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Laws Pertaining to Oil
By Milton A. Allen

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LAWS PERTAINING TO OIL

BY MILTON A. ALLEN

This is the fourth bulletin of the following series:
(1) Oil and Its Geology.
(2) Prospecting for Oil.
(3) Drilling for Oil.
(4) Laws Pertaining to Oil.

It is not intended in this bulletin to give a complete and exhaustive study of the law relating to oil and gas land nor consider all the variations that may arise from time to time. The subject matter of this bulletin is quoted practically verbatim from U. S. G. S. Bulletin 623 by Max W. Ball.

THE PLACER LAW AND THE ACT OF FEBRUARY 11, 1897

THE ACT OF FEBRUARY 11, 1897

Petroleum deposits on the unwon withdrawn public domain are acquired under the placer law. The act of February 11, 1897 (29 Stat., 526), which ended all doubts upon this point, is as follows:

"An act to authorize the entry and patenting of lands containing petroleum and other mineral oils under the placer mining laws of the United States.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person authorized to enter lands under the mining laws of the United States may enter and obtain patent to lands containing petroleum or other mineral oils, and chiefly valuable therefor, under the provisions of the laws relating to placer claims: Provided, That lands containing such petroleum or other mineral oils which have heretofore been filed upon, claimed, or improved as mineral, but not yet patented, may be held and patented under the provisions of this act the same as if such filing, claim, or improvement were subsequent to the date of the passage hereof."

It is important to note that lands, to fall within the purview of
this act, must be *chiefly valuable* for petroleum or other mineral oils. In the mining laws as they apply to the great majority of mineral deposits it is not stated whether lands, in order to be considered mineral, must be more valuable for mineral development than for any other purpose, or whether the presence of mineral in paying quantities impresses a mineral character upon the land despite other and perhaps more valuable uses. But in the case of petroleum lands there is no doubt; to be subject to entry under the placer law oil lands must be chiefly valuable for their oil content.

**PROVISIONS OF THE REVISED STATUTES**

The sections of the Revised Statutes which directly provide for placer claims are the following:

Sec. 2329. Claims usually called “placers,” including all forms of deposit, excepting veins of quartz, or other rock in place, shall be subject to entry and patent, under like circumstances and conditions, and upon similar proceedings, as are provided for vein or lode claims; but where the lands have been previously surveyed by the United States, the entry in its exterior limits shall conform to the legal subdivisions of the public lands.

Sec. 2330. Legal subdivisions of forty acres may be subdivided into ten-acre tracts; and two or more persons, or associations of persons, having contiguous claims of any size, although such claims may be less than ten acres each, may make joint entry thereof; but no location of a placer claim, made after the ninth day of July, eighteen hundred and seventy, shall exceed one hundred and sixty acres for any one person or association of persons, which location shall conform to the United States surveys; and nothing in this section contained shall defeat or impair any bona fide preemption or homestead claim upon agricultural lands, or authorize the sale of the improvements of any bona fide settler to any purchaser.

Sec. 2331. Where placer claims are upon surveyed lands, and conform to legal subdivisions, no further survey or plat shall be required, and all placer-mining claims located after the tenth day of May, eighteen hundred and seventy-two, shall conform as near as practicable with the United States system of public-land surveys, and the rectangular subdivisions of such surveys, and no such location shall include more than twenty acres for each individual claimant; but where placer claims can not be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands; and where by the segregation of mineral lands in any legal subdivision a quantity of agricultural land less than forty acres remains, such fractional por-
tion of agricultural land may be entered by any party qualified by law for homestead or preemption purposes.

Sec. 2332. Where such person or association, they and their grantors, have held and worked their claims for a period equal to the time prescribed by the statute of limitations for mining claims of the State or Territory where the same may be situated, evidence of such possession and working of the claims for such period shall be sufficient to establish a right to a patent thereto under this chapter, in the absence of any adverse claim; but nothing in this chapter shall be deemed to impair any lien which may have attached in any way whatever to any mining claim or property thereto attached prior to the issuance of a patent.

