

## THE LEGAL SOONERS OF 1889 IN OKLAHOMA

By B. B. Chapman\*

## RULES FOR "HARRISON'S HOSS RACE"

The annual report of the General Land Office in 1889 stated that the opening of Oklahoma District was "the most important event for several years in the administration of the affairs" of the office. The district comprised nearly 3,000 square miles in present Oklahoma between Stillwater and Norman, including Oklahoma City and Guthrie. It was within the Creek and Seminole cessions of 1866. Prior to the opening of Oklahoma District the lands were available for almost unrestricted pasturage by ranchmen.<sup>1</sup>

Oklahoma District was bounded on the south by the South Canadian River, on the east by the Indian Meridian and the Pawnee Reservation, on the north by the Cherokee Outlet, and on the west by the Cimarron River and the 98th Meridian. Between 1871 and 1874 the lands were surveyed and subdivided into sections and quarter sections. In 1886-87 the Southern Kansas Railway Company and the Gulf, Colorado and Santa Fe Railway Company constructed a railroad from Kansas via Guthrie and Oklahoma Station to Texas.<sup>2</sup>

\* This article is a revision by Dr. H. B. Chapman, of his paper read at the meeting of the Southern Historical Association at Houston, Texas, Nov. 7-9, 1937. The study was made under the auspices of the Research Foundation of Oklahoma State University.—Ed.

<sup>1</sup> Asst. Com. William M. Stone to register and receiver, Guthrie land office, Jan. 13, 1891. NA, CLO, *Townsites*, vol. 5, p. 48; *S. Ex. Docs.*, 48 Cong., 2 sess., ii (2263), no. 59, p. 19.

Oklahoma District was also called the "Oklahoma lands," "Oklahoma Country," and in later years the "Unassigned Lands." Stone in 1890 said that Oklahoma District was "generally known as 'Oklahoma,' a name given to that section of the country by pioneers and others, and more particularly by certain people who have from time to time proposed to settle there before that country had been opened for settlement."

<sup>2</sup> Oklahoma Station became known as Oklahoma City, but at no certain time. In the Oklahoma Historical Society is vol. 1, no. 1, of the *Oklahoma City Times*, Dec. 29, 1888, "devoted to the settlement of Oklahoma." The paper was located at "Oklahoma City, I. T." (However, the mail cancellation out of this post office was simply "Oklahoma" from 1888 to 1924 when the name was given for the first time "Oklahoma City" in the Post Office Department.—Ed.)

The *Chicago Daily Tribune* on March 29, 1889, carried an artist's sketch of Oklahoma City. A picture giving a bird's-eye view of the "city" about 10 s. m. on April 22, 1889, is in *The Independent*, Vol. LVII, No. 2910 (Sept. 8, 1904), p. 551. There was a depot, freight house, section house, hotel, post office, and other buildings. See also E. H. Kelley, "When Oklahoma City was Serrmour and Verbeck," *The Chronicles of Oklahoma*, Vol. XXVII, No. 4 (Winter, 1949-50), pp. 347-353.



Above to left: John W. Noble,  
Secretary of the Interior, 1880.

(Photo through courtesy of the State  
Historical Society of Missouri.)

Below to right: Orion E.H. Mohler,  
Deputy Marshal, who opened  
the doors of Guthrie Land Office,  
April 22, 1880.

(Photo through courtesy of Mrs. Troy  
Brown, daughter of O. E. Mohler, of  
Tampa 4, Florida.)





Congress by an act of March 1, 1869, ratified and confirmed an agreement with the Creek Indians for the complete cession to the United States of the lands conditionally ceded in 1866.<sup>3</sup> The lands became a part of the public domain, but should only be disposed of in accordance with the laws regulating homestead entries, and to persons qualified to make such homestead entries, not exceeding 160 acres to one qualified claimant. The act stated that no person who might "enter upon any part of said lands" prior to the time that the same were opened to settlement by act of Congress should be permitted to occupy or to make entry of such lands or lay any claim thereto.

Section 12 of the Indian Appropriation Act of March 2 authorized the purchase of lands from the Seminoles, conditionally ceded by them to the United States in 1866.<sup>4</sup> This included the portion of Oklahoma District south of the North Canadian River. These lands, like those acquired from the Creeks, became a part of the public domain, to be disposed of mainly to homesteaders. Section 13 of the Act provided that until lands secured from the Seminoles were opened for settlement by proclamation of the President, no person should be permitted to "enter upon and occupy" the same; and no person violating this provision should ever be permitted to enter any of said lands or acquire any right thereto.<sup>5</sup> This came to be known as "the sooner clause."

Congress could have provided that all persons within Oklahoma District during the prohibitory period, or any part thereof, should be disqualified to acquire lands under the homestead or townsite laws. But Congress chose to use the more loose and indefinite expression, "enter upon and occupy." To what extent could a person be within Oklahoma District during the prohibitory period and yet not enter upon and occupy lands there? The provision regarding entrance and occupation was not a penal statute, but simply prescribed the qualifications of

<sup>3</sup> 25 Statutes, p. 759.

<sup>4</sup> Act of March 2, 1869, 25 Statutes, p. 1005.

<sup>5</sup> A decade earlier Ezra A. Hoyt, Commissioner of Indian Affairs, made a similar suggestion concerning the Otoe and Missouri Reservation on the Big Blue River in Nebraska and Kansas. On December 4, 1879, Senator Algernon Sidney Paddock introduced Senate Bill 753 providing for the sale of the Otoe and Missouri lands. Hoyt recommended that the bill be amended so that any person entering or settling upon any of the lands embraced in the reservation, prior to the issuance of a proclamation by the President giving notice that the same was open to settlement, should forfeit all right to enter any land on the reservation: Hoyt to Paddock, Jan. 25, 1880. NA, OIA, L. Letter Book, vol. 91, p. 5874.

A similar provision forbidding homesteaders to "enter upon and occupy" lands prior to a certain opening day was inserted in an act of June 20, 1890, concerning reservoir lands in Minnesota and Wisconsin: 26 Statutes, p. 169.

settlers on public lands mentioned in the act. From settlers' camps to the highest court the expression, "enter upon and occupy," was debated and construed in various ways. Judge James Layman Brown, a shrewd observer close to the scene, said: "This was the one clause in the law that made more contention, I honestly believe, than any other statute that was ever written on earth."<sup>6</sup>

The provisions for the opening of lands ceded by the Creeks and Seminoles were tied together by a sentence in Section 13 of the Act of March 2 stating that all the above provisions with reference to lands to be acquired from the Seminole Indians, including the provisions pertaining to forfeiture should apply to and regulate the disposal of the lands acquired from the Creek Indians by the agreement of January 19, 1889. This sentence so conjoined the two acts that the Creek and Seminole lands within Oklahoma District were regarded as one tract. The acts of March 1 and 2, as they relate to lands ceded by the Creeks and Seminoles, may well be considered as parts of the same act and should be read and construed together. Thus the provisions of Articles 12 and 13 of the Act of March 2 relate to lands in the Creek cession as well as to lands in the Seminole cession.

The acts of Congress did not forbid the communication of information relative to the character, the location and the best means of going from the boundaries of Oklahoma District to any tract therein; nor did the acts forbid anyone from receiving such information; nor was one disqualified by receiving after March 2 information from one who had acquired it before that date. The acts did not disqualify one as a homesteader, regardless of how much examination he had made of lands in Oklahoma district prior to March 2, with the intention of selecting a future homestead there.

The words, "any part of said lands," were written into the Act of March 1 in reference to the Creek cession. The Atchison, Topeka and Santa Fe Railroad Company was the successor in interest to the right of way across lands in Indian Territory granted by Congress in 1884 to the Southern Kansas Railway Company. The company had simply an easement, not a fee, in the lands of the right of way on which its trains were operated. Some officers and employees of the company legally resided on the right of way across lands ceded by the Creeks and Seminoles. Internal revenue officials, Indian agents and traders, deputy marshals, army teamsters, mail carriers and many other white persons were properly and rightfully on

<sup>6</sup>James L. Brown, "Early and Important Litigation," *Senator's Oklahoma Magazine*, Vol. VIII, No. 2 (April, 1909) pp. 26-30.

lands ceded by these Indians, just prior to the time the same were opened to settlement by act of Congress. In reference to the Seminole cession, the Act of March 2 applied to the lands collectively when it stated that until the lands were legally opened to settlement, no person should be permitted to enter upon and occupy the same without subjecting himself to the disqualification clause.

President Benjamin Harrison on March 23 issued a proclamation opening the lands of Oklahoma District to settlement on April 22.<sup>7</sup> Warning expressly was given that no person entering upon and occupying lands in Oklahoma District before "twelve o'clock, noon" on April 22 would ever be permitted to enter any of said lands or acquire any rights thereto, and that the officers of the United States would be required to enforce strictly the provisions of the act of Congress of March 2 to the above effect. The General Land Office had no power to modify the terms of exclusion of all persons, whether they proposed to enter lands or not. The words "twelve o'clock, noon" in their true acceptation mean the middle of the day when the sun is in the Meridian. At Guthrie standard time or railroad time was a half hour earlier than Meridian time. The prohibitory clause covered Oklahoma District, and no exception was made for the right of way of the railroad running through Guthrie and Oklahoma Station.

John W. Noble, Secretary of the Interior, on April 12 requested the Attorney General to have appointed such number of deputy marshals as he might deem proper to act with the military in making of arrests that might be found necessary to preserve the peace.<sup>8</sup> Some people suspected that deputy marshals would not be prevented from taking homesteads because of their presence in Oklahoma District during the prohibitory period, just prior to April 22. Certainly Congress did not intend to put any obstacle in the way of securing the services of the best men as public officers in Oklahoma. It was no easy time for a deputy marshal to keep peace, quell disorder, and overcome the reckless and lawless gangs of gamblers, sharpers, and ruffians generally that flocked into Oklahoma District.

Strother M. Stockslager, Commissioner of the General Land Office, on April 12 wrote Senator John J. Ingalls of Kansas a letter in regard to a question submitted to Ingalls on March 29 by C. T. [F.] Sommers of Oklahoma Station. The letter

<sup>7</sup> 26 Statutes, p. 1544.

