

## THE LANDS DIVISION

## LAND ACQUISITION SECTION - Background of establishment of the Division and its Sections.

(Memorandum dictated by Judge D. D. Caldwell.)

In addition to the Departmental records indicating the assignment of duties, at intervals, of the Lands Division and the Public Lands Division (with the detailed assignment of duties to the Sections of the Lands Division) as set forth in Departmental Orders, Judge Caldwell furnished the following historical information as to the duties devolving upon the Department - which are now assigned to the Lands Division - in the earlier days of litigation affecting public and Indian Lands, including condemnation proceedings and examination and approval of titles.

## LAND LITIGATION IN THE WEST AND SOUTH.

In the West there were what may be termed two great divisions of land litigation: (1) That growing out of grants of land by the Government to subsidize the construction of the great transcontinental railroads; and (2) that growing out of the entries on the public lands; and (3) timber (and some coal) depredations on the public lands or the public domain. The litigation arising from entries on public lands through fraud or attempted fraud, in seeking title to public lands under the "Homestead Act", the "Timber and Stone Act", the Mineral Land laws, etc., and Trespass cases, were brought under "general land laws" - to recover the value of the timber, etc., unlawfully taken and to punish the trespasser. Later there developed the cattle industry, which involved the grazing of large herds of cattle on the public domain - on land open to settlement and subject to entry by private individuals. The cattlemen did not like to have their cattle stray off - so they began to fence the public lands, which was in violation of the law, which they sought to circumvent by fraudulent procedures. The

free passage of the homesteading pioneers across the public lands was, of course, interfered with, - to their great inconvenience. These pioneers demanded the right to remove these unlawful barriers, and not only to proceed across the enclosed lands but to file as homesteaders on any lands within the enclosure which had not been previously "homesteaded". Their efforts to carry out such plans were met with armed force by hirelings of the cattlemen. This situation evidently bothered the cattlemen, for they began and actually carried into effect the practice of inducing certain nomadic individuals, of no permanent address, for a small consideration, to file homestead entries on the lands the cattlemwn had fenced. At that time a homesteader was required to go upon and actually live upon and cultivate his entry for five years, whereupon he became entitled to a patent issued by the Government for the land so entered. Under the liberal laws of the time a "settler" was not required to go upon the lands selected by him immediately upon such selection and entry. He was given six months to actually move onto the land. Then, a further provision of the liberal law of the time permitted him, if he was financially able to do so, to "commute" his entry to cash; that is, to pay cash to the Government at a nominal rate per acre, - after 14 months residence on and cultivation of his entry, whereupon he became entitled to a patent, though he may have actually resided on the land for only eight months.

The cattlemen were willing - even anxious - to pay the expenses connected with the making of homestead entries by the wandering individuals whose aid they sought; also, such small expense as might be involved in the building on the purported homesteads of shacks which passed for dwellings - though uninhabitable

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the year round. They were even willing to pay the cash commutation cost of the land 14 months after the date of the entry;- so they had the "hobo" entrymen, at the time of their entries, but as of a date 14 months later, execute a conveyance of the land to the cattlemen, together with "proof" - fraudulent, of course, of compliance with the laws relating to residence on and cultivation of the land. The cattlemen knew, of course, the "entryman" had no intention of residing on the land or improving it. But by such means the cattlemen hoped to acquire title to the lands they had fenced - with such "color" of title as would discourage bona fide settlers from bothering them.

These "unlawful fence" cases gave the Government a great deal of trouble, the solution of which and the wiping out of the practices recited above constitute a story in themselves. It may be said, however, that the Department of Justice, with the aid of the U. S. Secret Service Operatives, finally succeeded in its efforts to enforce the law against unlawful barriers on the public domain.

The Congress, in 1855, enacted a law ( 23 Stat. 321) making it unlawful to construct enclosures on the public lands. The U. S. Attorneys were authorized by the said Statute, upon the filing of an affidavit by any citizen of the United States, giving a description of the land with reasonable certainty, and the person guilty of maintaining such enclosure, to institute civil proceedings in the U. S. District Court, in the name of the United States, and against the party or parties named in the affidavit describing such parties, to restrain the maintenance of such enclosures.- That was an unusual situation for this reason; While the United States Attorneys ordinarily could act upon their own initiative in bringing criminal proceedings,

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they were usually expected to institute civil proceedings only upon instructions from the Department - but this Act permitted them to file the action upon the filing of the affidavit by a citizen, as above stated.

THE MORE IMPORTANT LAND MATTERS IN THE SOUTH:

There was a great deal of "live oak" timber in the South, which was used and was necessary, in the construction and the repair of United States' Naval Vessels prior to the use of steel in building the vessels,- so the Government had a vital interest in preserving this valuable product of the South - which was the principal situs of live-oak growth. There are certain Sections of the Revised Statutes which relate particularly to the preservation of live-oak timber: Sec. 2458-9 R. S. provided for the selection and the reservation from other disposition of such land (that containing live-oak timber) - in order that live oak and red cedar timber might be available to the United States Navy. Sec. 2461 of the Revised Statutes provided penalties for the cutting and destruction of such timber on the public lands; Section 2460 of the Revised Statutes even provided that the land and naval forces of the United States might be used to protect this timber.

Another valuable asset on the public lands in the south was the rosin and turpentine found in the pines of that region. To go on the public lands and "box" the trees for turpentine was against the law. Turpentine and other products of the trees of the South were essential naval supplies for the United States; therefore, the United States had to proceed to protect the sources of such materials - and many suits were instituted for that purpose. (Note the Acts in connection with "Depredations on Timber Lands", 11 St. 408; April 30, 1790, and other statutes cited.)