Sec. 2333. Where the same person, association, or corporation is in possession of a placer claim, and also a vein or lode included within the boundaries thereof, application shall be made for a patent for the placer claim, with the statement that it includes such vein or lode, and in such case a patent shall issue for the placer claim, subject to the provisions of this chapter, including such vein or lode, upon the payment of five dollars per acre for such vein or lode claim and twenty-five feet of surface on each side thereof. The remainder of the placer claim or any placer claim not embracing any vein or lode claim shall be paid for at the rate of two dollars and fifty cents per acre, together with all costs of proceedings; and where a vein or lode, such as is described in section twenty-three hundred and twenty, is known to exist within the boundaries of a placer claim, an application for a patent for such placer claim which does not include an application for the vein or lode claim shall be construed as a conclusive declaration that the claimant of the placer claim has no right of possession of the vein or lode claim; but where the existence of a vein or lode in a placer claim is not known, a patent for the placer claim shall convey all valuable mineral and other deposits within the boundaries thereof.

It is obvious that to interpret these sections a knowledge of the lode law is necessary, and the pertinent sections of the Revised Statutes bearing upon lode claims, together with certain sections of general application, are here given:

Sec. 2318. In all cases lands valuable for minerals shall be reserved from sale, except as otherwise expressly directed by law.

Sec. 2319. 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 citizens 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.

Sec. 2320. Mining claims upon veins or lodes of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, heretofore located, shall be governed as to length along the vein or lode by the customs, regulations, and laws in force at the date of their location. A mining claim located after the tenth day of May, eighteen hundred and seventy-two, whether located by one or more persons, may equal, but shall not exceed, one thousand five hundred feet in length along the vein or lode; but no location of a mining claim shall be made until the discovery of the vein or lode within the limits of the claim located.

Sec. 2321. Proof of citizenship, under this chapter, may consist, in the case of an individual, of his own affidavit thereof; in the case of an association of persons unincorporated, of the affidavit of their authorized agent, made on his own knowledge or upon information and belief; and in the case of a corporation organized under the laws of the United States, or of any State or Territory thereof, by the filing of a certified copy of their charter or certificate of incorporation.

Sec. 2324. The miners of each mining district may make regulations not in conflict with the laws of the United States, or with the laws of the State of Territory in which the district is situated, governing the location, manner of recording, amount of work necessary to hold possession of a mining claim, subject to the following requirements: The location must be distinctly marked on the ground so that its boundaries can be readily traced. All records of mining claims hereafter made shall contain the name or names of the locators, the date of the location, and such a description of the claim or claims located by reference to some natural object or permanent monument as will identify the claim. On each claim located after the tenth day of May, eighteen hundred and seventy-two, and until a patent has been issued therefor, not less than one hundred dollars' worth of labor shall be performed or improvements made during each year. On all claims located prior to the tenth day of May, eighteen hundred and seventy-two, ten dollars' worth of labor shall be performed or improvements made by the tenth day of June, eighteen hundred and seventy-four, and each year thereafter, for each one hundred feet in
length along the vein until a patent has been issued therefor; but where such claims are held in common, such expenditure may be made upon any one claim; and upon a failure to comply with these conditions the claim or mine upon which such failure occurred shall be open to relocation in the same manner as if no location of the same had ever been made, provided that the original locators, their heirs, assigns, or legal representatives, have not resumed work upon the claim after failure and before such location. Upon the failure of any one of several co-owners to contribute his proportion of the expenditures required hereby, the co-owners who have performed the labor or made the improvements may, at the expiration of the year, give such delinquent co-owner personal notice in writing or notice by publication in the newspaper published nearest the claim for at least once a week for ninety days, and if at the expiration of ninety days after such notice in writing or by publication such delinquent should fail or refuse to contribute his proportion of the expenditure required by this section his interest in the claim shall become the property of his co-owners who have made the required expenditures.

