PLAN AND PURPOSE OF THE NATIONAL FORESTS

(Continued From Page Nine.)

der the circumstances by a prudent man in the effort to make a home and farm for his own support. More than this cannot be required, less should not be accepted as a compliance with the law.

Rights under the desert land laws may be acquired by any citizen of the United States, twenty-one years of age, or any person of that age who has declared his intention of becoming a citizen of the United States, except that persons who have acquired title to or are claiming under any of the public land laws, except the mineral laws, through settlement or entry made since August 30, 1890, any other lands which with the lands last applied for would amount in the aggregate to more than 320 acres can not make a desert land entry. In defining what are desert lands which may be so acquired the interior department holds that "lands which produce native grasses sufficient in quantity, if unfed by grazing animals, to make an ordinary crop of hay in usual seasons, are not desert lands. Lands which will, without artificial irrigation, produce an agricultural crop of any kind in amount to make the cultivation reasonably remunerative are not desert. Land containing sufficient moisture to produce a natural growth of trees are not to be classed as desert lands." Rights under the desert land laws may be initiated by an entry on surveyed lands, or by going upon unsurveyed lands and reclaiming or commencing to reclaim the tract which it is intended to appropriate. In the latter case the entry may be made at any time within three months after the filing of the plat of survey in the local land office. But in order to preserve the right to make the entry, the work of reclamation must be continued up to the filing of the plat of survey, unless the reclamation of the land is completed before that time, and in that event, the claimant must continue to cultivate and occupy the land until the survey is completed and the plat filed. The term entry as used in the desert land law has a technical meaning practically the same at that given above in connection with the homestead law; that is, the applicant must make a formal application, must furnish affidavits, and pay the price required by law, and when this is done and the land officials have issued their certificate showing the allowance of the entry—the entry is made.

Any person who has initiated a claim under the desert land laws in either of the ways above mentioned, is protected by the saving clause of the proclamation thereafter setting aside any national forest in which his claim may be included, and may proceed to perfect his claim regardless of the existence of the national forest so long as he complies with the law.

The requirements which the claimant must continue to comply with under the desert land law after the initiation of his right, consist of the expenditure of one dollar per acre each year for the first, second and third year after making entry, for the purpose of improving and reclaiming the land. In the third year there must be filed a map or plan showing the improvements made upon the land. The entryman is ordinarily allowed four years from the date of entry in which to complete the reclamation, but he is entitled to make final proof and receive patent sooner if he has before that time expended the sum of $3 per acre in improving and reclaiming the land, has reclaimed all the irrigable land embraced in his entry and has cultivated one-eighth of the entire area claimed. The three requisites last mentioned must be compdied with in all cases before patent can be secured. Persons entering lands under the desert land laws must pay the government 25 cents an acre, for each acre entered, at the time of making entry, and an additional $1 per acre at the time of making final proof.

Timber and Stone Laws.

Rights under the timber and stone laws may be acquired by, first, any person who is a citizen of the United States, or who has declared his intention to become such citizen, if he is not under 21 years of age, and has not already exhausted his right by reason of a former application for an entry of that kind; or has not already acquired title to or is not claiming under the homestead or desert land laws through settlement or entry made since August 30, 1890, any other lands which, with the lands he applies for would aggregate more than 320 acres; second, by an association of such persons or, third, by a corporation, each of whose stockholders is so qualified. The lands which may be acquired under these laws must be unreserved, unappropriated, non-mineral, surveyed, public lands within the public land states, which are chiefly valuable for the timber or stone thereon and unfit for cultivation at the date of sale. In defining what are lands chiefly valuable for timber and unfit for cultivation the supreme court of the United States holds that they are lands which are more valuable for timber than they are for cultivation in the condition in which they exist at the date of the application to purchase, and therefore include lands which could be made more valuable for agriculture by cutting and clearing them of timber. The relative value for timber or cultivation must be determined from conditions existing at the date of the application.

To initiate a right under the timber and stone law the claimant must first make a personal examination of the land desired for the purpose of enabling him to make a sworn statement that it is of the character which the laws allow him to enter; he must then make a formal application and file with his application the sworn statement besides making the payment required by law. When this has been done he has initiated a right which will be protected by the saving clause of any proclamation thereafter setting aside any national forest in which his claim may be included, and may proceed to perfect his claim regardless of the forest withdrawal, so long as he continued to comply with the law. In considering the things which the claimant must thereafter do before he can obtain patent, it is worth noticing that within the last six months the interior department has made a radical change in its procedure concerning timber and stone claims. The timber and stone act of June 3, 1878, simply provides that the lands may be sold "at the minimum price of two dollars and fifty cents per acre." Heretofore it was the practice of the interior department to charge only the minimum price for all entries made under the act, regardless of the amount of timber on the claim. Now in some parts of the United States the average stand is from three to four thousand feet, board measure, of merchantable timber per acre; in other parts the average stand is from twenty to thirty thousand feet per acre, so the man who bought timber and stone land which contained marketable timber worth from $80 to $120 per acre was charged the same price as the man who bought land containing timber worth from $12 to $16 per acre. This, and the manifest improvidence of disposing of those areas which contain timber of such great value for such a ridiculously small sum has led to the change in the procedure of the interior department above mentioned. Under the present practice no timber and stone land is sold for a less sum than $2.50 per acre since that is the minimum prescribed by law. But the statute prescribes no maximum, therefore the interior department has provided that each tract for which an application is made shall be appraised at its reasonable value, and shall be sold for such price only. This is strictly in pursuance of the law, and is equitable and just both to the government and the individual.