<sup>8</sup> Noble to Att. Gen., April 12, 1889, NA, Lat. Dept., Lands and R. R. Div., Record Letters Sent, vol. 79, pp. 79-80.

concerned the prohibitory period and later drew critical attention. Stockslager wrote:<sup>9</sup>

The statute makes no exceptions to this provision. I am inclined to think, however, that when a person was already within these lands at the date of the approval of the act by proper authority his presence there should not be regarded as a violation of this provision of the act. The primary jurisdiction to set upon applications to enter rests with the district land officers, and Mr. Sommers may present his application for entry to them with proper proof of his allegations. Should they refuse to permit an entry he may appeal from their action, which would bring his application and proofs before this office for its adjudication of the case.

Stockslager made no comment about a prospective claimant going outside of Oklahoma District to become a qualified entryman.

Noble instructed John Alfred Pickler and Cornelius MacBride, inspectors of the public land service, to have the land office buildings erected and to supervise and direct everything that would tend to the effectual establishment and peaceful preservation of general law and order. Pickler arrived at Arkansas City on April 13, and sent Noble the following telegram: "Will have to build for both land offices. There is nothing at all at either point. Can contract here. Can build two buildings, each eighteen by thirty feet, suitable. Total \$1,075. Shall I do so? Answer early."<sup>10</sup> On the same day Noble replied: "If buildings can be put up for occupancy by twenty-

<sup>9</sup> Stockslager to Ingalls, April 12, 1889, *Ann. Rpt., Gen. Land Office, 1889*, p. 101; also in NA, GLO, "A" Letter Book, C. and D. Div., vol. 23, pp. 263-294. A United States commissioner referred to in contemporary records as C. F. Sommers, was alleged to have been at Oklahoma Station at noon on April 22, 1889, and to have laid claim to two city lots there; Alfred J. Pickler to Noble, May 8, 1889, *S. Ex. Docs., 51 Cong., 1 sess., v (2682) no. 33*, pp. 14-15; extract copy from the records of Oklahoma City, May 2, 1889, *ibid.*, ix (2686), no. 72, p. 30; Capt. D. F. Silca to Maj. J. P. Sanger, Nov. 6, 1889, *ibid.*, pp. 30-35. C. F. Sommers administered the oath of office to the elected officials of the provisional government, including William L. Couch, mayor.

A search in the National Archives revealed no proof that Secretary Noble approved Stockslager's letter of April 12, although in the case of Ransom Payne v. William S. Robertson attorneys for appellant claimed that Noble did so. Attorneys also claimed that the substance of Stockslager's letter was embodied in a circular and widely distributed prior to April 22, 1889.

It was reported that a person who was offered the position of United States deputy marshal in Oklahoma District inquired if acceptance of the office would deprive him of the right to take and hold a homestead. On this matter Noble is said to have advised Congressman William M. Springer of Illinois to tell him to take the office and he would see that he was protected in his rights to acquire a homestead. Springer's verification of the incident is in *Cong. Record*, Jan. 17, 1890, p. 670; see also Ransom Payne v. William S. Robertson, U. S. Supreme Court, *File Copies of Briefs*, no. 20; Oklahoma City Townshel v. George E. Thornton et al., 13 Land Decisions 499 (1891).

<sup>10</sup> T-1, from Pickler to Noble, April 13, 1889, NA, Int. Dept., Lands and R. B. Div., box 680, Okla. Misc. Papers; tel. from Noble to Pickler, April 14, 1889, NA, Int. Dept., Appt. Div., Letter Book, vol. 10, p. 259.

second contract for them. Push things. Land officers, clerks and inspectors will be at Arkansas City on seventeenth."

Robert S. Baird secured the contract to build the land offices at Guthrie and Kingfisher. Pursuant to an arrangement, the employees entered the territory by means of a pass about April 17. Moses M. Staudley who successfully contested one of them in litigation wrote: "There were two gangs of sooners who settled on the Cottonwood in O. T. The 'Cowboy or S. H. Foss gang,' and the 'Lumber haulers,' or the men who entered O. T. April 17, 1889, and hauled the lumber for the U. S. Land Offices at Guthrie and Kingfisher. The names of the Lumber haulers were George W. Jones, Benj. Frank Hostettler, Wm. F. Huff, Sam Smith, and Charles Combs."<sup>11</sup>

Archival sources show that several persons received permission to enter the Oklahoma District prior to April 22. For instance, on April 13 Noble requested that U. S. Commissioner John M. Galloway be privileged to enter "the territory for the purpose of establishing a building on the one acre reserved in the President's proclamation for Government use."<sup>12</sup>

Noble said that it was "highly desirable that such an officer should be present." The War Department approved the request on April 15. On April 19 Noble requested that a permit be telegraphed to Arkansas City for "four men and three teams to enter Oklahoma to transport office outfit and personal effects of officers and clerk[s] from Guthrie to Kingfisher." The War Department promptly complied with the request.

The term "legal sooners" was applied to persons who entered Oklahoma District as employees of the government, or under special permit, or because of their occupation such as employees of the railroad company, and initiated a claim to land by using an advantage not available to persons who entered the district after the lawful hour of opening. Claimants without the shelter of permit or employment, who remained within Oklahoma District, or who entered upon and occupied lands there during the prohibitory period, or after March 2, 1889, and before the hour of noon on April 22, were called "moonshiners" presumably because they came in by the light of the moon. According to a contemporary observer the word "sooner" was not applied to them for five or six months after the opening.<sup>13</sup> A "sooner" was a land claimant who was in Oklahoma

<sup>11</sup> Staudley to D. M. Kirkbride, Nov. 29, 1893. NA, Int. Dept., Lands and R. R. Div., Box 673.

<sup>12</sup> Noble to Sec. War, April 3, 1889. NA, AGO, Consolidation file 2653, 1885-1889; same to same, April 19, 1889, *ibid.*

<sup>13</sup> Dan W. Peery, "The First Two Years," *Chronicles of Oklahoma*, Vol. VII, No. 3 (Sept., 1929), p. 284; Andrew Wood to Editor, *Visitor*, April 22, 1889, *ibid.*, Vol. XXXIV, No. 3 (Autumn, 1956), pp. 303-306.



District during the prohibitory period and who acquired an advantage in initiating settlement by such occupancy.<sup>14</sup>

MacBride said that the atmospheric condition of things on and before April 22 seemed to impel men, previously honorable and honest, to grab, catch, and hold everything in sight. John Ichabod Dille, register of the Guthrie land office, noted that "hundreds of people" were at Guthrie on April 20. MacBride and Pickler reported that there were 300 persons in and about Guthrie before noon on April 22. They said: "This body of men was composed of deputy marshals, land officials, railroad employes, railroad stowaways brought here in freight trains, deputy internal-revenue collectors, and a host which cannot be classified." Pickler saw men finish "a survey of the town" before 11 a. m. The first non-sooner affidavit in Oklahoma history was filed by a sooner, Mark S. Cohn, in the Guthrie land office on April 22, with the reported connivance of Dille and a deputy marshal.<sup>15</sup>

At Kingfisher on April 21 a newspaper reporter found 500 people. Dille observed that men under contract to haul lumber from Council Grove to Fort Reno "were killing time in every way" in an effort to be within Oklahoma District at noon on April 22 at which time they would rush to the claims they desired.<sup>16</sup>

During the first month there was popular clamor against the legal sooners. An example is the petition transmitted by James L. Brown to the Secretary of the Interior on May 23, inquiring among other things if entrance upon lands from the right of way of the Santa Fe Railroad on April 22 would bar a prospective entryman from acquiring title to lands.<sup>17</sup> The same question was raised as to railroad employes, army teamsters, cooks, etc. Among those who signed the petition were

<sup>14</sup> *Ann. Rpt. Gov. of Okla., 1891, H. Ex. Docs., 52 Cong., 1 sess., xvi (2935), p. 450.* Judge Walter H. Sanborn defined the word "sooner" as one who "to the injury of other intending settlers, enters upon and claims land as his homestead before such entry and claim are effective to initiate a valid homestead under the acts of Congress"; *Howe v. Parker*, 196 Fed. 738 (1911).

The name "boomer" was applied to any prospective settler in the Run of 1889. The term "old boomer" usually meant a follower of David L. Payne or William L. Couch who in years prior to 1885 had boomed or advertised the fact that Oklahoma district was unsettled, and attempted by direct action to settle there.

<sup>15</sup> B. E. Chapman, "Guthrie, From Public Land to Private Property," *The Chronicles of Oklahoma*, Vol. XXXIII, No. 1 (Spring, 1955) pp. 63-86. Included is an account of the case of Ransom Payne, an important one in the study of legal sooners. Payne was a deputy marshal.

<sup>16</sup> Dille to Noble, May 9, 1889, *S. Ex. Docs., 51 Cong., 1 sess., v (2687), no. 33, pp. 16-18.*

<sup>17</sup> Brown to Sec. Int., May 23, 1889, NA, Int. Dept., Lands and E. R. Dir., box 601, Okla. Misc. Papers. The petition is with the letter.

G. W. ["Public Domain"] Adams, W. B. Barger, J. F. Bellamy, George W. Farmer, J. C. Gatewood, Ledra Guthrie, A. B. Harmon, William H. Hart, Witten Haycraft, John O. Johnson, Charles Lane, R. B. Linthicum, J. M. McCornack, Angelo C. Scott, W. W. Scott, Oscar H. Violet.

Secretary Nobles opposed any legislation ratifying acts which sooners had done in disregard of justice and fair treatment and to the injury of law-abiding citizens. "Care will be taken," said President Harrison, "that those who entered in violation of the law do not secure the advantage they unfairly sought."<sup>25</sup> Archival sources do not reveal the whole story of the legal sooners, but the light is sufficiently clear to see some of their activities that were condemned by the courts.

#### MARSHALS NEEDLES AND JONES

A study of "legal sooners" leads quickly to deputy marshals, due in part to a public tendency to refer to various federal officers by that term. Thomas B. Needles was Marshal of Indian Territory with headquarters at Muskogee. He had authority in all the said territory, but William Clark Jones, Marshal of Kansas, had concurrent authority in so much of the territory as was in the Kansas district. Thus Needles and Jones had concurrent authority in Oklahoma district.

An Act of Congress on March 1, 1889, provided for the organization of a court in the Indian Territory, subsequently located at Muskogee.<sup>26</sup> The marshal of the court was empowered to appoint deputies, the number being limited only by the necessity of the case. It was competent to the President to direct the military forces to render the marshal such aid as might be necessary to enable him to maintain peace and enforce the laws of the United States in the Indian Territory.