Sec. 2325. A patent for any land claimed and located for valuable deposits may be obtained in the following manner: Any person, association, or corporation authorized to locate a claim under this chapter, having claimed and located a piece of land for such purposes, who has, or have, complied with the terms of this chapter, may file in the proper land office an application for a patent, under oath, showing such compliance, together with a plat and field notes of the claim or claims in common, made by or under the direction of the United States surveyor-general, showing accurately the boundaries of the claim or claims, which shall be distinctly marked by monuments on the ground, and shall post a copy of such plat, together with a notice of such application for a patent, in a conspicuous place on the land embraced in such plat previous to the filing of the application for a patent, and shall file an affidavit of at least two persons that such notice has been duly posted, and shall file a copy of the notice in such land office, and shall thereupon be entitled to a patent for the land, in the manner following: The register of the land office, upon the filing of such application, plat, field notes, notices, and affidavits, shall publish a notice that such application has been made, for the period of sixty days, in a newspaper to be by him designated as published nearest to such claim; and he shall also post such notice in his office for the same period. The claimant at the time of filing this application, or at any time thereafter, within the sixty days of publication,
shall file with the register a certificate of the United States surveyor-
genral that five hundred dollars' worth of labor has been expended or improvements made upon the claim by himself or grantors; that the plat is correct, with such further description by such reference to natural objects or permanent monuments as shall identify the claim, and furnish an accurate description to be incorporated in the patent. At the expiration of the sixty days of publication the claimant shall file his affidavit, showing that the plat and notice have been posted in a conspicuous place on the claim during such period of publication. If no adverse claim shall have been filed with the register and receiver of the proper land office at the expiration of the sixty days of publication, it shall be assumed that the applicant is entitled to a patent, upon the payment to the proper officer of five dollars per acre, and that no adverse claim exists; and thereafter no objection from third parties to the issuance of a patent shall be heard, except it be shown that the applicant has failed to comply with the terms of this chapter.

Sec. 2326. Where an adverse claim is filed during the period of publication, it shall be upon oath of the person or persons making the same, and shall show the nature, boundaries, and extent of such adverse claim, and all proceedings, except the publication of notice and making and filing of the affidavit thereof, shall be stayed until the controversy shall have been settled or decided by a court of competent jurisdiction, or the adverse claim waived. It shall be the duty of the adverse claimant, within thirty days after filing his claim, to commence proceedings in a court of competent jurisdiction, to determine the question of the right of possession, and prosecute the same with reasonable diligence to final judgment; and a failure so to do shall be a waiver of his adverse claim. After such judgment shall have been rendered, the party entitled to the possession of the claim, or any portion thereof, may, without giving further notice, file a certified copy of the judgment-roll with the register of the land office, together with the certificate of the surveyor-general that the requisite amount of labor has been expended or improvements made thereon, and the description required in other cases, and shall pay to the receiver five dollars per acre for his claim, together with the proper fees, whereupon the whole proceedings and the judgment-roll shall be certified by the register to the Commissioner of the General Land Office, and a patent shall issue thereon for the claim, or such portion thereof as the applicant shall appear, from the decision of the court, to rightly possess. If it appears from the decision of the court that several parties are entitled to separate and different portions of the
claim, each party may pay for his portion of the claim with the proper fees, and file the certificate and description by the surveyor-general, whereupon the register shall certify the proceedings and judgment-roll to the Commissioner of the General Land Office, as in the preceding case, and patents shall issue to the several parties according to their respective rights. Nothing herein contained shall be construed to prevent the alienation of a title conveyed by a patent for a mining claim to any person whatever.

Sec. 2327. The description of vein or lode claims upon surveyed lands shall designate the location of the claims with reference to the lines of the public survey, but need not conform therewith; but where patents have been or shall be issued for claims upon unsurveyed lands, the surveyors-general, in extending the public survey, shall adjust the same to the boundaries of said patented claims so as in no case to interfere with or change the true location of such claims as they are officially established upon the ground. Where patents have issued for mineral lands, those lands only shall be segregated and shall be deemed to be patented which are bounded by the lines actually marked, defined, and established upon the ground by the monuments of the official survey upon which the patent grant is based, and surveyors-general in executing subsequent patent surveys, whether upon surveyed or unsurveyed lands, shall be governed accordingly. The said monuments shall at all times constitute the highest authority as to what land is patented, and in case of any conflict between the said monuments of such patented claims and the description of said claims in the patents issued therefor the monuments on the ground shall govern, and erroneous and inconsistent descriptions or calls in the patent descriptions shall give way thereto.

