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PORTAGE LAKE CANAL

**DECISION BY SECRETARY SMITH
EXPECTED SOON.**

**ALLEGED FRAUDULENT ENTRIES
OF MINERAL LANDS.**

Several Land Commissioners Have Found That the Canal Improvements Were Inadequate and that Mineral and Other Lands Were Wrongfully Taken by the Company, and It Is Expected That These Findings Will Be Affirmed.

The Sentinel Bureau.
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There is an interesting history connected with the Portage Lake Canal land case, which was recently re-argued before Secretary Hoke Smith of the Interior department. There have been several investigations by committees of congress and some sharp reports by the commissioners of the General Land office touching the connection between the Canal company and a considerable body of the lands alleged to be forfeitable. The history of this grant of lands to the Canal company in the upper peninsula of Michigan dates back to 1865, and there have been many acts of congress affecting the grant and the question whether the same has been earned by the company. Suits have been instituted by Angus Smith and others for the purpose of testing the right of the Land company to the lands alleged to have been forfeited.

Back in 1865 congress granted 200,000 acres of land to the state of Michigan for the purpose of aiding in the construction of a ship canal to connect the waters of Lake Superior with the waters of Portage lake. This canal was to cut through Keweenaw peninsula by way of Houghton lake to a point near the waters of Lake Superior. It was required that the canal should be 100 feet in width and at least thirteen feet deep. Shortly after the first grant to the company congress increased the grant to 400,000 acres. Both of these grants specified that the lands to be selected by the company should be taken from the tracts subject to private entry, and that in no event should the company receive any lands "designated by the

United States as mineral" prior to the passage of the granting acts.

For the most part the contests before the Interior department have been instituted for the purpose of testing the right of the company, not only to the lands alleged to be forfeited as unearned, but also lands improperly taken as being among the lands described or designated by the United States as mineral.

Canal Work Delayed.

The construction of the canal has dragged through all these years and the company was repeatedly granted extensions of time in which to have the work completed. The canal and breakwater were twice reported upon by a committee of congress to be frauds upon the prescribed legislative requirements, and instead of being an aid were an actual menace to navigation. When completed several years ago the canal was found to be incapable of serving the purposes intended, as it was not navigable for vessels of the larger size, and the harbor was unsuited in certain kinds of weather for vessels of any description. The attention of congress was directed to the matter and investigations were instituted which developed the fact that not only was the canal a fraud upon the government, but in the selection of the lands granted, the company had secured nearly 300,000 acres which were expressly excluded from the grant by the terms of the original act, and that of this amount over 68,000 acres were mineral, and so designated upon the records of the government. The original investigation of this matter came up in connection with a bill then pending in congress to forfeit the old Ontonagon & Brule River railroad grant and to confine certain of the land selections and cash entries, previously made, within the limits of the railroad grant. A committee of congress reported that the canal company had not constructed a sufficient harbor or breakwater and that the canal itself had not been completed as prescribed in the original granting act. In a later report made about ten years ago a committee of congress declared that in their opinion the work of the Portage Lake Canal company was so defective as practically to be a fraud upon the intention of congress and that the company had failed, within the meaning of the act of congress, to construct a breakwater, harbor or ship canal of the specified dimensions.

With reference to the lands alleged to be illegally selected by the company, and over which the pending contests are being held, the committee stated that nearly 100,000 acres of lands selected were "not the nearest vacant lands to the canal," and that the object of this violation of the law was to exclude the poor lands lying near the canal, and to include the valuable copper lands instead. The committee also added that an additional 30,000 acres had been illegally selected within the railroad grant, and that under a proper construction

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of the acts of congress, nearly 280,000 acres had been illegally selected.

Lands Illegally Selected.

In 1866 the whole matter was again fully investigated by the General Land office with a view to the commencement, if possible, of legal proceedings on behalf of the United States to recover at least a portion of the lands of which the United States had been despoiled by the corporation. This investigation resulted in bringing to light another most important fact which had heretofore escaped the attention of congress in its investigations, that of the lands illegally selected under the act of 1865, 68,647.47 acres were "designated by the United States as mineral," and were for an additional reason especially excepted from the grant. These designations were shown by mineral leases made by the government, by the tract books of the local office, by the records of the mineral agent at Sault Ste. Marie, by the plat books of the General Land office, and finally by a public offering of the lands for sale as mineral in 1851. Finding all these particular designations of the lands as mineral, and for this reason title to these lands had illegally passed to the company, the then commissioner of the land office, William A. J. Sparks, concluded that as to these lands at least the right to recovery was clear, and reported the facts to the secretary of the interior. He recommended that suit be instituted to vacate the certificates which had been issued to the company.

In 1884 the matter was again investigated in the General Land office under the direction of the present commissioner, S. W. Lamoreux, who, after investigation, found the facts to be as stated nearly ten years before by his predecessor, and it was again reported to Secretary Smith, affirming the position of ex-Commissioner Sparks, and recommending that suit be brought to recover the lands. This report was dated March 9, 1894. During the summer of 1894 arguments upon the matter were heard in the Interior department before the assistant attorney-general and some of his assailants, Judge John F. Dillon of New York and Nathaniel Wilson appearing for the company, and James K. Reddington of Washington appearing against it. Last March the secretary inadvertently signed a decision prepared by his subordinates refusing to recommend the suit, which decision was, however, immediately withdrawn for further consideration, and a month ago the whole subject was again orally argued before the secretary in person, and his decision is expected within a short time. It is believed that he will recommend the suits in accordance with the recommendations of the commissioners. Even if it be true that the entire grant is beyond forfeiture for failure to build the canal, it is believed that the company should not be allowed to retain lands illegally selected, taken in violation of the act of congress if the United States has any remedy left, and the remedy remains until the statute of limitation becomes operative.

That the United States never received any proper equivalent for its lands is shown by the fact that after the congressional investigations, in order to make the canal available for ordinary navigation, the United States was obliged to purchase it from the company, equip it as a government canal and keep it in proper condition for use. This was provided for in the river and harbor bill of 1890, at a cost of \$150,000, and the canal and its appurtenances are now government property.

It is expected that Secretary Smith will give a decision on this important Upper Peninsula land case within a few weeks. Like most of the land cases growing out of grants to canal and railroad companies, this case is greatly involved by many acts of congress covering long periods of years and raising many intricate legal problems.

A. J. D.