

Appendix C
Land Decisions Synopsis ¹²⁶
Land Decisions

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Land Decisions Cited

1 L.D., 66 Naturalization - Minor - Proof

In case a homestead party claims to have been naturalized by reason of the naturalization of his father, his (the son's) minority, he must show that he was dwelling within the United States at the date of the father's naturalization.

1 L.D., 382 Railroad Grant - Withdrawal - Pre-emption Claim

1 L.D., 446 Pre-Emption - Final Prof - Good Faith

If where a pre-emptor applies to make final proof under his notice, he is surprised by the introduction of adverse and unexpected evidence, he may defer his offer of proof until any date within the time prescribed by law.

The law recognize circumstances as well as time in the development of a pre-emptor's good faith after his first act of settlement before the date at which he is required to make the proof and payment.

1 L.D., 545 Acts of An Officer De Facto

Where the Register of a land office was suspended from office and the Commissioner directed Receiver to take charge of the office, and the Receiver kept the office open and performed the duties of Register pursuant to such order, and received and allowed an application for mineral patent, and made publication thereof, such acts were those of an officer De Facto, acting colore officii and valid as to the public and the third parties having interest therein.

2 L.D., 88 Approximating 160 Acres Excess

Where the excess above 160 acres is less that the deficiency would be should a sub-division be excluded from the entry, the excess may be included; but when the excess is greater, it is excluded

2 L.D., 122 Settlement-Improvements-Preference Right

"An adverse decision based on the standing of a party or interpleader in a previous contest should, as a rule, not affect a case based upon matters arising subsequently to such decisions. Rights since accrued should be adjudicated without reference to the prior decisions."

2 L.D. 288 Insufficient Notice - Requirement

"Owing to insufficient notice and absence of application to enter by contestant, the contest in this case is dismissed."

2 L.D., 293 Pre-Emptor - Attempted Contest- Preference Right

"Where a pre-emptor seeks to contest a timber culture entry, such attempted contest confers no preference right, and is no bar to a subsequent contest properly initiated by a homestead or timber culture applicant."

3 L.D., 371 Indian Occupants - Circular

To prevent defrauding Indian occupants of their homes and improvements.

3 L.D., 441 Private Entry - Land Reduced in Price

Review of 3 L.D., 129 "The Department having decided that the private entry was void, because when made the land had not been re-offered since its reduction in price, and hence no bar pre-emption filing, such decision is vacated and the question held for further consideration."

4 L.D., 297 Final Proof Proceedings - Attorneys

"Circular to Registers and Receivers authorized to take affidavits and proofs in public land cases."

Regarding cross examination of claimants and witnesses in final proof. Claimants and witnesses must be cross-examined in all cases of final proof."

4 L.D. 310 Second Filing and Entries

"The Department will not consider a petition for the restoration of the right to file for, or enter land, unless accompanied by application for some specific tract."

4 L.D., 403 Railroad Grant - Cross Examination

"Your attention is called to the Circular of 12/15/1885

(4 L.D., 297) regarding cross examination of claimants and witnesses in final proof. Claimants and witnesses must be cross-examined in all cases of final proof."

4 L.D., 403 Railroad Grant - Selection - Right of Entry

"Selections made while the land is sub judice ¹²⁷ are invalid. A rejected application to file a pre-emption declaratory statement, pending on appeal is no bar to the reception of a homestead entry."

4 L.D., 503 Fraudulent Contest - Relinquishment

"Where a pending contest is attacked, on the ground of fraud, by one who also makes due application to contest entry in question, notice will not issue on such application, but the case will be held for final disposition of the prior contest.

It is however held that a relinquishment, executed before the first contest, but filed after said application, may inure to the benefit of the second contestant in the event that the allegation of fraud is established.

5 L.D., 204 Notice of Hearing and Decisions

"In addition to the registered return of notice of hearings and decisions as provided in Circular of 10/15/1884 ... all notices required to be given by you of your decisions, or of decisions of this office, involving the right of appeal, or the exercise of other rights within certain time ... will hereafter, be served by you personally or by registered letter."

5 L.D., 205 Practice - Appeal

"Though the General Land Office may refuse to receive an appeal from its decision not filed in time, it has no authority to dismiss such appeal if it is received without objection.

There is no authority under first Section of Act of 4/21/1876, for the confirmation of an entry and issue of patent where title has already passed from the Government."