The foregoing are the most common and most important modes of obtaining public lands, although there are many other kinds of rights which may be acquired in public land, for instance, town sites, parks, cemeteries, rights of way for public highways, railroads, telegraph and telephone lines, canals, ditches, reservoirs, and various other purposes. But our time is too limited to consider each of these.

As I have said several times, when rights under any of the laws above mentioned are initiated upon public lands prior to the inclusion of such lands within a national forest they are thereafter protected, but this is only one side of the matter. The next question is, what rights may be acquired in or to national forest lands and how may such rights be initiated? This is a subject which has already been dealt with to a great extent by former speakers in this course and I shall only mention one or two points.

The most important is the principle that rights in or to national forest land can be acquired only under some general law which has been specifically extended to national forests, or under some law which is applicable only to national forests. It is under the former of these, that mining claims upon national forests may be acquired. The act of June 4, 1897, specifically provides that any mineral lands or resources within national forests shall be subject to location and entry under the existing mining laws of the United States. Section 2319 of the revised statutes of the United States provides:

"All valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citzens of the United States and those who have declared their intention to become such, under regulations prescribed by law, and according to the local customs or rules of miners in the several mining districts, so far as the same are applicable and not inconsistent with the laws of the United States."

You will observe among other things that according to this statute rights under the mining law may only be acquired by citizens of the United States, and those who have declared their intention to become such. That such rights must be acquired under regulations prescribed by law, and according to the local customs or rules of miners in the several mining districts so far as the same are applicable and not inconsistent with the laws of the United States. The result of this is that the mining laws of the various states, and the rules and regulations of the miners in the mining districts are incorporated into and made a part of the statute law of the United States. However, the part of the above quoted statute which I particularly desire to call to your attention is the statement that all valuable mineral deposits are opened to exploration and purchase, and the lands in which they are found to occupation and purchase. These words separate the mineral deposits from the lands which contain them, and authorize two distinct things, that is, a party may acquire both the land and the mineral contained therein, or he may acquire the mineral only, without the land. Under this statute there exists that very pecullar class of property known as a mining location. The right to a mining location is initiated by a location and a discovery. By location is meant the designation of the area which it is intended to claim. This must be marked, or described, and the description published or otherwise made public in accordance with the state laws, or the rules and regulations of the mining district, provided only that the federal statute requires that "the location must be distinctly marked on the ground so that its boundaries can be readily traced." By discovery, is meant the discovery of valuable deposits of mineral within the limits of the claim located. The supreme court of the United States said, "While the statute does not prescribe what is necessary to constitute a discovery under the mining law of the United States, it is essential that it give reasonable evidence of the fact either that there is a vein or lode carrying precious minerals, or if it be claimed as placer ground that it is valuable for such mining. There must have been such a discovery in order to sustain a location, as would justify a prudent person in the expenditure of money and labor." In this connection I may add that the courts hold that it is not sufficient that the claimant be willing to spend money and labor upon the location. There is a distinction between being willing, and being justified. A valid discovery is a discovery of mineral in such quantities that a prudent man would be justified in spending money and labor in developing the claim.

Necessary Work.

Having once made a valid location and discovery the claimant only needs to perform the required amount of development work each year to preserve his right. He may never apply for a patent for the land, yet his right to extract the mineral and develop his mine is practically indefeasible, and wil continue indefinitely. A mining location is in itself a property right, often, indeed, an extremely valuable one, although it is from its nature a peculiar kind of property. Being severable from the land, it may be taxed by the state; it may be sold, mortgaged or otherwise conveyed, and it has some but not all the attributes of real property, for instance, it will descend to the locator's heirs, but it is not subject to the dower rights of the locator's wife, nor is it necessary that a conveyance be in writing, even in those states which have re-enacted the fourth section of the statute of frauds. Should the locator desire to obtain a patent for the land included in his location he may do so at any time by having a survey made of the claim if it is not already located according to legal subdivisions and making a formal application for patent accompained by a plat of the survey. He must then publish a copy of such plat and notice of the application for patent, both upon the land claimed and in the United States land office for sixty days. At the expiration of this period, upon furnishing due proof of such publication, that he has made a valid location and discovery, and has expended $500 worth of labor or improvements upon the claim, he is entitled to a patent upon making a further payment of $5 per acre.