On March 16 Senators Shelby M. Cullom and Charles B. Farwell of Illinois accordingly recommended that Needles of that state be appointed as marshal. In a letter to the President they said: "Mr. Needles was our former state auditor, is a man of experience, integrity, sobriety and ability and we believe would be such a man as you desire. It is due from us to say that he was not a soldier, but we believe him to be otherwise the kind of man you want."<sup>27</sup> Needles was commissioned marshal on March 26. His annual salary was \$200 and fees.

<sup>25</sup> Message of Dec. 3, 1889, *Messages and Papers of the Presidents*, vol. 13, p. 47.

<sup>26</sup> 25 Statutes, 783; "Marshal of Indian Territory," *Official Opinions of the Attorney General*, vol. 19, p. 293.

<sup>27</sup> Cullom and Farwell to the President, March 16, 1889, NA, Justice Dept., appointment file of Needles, Dist. of Indian Territory; *Reg. of Dept. of Justice*, 1891, pp. 56-61.

Since he was a Republican appointee his prospects of office tenure were superior to those of Jones. By direction of the President the responsibility of keeping the peace in the territory rested largely upon him.

On April 10 Attorney General W. H. H. Miller authorized Needles to appoint such number of deputies as might seem necessary.<sup>21</sup> Needles arrived at Guthrie on April 16. On April 20 at Arkansas City he met Dille and Cassius McDonald ["Cash"] Barnes, register and receiver of the Guthrie land office. On the "very earnest solicitation" and the "earnest and persistent request" of Dille and Barnes, Needles appointed Benton J. Turner, James H. Huckleberry, and Orion Eli Mohler as special deputies, exclusively for the protection of the Guthrie land office, records and monies.<sup>22</sup> Needles said they were assigned for duty under the orders of Dille and Barnes, and that he delivered the commissions to Dille and Barnes, ordering them to have their men sworn before a United States Commissioner before delivering the commissions to them. According to Needles, on the morning of April 22 he had four other deputies at Guthrie and only a total of fourteen in the entire Indian Territory.

Turner entered Oklahoma District on the night of April 21. At noon on April 22 Mohler opened the double doors of the land office, which swung inward. The first applicant to enter was Mark S. Cohn who among other things filed for Turner and Huckleberry soldier's declaratory statements for the west half of section nine which became East Guthrie.

Dille said that Mohler was the only deputy marshal appointed on his recommendation. He added: "Mr. Needles offered me the commissions for three deputies, believing that we should have some officials present at this office with whom we were acquainted. I accepted one and refused to take the other two because I did not know of but one person who desired to go into the Territory as a looker-on with whom I was personally acquainted."<sup>23</sup> In reprimanding Dille for conditions at Guthrie, Noble said: "By the first acts of your office a townsite had been fixed and almost surrounded by the filings made by your brother and Mr. Cohn, before the law-abiding people could arrive."<sup>24</sup>

<sup>21</sup> Miller to Needles, April 10, 1889, NA, Justice Dept., *Instruction*, vol. 126, pp. 115-117; affidavit of Needles, Sept. 14, 1890, NA, GLO, townsite box 140.

<sup>22</sup> Needles to Miller, April 30, 1889, NA, Justice Dept., no. 3982 in file 3485-1889; Miller to Needles, May 4, 1889, *ibid.*, *Instruction Book*, vol. 3, p. 349; Needles to Miller, May 24, 1889, *ibid.*, no. 4716 in file 3485-1889. There is a sketch of Mohler's life in the *Guthrie Daily Leader*, April 16, 1957.

<sup>23</sup> Dille to Noble, May 9, 1889, *S. Ex. Doc., fac. cit.*, pp. 15-18.

<sup>24</sup> Noble to Dille, May 28, 1889, NA, Int., Dept., Appt. Div., *Letter Book*, vol. 12, pp. 16-27.

Since Jones subsequently was subjected to greater condemnation than Needles, his record should be set forth more fully. In 1861 at the age of 21, Jones was mustered in as 1st Lieutenant, Company F, 3 Regiment, Kansas Infantry.<sup>25</sup> He was promoted to captain, June 23, 1862, in the Tenth Kansas Infantry, and was mustered out August 19, 1864. On October 26, 1866, he became a major in the Kansas Cavalry, Company 19, and five months later he was promoted to lieutenant-colonel.

Jones was warden of the Kansas State Penitentiary from April 9, 1883, to April 1, 1885. He then sought appointment as United States marshal for the district of Kansas. In the National Archives is a half-pound bundle of papers requesting his appointment.<sup>26</sup> Samuel J. Crawford, former governor of Kansas, gives the flavor of these recommendations when he wrote to President Grover Cleveland on July 6, 1885:

I think I speak the truth when I say that no better or truer soldier ever wore spurs or drew a sword. He has filled other important, responsible positions within the state, and in each and all he discharged his duties with credit and profit to the state. He was a delegate from Kansas at Chicago, and your friend from beginning to end, as true as the needle to the pole. I tell you the truth when I say that if it had not been for Col. Jones the Kansas delegation would have been carried away from your support by the friends of another at the critical moment. In him you have a friend, a true soldier and a worthy man. About eighty percent of the voters of Kansas served in the Army during the war, and so far, of all the appointments made in that state under the present administration, I believe in no instance has an ex-soldier been chosen. The appointment would be received with gratitude by that element as well as by the people of Kansas generally.

Jones was commissioned as marshal on March 12, 1886.<sup>27</sup> His difficulties began soon after the Republican administration came to Washington in 1889. Needles was expressly authorized to appoint such number of deputies as might seem necessary, and the same right was certainly not withheld from Jones. Among deputies Jones appointed were A. S. Claw, Asa Jones, A. G. Jones, H. S. Keys, J. B. Koonce, Ed. P. Madden, Capt. Rarriek (O. S. Rauck), J. O. Severns, George E. Thornton, J. S. Weaver, Ewers White, D. F. Wyatt.

<sup>25</sup> The pension file of Jones is no. C-2678365, Fed. Records Center, Alexandria, Va. There is a sketch of his life in *Kansas Historical Collections*, vol. 10. (1907-1908), p. 448.

<sup>26</sup> Appointment file of Jones, NA, Justice Dept. In the file is a personal letter of June 15, 1885, to Daniel Manning, Secretary of the Treasury, in which Jones said: "In our state convention for delegate to Chicago, I was an outspoken Cleveland man, and upon that issue I went before the convention, and received an overwhelming vote and was elected."

<sup>27</sup> *Reg. of Dept. of Justice*, 1886, p. 72. It seems impossible to secure a complete list of deputy marshals appointed by Jones and Needles or to get the correct spelling of names. See however lists in *S. Ex. Doc.*, loc. cit., pp. 4-5.

Jones was in Guthrie a few days before the land opening. He appreciated the influx of population that would follow on and after April 22, 1889.<sup>28</sup> He knew there had been several hundred federal troops stationed in Oklahoma District for the preservation of order, and he was informed by the commanding officer at Oklahoma Station that on and after high noon on April 22 his functions would cease. Jones attempted to organize a force of deputy marshals at different points where it was supposed that people would concentrate. Special requests were made of him. The commanding officer of the United States troops at Alfred (now Mulhall) requested him to send a deputy marshal there to capture horse thieves. At the request of an officer of the Atchison, Topeka and Santa Fe Railway Company eight of their employees were appointed temporary deputy marshals. Most of them were conductors constantly passing through the territory and could perform a useful service if lawless men attempted to commit a violent act on the trains. In addition to the eight employees, Jones appointed not less than nineteen deputy marshals. Jones thought he successfully organized a force of deputy marshals as evidenced by the good order maintained. He said:

I believe that a few of my deputies have attempted to file on as many tracts of land in the territory but I know many of them have not and while I instructed them not to do so, when they saw themselves surrounded by about 500 to 700 persons at Guthrie and at least one half that number at Oklahoma Station waiting for the hour of twelve to come, I do not wonder that some of the deputies, who were serving without pay and only there in the interest of good order, took the fever and attempted to get them a home. As to myself, I never attempted to homestead a foot of land either in Oklahoma or any other territory or state.<sup>29</sup>

On April 24 the *Kansas City Daily Journal* carried a stinging account in which a reporter told of seeing Jones, Needles, Dille and others make an "unauthorized and unwarranted settlement" of Guthrie before Oklahoma District was legally opened to settlement. The next day the *St. Louis Globe-Democrat* said: "Oklahoma City, like Guthrie was built in a day, or, properly speaking, was claimed in an hour, excepting that portion which was captured before time by those appointed to go down and execute the law. The Deputy United States

<sup>28</sup> The position of Jones is set forth in his letter to the At. Gen., May 9, 1889, NA, Justice Dept., no. 4350 in file 5485-1889.

<sup>29</sup> Jones appointed A. (S?) Payne as a deputy marshal. W. H. Jenkins of Emporia, Kansas, said that at Guthrie Payne encroached on his lot in a block near the land office. Jenkins appealed to Jones who said he "didn't want to hear another word out of my damned head." Jenkins said he then bought Payne's asserted interest in the lot for \$15.00; Jenkins to At. Gen. Miller, May 15, 1889, NA, Justice Dept., no. 4405 in file 5485-1889.

Marshals laid out the town Sunday night, and Monday morning they covered the supposed choice sites with tents.<sup>30</sup>

A wail that legal sooners had captured choice lands caused Secretary Noble and Commissioner Stockslager on April 24 to make it clear that a deputy marshal or other government officer who entered Oklahoma District with a view to locate a claim or town lot had acquired no right there.<sup>31</sup> Stockslager said such locations appeared to be in violation of the spirit of the law opening the territory.