5 L.D., 220 Blank Forms for Final Proof

"Stipulation for use of new forms ... reject proof if not on new form ... with instructions on handling, distribution, proof.

5 L.D., 591 Timber Culture Contest - Pre-emption

"The term "Homestead Laws" in 3rd section of the Timber Culture Act is used in a generic sense and will embrace the pre-emption law.

The right of contest against a Timber Culture entry in default extends to an applicant for the land under the pre-emption law."

6 L.D., 246 Settlement Rights - Entry - Relinquishment

"On the relinquishment of an entry the right of a settler, then residing on the land, attaches eo instanti, ¹²⁸ and is superior to that of a homesteader who enters the land immediately after the relinquishment.

A relinquishment is ineffectual, so far as releasing the land is concerned, until filed and the purchaser of a relinquishment acquires no right thereby to the land. His right as a settler must date from the time when he made personal settlement."

6 L.D., 747 Pre-Emption - Alienation - Trade and Business

"An entry is invalid and must be cancelled where it appears that the pre-emptor, prior to final proof, had disposed of portions of the land entered, and agreed to convey the remainder on securing title thereto.

Land settled and occupied for the purpose of "trade and business" at the date of entry is not subject to right of pre-emption."

7 L.D., 254 Second Homestead Entry

"A petition to leave to make a second homestead entry will not be considered in the absence of a formal application for a specific tract of land."

8 L.D., 192 Practice - Appeal - Relinquishment - Residence

"Failure to file specifications of errors within required time will not defeat an appeal where such appeal was caused by the appellant's inability to secure a copy of the decision.

A motion to dismiss an appeal, filed by a former attorney, of the appellant, will not be considered where it is apparent that the said attorney, at the date of said motion, had ceased to represent the appellant.

In the absence of an intervening adverse claim, credit may be allowed a homesteader for residence on the land while covered by his previous timber culture entry."

8 L.D., 197 Practice - Notice - Continuance

"The transferee having actual notice of the contest proceedings and being represented therein, will not be heard to object that the heirs of the deceased entryman were not served with due notice of contest.

An application for continuance for purposes of procuring the deposition of witnesses who refuse to attend the trial, is made in time if presented on the day of the trial."

8 L.D., 452 Timber Culture Contest - Notice - Devisee

"In contesting the claim of a deceased entryman due diligence should be exercised to ascertain the names and last known addresses of the heirs or legal representatives of the decedent, and if ascertained, the notice should be to them by name, and served personally, if possible.

The sole devisee of a deceased entryman is entitled to notice of a contest against the deceased entryman"

8 L.D., 495 School Land

"A settlement upon a school section made prior to and existing at the date of survey, excepts the land covered thereby from the operation of the school grant, and the State is entitled to select other lands in lieu"

9 L.D., 40 Pre-emption Entry - Second Filing

"Settlement and filing confer an inchoate right in the land, which will be protected as against the claims of others; but until there has been full compliance with the law, payment of the purchase price, and receipt given by the proper officer, there is no vested right acquired under the pre-emption law.

The office of Declaratory Statement is to give notice that the settler intends to purchase the land described

The right to make a second filing will be recognized where through no fault or neglect of the pre-emptor, consummation of title was not practicable under the first."

9 L.D., 48 Mining Company - Proof of Incorporation

"Proof furnished ... under patented entry ... showing due compliance, ... may be accepted in proof of such filing"

9 L.D., 123 Rules to be Observed in Passing on Final Proofs

9 L.D., 193 Timber Culture Contest Act of 5/14/1880

"The application to enter, filed by a timber culture contestant, confers no right if it is abandoned prior to the termination of the contest.

A contestant secures no preference right under the Act of 5/14/1880, under the cancellation of the entry is caused by the contest.

9 L.D., 195 Soldier's Additional Homestead Act of 6/15/1880

9 L.D., 365 Local Officers - Vacancy in Office

"A vacancy in the office of either the Register, or the Receiver, disqualifies the remaining incumbent for the performance of the duties of his own office, during the period of such vacancy."

9 L.D., 401 Homestead Entry - Death of Entryman - Patent
Clara Huls Case

"Where the death of the homesteaders is disclosed by the record, patent should issue in the name of the heirs generally.

