

In the United States Land Office
Vancouver Washington Territory

In the matter of the contest
of the homestead entry No 6273

of
John Solotsi; an Indian.

Statement

This is a case brought by N Whealdon to contest the right of John Solotsi (an Indian) to his homestead entry No 6273, on the N.W. $\frac{1}{4}$, of the N.E. $\frac{1}{4}$, the S.E. $\frac{1}{4}$ of the N.E. $\frac{1}{4}$, the S.W. $\frac{1}{4}$ of the N.E. $\frac{1}{4}$ and S.E. $\frac{1}{4}$ of the N.W. $\frac{1}{4}$ of Section 24 in T. 2, N. R. 18 E. on the grounds that the claimant herein has abandoned the same.

Argument

In order that the contestant prevail in this proceeding the burthen of proof is upon him to prove every material fact necessary to constitute abandonment:

As we take it and understand the law to be, there must be some overt act, or some intention on the part of the one claiming land to abandon it; a mere technical showing will not be sufficient:

In order for the contestant to prevail in this case he must show overt ^{act or} acts on the part of the claimant, that will show an intent on his part to abandon this land.

The contestants herein contends that they have made out their case by showing that the claimant has not

not lived on this land, and they rely solely on that one point; Now while this is technically true, a review of the testimony will, (we claim and contend) show, that this Indian like most of his race, is an unlearned person and did not know just where the lines of this land were, and thought all the time that his home was on the land claimed, and knew no better until informed of the fact, that it was a few feet off of it. by Gen Gordon U.S. Special Indian Agt. about one month ago.

We think it is apparent and conclusive from the evidence herein, that this Indian claimant has for many years made this his home and has cultivated some of it for years, and also that he was at work upon another part of this land when he was when he was stopped by threats by the contestant Whealdon.

This Indian testifies that he was digging postholes for the purpose of building a fence on this land when he was stopped by Whealdon threatening him with the law. We contend that we have shown that this Indian has in good faith tried to comply with the requirements of the law in this matter, and that he has made improvements on this land that few white men would have done under the same circumstances, hindered and threatened by this contestant and O. D. Taylor for whom Whealdon works and who owns land nearly surrounding this disputed tract. — We think that it is apparent

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from the evidence herein that this Indian has been prevented in every way by these men from perfecting his title to this land. — They have not been satisfied with threatening him, but they have fenced up the most practicable route to and from this land, and we contend that they have violated the Decree of the Court in the Case of the U. States vs. Frank Taylor in fencing up this road: as we claim the evidence shows that it is the old trail known among the Indians as the Col-Wash trail.

The contestants pretend and claim that this is not the trail known the Col-Wash trail, but we think the evidence is conclusive that this is the trail. We only show this for the purpose of showing what means are employed by the contestants to dispossess this Indian that has been his home for the greater part of his life.

— Contestants admit that the claimant has some of this land enclosed and has farmed it for years. It will appear from evidence that the mother of this claimant is the owner of N. E $\frac{1}{4}$ of the N. E $\frac{1}{4}$ of section 24 in T. 2, N. R. 18 E and that this claimant has some of his mother's land enclosed with the same fence that he has some of his land enclosed with, and that he has farmed this field for years, that he owns his own team, waggon

plow and other farming impliments, and has been industrious, and has maintained himself and family, also his mother, who lived with him.