As for legal sooners, Noble gave assurance that "not the least shadow of an injustice to settlers in Oklahoma would be tolerated for a moment." He directed Pickler and MacBride to "pursue a systematic and thorough inquiry into this wrong, preserving evidence with names, circumstances and conclusions, and make a written report. Be uncompromising and determined to correct this injustice, as it will not be tolerated to the least degree."<sup>32</sup>

From Guthrie on April 24 Needles sent this telegram to the Secretary of the Interior: "Everything remarkably orderly and peaceful. Ten thousand people here. Not a single arrest yet. Hope to preserve order without any trouble." MacBride and Pickler may have given vent to optimism and exaggeration when on May 3 they wrote that "a more successful opening of a new Territory could not be conjured up by the imagination of man." In this era of good feeling Mayor Daniel B. Dyer sent Noble the following telegram:<sup>33</sup>

At a meeting of the City Council of Guthrie, presided over by myself, the following resolution was unanimously adopted by a rising vote and directed to be forwarded to you: "Resolved that the thanks of this body and the citizens of Guthrie are hereby tendered to the Hon. Secretary of the Interior, John W. Noble, for the very prompt and efficient action taken in repressing fraud in attempting to acquire title to property and prevent the unjust use of official power by persons seeking to profit thereby.

Pickler and MacBride gave the following report on April 30: "Deputy marshals getting rid of their town lots as rapidly as they can. In three days not more than four or five lots will be ostensibly held by the deputies, who openly held lots a few

<sup>30</sup> *St. Louis Globe-Democrat*, April 25, 1889; *New York Herald*, April 26, 1889; April 28, 1889. An account is given of a hundred deputy marshals "who resigned office Monday at noon and squatted on town lots."

<sup>31</sup> On April 24 Noble requested Pickler and MacBride to secure "absolutely correct list of all deputy U. S. Marshals, serving in the Territory." Noble asked if it were true that the deputy marshals had endeavored to make entries of any kind prior to the advent of the settlers; tel. of April 24, 1889, NA, Int. Dept., Lands and A. R. Div., *Rec. Letters Sent*, vol. 79, p. 118.

<sup>32</sup> Tel. from Noble to Pickler and MacBride, April 25, 1889, *ibid.*, box 680; tel. from Pickler and MacBride to Noble, April 30, 1889, *ibid.*

<sup>33</sup> Tel. from Dyer to Noble, April 29, 1889, box 680.

days ago. Now deny that they have a foot of ground in the Territory." With this encouragement the settlers demanded that "the government declare a forfeiture of the claims of all persons, irrespective of employment, who were in the Oklahoma tract before Monday noon."

MacBride said it was "a melancholy truth" that deputy marshals and deputy collectors caused more trouble, more friction, and perpetrated more wrongs calculated to disturb the public peace than all the other citizens of Oklahoma District put together.<sup>22</sup> He and Pickler were more definite when they wrote:

Collector Acers (Nelson P. Acers), of Kansas, is responsible for more deputies who have acquired lands and town lots in this Territory than both of the marshals put together. He was instructed by the Internal Revenue Commissioner to designate certain men from whom Special Agent (George R.) Clark could select, when occasion required, internal revenue deputies. He designated an unknown number. Not one of these men reported to Clark; and they were only deputies to the extent of having authority to enter the Territory before 12 m. . . .; and they thereby acquired town lots and other advantages.

It was rumored that a member of Congress was "badly involved in the wholesale grab by the 200 and more deputies"; and that Attorney General Miller was convinced that "some crooked business had been perpetrated in Oklahoma."<sup>24</sup>

Pickler found that the first board of arbitration in Guthrie awarded lots to the first occupant and did not consider seniority in passing upon the right to lots.<sup>25</sup> M. M. Thompson of Guthrie put it more bluntly: "An honest settler in this town has no show at all as the U. S. marshals and U. S. commissioners and others here have banded themselves together and are robbing the settlers of their possession by setting themselves up as a Board of Arbitration."<sup>26</sup>

There was no better spokesman for the Board of Arbitration than one of its members, Henry B. Kelly, who had served in the Kansas State Senate, and was proprietor of the *McPherson Freeman*, a weekly newspaper. Kelly said:<sup>27</sup>

The provisional council was but municipal, its authority (assumed) ended with the city limits. The Board, a creation of the con-

<sup>22</sup>MacBride to Noble, May 8, 1889, 5, *Ex. Docs.*, 51 Cong. 1 sess., v (2682), no. 33, p. 12; MacBride and Pickler to Noble, May 8, 1889, *ibid.*, pp. 6-7.

<sup>23</sup>"After the Marshals," *The Oklahoma Pioneer*, May 11, 1889.

<sup>24</sup>*Cong. Record*, Jan. 17, 1890, p. 670.

<sup>25</sup>Thompson to President Benjamin Harrison, May 17, 1889, NA, Justice Dept., Kan. App. Papers, U. S. Marshals et al., 1888-1893, Complaints against W. C. Jones.

<sup>26</sup>Kelly to Senator Preston B. Plumb, May 28, 1889, NA, 1st Dept., Lands and E. R. Div., box 681. The letter is in the *Guthrie Daily Leader*, April 16, 1957.

all a temporary tribunal to judge as to prior occupancy between occupants, could do no more than to determine who was first in possession on the townsite, afternoon of April 22nd, while the question of being within the Territory was for government to settle at the proper time. The city authorities were done when they enquired "when entrance was made upon the townsite," it being the business of government to enquire "when the entrance was made into the Territory."

On April 30 Needles declared that charges in the newspapers about him were "absolutely false and without foundation." Two weeks later he said he would like to meet his accusers face to face before Miller, and added: "I have not entered any land or lands, town lot or lots, in the Oklahoma District and have no interest whatever, directly or indirectly, near or remote, of any kind or nature, in any land or lots in the Territory."<sup>28</sup> Needles had been content to let Inspectors Pickler and MacBride do the investigating.

Writing from Guthrie on May 24 Needles clarified the matter considerably. He said of Turner, Huckleberry, and Mohler:

These special deputies I never saw. I had not then nor have I now any acquaintance with them whatever. Mr. Dilte and Mr. Barnes insisted that for the safety and protection of the interests of the government they considered it necessary to have men assigned to them whom they personally knew and had confidence in. Upon reflection I deemed the request not an unreasonable one and complied therewith. Mr. Barnes today informs me that these men were never sworn and were not here.

Turner and Huckleberry never made homestead entry for Guthrie lands. Mohler paid a survey tax on a town lot in Guthrie. On May 24 Needles could not ascertain if Mohler claimed the lot and was informed "he is not here." Five of Needles' deputies made application to file a homestead entry or a soldier's declaratory statement for a homestead, but their applications were rejected. They were John G. Varnum, William J. Wilkins, Temp Elliott, Thomas Taylor, and John C. Bell. On June 5 Miller suggested to Needles that any deputies who had anything to do with attempting to take an unfair advantage of their position in order to get lands or lots should be discharged promptly. He added: "We must administer the affairs of the Department in all good faith."<sup>29</sup>

<sup>28</sup> Needles to Miller, May 13, 1889, NA, Justice Dept., no. 4298 in file 3485-1889.

<sup>29</sup> Miller to Needles, June 5, 1889, *ibid.*, *Instruction Book*, vol. 3 p. 507. In a telegram to Noble on June 21, 1889, Pickler recommended that action be taken to protect the timber on school lands. Noble directed the General Land Office to "send a timber agent under special instructions, without delay. Select the best man, who will not spend his time grabbing town lots"; tel. from Pickler to Noble, June 24, 1889, NA, GLO, 78, 591-1889.



The Oklahoma Homestead and Town Company was a private corporation formed under the laws of Colorado early in 1889. The first year Jones and C. S. Rogers were on the board of directors. Inspector MacBride said on May 8: "Marshall Jones has been active in dealing with all the real estate brokers of Guthrie. He and his deputy, C. S. Rogers, had about three dozen tents consigned to them."<sup>40</sup>

Jones was a Democrat confronted with an incoming Republican administration. For more than two months before the opening of Oklahoma district there was political clamor from Kansas to replace him with Richard J. Walker. About 2:30 p. m. on April 22, 1889, Jones entered upon and occupied a lot in Guthrie just across Second Street from the government acre.<sup>41</sup> The first improvement on the lot was a tent he erected. His agents kept intruders away. He subsequently erected there a frame business house 25 x 35 feet, and rented the lot. In a report on May 8 Pickler, a Republican, said:<sup>42</sup>

The people feel that Marshall Jones, a resident of Kansas and not a bona-fide settler, with his deputies and with influential parties in the Atchison, Topeka and Santa Fe Railway Company, and other speculators, unlawfully gained entrance to the forbidden territory and fraudulently gained great advantages over the honest settler, and thus secured the most valuable property, while those who obeyed the law are beaten by the law-breakers in the race. And to this conclusion all fair-minded, honest men are forced.

On May 11 Thomas D. Hance, a hotel keeper at Guthrie, sent a telegram to Secretary Noble stating that he was in a contest with Jones and that the arbitrators were delaying the case on account of the official position Jones held.<sup>43</sup> Noble asked Commissioner Stockslager if anything could be done in the matter. William O. Conway, law examiner, advised that the question of the right of occupants to particular lots was not in the existing condition of things within the jurisdiction of the department, which was without authority to enforce any conclusion it might arrive at by any civil process. Appended is this note signed by Stockslager: "The only way I know to

<sup>40</sup>Reports by Pickler and MacBride to Noble, May 8, 1889, NA, Int. Dept., Lands and R. R. Div., boxes 680-681; and in *S. Ex. Docs.*, loc. cit., pp. 7-14.

<sup>41</sup>This was lot no. 6 in block 55, west of the government acre. See Asst. Com. Edward A. Bowen to Trustees, Townsite Board no. 6, April 17, 1894, NA, GLO, *Townsites*, vol. 13, pp. 491-499; Asst. Com. Emory F. Best to Townsite Trustees, Board no. 6, Nov. 7, 1895, *ibid.*, vol. 29, pp. 356-363; same to same Jan. 24, 1896, *ibid.*, vol. 31, pp. 313-316; Thomas D. Hance et al. v. City of Guthrie, 23 L. D. 196 (1896).

<sup>42</sup>Pickler to Noble, May 8, 1889, *Cong. Record*, Jan. 17, 1890, pp. 666-667. Pickler said that Jones claimed as his own a lot in Oklahoma City at the "corner of Main and Broadway."

<sup>43</sup>Tel. from Hance to Noble, May 11, 1889, box 680, loc. cit.

get rid of the delay caused by the influence of Jones' position is to remove Jones. May 11, '89."

On May 15 Senator Preston B. Plumb of Kansas sent the following message to President Benjamin Harrison: "I recommend the appointment of Richard L. Walker of Topeka, Kansas, as U. S. Marshal for the District of Kansas. This in pursuant to an agreement between Mr. Ingalls and myself. Mr. Walker is an ex-Union soldier and an upright capable man."<sup>44</sup> Townsite authorities of Guthrie awarded Jones a warranty certificate for the lot on May 17. He was removed from office on May 23, and on May 27 Walker took the oath as Marshal of Kansas.