9 L.D., 429 Desert Land Entry - Repayment

"If at date of initial entry, land are properly held at double minimum, and so entered, but subsequently reduced by statute, repayment of the excess over twenty five cents (.25) can not be allowed but credit therefore may be given on completion of the entry."

12 L.D., 198 Practice - Failure to Comply With The Rules

"Where an excuse is offered for a failure to comply with the Rules of {Practice, a definite statement should be made of the facts relied upon, and such, and such statement supported by the affidavit of the party."

12 L.D., 297 Application to Enter - Vacancy, Register's Office

"An application to enter, filed during a vacancy in the Register's office, is in contemplation of law, submitted for official action when the vacancy in said office is filled.

An application to,enter, made in due compliance with exiting regulation, is not prejudiced by a subsequent change of regulation, made prior to action on said application, especially where applicant complies with the late construction of the law when notified thereof."

12 L.D., 556 Homestead Entry - Meandered Stream

"The fact that a stream has been meandered, will not operate to defeat an entry embracing lands on each side thereof, where it is satisfactorily shown by the records of survey that such stream does not fall within the class that should be meandered."

13 L.D., 49 Desert Land Entry - Death of an Entryman - Patent

"If the record discloses the death of a desert land entryman, patent should issue in the name of the heirs generally."

13 L.D., 131 Homestead Entry - Death of Entryman

"If a homesteader dies before final proof, and his widow also dies, not having made proof, the homestead right vest in the heirs of the original entryman, and not in the heirs of the widow."

13 L.D., 132 Speculative Contest - Preference Right

"No preference right is acquired through a speculative contest that can be asserted as against an intervening entry."

13 L.D., 142 Settlement Rights - Purchase of Improvements

"Settlement rights under the Public Land Laws can not be acquired by the purchase of the improvements and possessory rights of another. Such rights are only acquired through acts of settlement in person by the party seeking to secure the benefits thereof."

13 L.D., 502 Res Judicata - Application to Enter

"The doctrine of res judicata is not applicable where decision is rendered upon an incomplete record.

An application to enter land covered by an existing entry of another confers no right upon the applicant, and if rejected, and appeal taken from such action, it is not a pending application that will attach on the cancellation of the previous entry, as the appeal does not operate to save or create rights not secured by the application itself."

14 L.D., 133 Relinquishment - Vacancy in Local Office

Armstrong v. Miranda

"A relinquishment executed by the entryman while so intoxicated as to not comprehend the instrument character is ineffective.

A vacancy in the office of either the Register or the Receiver disqualifies the remaining incumbent for the performance of the duties of his own office, during the period of such vacancy.

A relinquishment sent to the local office of the Register, is not filed in contemplation of law, and if returned to the entryman before said vacancy is filed, no action can be subsequently taken thereon by the Register and Receiver."

14 L.D. 140 Repayment - Purchase after Cancellation

"A purchase of land at an Administrator's sales, subsequent to the cancellation of the entry acquires no right to a repayment of the purchase money paid by the original entryman."

14 L.D., 200 Pre-emption Entry - Payment - Receiver

"The failure of a Receiver to properly account for the purchase money can not defeat the right to a patent under the Pre-emption law, where final proof is submitted in full compliance with law, and full payment is made for the land."

14 L.D., 677 Desert Land Act - Resident Citizen

"The phrase resident citizen of the State or Territory in which land sought to be entered is located as used in the Desert Land Act, amended 3/3/1891, should be construed to embrace all persons living in such State or Territory and entitled to protection in the exercise of civil rights, without regard to their political rights, and must be read in connection with the provisions of sections 1 and 7 of said Act."

15 L.D., 114 Practice - Soldier's Additional Homestead

Section 7 Act of 3/3/1891

"An affidavit of contest may be based on the information and belief of the contestant.

The right to make a Soldier's Additional Homestead Entry is not assignable."

15 L.D., 345 Right-of Way - Reservoir - Act of 3/3/1891

"The Secretary of the Interior has no jurisdiction to act upon an application for right-of-way under sections 18 to 21, Act of 3/3/1891, unless it affirmatively appears that some portion of the Public Domain is affected thereby."

18 L.D., 23 Homestead Entry - Conflicting Settlement Rights

"When a homestead applicant alleges a prior settlement right as against an entry of record, a hearing should be ordered to determine the rights of the parties."