We think It will be apparent from the evidence that this land is a rough piece of land, very little of it ~~fit~~ suitable for farming.

~~~~~ This Indian has testified that he built this house of his, and has lived in it for more than ten years, and that he believed it was on his land, not knowing just where the lines were.

There is no difference between the parties, that this indian has cultivated and farmed that part of this disputed tract that is enclosed by this fence owned by him.

We claim that it makes no difference when these improvements were put there, so that the Claimant has added to and kept them in repair with intention of improving his land and otherwise complying with the law in the premises.

We think if there is any want of improvement on the part of this indian on this land, he has satisfactorily shown under what circumstances he has done what he has.

This contestant ~~and his men~~ and D. D. Taylor and his men under their direction have by their acts

prevented this indian from the free use and enjoyment of this land. It is admitted that this claimant

has now got a growing crop on this land.

We suppose the claimant Contestant will claim that it is by a mistake that this portion of this land is occupied and farmed by this claimant; but will he admit that it was by a mistake that his house was a few feet off of the land, Why not? it is a poor rule that will not work both ways.

This claimant has testified that he had no intention of abandoning this land but has tried to comply with all of the requirements of the Law to perfect his title to the same; and we submit, if it is right or just under the facts as they appear in this case and upon the showing made by the contestants, to dispossess this indian of his home?

We think the contestants has fall far short of proving abandonment on the part of this claimant; but on the contrary has by the evidence of his own witnesses shown that this indian is an exception to his race; that he has tried to comply with the Laws of the white man, that he is honest industrious and an upright man.

The indian first owned this land and their manner of using of it was altogether different from that of the white man, and it cannot be expected

of them to break loose entirely from the customs and ways that for generations has been so closely followed by them, and we think the General Government in its dealing with the Indians has recognized this fact and has made rules regarding this land in connection other lands, so that the rigid rule has been somewhat relaxed in their favor.

In support of this we call your attention to the order of the General Land office approved May 30<sup>th</sup> 1884 and afterwards Oct 27<sup>th</sup> 1887 reaffirmed by W. A. F. Sparks Commissioner.

In this you are instructed to pre-emptorily refuse all entries and filings attempted to be made by other than Indians occupants upon lands in the possession of Indians who have made improvements of any value whatever thereon.

We submit this order as a complete answer to the claim of the contestant, as he has attempted to prove it by his own evidence,

Then would not the allowance of this contest and an entry by Mr Whealdon of this land work a hardship upon this Indian, and in the language of Mr Sparks the Commissioner be an act of ~~inhumanity~~ inhumanity to defenceless people, and provocative of violence and disturbance?

We consider this is a case just in point.

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that this attempt on the part of Wheelon to make entry on this land in violation of this order, land on which the indian has had his home and improvements and where he has lived for years cultivating the soil and making this land his permanent home.

The contestants make no claim that this indian is nonreservation indian and had a right to homestead this land, but admit by this contest that he had the right, but claim that he has forfeited that right by abandoning the land; but even if that were ~~the~~ fact, we are unable to see how this contestant can be benefited by it or how he can maintain this contest in the face of the order of the General ~~Government~~ Land Office of date May 25, 1888, withdrawing as we understand all of the unoccupied lands in T. 2, N. R. 18 E, 14 E, and 15 E from public entry, or in other words, prohibiting the entry of any of these lands by white men until the question of these fisheries is settled. We have not seen this order, but have been informed that you are in possession of such order; then if this be true, even if this indian has abandoned this land it is not subject to entry by contestant, it being situated within the tract of land which an entry by white man is forbidden. If this contestant has no right to enter this land, we contend that he

has no right to maintain this contest and that the same should be dismissed.

We would in conclusion, call your attention to the plat of survey by Gen Gordon and his affidavit; by it, and the evidence in this case you will see that this indian has for the last ten years kept about three acres of this land constantly in cultivation and now has an orchard of fruit trees grown thereon, and has a good substantial fence around the same.

As another and stronger evidence of good faith in this indian, of his trying to comply with the white man's laws of which he had no knowledge, is the fact, that just as soon as he found out from Gen Gordon's survey, that he was not living on this land, he immediately moved his house thereon and is now living in said house.

The Contestant's witnesses, in their testimony admit that this indian has continued to live there and cultivate this land for the last ten years never quitting it except a short time in summer to fish and then only went to the Columbia river, about one mile distant.

Can a stronger case of intention to comply with the law be shown than in this case, we think not.

And more this indian has been fenced in all

around in every conceivable way by this man  
 Whealdon and O. D. Taylor for the evident purpose  
 of trying to annoy him and compell him to leave  
 and abandon it; and under similar circumstances  
 a great many white men would have thrown it  
 up.

Contestants whole case rests on the one  
 point, that this indian's house was a few feet  
 off of this land. We think it is too technical to  
 deprive this indian and his family of a home  
 all of which is respectfully submitted

W. L. Bradshaw

J. L. Storf

attorneys for John Soletsi

The above named Claimant

We further submit that this Indian has lived on this land for the  
 last ten years and ought to be allowed to make his final proof  
 and thus stop litigation and annoyance by designing white  
 men to deprive him of his old home.

W. L. Bradshaw

J. L. Storf

N. Whealdon  
vs  
John Selotii.  
Indian

Argument for defence  
by  
Braashad + story  
attys

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May 1889.