

State Lands, Assignment of Contract to Purchase.

Patents should not issue for state lands to other than the contractor to purchase, except where a proper assignment is made and filed in the office of the county clerk where the land is situated, or in the office of the register of state lands.

Helena, Montana, February 7, 1910.

Hon. F. H. Ray,
Register,
Helena, Montana.

Dear Sir:—

I am in receipt of your letter of the 1st instant, submitting your file in the matter of certificate of purchase No. 885, together with a statement that you have a request from Mr. George F. Shelton, attorney for J. Q. Adams, to issue, under such certificate, two patents, each for an undivided one-half interest to the land described in certificate No. 885, and asking my opinion as to whether or not this request should be complied with, upon the payment of the balance due.

The file which you have submitted with your letter shows that the contract for the purchase of the land described in the certificate was made by the board of land commissioners with one M. Lane. It also shows that certain instrument, dated May 12, 1908, in the nature of an agreement was entered into by M. Lane, and his wife, with William L. Irvine and Margaret K. Irvine, his wife. The purport of the agreement is that the contract to purchase entered into by M. Lane with the state was for the benefit of said M. Lane and W. L. and Margaret Irvine, each to take an undivided one-half interest in the land.

This instrument was acknowledged August 14, 1908, and the certified copy shows that it was recorded in the office of the county clerk and recorder of Gallatin county on August 15, 1908, but the endorsements upon the instrument showing the date of filing are omitted from the certified copy. However, from the data at hand it appears that the instrument was recorded in Gallatin county not later than August 15, 1908.

It appears that after the execution of this instrument M. Lane was entitled to but an undivided one-half interest in the land, and that W. L. and Margaret Irvine were entitled to the other undivided one-half interest.

However, your file also shows what seems to be an original receipt, dated August 3, 1908, showing a payment of \$100.00 to M. Lane made by W. J. Walsh, and also a balance due of \$1,050.00 to be paid by said Walsh at the Commercial National Bank, of Bozeman, presumably on Lane's account. This receipt, on its face, purports to be for a part payment to Lane in consideration of his relinquishment of his contract purchase under certificate No. 885, and also all of his right, title and interest in the land under said contract.

You will notice that the date of the receipt is later than the date of the contract between Lane and his wife and W. L. Irvine and wife but prior to the date of the acknowledgment of the same; and, therefore,

necessarily prior to the recording thereof. However, as the agreement last above referred to was duly recorded, and the receipt referred to is not entitled to be recorded under the law, I think there is no doubt but that the agreement between Lane and wife and Irvine and wife is a good and valid assignment of an undivided one-half interest in the contract of purchase, No. 885.

Under date of December 29, 1908, William L. Irvine and Margaret K. Irvine executed an instrument, designating Roy S. Alley, as their attorney-in-fact, to dispose of their interest under the contract. Later said Alley, acting as attorney-in-fact for W. L. Irvine and wife, conveyed and assigned, on January 2, 1909, the interest theretofore held by Irvine and wife to one J. Q. Adams, of Miles City, for a stated consideration of \$4,000.00. It therefore appears that J. Q. Adams is entitled, upon payment of the balance due the state, to an undivided one-half interest in the land described in certificate of purchase No. 885.

As to whether W. J. Walsh or M. Lane is entitled to the other undivided one-half interest in the land described therein the file submitted with your letter is insufficient upon which to base an opinion. If Walsh completed the payment shown to be due by his receipt, dated August 3, 1908, he is entitled, as between him and Lane, to a conveyance of Lane's interest in the lands. As to whether or not this sale, as shown by the receipt, which amounts practically to an option, was ever consummated I am unable to say, and your records do not show, and until the fact with regard to this particular matter is made to appear, I advise you that a patent should not be issued to W. J. Walsh.

Correspondence with Walsh, or his attorney, would undoubtedly disclose the position taken by him, and might serve to clear up the situation so that you could, upon payment of the balance, issue patents in accordance with Mr. Shelton's request.

Very truly yours,

ALBERT J. GALEN,

Attorney General.