Other rights which may be acquired under general laws which have been specifically extended to national forests are rights of way for railroads, rights of way for irrigation projects, and rights of way for electrical power plants.

However most of the rights which may be acquired in national forests are provided for by statutes which are applicable to the national forests only. The act of June 4, 1897, provides:

"The secretary of agriculture may permit, under regulations to be prescribed by him, the use of timber and stone found upon such reservations, free of charge, by bona fide settlers, miners, residents and prospectors for minerals, for firewood, fencing, buildings, mining, prospecting and other domestic purposes, as may be needed by such persons for such purposes, such timber to be used within the state or territory, respectively, where such reservations may be located."

"The settlers residing within the exterior boundaries of such forest reservations or in the vicinity thereof may maintain schools and churches within such reservation, and for that purpose may occupy any part of the said forest reservation, not exceeding two acres for each school house and one acre for a church."

"All waters on such reservations may be used for domestic, mining, milling or irrigation purposes, under the laws of the state wherein such forest reservations are situated, or under the laws of the United states and the rules and regulations established hereunder."

Water Rights.

The act of February 1, 1905, provides for rights of way for dams, reservoirs, water plants, ditches, flumes, pipes, tunnels and canals for municipal, mining and milling purposes, and the act of June 11, 1906, provides for the acquisition of homesteads in national forests. There is another act relating to national forests, which is of sufficient importance to be mentioned here, although it does not, strictly speaking, fall within the classification laid down above. That is the act of May 23, 1908, which provides that hereafter twenty-five per cent of all money received from each national forest during any fiscal year, shall be paid at the end thereof to the state or territory in which said reserve is situated, to be expended for the benefit of the public schools and public roads of the county or counties in which the national forest is situated. Under this statute the state of Montana received the sum of $61,941.46 for the year ending June 30, 1908, and since the receipts from the national forests are on the increase, it will undoubtedly receive a much larger sum for the year ending June 30, 1909.

In addition to the statutes above mentioned the secretary of agriculture is authorized to make rules and regulations for the preservation of the forests, and to regulate their use and occupancy. All persons are by statute expressly prohibited from entering upon the national forests for any purpose unless they comply with such rules and regulations. The statutes upon this subject are as follows:

"The secretary of agriculture shall make provisions for the protection against destruction by fire and depredations upon the public forests and forest reservations which may have been set aside or which may be hereafter set aside under the said act of March third, eighteen hundred and ninety-one, and which may be continued; and he may make such rules and regulations and establish such service as will insure the objects of such reservations, namely to regulate their occupancy and use and to preserve the forests thereon from destruction."

"Nothing herein shall be construed as prohibiting the egress and ingress of actual settlers residing within the boundaries of such reservations, or from crossing the same to and from their property or homes; and such wagon roads and other improvements may be constructed thereon as may be necessary to reach their homes and to utilize their property under such rules and regulations as may be prescribed by the secretary of the interior. Nor shall anything herein prohibit any person from entering upon such forest reservations for all proper and lawful purposes, including that of prospecting, locating, and developing the mineral resources thereof; provided, that such persons comply with the rules and regulations covering such forest reservations."

The constitutionality of the first paragraph above quoted has been vigorously assailed on the ground that it was a delegation of legislative power. Unfortunately the decisions of the courts upon this point are not entirely harmonious. While a majority of the courts of first instance, and the only appellate court which has had the question before it, have held the statute constitutional and the regulations valid, a few courts of first instance have held otherwise. It is confidently asserted however, that the decisions last mentioned are fallacious. The fallacy lies in the fact that the courts limited their inquiry to the effect of the words "may make such rules and regulations and establish such service as will insure the objects of such reservations, namely, to regulate their occupancy and use and to preserve the forests thereon from destruction," without taking into consideration other portions of the act. Now it is an elementary rule of statutory construction that the entire act must be construed as a whole, and consequently the courts, in so limiting their inquiries arrived at an erroneous conclusion through failing to notice the provisions of the second paragraph above quoted, which have a material bearing upon the question. Every court which has decided adverse to the constitutionality of the statute, has admitted the proposition that if congress had provided that the occupation or use of a national forest by any person, without permission of the secretary should be a misdemeanor, the statute would be clearly valid and constitutional. Yet when the entire statute is considered it appears that this is exactly what congress has provided. The exact words—to repeat what has been said before are:

"Nor shall anything herein prohibit any person from entering upon such forest reservation for all proper and lawful purposes, including that of prospecting, locating and developing the mineral resources thereof; provided, that such persons comply with the rules and regulations covering such forest reservation."

Any construction of this statute which held that it did not prohibit every person from entering upon a national forest unless he complied with the rules and regulations would simply render the proviso of the act an absolute nullity, this is something that no court is at liberty to do.

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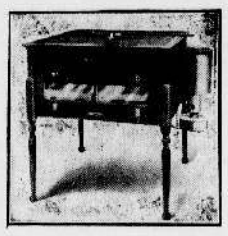

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