his mediation between the two tribes which were at war, and which, when peace was brought by his efforts, elected him "father and mother of their country," a distinction which he also received from an other tribe. Mr. Stanley says he is in the most robust health and in fact, is as strong as ever.

Truth is Mighty and Must Prevail

Is a good old maxim, but no more reliable than the oft repeated verdict of visitors that

COOPERSTOWN, DAKOTA,

is the Queen City of a magnificent county and the most beautifully located of the many new and prosperous places of North Dakota. It is the

Permanent County Seat of Griggs County,

and, though only a few months old, already has a representation in nearly every branch of business and each man enjoying a profitable trade. Plenty of room for more business houses, mechanics or professional men. Cooperstown is not only the

TERMINUS OF THE S. C. & T. M. R. R., but is also Headquarters thereof. In short, the place is, by virtue of its situation

The Central City of the Central County of North Dakota.

THE GEOGRAPHICAL CENTER! THE COMMERCIAL CENTER!
THE FINANCIAL CENTER! THE RAILROAD CENTER!

and the outfitting point of settlers for fifty miles to the North and West. The energetic spirit of Cooperstown's citizens, who in most cases have not yet reached the meridian of life, the singleness of purpose and unity of action in pushing her interests, have resulted in giving her an envious reputation for business thrift even this early in her history.

GRIGGS COUNTY

is the acknowledged Eden for settlers and home-seekers. Its soil is unsurpassed; its drainage the very best; its climate salubrious, and its railway advantages par-excellent. Public land in the county is becoming scarcer every day, yet there are still thousands of opportunities for the landless to get homes.

GREAT STRIDES

toward Metropolitan comforts have been made in Cooperstown and the wandering head of the weary traveler can here find rest and entertainment at an

BEAUTIFUL AND ELEGANTLY APPOINTED HOTEL,

erected at a cost of \$21,000. The man who becomes a citizen of Griggs county's thrifty capital can have, without price or waiting, the advantages of

GOOD SCHOOLS AND SPLENDID SOCIETY.

The rapidly growing embryonic city of Cooperstown is surrounded on all sides by the very richest lands in North Dakota. Cooperstown, situated as it is in the very heart of a new and fertile region, must boom to keep pace with the

UNPARALLELED RAPID DEVELOPMENT

of the surrounding country. When you stop and consider the facts you will realize the advantages this new town enjoys. It being the terminus of a railroad, the entire country makes it a

UNIVERSAL TRADING POINT,

a fact demonstrated by the merchants already established and enjoying big trades. Cooperstown is not an experiment but is built on the solid rock of commercial industry. Sound investments can be made in Cooperstown city property or Griggs county farm lands by applying to the

COOPER TOWNSITE CO., Cooperstown, D. T.,
Or J. M. BURRELL, Sanborn, D. T.
Plans Sent on Request. Uniform Prices to All.