Sec. 2334. The surveyor-general of the United States may appoint in each land district containing mineral lands as many competent surveyors as shall apply for appointment to survey mining claims. The expenses of the survey of vein or lode claims, and the survey and subdivision of placer claims into smaller quantities than one hundred and sixty acres, together with the cost of publication of notices, shall be paid by the applicants, and they shall be at liberty to obtain the same at the most reasonable rates, and they shall also be at liberty to employ any United States deputy surveyor to make the survey. The Commissioner of the General Land Office shall also have power to establish the maximum charges for surveys and publication of notices under this chapter; and, in case of excessive charges for publication,
he may designate any newspaper published in a land district where mines are situated for the publication of mining notices in such district, and fix the rates to be charged by such paper; and, to the end that the Commissioner may be fully informed on the subject, each applicant shall file with the register a sworn statement of all charges and fees paid by such applicant for publication and surveys, together with all fees and money paid to the register and the receiver of the land office, which statement shall be transmitted, with the other papers in the case, to the Commissioner of the General Land Office.

SEC. 2335. All affidavits required to be made under this chapter may be verified before any officer authorized to administer oaths within the land district where the claims may be situated, and all testimony and proofs may be taken before any such officer, and, when duly certified by the officer taking the same, shall have the same force and effect as if taken before the register and receiver of the land office. In cases of contest as to the mineral or agricultural character of land, the testimony and proofs may be taken as herein provided on personal notice of at least ten days to the opposing party; or if such party cannot be found, then by publication of at least once a week for thirty days in a newspaper, to be designated by the register of the land office published nearest to the location of such land; and the register shall require proof that such notice has been given.

* * * * *

SEC. 2346. No act passed at the first session of the Thirty-eighth Congress, granting lands to States or corporations to aid in the construction of roads or for other purposes, or to extend the time of grants made prior to the thirtieth day of January, eighteen hundred and sixty-five, shall be so construed as to embrace mineral lands, which in all cases are reserved exclusively to the United States, unless otherwise specially provided in the act or acts making the grant.

DISCOVERY

An analysis of the placer law shows its most important requirement to be this: A discovery of mineral must be made before exclusive right of possession and enjoyment attaches. Section 2329 of the Revised Statutes provides for entry and patent of placer claims "under like circumstances and conditions and upon similar proceedings" to those for lode claims. Section 2320 provides that "no location of a mining claim shall be made until the discovery of a vein or lode within the limits of the claim located."

From an examination of many test cases which have been held it appears that "No mere surface seepages" on the claim or on adjoin-
ing lands, nor outcrops of oil sands, even under favorable geologic conditions, nor producing wells on adjacent lands, nor gas flows too small to be of substantial value can be considered as constituting valid discovery. It is difficult to frame a definition which will cover all cases, and such a definition in advance of court or departmental interpretation should not be given much weight, but it is safe to say that a discovery, to validate an oil location under the placer law, should consist of oil or gas in sufficient quantity to justify a man of ordinary prudence in the expectation of developing such a paying supply as to make the land chiefly valuable therefor.

Not only is a discovery essential, but it must be made before application for patent. If it is made after the other acts of location have been performed the location will date from the time of discovery (Lindley on Mines, 3d ed., §335), but if it is made after application for patent the application is without legal foundation and can not be recognized as a basis for mineral entry or patent.

OTHER PREREQUISITES TO LOCATION AND PATENT
UNITED STATES, EXCLUSIVE OF ALASKA

Aside from the requirement that the locator shall be a citizen of the United States or have declared his intention to become such (R. S., 2319), the only essential to a valid location in addition to a discovery of mineral is, so far as the Federal mining law is concerned, that the claim be “distinctly marked on the ground so that its boundaries can be readily traced” (R. S., 2324). State laws and local regulations prescribe other requirements, such as posting a location notice on the claim and recording the location with a specified district or county officer. Once these requirements have been met, the locator has “the exclusive right of possession and enjoyment of all the surface included within the lines” of his claim (R. S. 2322). The claim may comprise 20 acres if located by an individual or, if made by an association, 20 acres for each member thereof (R. S. 2321), but in no case may it exceed 160 acres (R. S., 2320). There is no limit upon the number of claims which may be located by a single individual or association.