Jones on September 22, 1890, filed with Townsite Board No. 1 an application for a deed to the lot he claimed. He said he had held the lot continuously in good faith since April 22, 1889, and that he had not entered upon it nor into Indian Territory in violation of the act of Congress or the proclamation of the President. He appeared before the board at a hearing, but the Board on March 10, 1891, decided that he was not entitled to the lot. It seems that Jones did not appeal from the decision, but at the time of his death, September 24, 1895, controversy over the ownership of the lot was in the Interior Department for determination. The lot was awarded to the City of Guthrie.<sup>45</sup>

What portion of the charges against Jones emanated from politics, and what portion should be attributed to his human frailty, is left to the reader to decide. It is enough here to present the record as preserved in the National Archives, and explain the conditions under which Jones lived. No history of the Run of '89 can overlook the role he played. Needles held the office of marshal until a Democratic administration came to Washington. He was succeeded by James J. McAlester who was commissioned on April 6, 1893.

#### TRANSMITS

Among numerous cases before the Secretary of the Interior concerning the Run of '89, no decision was more basic and none was subsequently referred to so much as that in Townsite of Kingfisher v. John H. Wood and William D. Fossett, decided by Secretary John W. Noble on October 1, 1890.<sup>46</sup> Kingfisher Stage Station was at the junction of Uncle John

<sup>44</sup> Plumb to Harrison, May 15, 1889, NA, Justice Dept., Kan. Appt. Papers II. S. Marshals et al., 1889-1893, file of Richard L. Walker; affidavit of Jones, Sept. 11, 1890, and affidavit of Walker, Sept. 15, 1890, NA, GLO, townsite box 140.

<sup>45</sup> Bureau of Land Management, *Oklahoma Townsite Records, Guthrie*, vol. 38 p. 94.

<sup>46</sup> 11 L. D. 230.

Creek and Kingfisher Creek, and with a land office located there a town was certain to grow. For more than five years prior to 1889, Wood had been "a legal, bona fide resident of Oklahoma," and his home was near the military reservation at present Oklahoma City. He left his home on April 18, in charge of military transportation, and went to Kingfisher. On the morning of April 22, he was hauling wood and working a mile east and somewhat north of the land office there. Within eight minutes after the opening of Oklahoma District he was upon and claimed the Northeast Quarter of Section 15 as his homestead. He was the first settler on the tract, and he began digging at once.

Prospective settlers, estimated from three to ten thousand, had assembled on the border of Oklahoma District, one and a quarter miles west of Kingfisher. They were known as the "West Liners." On Sunday evening, April 21, a large number of people held a meeting at Buffalo Springs (now Bison) outside of and upon the north border of Oklahoma District. George E. Hubbard, chairman of the meeting, was selected as mayor of the town, and a proper person to present the townsite application for the residents upon the land. The North Half of Section 15 was agreed upon as a townsite. The land office was in the southeast corner of the Northwest Quarter of the section.

Fossett was a master of frontier life, and eventually became a United States marshal. At noon on April 22, 1889, he was with other prospective settlers on the border west of Kingfisher, and according to a reliable witness he "rode the best horse on the west side."<sup>47</sup> He was a qualified homesteader and was the first settler on the Northwest Quarter of Section 15, which he claimed for his homestead. Jacob V. Admire, receiver of the Kingfisher land office, said: "I saw Bill Fossett jump off his horse about 200 yards west of the land office and on the same quarter section, jerk his saddle off, throw it down, and wave his blanket as notice of his claim to be the first settler upon this tract of land . . . . If I had not been one of the judges in the case, I would have made a good witness for him in the contests which followed."<sup>48</sup> As soon as Fossett reached the quarter section, he began a digout, then notified all trespassers of his prior right as a homesteader. He plowed some that day.

The main body of people who dashed for Kingfisher had previously and publicly agreed to settle upon the South Half of Section 15 as a townsite. It was called Lisbon. About an

<sup>47</sup> J. V. Admire, in *Echoes of Eighty-Nine*, pp. 19-25.

<sup>48</sup> Cash Cadz, in *Echoes of Eighty-Nine*, pp. 7-11; see also *ibid.*, pp. 58-60. For a portrait of Fossett and a sketch of his frontier life, see *Portrait and Biographical Record of Oklahoma*, pp. 513-514.

[4-007.]

**HOMESTEAD.**



APPLICATION

No. 2

Land Office at Kingfisher ?

April 20 1889

John H. Wood of Kingfisher ?

do hereby apply to enter, under Section 2289,

Revised Statutes of the United States, the 7<sup>th</sup> E. 4

of Section 15 'in Township 14

Range 7 West comprising 160 acres.

My post office address is Kingfisher ?

John H. Wood

*Plat  
A. S. Co.  
Kingfisher  
Okla.*

Land Office at Kingfisher Stage Station

April 20 1889

J. Robbent

REGISTER OF THE LAND OFFICE.

do hereby certify, that the above application is for Surveyed Lands of the class which the applicant is legally entitled to enter under Section 2289, Revised Statutes of the United States, and that there is no prior valid adverse right to the same.

J. Robbent  
Register

Certificate for application to homestead, entered at Kingfisher Land Office, 1889.

hour after Wood and Fossett settled upon their claims, a few parties who had been disappointed in securing desirable town lots on the south half of the section, crossed over upon the north half thereof and staked off lots and encamped thereon. Between two and three o'clock people from the north line of Oklahoma arrived and thereafter a large number of them staked off lots and encamped upon the north half of the section. They were called "North Liners" because they made the run from the southern border of the Cherokee Outlet. The lands were surveyed into lots, blocks, streets, and alleys for townsite purposes. Since the evening of April 22, there was sufficient population upon the north half of the section to warrant the entry of the entire tract as a townsite, were that the only question in the case. The half section became known as Kingfisher City.

In the land office on April 23, four filings were made for land in the North Half of Section 15. Wood made homestead entry No. 3 for the Northeast Quarter, and Fossett made homestead entry No. 5 for the Northwest Quarter. Samuel R. Cowick filed an application stating that he had settled upon and improved the South half of the North Half of the Section and declared his intention to claim the land as a preemption right for a townsite as trustee in trust for the use and benefit of the settlers and occupants thereof.<sup>49</sup> S. P. Leitner filed a declaratory statement for the North Half of the Section as a townsite.

When Wood and Fossett made homestead entry, more than 500 actual residents and settlers in good faith were on the land. Tents, temporary structures, and other improvements on the half section (excluding the land office on the government acre) were valued at not less than \$5,000. There was the stage station and stable and at least twenty other places of business, so that it could be said that when Wood and Fossett made their entries the half section was actually settled upon and occupied for purposes of trade and business.

On April 29, Jacob C. Roberts and Admire, register and receiver of the land office, reported the situation to Commissioner Stockslager. Hubbard on May 4, filed in the land office a declaratory statement for the North Half of Section 15 as a townsite, alleging that he was the duly elected mayor of Kingfisher. The statement was accompanied by a petition signed by over 250 alleged residents of the land in question. In view of the fact that Cowick and Leitner were not the proper parties to make townsite applications, that the land

<sup>49</sup> Com. Stockslager to register and receiver, Kingfisher land office, May 29, 1899, NA, GLO. *Townsites*, vol. 2, pp. 134-137. The letter includes Cowick's application.

had been entered by Wood and Fossett, and that there was no statement in or accompanying the applications asserting that the land was settled upon and occupied for purposes of business and trade. Stockslager on May 29 rejected their applications. In order to ascertain the facts in the case and determine the status of the land, he directed the register and receiver to order a hearing. He said that the burden of proof was on the townsite claimants to show the facts reserving the land from disposal under the homestead law.

The hearing extended from July 25 to August 17 during which 550 pages of testimony were taken. On the North Half of the Section were buildings valued at \$10,000, including places of business which had been in continual operation since Wood and Fossett made homestead entry for the land on April 23. The character and improvements of the land were such as was generally seen in new towns of a population of 300 to 500. In a report of September 21, Robbins and Admire gave the facts as determined about the settlement of the half section. They referred to Stockslager's letter of April 12 to Senator Ingalls, and concluded that Wood was a legally qualified entryman. They held that the North Half of Section 15 had been "legally selected for a townsite," prior to noon on April 22 and that the homestead entries should be canceled.

Assistant Commissioner William M. Stone on March 6 reversed the decision of the Kingfisher land office and held that Wood and Fossett legally initiated the prior rights to the land in controversy. He said that when a body of people made a townsite selection and came in conflict with prior filings or entries, it was their interests that were at stake and their case to defend, and not that of the government which had no greater interest in the matter than to decide who was legally and equitably entitled to the land so selected. Stone also said:

In all cases of this character, where either settlement or selection antedate the entry or filing, the question to be inquired into and passed upon is the date of such settlement or selection. The rights of a homesteader attach at the date of his settlement. This right lawfully acquired, gives the settler the right of entry, and a right to enter, if followed by a due compliance with the law under which entry is made, is equivalent to a right to patent, as against everybody but the United States, upon a proper presentation of the facts to this office, and the patent when issued relates back to the initial act so as to cut off all intervening claims. A body of people coming together with the common purpose of locating a town upon public land, have no greater rights under the law than a homestead settler; they are upon the same footing, and, as in this case, their rights must be determined according to the priority of their initial acts.

The case came before Stone for review and he expressed his views more emphatically than ever. He considered Wood a qualified entryman. He quoted from Stockslager's letter of

April 12, 1889, and endorsed it as a "proper construction" of the acts of Congress opening Oklahoma District to settlement.<sup>50</sup> Stone said:

In the case of Kingfisher there was no inspection of the land, no examination as to its suitability for the purpose, no survey into lots, blocks and streets, no marking of exterior boundaries in any way, except in the minds of prospective speculators, twenty or more miles away. None of these several steps were attempted before the settlement of Fossett and Wood; nor could they have been legally done, in view of the act of March 2, 1889, and the President's proclamation. If, as is maintained by counsel in his argument, the people of Buffalo Springs could make a legal selection of a townsite in Oklahoma, with equal force might it be argued that meetings held in every village from Maine to California might with equal right select such townsites, and so plaster over the entire surface of Oklahoma with prospective towns, to the exclusion of the homesteaders for whose benefit the territory was thrown open. In the heat of speculation these parties seem to have overlooked the fact that towns are but the incidents in opening up a new country, and not the main object thereof.