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WHAT CONSTITUTED IN THE EARLY DAYS OF LAND LITIGATION  
THE GENERAL LITIGATION - (Involving Titles and  
other Lands Matters) now supervised by  
the Lands Division.

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The great bulk of the litigation in the earlier days of Lands litigation was in the great number of small cases - each one important but not individually involving a large amount nor of a nature unusual to the general run of the work of the Department. There were a large number of Timber Trespass Cases - and some Coal Trespass Cases. Everyone felt free to go on the Public Lands and cut timber - and they did so, - in effect stealing the public timber. We traced that timber in suits and sought to recover the measure of damages to which the Government was entitled - under such proof as we could make.

Another category of cases was where fraud was alleged in the procurement of the title to public lands - under entry in one form or another permitted by law. In such cases we filed Bills in Equity to cancel the patents that had been issued - At first these Bills in Equity were drafted in the Department, instead of leaving that duty to the United States District Attorneys - in order to secure a certain uniformity in the preparation thereof. The variety of the cases and the volume of the litigation involved is well treated in the Annual Report of the Attorney-General for 1910 - the first of such Reports submitted to the Congress after the establishment by him of the "Public Lands" Division - in 1909.

The assignments in previous years having enlarged the duties of the Public Lands Division, the functions of the Division were re-stated at length in 1933. Briefly, the reassignments of duties between 1910 and 1936 were as follows:

Indian matters were added in 1910, - By memoran-

dum to the Chief Clerk from Attorney-General Wickersham - January 14 - 1910. Matters pertaining to all acquisitions of land, including examinations of titles, were added by Attorney-General Daugherty in 1921 - (See Gen.Or. No. 1200 - July 20, 1921) Attorney-General Sargent transferred to the Admiralty Division all matters pertaining to the condemnation of lands and titles to lands - (See Order No. 1823, May 19, 1927) but in 1930 Attorney-General Mitchell provided for the restoration of these functions to the Lands Division. (See Order No. 2085, February 1, 1930). In 1933 Attorney-General Cummings re-stated at length the functions of the Division. (See Order No. 2507, Dec. 30, 1933) and in 1936 he added re-settlement and Housing Matters. (Supp. Order No. 2507 - January 20, 1936.)

In view of the depressed financial condition of the Country, Congress enacted legislation authorizing the purchase of farm lands, to be divided into small farm units and to be transferred to dispossessed tenants and others who might qualify to purchase these self-sustaining units. (Nat. Industrial Relief Act - 1933 - 48 Stat. 200)(See also the Emergency Relief Appropriation Act of 1935; 49 Stat. 115; and the same Act for 1936 - 59 Stat. 1608.)

Increase of duties of the Lands Division and Increase in Personnel.

In 1933 the Personnel of the Lands Division (then designated Public Lands Division) included 57 persons; whereas by reason of the above mentioned duties and increased work, the personnel of the Lands Division, in 1937, included 450 employees. The increase in the volume of work resulting from the new land policy approved by Congress increased the mail received by the Division to a total eight times as great as the mail received in 1933. (Note Annual Report, Asst. Atty. Genl. McFarland 1937, p. 108; and the Annual Report of the Attorney General, 1937.)

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## Background Lands Division and Land Acquisition. - 3-

Judge David D. Caldwell, for more than 60 years with the Department as an attorney and for much of that time engaged on Lands' duties, gave the following interesting and informative statement - in addition to detailed data as to "Personnel assigned" and "Duties" - as a part of the historical background of the establishment of the Division - as the first of the major "Divisions" of the Department - and of its duties - including the examination of titles, the approval of titles, the conduct of condemnation proceedings in trial courts, etc.-

"The Lands Division of the Department of Justice is the first of the major Divisions of the Department created as such. It was created by Department Order No. 114, issued November 16, 1909, by Attorney-General Wickersham. He directed that it be known as the "Public Lands Division", and that it be in charge of Attorney Ernest Knaebel. There were assigned to this Division - "All suits and proceedings concerning the enforcement of the Public Land Laws, including suits or proceedings to set aside conveyances of allotted (Indian) lands". This Division is first mentioned in the Department Register for 1910, p. 13: "Public Lands Division, Ernest Knaebel, Attorney in Charge".

"By Departmental Order No. 122, issued December 14, 1909, Attorney-General Wickersham clarified the intent of Circular No. 114, by stating that the latter was intended to embrace in the litigation assigned thereby to the Public Lands Division \*\*\*\* All civil or criminal, or whether the land be opened to entry under the general land laws or reserved for public purposes, or lands devoted to the uses of tribal or individual Indians, including actions to recover rents and royalties." Excepted from assignment to the Public Lands Division were certain suits with which Assistant Attorney-General Russell was charged, which were then pending in Oklahoma and in which appeals had then recently been taken to the Circuit Court of Appeals; and certain other matters affecting Indians but not their lands."

Among the other matters assigned by this Order were \*\*\*\*\* "Actions arising out of land (Indians), including timber trespasses and water rights." \*\*\*\*\*

\*\*\*\*\* "It seems clear that the intent at that time was to bring together in the Public Lands Division all matters growing out of public and Indian lands."

"On May 9, 1911, Mr. Knaebel was appointed Assistant Attorney-General, and in that capacity continued as head of the Public Lands Division; and since that time the "Public Lands" Division (and its successor the Lands Division) has been headed by an Assistant Attorney-General."

"In 1920 the assignments to the Public Lands Division were increased by the addition of title examination work and land litigations and condemnations in the District of Columbia. (See Departmental Register for 1920), - but the Division continued