18 L.D., 214 Settlement Rights - Homestead - Unsurveyed Land

"The right of a homestead settler on unsurveyed land, if not asserted within the statutory period, is defeated by the intervention of an adverse claim.

A settler on unsurveyed land is charged with notice of the filing of the plat of survey, and the opening of the lands embraced therein to entry."

19 L.D., 392 Abandoned Military Reservation - Act of 8/23/1891

Sec. 2 "Settlement may be made on any of these reservations, whether surveyed or not, where the area exceed 5000 acres Surveyed lands and triplicate plat filed ... you will allow homestead entries to go on record

This Act grants a preference right of entry for a period of six months from it date to all bona fide settlers who are qualified to enter ... have made improvements and are now residing upon any agricultural lands in said reservation

19 L.D., 472 Certiorari - Appeal - Notice of Decision

"An application for certiorari will be granted where right of appeal is denied on the grounds that it was exercised out of time, and the record does not show that notice of the decision appealed from was served on the applicant."

20 L.D., 61 Desert Land Entry - Expenditure - Map

John W. Bill - "The cost of fencing may be properly shown as an expenditure authorized under Sec. 5 of the Desert Land Act of 3/3/1891.

The failure of a desert entryman to file a map showing the plan of contemplated irrigation, as required by Sec. 4 may be cured, in the absence of any adverse claim, by subsequent compliance with law, and furnishing a map on final proof showing the character and extent of the improvement"

Sec. 5 provides for the expenditure of not less that \$1.00 per acre each year on the land, until he shall have expended \$3.00 per acre in water rights, in permanent improvements, in ditches etc"

20 L.D., 154 Right-of-Way Act of 3/3/1891

Restricts the purpose for which the right-of-way therein granted may be used to that of irrigation; and maps of location will not be approved where it appears that the right-of-way is desired for any other purpose than irrigation."

20 L.D., 389 Application to Enter - Appeal from Rejection

"An application to enter land covered by the existing entry of another conferees no right upon the applicant; but an application to enter, improperly rejected at the time, protects the rights of the applicant against the claims of others, if he appeals from such rejection."

20 L.D., 459 Railroad Lands - Forfeiture Act - Soldiers' "Declaratory Statement. " A n applicant for the preferred right of entry accorded bona fide settlers under Sec. 2 Act of 9/29/1890, who fail to appeal from the rejection of his application, loses thereby whatever rights he may have been entitled to under said Act; and it therefore follows that the heirs of such an applicant can have no right in the premises based on the settlement of the deceased applicant."

20 L.D., 569 Abandoned Military Reservation Act of 2/15/1895

"Amends Act of 8/23/1894. Sec. 2 provides preference right of entry to actual settlers by the terms of Act of 8/23/1894, shall take effect and continue for six months from date of passage of Act of 2/15/1895."

21 L.D. 7 Homestead Entry - Meandered Stream

"The fact that a stream has been meandered will not operate to defeat an entry embracing lands on both sides thereof, where it is satisfactorily shown by the records of survey that such stream does not fall within the class that should be meandered.

That the general average of said river at a right angle with the course of the stream is found to be only about 1.30 chains (84 feet) less than one half of the distance prescribed by the present rules and regulations for meandered rivers."

21 L.D., 122 Practice - Appeal - Interlocutory Order - Certiorari. "An order of the local official directing a rehearing in a case on which final action has not been taken by said office, is interlocutory, in character, and an appeal therefrom will not lie to the Commissioner; nor will an appeal be entertained from the Commissioner's decisions denying the right of appeal from the local office.

If an appeal is not wrongfully denied, certiorari will not be granted, unless the facts set out shows that the applicant is entitled to relief under the supervisory authority of the Secretary."

Certiorari - "A writ from a superior to an inferior court directing a certified record of its proceedings ... to be set up for review."

21 L.D., 138 Railroad Lands - Settlement Rights

"A claimant will not be heard to assert a settlement right where by his own laches he has allowed the rights of others to intervene, and by his own acts recognizes such intervening rights.

Purchasers under section 5, Act of 3/3/1887, are not required to establish and maintain residence on the land included in their purchase.

21 L.D., 203 Settlement Rights - Reservoir Withdrawal - Commutation. "Settlement claims valid but for the withdrawal authorized by the Arid Land Act of 1888, are protected by the amendatory Acts of 8/30/1890 and 3/3/1891 for the purpose of said withdrawal.