I must adhere to my decision that the attempted selection of this land, by the meeting at Buffalo Springs, was not such a selection as conferred any rights on the people who subsequently sought to make a town thereon. While the settlement as effected might, in the absence of the prior legal adverse claim of Wood and Fossett, have been such an act as to initiate a valid townsite claim, these homesteaders having initiated their rights in accordance with law, some time before the influx of town settlers, I find the homestead, as made of record a bar to any acts done in the interests of the town.

Such was the situation when on October 1, 1890, Secretary Noble gave the famous decision, setting forth the "doctrine of advantage," and a construction of the acts of Congress about entering upon and occupying lands in Oklahoma District before the hour of noon on April 22, 1889. Contestants were somewhat at sea as to what "the sooner clause" meant until this decision was given. Noble noted the great stress laid by counsel upon the fact that Wood was lawfully in the territory, in the government service, at and prior to the land opening. He described the competition and excitement of the great race for homes, and observed that among these citizens there was complete confidence in and reliance upon the strength of the government to

<sup>50</sup> Stone to register and receiver, Kingfisher land office, March 5, 1890, *ibid.*, vol. 3, pp. 147-158; May 5, 1890, *ibid.*, pp. 411-417; May 13, 1890, *ibid.*, pp. 444-445.

In the case of Blanchard v. White this language was used by Stone in limiting the act of March 2, 1889: "All persons who, from and after the approval of the act aforesaid and prior to 12 o'clock noon of April 22, 1889, should enter upon and occupy any portion of the territory, with the intent to make selections, settle upon or enter any of the lands therein, all others are not within the prohibitory clause." Stone to register and receiver, Guthrie land office, March 7, 1890, NA, G.L.O., "H" Letter Book, vol. 119, pp. 174-228.

protect them from imposition and fraud, if they themselves would do right. Noble said:

But there were others not so disposed. There were men there who, upon one pretense and another—one necessity or another—had been admitted within the border. The railroads required men to preserve the track and to run the trains; the military wagons were handled by civilians engaged for the purpose; there were the registers and receivers of the land offices, with their clerks, there were the United States marshals and their deputies; and there were many others that had evaded the troops and crept into the domain without pretense of right. Many, in each of these classes, that were in the territory sooner than the law allowed for such designs of settlement, nevertheless intended to take advantage of their situation and anticipate and defeat the multitude on the borders. Their chief purpose was to get a quarter section or a town lot, and if they had an apparently special occupation there, the real cause of their presence was to get land . . . .

The evident intention of Congress was to give to all persons desiring homes in Oklahoma an equal chance to obtain them. The territory was opened for homestead settlement to any qualified homesteader, but under the same conditions. No partiality was intended to be shown to any individual or class of individuals. . . .

The language of the law was broad as it could be made, prohibiting any one from entering upon the lands for the purpose of settling the same. The end sought by the people was settlement. This it was that would produce title; convert the public domain into private property. The statute's chief purpose was to regulate settlement. Each act of the individual was induced by his desire to make settlement of a particular piece of land, and the statute declared that for this purpose no one should enter upon or occupy these lands—this territory—until they are opened for such "settlement" by proclamation of the President. . . . The evident purpose of the law was to prohibit one or another entering the territory before the proclaimed hour, with a view and purpose of settlement of any part thereof. No one could be there, legally with such purpose, in whole or in part. Whether there before the time by some permit or without it, the one who then entertained the intention of making a settlement and to use the advantage which his presence gave, to the exclusion of others, was violating the spirit of the law, and it destroyed his claim when attempted. If he had declared it before, he should have been expelled; if he exhibited such preconceived purpose by his subsequent acts, he not only could not lawfully claim any particular tract, but forfeited all right to future acquisition.

Any special license to be present must have been for another and entirely different purpose. No license could be granted against the statute, and no one could successfully pervert his license or special employment to defeat the equal and just operation of the statute upon all alike. The permit was exhausted in protecting its possessor; it could not be used as a weapon against others. The moment the possessor of such special privilege formed his purpose to take advantage of his position for the selection and seizure of a tract of land, his license was valueless, and he became a trespasser from that moment. To hold that the few with permits, or especially engaged within the limits of these lands any more than those there without license, could pick out their claims in advance of the hour of opening, and pounce upon them at the very moment the signal was given to the others to start on their long race, would be to support pretension and



favoritism and punish honorable obedience to authority. It is neither the law nor the equity of the case, and will not be allowed. He, who, being within these lands by special authority as deputy, train-band, wagon-master, or other, had the purpose to jump upon a particular tract, and who gave the evidences of his prior intent by his conduct immediately thereafter, violated the statute. Such persons had entered upon and occupied this territory for the purpose of settlement—before the hour fixed in the proclamation—whatever license they may hold up or self-indulgent and self-deceiving pretext they may now present. They were not licensed or employed thus to defeat the law and injure their neighbors.

Both classes were prohibited from acquiring rights to these lands; those who were in the territory at and before the hour designated in the proclamation without pretense or special license; and those who were there by special authority, or for a special purpose, but attempted to pervert their presence to secure claims before others held on the borders could arrive, even from the most distant parts thereof.

On the other hand, I do not think it was the intention of Congress that a man who happened to be legally in the territory, but did not use his position to his own advantage, or to the disadvantage of his fellow citizens, should be forever prohibited from acquiring any rights in the territory. Each case must be determined upon its own merits and evidence; but it may be said generally, that the presence in the territory before the opening, under the proclamation, and the actual settlement and entry at the land office must be so widely and obviously separated in every detail and circumstance as to render it impossible to reasonably conclude that the one was the result of the other, or in any wise dependent upon it.

I think it clearly appears that Mr. Wood, though permissibly in the territory, in charge of the military transportation train, took advantage of his position to seize upon the land in controversy, in anticipation of the advent of those who had been held back . . . . His engagement as a wagoner, and his train, had become mere instruments and means by which he intended to secure, in an unjust way, a most valuable quarter section of land, before the others arrived. This he was disqualified to do, and his entry must be canceled.

Noble was of the opinion that the government acre and land office in the southeast corner of the quarter section Fossett claimed was not in itself sufficient to impeach the good faith of the homestead entry. Fossett wanted to commute his homestead entry to cash and the only impediment was a charge of collusion for speculation purposes made by certain protestants including J. P. Bernard. The south half of section fifteen had been entered as a townsite on August 5, 1890. The quarter section Wood claimed was added to it on December 19. On January 4, 1892, Noble concluded that charges against Fossett were without foundation.<sup>51</sup> On February 10 Fossett received

<sup>51</sup> Kingfisher Townsite v. Fossett, 14 L. D. 13; Stann to register and receiver, Kingfisher land office, June 3, 1891, NA, Townsites, vol. 5, pp. 16-23; Bureau of Land Management, *Older Tract Book*, vol. 4, p. 197; NA, GLO, Kingfisher, Canceled Homestead Entries, no. 3. A microfilm copy of the *Oklahoma Tract Books*, 72 volumes, is in the Oklahoma Historical Society.

a final certificate for 120 acres on the payment of \$1.25 an acre. The southeast quarter of his tract which bordered the government acre he commuted to cash on April 22 on the payment of \$10.00 an acre. Noble's decision which disqualified Wood left in its wake a trail of tears for legal sooners.<sup>57</sup>

#### RAILROAD EMPLOYEES

Alexander F. Smith had been for a long time prior to January 30, 1889, in the employ of the Atchison, Topeka and Santa Fe Railroad Company as a trackman or section hand, and on that day he came to Edmond in that capacity, bringing his family with him. He did not enter Oklahoma District with the expectation or intention of taking land there. It appears that from March 2 to April 22 he remained continuously on the right of way of the railroad company, lived at Edmond with his family in his tent, and in the meantime and for many months thereafter remained in the employ of the railroad company. Prior to April 22 he indicated to his fellow-workmen a desire to take a homestead, but did so not toward carrying out the intention. His attention was called to a notice posted at the station at Edmond by the railroad company, warning all employees that, if they expected to take land, they must leave Oklahoma District.

When the lands were opened to settlement, Smith was at Edmond on the right of way. Soon after the hour of noon on April 22 he removed his tent about one hundred and fifty yards from the right of way and put it up on the Northeast Quarter of Section Thirty-five, in Township 14 North, Range 3 West. He improved his premises, made this quarter section his home and on April 23, duly made an entry at the proper land office at Guthrie. For several weeks he continued to reside on the land he had chosen. He valued the land at \$6,000, or at the rate of \$37.50 an acre.

Eddie B. Townsend came upon the same tract on April 22 at 1:20 p.m., nearly four hours in advance of the townsite claimants. On June 22 he filed in the land office at Guthrie a contest asking that Smith's homestead entry be canceled for the reason that Smith had, after March 2 and before April 22, entered upon and occupied lands in Oklahoma District. In all other respects Smith was a legally qualified homesteader; and the local land officers decided that he was entitled to the land

<sup>57</sup> Martin C. Lawrence was employed as a government teamster for the military authorities of the United States and resided on the Military Reservation at Oklahoma City. Within five minutes after the hour of the opening on April 22, 1889, he located on a quarter section and claimed it for his homestead. John H. Burford and John C. Delaney, register and receiver of the Oklahoma City land office, followed Noble's doctrine as set forth in the Wood case. Their decision is in the *Oklahoma Daily Journal*, July 1, 1891.

on which he had settled.<sup>53</sup> The General Land Office reversed the decision of the local land officers.<sup>54</sup> The Secretary of the Interior sustained the General Land Office and on February 28, 1891, ordered that Smith's homestead entry be canceled.<sup>55</sup> The entry was canceled March 9. Townsend, who had resided on the quarter section since the day of the land opening, made homestead entry for the land on March 12, 1891. On April 30, Smith filed a complaint in the District Court of Oklahoma County against Townsend, for the purpose of having him

<sup>53</sup>The decision of Register Dille and Receiver Barnes was made about July 28, 1890, and is in NA, GLO, Edmond townsite file, box 134. The file is a valuable source not only on the case of Smith v. Townsend, but also on the founding of Edmond.