Having complied with all the requirements necessary to a valid location, and having thus become entitled to exclusive right of possession, the claimant, in order to continue the right, must expend not less than $100 worth of labor or improvements upon the claim during each year (R. S., 2324). Upon failure to perform the required assessment work, as this $100 worth of labor or improvements is called,
the right to exclusive possession is subject to forfeiture, and the claim becomes "open to relocation in the same manner as if no location * * * had ever been made" (R. S., 2324). The present law gives the claimant until the end of the calendar year succeeding his location in which to perform his first assessment work (21 Stat., 61), and thereafter the calendar year is the period for which such work is required.

It is important to note that assessment work gives "exclusive right of possession and enjoyment" only after discovery.

THE "FIVE CLAIMS ACT" OF FEBRUARY 12, 1903

An act known as the "five claims act," making certain provisions as to assessment work under the placer law, was approved February 12, 1903 (32 Stat., 825), and is as follows:

"An act defining what shall constitute and providing for assessments on oil mining claims.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That where oil lands are located under the provisions of title thirty-two, chapter six, Revised Statutes of the United States, as placer mining claims, the annual assessment labor upon such claims may be done upon any one of a group of claims lying contiguous and owned by the same person or corporation, not exceeding five claims in all: Provided, That said labor will tend to the development or to determine the oil-bearing character of such contiguous claims."

It must be remembered in reading this act that, as already pointed out, assessment work is involved only after discovery, so that prior to discovery this act has no application—there must be a discovery on each of the five claims.

THE "ASSIGNMENT ACT" OF MARCH 2, 1911

(36 Stat., 1015)

"An act to protect the locators in good faith of oil and gas lands who shall have effected an actual discovery of oil or gas on the public lands of the United States, or their successors in interest.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in no cases shall patent be denied to or for any lands heretofore located or claimed under the mining laws of the United States containing petroleum, mineral oil, or gas solely because of any transfer or assignment thereof or of any interest or interests therein by the original locator or locators, or any of them, to any qualified persons or person,
or corporation, prior to discovery of oil or gas therein, but if such claim is in all other respects valid and regular, patent therefor not exceeding one hundred and sixty acres in any one claim shall issue to the holder or holders thereof, as in other cases: Provided, however, that such lands were not at the time of inception of development on or under such claim withdrawn from mineral entry."

It is to be noted that this act provides for the issuance of patent only if the “claim is in all other respects valid and regular.” It does not validate claims made by “dummies” or otherwise in contravention of the spirit of the mining laws. The Government may inquire into the interest of each locator and where such interest is insufficient may refuse patent in the same manner as if the act had not been passed. It should be noted also that the act is exclusively retrospective and has no bearing on claims initiated after March 2, 1911.

The following is a list of the oil land withdrawals made by Congress for the State of Arizona:

**ARIZONA**

**GILA AND SALT RIVER MERIDIAN**

North and West

<table>
<thead>
<tr>
<th>Township</th>
<th>Range</th>
<th>Description</th>
<th>Date of Withdrawal</th>
<th>Date of Confirmation</th>
</tr>
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<tbody>
<tr>
<td>T. 40 N., R. 7 W.</td>
<td>Withdrawal</td>
<td>April 14, 1910</td>
<td>July 2, 1910</td>
<td></td>
</tr>
<tr>
<td>T. 41 N., R. 7 W.</td>
<td>Withdrawal</td>
<td>April 14, 1910</td>
<td>July 2, 1910</td>
<td></td>
</tr>
<tr>
<td>T. 40 N., R. 8 W.</td>
<td>Withdrawal</td>
<td>April 14, 1910</td>
<td>July 2, 1910</td>
<td></td>
</tr>
<tr>
<td>T. 41 N., R. 8 W.</td>
<td>Withdrawal</td>
<td>April 14, 1910</td>
<td>July 2, 1910</td>
<td></td>
</tr>
<tr>
<td>T. 40 N., R. 9 W.</td>
<td>Withdrawal</td>
<td>April 14, 1910</td>
<td>July 2, 1910</td>
<td></td>
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<tr>
<td>T. 41 N., R. 9 W.</td>
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<td>July 2, 1910</td>
<td></td>
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<tr>
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<tr>
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<tr>
<td>T. 41 N., R. 13 W.</td>
<td>Withdrawal</td>
<td>April 14, 1910</td>
<td>July 2, 1910</td>
<td></td>
</tr>
</tbody>
</table>
SALT LAKE MERIDIAN
South and West
(These townships seem to be nonexistent.)