A homestead entry made after amendment of Sec. 2301 R.S., and commuted on less than 14 months residence on date of original entry, may be equitably confirmed, where the period of

residence, if computed from settlement is in substantial compliance with law, and since commutation the land has been sold to a purchaser in good faith."

21 L.D., 303 Confirmation Sec. 7 Act of 3/3/1891

"A mortgage covering a legal sub-division, with the exception of one acre thereof, is such an encumbrance of the entire sub-division as to bring hereof within the confirmatory provisions of Sec. 7 Act of 3/3/1891."

Meander - To survey roughly as a district, by noting the bearings, distance, etc. of prominent points with respect to the path followed. Funk & Wagnalls New Dictionary of the English Language, New York & London, 1928.

21 L.D., 367 Instruction Relative to Hearings Ordered Upon Special Agent's Reports. Hearings ordered upon an inquiry instituted by the Government into validity of alleged fraudulent or illegal entries.

21 L.D., 377 Correction of Final Certificate -

Patent Sec. 2448 R.S. "An error in a final certificate, as to the name of the entryman, may be corrected Nunc Pro Tunc. (Retroactive action).

Under the provisions of Sec. 2448 R.S. a patent may issue in the name of an entryman, though his death may be disclosed by the record. The doctrine announced in the case of Clara Huls 9 L.D., 401 modified.

23 L.D., 193 Private Land Claim - Homestead Entry. Confirmeres of Duran de Chavez Grant v. Saabedra. "By the terms of Sec. 14, Act of 3/3/1891, a claim of ownership, asserted under Mexican private land grant, cannot be considered as against a homestead entry on which final certificate has issued prior to the confirmation of said grant."

24 L.D., 159 Price of Land - Indemnity Limits - Repayment

"Lands falling within the indemnity limits of a railroad are not raised the double minimum price.

There is no statutory authority for the return of a double minimum excess in fees and commissions erroneously required on a homestead entry of lands in fact single minimum, where such money has been covered into the United States Treasury."

25 L.D., 82 Second Homestead Entry Act of 3/2/1889 Sec. 2

"Provides for the allowance of a second homestead entry, in any case in which the applicant, prior to the enactment of the statute, made entry under the Homestead Law but has not perfected title thereunder either before since that time."

26 L.D., 87 Abandoned Military Reservation - School Grant

27 L.D., 144 Abandoned Military Reservations - Preference Right of Entry - Diaz v. Glover
Preference right accorded actual settlers must be asserted within statutory period; and if settler's application is rejected on account of an adverse claim, he must appeal or institute contest against such claim within said period.

On the rejection of an application to enter for the reason that part of the land is covered by the prior entry of another, and failure of the applicant to appeal ... his subsequent contest against the prior entryman will not operate to reserve for his benefit the land not in conflict.

29 L.D., 141 Manner of Proceeding Upon Special Agent's Report

1. Fraudulent, illegal, or non-compliance with law, and facts are sufficient, if true, warrant cancellation of entry.
2. The notice must specifically define the charges.
3. Notice must be served personally, or by publication.
4. Application for hearing must be forwarded promptly.
5. Upon termination of hearing local officer will make their finding and recommendation notify the defendant, and upon the expiration of the time allowed for an appeal, transmit the record to this office.
6. Where claimant fails to apply for a hearing at the end of the expiration period, render their decision.
7. Notice of decision shall be given the entryman.
8. Hereafter, no entry, filing, location, or other public land claim will be cancelled upon allegations contained in a special agent's report, except upon proper evidence that the entryman had notice of the charges either by personal service, or publication.
9. Instructions of 11/4/1895 (21 L.D., 367), relative to hearings ordered will remain in force.
10. All notices to be served on entrymen or claimants ... must likewise be served on transferee or mortgagees, where such ... are of record as parties-in-interest in the local office or in the General Land Office.

29 L.D., 649 Accounts - Unearned Fees and Unofficial Moneys

Circular Receiver required to classify the several items for which he takes credit in the account, and to show the total amount in each class.

31 L.D., 441 Compactness of Desert Land Entry. Act of 3/3/1877 Sec. 1 "Provides that no person shall be permitted to enter more than one tract of land, and not to exceed 640 acres, which shall be in compact form"

32 L.D., 382 Land in Possession of Indian Occupants