<sup>54</sup>Asst. Com. William M. Stone to register and receiver, Guthrie land office, Oct. 30, 1890, NA, GLO, *Townsites*, vol. 4, pp. 357-361; "Claim Jumpers at Edmond," *New York Herald*, April 26, 1889, p. 11. Smith's homestead application, including his non-sooner affidavit, is in NA, GLO, Guthrie, Canceled Homestead Entries, no. 38.

<sup>55</sup>Noble to Com. Gen. Land Office, Feb. 28, 1891, NA, Int. Dept., Lands and R. R. Div., *Rec. Letters Sent*, vol. 121, pp. 36-38.

<sup>56</sup>The records of the General Land Office show that on June 27, 1892, Townsend filed an application to perfect claim to the northeast quarter of the land. The application is filed with cash entry No. 949. Townsend made cash entry no. 926 at the Guthrie land office on September 29; the \$375 was paid to the Secretary of the Interior; the said entry was approved on October 20, and on the same day patent was issued thereon, except a reservation for park, school and other public purposes, containing two and one half acres (as shown on the plat of the townsite of Edmond), leaving 31½ acres at ten dollars an acre, amounting to \$375. The purchase was made in accordance with Section 21 of the act of May 2, 1890 (26 Statutes, § 11), relative to the establishment of townsites. See also Com. T. H. Carter to register and receiver, Guthrie land office, Dec. 23, 1891, NA, GLO, *Townsites*, vol. 7, pp. 34-35.

On July 9, 1914, Andriens A. Jones, Assistant Secretary of the Interior, directed that the \$375 be paid to L. W. Marka, Mayor of Edmond. See papers in GLO, filed with cash entry no. 926.

"Townsend's final proof, or rather his testimony at the time he made his final proof was to the effect that he had never sold or bargained said tract or any portion thereof at the time or before he made his proof. Afterwards a large number of contracts were produced showing that he had sold quite a number of lots . . . . When these contracts were shown Townsend was forced to confess that he had sold portions of the tract he was seeking to prove up as a homestead. The Grand Jury of Oklahoma County wanted to investigate this case. A considerable number of the good citizens of Edmond knew of Townsend's perjury and were insisting on his indictment but [Horace] Speed or [John F.] Stone, I do not know which one, defeated the efforts of the Edmond people." The quotation is from a copy of a letter by William D. Lindsey, Register of Guthrie land office, to Alfred P. Swinford, Dec. 4, 1893, NA, Int. Dept., 13740 Lands and R. R. Div. 1893.

There remained in the quarter section 120 acres which Townsend paid for on October 20, 1892, at the rate of \$1.25 an acre, in accordance with Section 21 of the Act of May 2, 1890. See BLM, *Okla. Tract Book*, vol. 2, p. 168. Patent for the 120 acres was issued on January 12, 1893, and is recorded in BLM, *Okla. Patent Records*, vol. 5, p. 245.

declared a trustee for Smith, and for a conveyance of the legal title to the land accordingly. Annually for three years Smith made an unsuccessful attempt to have his claim sustained in the courts.

In 1892, Townsend paid \$375 to have his claim to the Northeast Quarter of the land in question changed or transmuted into a cash entry.<sup>54</sup> The Northeast Quarter was included in the Edmond townsite. Townsend's homestead entry embracing the remainder of the land, or 120 acres, was commuted to cash in 1892 on the payment of \$150.

Counsel contended that Smith had not entered upon and occupied any part of the lands of Oklahoma district during the prohibitory period, within the meaning of the acts of March 1 and 2, 1889.<sup>55</sup> The Supreme Court of the Territory of Oklahoma held that the words "enter upon and occupy" in reference to Seminole lands were equivalent to the words "enter upon" as used in reference to Creek lands.<sup>56</sup> And the interpretation was given that Congress intended that all persons who expected to avail themselves of the privileges and benefits of the acts of Congress opening these lands to settlement should remain without the limits of the lands until, by proclamation of the President, they should be permitted to go in and make homestead and townsite settlement upon them. It was observed that thousands of homestead settlers had remained outside the limits of the lands until it was lawful for them to enter. The court said of Smith: "He had been warned by the railroad company to go out, but refused to do so, and his duties were not such as to require him to remain in up to the time of the opening; and he took advantage of his being at the land, and secured a settlement on it before others, who obeyed the law, and remained outside, had an opportunity to reach it, even by railroad transit." Although Smith was lawfully on the right of way of the railroad company, his presence there disqualified him as a homesteader on adjoining lands. He did not have the qualifications prescribed in the Act of March 2, 1889.

In 1892, the register and receiver of the Oklahoma land office estimated the number of contest cases on the office docket as 1,600. Governor Abram J. Seay said that a construction of the acts of March 1 and 2, 1889, by the United States Supreme Court in the Smith case would "be the direct means of effecting a settlement of 90 percent of all contest litigation over homestead claims in Oklahoma Territory."<sup>57</sup> Warren G. Sayre,

<sup>54</sup> A brief of 45 pages by A. H. Garland and H. J. May is in the U. S. Supreme Court, *File Copies of Briefs*, vol. 16, no. 1173.

<sup>55</sup> *Smith v. Townsend*, 29 Pac. 60 (1892); 148 U. S. 490 (1893).

<sup>56</sup> *Seay et. al. to Att. Gen. W. R. H. Miller*, Sept. 8, 1892, *File Copies of Briefs*, loc. cit.

member of the Cherokee Commission, said: "The ownership and use of property of the value of millions of dollars will be determined when this suit is ended." He estimated that of the 10,000 quarter sections in Oklahoma District, half of them were claimed, and in some manner occupied by two or more persons who were at much expense contesting the rights of each other. Attorney General Miller urged an early decision of the Smith case. He said the proper growth and development of the country was retarded "for a man hesitates to sow unless he has some assurance that he can also reap." Miller observed that the moral tone of the entire people of Oklahoma Territory was affected in that the conflicting claims and the efforts to maintain them were most conducive to quarrels, perjury, estrangements, violence, and murder.

In a brief prepared for the United States Supreme Court under date of March 3, 1893, John F. Stone and A. X. Parker estimated that sooners and legal sooners totaled about 5,000. They explained that on the opening of Oklahoma District the word "sooner" came into existence and immediately by common consent was applied and accepted. They said it was used by public speakers, "became familiar in the columns of local newspapers, in the testimony of witnesses and in the arguments of advocates, and was heard from the bench and found its way into bound volumes." The attorneys said that the terms "sooners" and "legal sooners," although "newly coined and rough from the mint" were as old as Oklahoma Territory. Attorneys Charles A. Maxwell and George S. Chase said in a brief:

The lands contiguous to the railroad, where towns were to spring up, were the coveted prizes, and it is a little singular that all these persons who happened to be in the country on other lawful missions, and only concluded to make settlements as *afterthoughts*, and without interference with official duty, happened to get upon lands contiguous to large towns or in other favored places where their value exceeds many fold, and in numerous instances many hundred fold, the value of ordinary agricultural lands, suitable for homes and as contemplated by the homestead laws.

There were two technical points in the case. (1) When Smith was residing on the right of way he was on the identical tract for which he later made homestead entry. He simply shifted his position from the part covered by the railroad's easement to another spot. In securing title to the lands Townsend paid for the portion including the right of way. (2) On April 22, 1889, Smith seted upon Santa Fe Railroad time, an arbitrary standard adopted by the railroad for its use and convenience, and nearly thirty minutes faster than sun time.

The United States Supreme Court ruled on the cardinal point when it held that Congress did not intend that persons on the right of way in the employ of the railroad company

should have a special advantage of selecting tracts, just outside the right of way, and which would doubtless soon become the sites of towns and cities. The court said that the intent of Congress was to put a wall around Oklahoma District, and disqualify from the right to acquire, under the homestead laws, any tract within its limits, every one who was not outside the wall on April 22. "When the hour came," said the court, "the wall was thrown down, and it was a race between all outside for the various tracts they might desire to take to themselves as homesteads."

The Smith case determined conclusively that a person who was within the boundaries of Oklahoma District, subsequent to March 2, 1889, and prior to noon on April 22, and who by reason of having been therein gained an advantage over those who remained outside, was thereby disqualified from acquiring any land therein by homestead or townsite entry. If a prospective homesteader chanced to step within the limits of Oklahoma District between the dates mentioned, he might, under the letter of the law, have been disqualified from taking a homestead therein. But the court gave strong implication that if at the hour of noon on April 22, he was in fact outside of the limits of the district, his case would be different from the Smith case, and it might perhaps be said that he was not disqualified from taking a homestead, since he had acted within the spirit of the law.

It was necessary for the railroad to provide proper and safe facilities for travel, and for the handling of such business as might be offered to it as a common carrier. It was necessary to employ persons to keep its track, rolling stock, and yards in a safe and proper condition. There was no compulsion or obligation on anyone to work for the railroad. The individual had the choice of accepting the remuneration offered him by the railroad for entering its employment, or of preserving the right to acquire a homestead or town lots at a future date.

Events in the vicinity of Oklahoma City caused this theory of capitalism to be echoed in the courts. Rachael Anna Haines was the common-law wife of David L. Payne, who died in 1884. About April 15, 1889, she came to Oklahoma City where she was employed by William L. Couch as a cook for his railroad graders. Mrs. Haines, Couch, and his father, Mesback H. Couch, remained in Oklahoma District until April 22, and were held to be disqualified as homesteaders.

About April 15 Mesback Q. Couch came to Oklahoma City where he worked on the railroad in the employment of his brother, William L. Couch. Apparently he did not visit the tract he desired to homestead. On April 21 he went to the Pottawatomie country on the east border of Oklahoma District

from which he entered the race on horseback at noon on April 22. He reached a tract bordering South Oklahoma City about 1:30 p.m. and did acts of settlement. He worked for the railroad company after the land opening. In 1893, Acting Commissioner Stone said of him: "If Couch was in fact a soomer, and took advantage of his entrance into the territory, the arms of the law, after a thorough investigation, have failed to develop the fact."<sup>60</sup> On May 25, 1893, H. George Kuhlman filed in the local land office a relinquishment by Couch and an application to make homestead entry for the land. Couch doubtless received a consideration for the relinquishment.

