THE EVENING NEWS.

Wednesday, - - November 20, 1872.

Decision in the United States Land Office.

As the question whether land is mineral or agricultural is one of great importance and frequently arising, we give below the opinion of the Register and Receiver of the Sacramento Land Office in the contested case of Blakely, mineral applicant, vs. Johnson, agricultural claimant. The Register and Receiver, after reciting the record facts, proceed as follows:

The evidence shows that Johnson, the agricultural claimant, settled upon the land in contest in the year A. D. 1849, and has lived upon it and made it his home ever since—rearing upon it a family of children.

Blakely, the mineral claimant, and his grantors, went into possession of a small part of the disputed premises in September, 1867, under a contract with said Johnson, who was then in possession, by the terms of which the possession was to revert to Johnson after the expiration of four years and nine months from the 20th day of September, 1867.

Johnson has valuable improvements on the land, is a *bona fide* settler and has been since 1849, and filed on the land in time.

It is insisted by counsel for the mineral claimant that the only question to be decided in this proceeding is whether the land in contest should be treated as mineral or agricultural. We will therefore examine that question first.

The present case differs from most of the cases tried in this office which involves the character of the land. As a general rule in that class of cases, the land claimed to be agricultural is the common red land of the mountain slopes of the Sierra Nevadas. Such land is very valuable for the cultivation of the vine—a branch of agriculture yet in its infancy—and of fruits of almost every variety. With a little manuring, and such careful cultivation as lands in the Eastern States receive, it would successfully grow nearly all the grains and vegetables. It is generally believed by those best acquainted with the subject that in a few years the most thrifty farmers of the State will be found on this character of land. Still such land could not with propriety be called exceedingly rich and fertile. It could not be classed with the first quality of agricultural lands. The soil is light, and exhaustive crops would soon make manuring necessary.

It is in the kind of land above described that gold mines are generally found or claimed. It overlies gravel hills and ledges of quartz; and as the general estimate of its agricultural value has been very low, and as there is a good deal of such land, the fact that it contains gold mines which will pay ordinary days' wages by extensive working, has been deemed sufficient warrant for its destruction by mining processes. This rule of decision has perhaps been carried too far in view of a wise consideration of the future; but under the law and the decisions such land must be held mineral, when it can be mined with any profit whatever.

The land in contest in this case, however, differs very materially from the class of land described. That portion of it which is claimed to be mineral is rich bottom land, such as is seldom found in the Sierra Nevadas. It is natural meadow land, with a rich black soil several feet in depth. Such land is very valuable for agricultural purposes in that region of country—much more valuable than it would be where such land is common. It will grow in large quantities almost all kinds of agricultural products at a locality where such products command the highest price. Evidently, therefore, this land should not be considered more valuable for mineral than for agricultural purposes, unless it appears affirmatively that the washing away of such valuable soil by mining processes will pay a handsome profit. But upon a careful examination of the evidence we fail to see that the mining already done on this land has paid the expenses incurred in working it. The mineral claimant seems to have been sluicing off this rich soil with the vain hope of some time or other making it profitable. And yet he has worked out what is evidently the best part of the land for mining purposes. There is no probability that what remains will pay better than the part already worked. He has already sluiced off the centre or lowest part of this meadow where the richest deposit of gold would naturally be. More clear profit could have been made from the agricultural products of the land annually, if it had been carefully farmed, than the evidence shows to have been received from mining it. The use of it for agricultural purposes would have left the land in its original condition, a source of continuous profit in the future; all of it that has been mined is practically destroyed. A true statement of the question is this:

"If the land were owned in fee simple by a man of good judgment, well acquainted with both mining and farming, and knowing all about the premises that is shown by the evidence, would he preserve it for agriculture, or destroy it by mining?"

From a careful consideration of all the testimony (and we may add that the Register and Receiver have both seen the premises) we are of the opinion that the land in contest is agricultural in character, within the meaning of the law, and should be so treated.

This view of the case makes it unnecessary to pass upon other questions raised by counsel. It may be well enough, however, to add a word as to the construction of the latter clause of Section 12 of the act of July 9th, 1870, which provides that "nothing in this section contained shall defeat or impair any bona fide pre-emption or homestead claim upon agricultural lands or authorize the sale of the improvements of any bona fide settler to any purchaser." Under this provision, in our judgment, when a bona fide pre-emptor or homestead claimant has settled on land and made valuable improvements long prior to the location of a mining claim thereon, as in this present case, the owner of the mining claim, when he applies for a patent thereto, should be confined to that part of the land that is strictly mineral and held under local customs, and should not be allowed to purchase any of the land upon which the settler has valuable and permanent improvements.

Our conclusion is that the mineral claimant should not be allowed to purchase any of the land in contest.

T. B. McFARLAND, Register.
HART FELLOWS, Receiver.
—*Sacramento Union.*

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