T. 43 S., R. 10 W.: Withdrawal .................. April 14, 1910
                   Restoration ......................... April 30, 1910

T. 43 S., R. 11 W.: Withdrawal .................. April 14, 1910
                   Restoration ......................... April 30, 1910

T. 43 S., R. 12 W.: Withdrawal .................. April 14, 1910
                   Restoration ......................... April 30, 1910

T. 43 S., R. 13 W.: Withdrawal .................. April 14, 1910
                   Restoration ......................... April 30, 1910

T. 14 S., R. 14 W.: Withdrawal .................. April 14, 1910
                   Restoration ......................... April 30, 1910

T. 43 S., R. 15 W.: Withdrawal .................. April 14, 1910
                   Withdrawal confirmed .................. July 2, 1910

T. 43 S., R. 16 W.: Withdrawal .................. April 14, 1910
                   Withdrawal confirmed .................. July 2, 1910

Although gas has not been mentioned in the acts of Congress it is construed that gas is included where oil is mentioned, as instanced in several decisions that have been made by the courts.
STATEMENT OF THE OWNERSHIP, MANAGEMENT, CIRCULATION, ETC., REQUIRED BY THE ACT OF CONGRESS OF AUGUST 24, 1912,

Of University of Arizona Bulletin, Published Weekly, Sept. to May, at Tucson, Arizona, for April 1, 1918.

STATE OF ARIZONA,
COUNTY OF PIMA—ss.

Before me, a Notary Public in and for the State and County aforesaid, personally appeared Charles F. Willis, who, having been duly sworn according to law, deposes and says that he is the Director of the University of Arizona Bulletin and that the following is, to the best of his knowledge and belief, a true statement of the ownership, management (and if a daily paper, the circulation), etc., of the aforesaid publication for the date shown in the above caption, required by the Act of August 24, 1912, embodied in Section 433, Postal Laws and Regulations, printed on the reverse side of this form, to-wit:

1. That the names and addresses of the publisher, editor, managing editor, and business managers are:

Publisher—University of Arizona ............................................ Tucson, Arizona
Editor—Charles F. Willis ................................................... Tucson, Arizona
Managing Editor—None
Business Manager—None

2. That the owners are: (Give names and addresses of individual owners, or, if a corporation, give its name and the names and addresses of stockholders owning or holding 1 per cent or more of the total amount of stock.)

University of Arizona.

3. That the known bondholders, mortgagees, and other security holders owning or holding 1 per cent or more of the total amount of bonds, mortgages, or other securities are: (If there are none, so state.)

None.

4. That the two paragraphs next above, giving the names of the owners, stockholders, and security holders, if any, contain not only the list of stockholders and security holders, as they appear upon the books of the company but also, in cases where the stockholder or security holder appears upon the books of the company as trustee or in any other fiduciary relation, the name of the person or corporation for whom such trustee is acting, is given; and also that the said two paragraphs contain statements embracing affiant's full knowledge and belief as to the circumstances and conditions under which stockholders and security holders who do not appear upon the books of the company as trustees, hold stock and securities in a capacity other than that of a bona fide owner; and this affiant has no reason to believe that any other person, association, or corporation has any interest direct or indirect in the said stock, bonds, or other securities than as so stated by him.

5. That the average number of copies of each issue of this publication sold or distributed, through the mails or otherwise to paid subscribers during the six months preceding the date shown above is:—

CHARLES F. WILLIS.
Sworn to and subscribed before me this 15th day of March, 1918.

THOS. R. BLAIR.
(My commission expires 1-28-19.)