

original
Doc. in safe

~~APPENDIX~~

The following is the proclamation dated December 20, 1843, and issued by John Ricord, as attorney for Rev. Alvin F. Waller, One of the originals of this document in the hand- and signed by Ricord, pasted on cloth, is in the possession of the Oregon Historical Society. This original is said to be one to have been posted at making public announcement of Waller's alleged rights to Dr. McLoughlin's land claim.

Ricord's Address = (not reproduced in Newman's Journal see CAC)

TO THE PEOPLE OF OREGON.

Fellow Citizens,

Having been Retained professionally to establish the Claim of Mr. Alvin F. Waller to the Tract of Land on the East Bank of the Wallamette River, sometimes called the Wallamette Falls Settlement and sometimes Oregon City, I consider it a duty to my Client and the public, to state briefly and concisely the several circumstances of his case, as they really exist, in order that his motives may not be impugned and his intentions misunderstood and misrepresented.

The public are already aware that my client commenced the Occupancy of his Farm, in the spring of A. D. 1840, when no one resided at the falls; and that, in the course of that Summer, he built his Home, moved his family into it, and cleared and fenced a good portion of the Land, from which, in the ensuing years A. D. 1841 & 1842 he raised successive crops of corn, Potatoes and other vegetables usually cultivated by Farmers. That he remained thus occupying undisturbed, until the month of December A. D. 1842, about two years and six months, when Doctor John McLoughlin caused his Farm to be surveyed, for the purpose of selling it in subdivisions to American Citizens. It has since been currently reported and quite generally believed, that my client had renounced his right in favor of Doctor McLoughlin. This I am authorized to contradict, having perused the letter written by Mr. Waller, which, not only contains no renunciation, but on the contrary, is replete with modest and firm assertions of his rights in the premises: offering at the same time to relinquish his claim, if the Doctor would comply with certain very reasonable and just conditions. Upon this offer, the parties had come to no final conclusion, until my arrival in the Colony, when Doctor McLoughlin attempted to employ me to establish his claim, disregarding the rights of all other persons-- which, I declined doing. Mr. Waller thereupon engaged me to submit the conditions a second time to the Doctor, for his acceptance or rejection; which I did in the following words:

"1st. That your preemptive line be so run as to exclude the Island upon which a private Company of Citizens have already erected a Grist Mill--conceding to them so much water as may be necessary for the use of said Mill."

"2d. That Mr. Waller be secured in the ultimate Title to the two city Lots now in his possession and other lots not exceeding in superficial area five Acres, to be chosen by him from among the unsold lots of your present Survey."

"3d. That the Rev. Mr. Lee on behalf of the Methodist Episcopal Mission, be in like manner secured in the lots claimed for the use of said Mission." They consist of Church and Parsonage lots and are well known to the public.

I received a letter from Dr. McLoughlin dated 10th Novr. 1843, in answer to mine, in which he declines complying with the above Conditions, and thus puts an end to the offer of my Client to relinquish his right of Preemption. Under these circumstances Mr. Waller has now applied to the Supreme Court of the United States, which, under the Constitution has original jurisdiction of "all cases in Law & Equity, arising under Treaties," to grant him a Commission for perpetuating the testimony of the facts in his case, de bene esse, in order that, whenever Congress shall hereafter see fit to prescribe by law the conditions and Considerations, he may be enabled to demand of the United States, a Patent; also praying the Court to grant him such other relief in the premises as may be consonant with Equity and good conscience.

The Legality of Mr. Waller's claim rests upon the following Grounds:-

1st. He was a citizen of the United States of full age and possessed of a family when he first came to reside on the premises. 2d. He built a House upon them and moved his family into it; thus becoming in Fact and in Law a Householder on the land. 3d. He cleared, fenced and cultivated a portion of it during two years and six months, before he was disturbed in his actual possession. And 4th. That he is not at this moment continuing the cultivation of his Farm, is not his fault since it was wrested from him.

The Illegality of Doctor McLoughlin's Claim rests upon the following Grounds:-

1st. He is a British Subject, owing allegiance to a Foreign Power, and has so continued to be ever since the Spring of A. D. 1840. For this reason alone he could not acquire preemption to lands in the United States.

2d. He is the Chief Officer of a Foreign Corporate Monopoly. For this reason alone he could not acquire preemption to lands in the United States.

3d. He does not now and never did reside on the land in question, but on the contrary, he resides and has always continued to reside on the North side of the Columbia River, the Section of country actually in dispute between the two Governments, about Twenty miles from the land claimed by Mr. Waller, and there he is obliged to remain, so long as he continues to be Chief Factor.

4th. He is not in fact the Claimant. The Hudson's Bay Company, a Foreign Corporation, is in fact the Claimant while Doctor McLoughlin only lends his name; well knowing, that a Corporation even though it be an American one, cannot acquire a preemption. This is evinced by the employment of men to be his Agents and to sell lots for him, who are at the same time partners in and receiving dividends and Salaries from the Company.

5th. The pretensions of Doctor McLoughlin arose, if at all, two years and six months after the actual Settlement of Mr. Waller; and therefore they are in direct violation of the Treaty of A. D. 1827: Converting the mutual and joint occupancy into an exclusive occupancy by British subjects.

6th. The Treaty of joint occupancy (1827) does not and was never intended on the part of the United States, to confer any rights of citizenship upon Foreigners. The Power to confer such rights is by the Constitution reserved to Congress. And the right to acquire title by preemption is peculiar to citizens.

These fellow citizens are the Facts and some of the Points of Law in my client's case.

Upon the same principle contended for by Dr. McLoughlin, any of you may incur the risk of being ousted from your Farms in this Colony, by the next rich foreigner who chooses to take a fancy so to do, unless in the first instance, you come unanimously forward and resist these usurpations. It is not my client's intention to wrong any who have purchased Lots of the Doctor, and to guard against the injury which might result to individuals in this respect, I have carefully drawn up the Form of a Bond for a Warrantee Deed, which, Mr. Waller is at all times ready, without any further consideration, to execute to any person who has, in good faith, bought of the Doctor, prior to the date of this notice, by being applied to at his residence. Mr. Waller does not require one cent of money to be paid to him as a Consideration for his Bonds---the trouble, expense and outlays they have already incurred, with the desire to save all such persons harmless from pecuniary loss, is a good and sufficient Consideration in Law to bind him in the proposed penalty of One Thousand dollars. See Comyns. Digest, Assumpsit B.

I am of opinion that Mr. Waller has rights in the premises, which neither Doctor McLoughlin nor even Congress by any retrospective legislation can take away from him;--and therefore fellow citizens, in sincere friendship, I would counsel you to loose no time in applying to him for your new Bonds.

JOHN RICORD,
Counsellor in the Supreme Court of
the United States and Attorney for
Alvin F. Waller.

Dated 20th December, 1843.