#### HOW SOOMERS COULD SELL OUT

If Smith had maneuvered more efficiently in litigation he might well have reaped a profitable reward for his soomerism, and at the expense of Townsend, Ewers White, legal soomer and deputy of Marshal William C. Jones, demonstrated such maneuvering as will now be explained.

Section 2 of the Act of May 14, 1880, provided that in all cases where any person had contested, paid the land office fees, and procured the cancellation of any preemption, homestead or timber culture entry, he should be notified by the register of the land office of the district in which the land was situated of such cancellation, and should be allowed thirty days from date of such notice to enter said lands.<sup>61</sup> One purpose of the act was to secure to the successful contestant a reward for his services in aiding the government to expose fraud, by giving him a preferred right of entry. A second purpose of the act was to permit an inceptive right to be obtained, other than by filing an entry for the land. When a homestead entry of a disqualified entryman was canceled, he who attempted to enter the land on the ground that the original entry was void, acquired no rights against one who had initiated the contest in the land office and obtained a relinquishment in his favor from the original entryman.

<sup>60</sup> Stone to register and receiver, Oklahoma City land office, July 23, 1892, NA, GLO, "H" Letter Book, vol. 277, pp. 261-287.

<sup>61</sup> 21 Statutes, 140. Illustrative cases involving lands in Oklahoma district are *Sprent v. Durland*, 35 Pac. 682; 896 (1894); and *James L. Hodges v. William C. Colcord*, 70 Pac. 383 (1902); 193 U. S. 192 (1904).

In reference to the act of May 14, 1880, it should be said that if the government gave a patent to a soomer, it alone could bring suit to cancel the same. One who had no interest in the land could not complain, because he could not be injured by the action of the government in issuing a patent for the land to another. If the Department of the Interior entertained a contest, and permitted it to be filed, the party filing the same, had a right to have it heard, but he had no right or interest in the land itself. He did not acquire any interest in the land until after the homestead entry against which his contest was directed had been canceled, as a result of his contest; *Parker v. Lynch et al.*, 56 Pac. 1082 (1898).

A homestead entry, valid upon its face, constituted such an appropriation and withdrawal of land as to segregate it from the public domain, and precluded it from subsequent homestead entry or settlement until the original entry was canceled or declared forfeited, in which case the land reverted to the government as a part of the public domain, and became subject to entry under the land laws of the United States. The Ewers White case illustrates the principle.

White was appointed deputy marshal by Jones in Kansas in 1887, and held the office until May or June, 1889. White said he was ordered into Oklahoma District to assist in preserving order, and that he arrived at Oklahoma City about April 15. Assistant Commissioner Stone wrote:

He seems to have done nothing officially, except to warn the people not to step from the railroad tracks. It is very evident that the people who were there, and afterwards made selections of land, knew that it was unlawful for them to be in the territory for such purpose, even upon the R. R. right-of-way, because they all except the officials, pretended in one way or another to be employees of the Company . . . . How many people were here the testimony does not reveal, but the description of the scene that was presented at precisely 12 o'clock noon, on the 22nd of April, shows that there was quite a number, and one second past that hour the Railway Company was short a large number of employees, who, as if by magic had at once become tillers of the soil and honest bona fide settlers upon the public domain.

On April 22, White rode a horse along the right of way until noon. He carried a board about three feet long with a crosspiece nailed on, to which was attached a card with his name written thereon. At noon he promptly entered upon a quarter section just southwest of the present capitol in Oklahoma City, drove the board into the ground and claimed the land. About 7:30 a. m. on April 23 at the Guthrie land office Jones succeeded in getting eight of his deputies in line ahead of all others. Stone wrote:<sup>62</sup>

The first one at the door was a deputy Marshal, and immediately behind him in the line were seven other deputies ostensibly preserving order, but at the same time ready, willing and anxious to make entries of a portion of the public domain. Marshal Jones in his testimony denies that he did anything to assist his deputies in obtaining any advantage of position in the line, yet the deputies were there in the line as stated, and Jones was there in command of the force.

White made homestead entry No. 6 about 10 a. m.

<sup>62</sup> Stone to register and receiver, Guthrie land office, March 7, 1890, NA, GLD "H" Letter Book, vol. 119, p. 174-228. White's homestead application, including his non-sooner affidavit, is in *ibid.*, Canceled Homestead Entries, Guthrie, no. 6. This was "the first claim contest to be tried in Oklahoma": "All Three Shut Out," *Kansas City Times*, July 22, 1889.



A few days later Charley J. Blanchard and Vestal S. Cook, who had taken undue advantage in the Run, each filed in the local land office an affidavit of contest, charging that White was disqualified as a homesteader. On July 18, the register and receiver of the land office recommended the cancellation of White's entry, and dismissed the contests of Blanchard and Cook. All parties appealed their cases. On June 3, William T. McMichael had entered upon the land with a view of establishing his residence thereon, and initiating a homestead right to the land. He was ejected from the land on August 2 by the military at the instance of White. On August 31, he filed a contest, alleging that his rights were superior to those of White and of other claimants, and that he was the only qualified settler on the tract entitled to make entry therefor.

While the case involving White, Blanchard, and Cook was pending before the Secretary of the Interior, White on November 29, 1890, at 3:25 p.m. relinquished his homestead entry, and Samuel Murphy entered the tract of land.<sup>62</sup> The two events of that day arouse suspicion, that White, realizing the weakness of his case, sold his "rights" to the highest bidder at the expense of McMichael. The case henceforth was one between McMichael and Murphy. The Secretary of the Interior held that White's entry could not be regarded as void, but voidable only.<sup>64</sup> He said that its invalidity had to be established by extraneous evidence, and a judgment as to its illegality pronounced by a competent tribunal. If that had never been done the tract covered by the entry would have remained forever segregated from the public domain. Murphy received a final certificate for the land on June 16, 1897.

The Supreme Court of the Territory of Oklahoma held that White's entry, being prima facie valid, segregated the tract of land from the mass of the public domain, and precluded McMichael from acquiring an inceptive right thereto by virtue of his alleged settlement. The court also said that McMichael acquired "no right whatever by his unwarranted intrusion or trespass upon the possessory rights of White"; that McMichael was "a mere intruder, a naked, unlawful trespasser," and that no right, either in law or equity could be founded thereon. The Supreme Court of the United States also agreed that when White, from the first disqualified as an entryman, relinquished the entry he had made, the tract again became public lands, subject to the entry made by Murphy.

<sup>62</sup> NA, GLO, *Okl. Tract Book*, vol. 1 (serial 35), p. 141. Murphy's homestead name is in NA, GLO, *Okl. City*, F. C. 2764.

<sup>64</sup> *McMichael v. Murphy*, 20 L. D. 147; on review, p. 535 (1895); 70 Pac. 189 (1902); 197 U. S. 304 (1905). One contesting for a preference right had no right to the possession of land pending the litigation as against the homestead entryman; *Reaves et al. v. Olive*, 41 Pac. 353 (1895).

Congress conferred upon the Department of the Interior the express power to hear and determine all questions pertaining to the sale or transfer of the public domain to private individuals.<sup>65</sup> To avoid confusion and conflict the courts were content to let the department perform its duty in regard to obtaining facts, and with a reasonable application of law. Thus the Secretary of the Interior was virtually a czar in land cases that arose in Oklahoma district.

Most legal soomers who entered land used good judgment in selling relinquishments to their homesteads. A few of them had a favorable hearing before the Secretary of the Interior as illustrated by the following cases.

In 1889, John B. Taylor and his family moved from Missouri to the stage station in the vicinity of present Yukon. Taylor contracted with the Northwestern Stage and Mail Company to take charge of the station. The company carried the United States mail and transported passengers between Ft. Reno and present Oklahoma City, a distance of about thirty-five miles. This was the only station on the route, and Taylor furnished meals for the employees of the company, and also to the passengers, for which he was paid by the company. He resided at the station until April 22, 1889, and on the afternoon of that day selected a near-by tract of 152 acres for his homestead and made entry for it.<sup>66</sup>

On November 11, Solomon S. Riddle instituted contest proceedings against the entry, alleging that Taylor had selected and settled upon the land prior to the hour of lawful opening. Assistant Secretary George Chandler held that Taylor was legally within Oklahoma District at the opening thereof for entry, and had selected the land after the period prescribed. Since there was no adverse interest when the entry was made, and since Riddle instituted the contest several months later, Chandler sustained Taylor's entry. Taylor relinquished the land on March 19, 1894, and on the same day John Fritz made homestead entry for it.

Francis M. Jordan, a physician, went into Oklahoma District in 1888 with a view to making settlement and selected a tract near present Oklahoma City. He properly obeyed the order of the military to vacate Oklahoma district, an order given before

<sup>65</sup> In regard to jurisdiction see *John C. Adams v. William L. Couch*, 25 Pac. 1009 (1891); *Commerger v. Dicks*, 26 Pac. 864 (1892); *Gourley v. Countryman*, 90 Pac. 427 (1907); *Shepley et al. v. Cowan et al.*, 91 U. S. 330 (1875).

<sup>66</sup> *Riddle v. Taylor*, NA, Int. Dept., Lands and R. R. Div., vol. 262, pp. 457-458 (1893). An artist's sketch by R. F. Zegbaum of the "Relay House on the Mail Route Between Fort Reno and Oklahoma," is in *Harper's Weekly*, Vol. XXXIII, No. 1686 (April 13, 1889), p. 230.

the passage of the prohibitory act. He was an employee of the Atchison, Topeka and Santa Fe Railroad Company, as physician and surgeon, with headquarters at Purcell. During the prohibitory period he was three times within Oklahoma District, but each time on a professional visit to a sick patient and was at no time more than a few steps from the railroad right of way. On April 22, 1889, he went to Oklahoma City on the train, walked to a tract adjacent to the place he had selected in 1888, and made settlement. The question as to whether he was a qualified entryman came before Secretary Hoke Smith.<sup>47</sup> He found that during the three visits Jordan had not sought or obtained any advantage of anyone, and awarded him the land. Smith observed that no knowledge of this particular land or of adjacent lands obtained prior to the passage of the Act of March 2, 1889, however advantageous such information might be, could have the effect of disqualifying Jordan for subsequent homestead entry. Jordan proved up on the land in 1896.

#### CONCLUSION

The words, "any part of said lands," used by Congress in 1889 applied to the lands of Oklahoma District collectively, and disqualified all prospective settlers, whether rightfully or wrongfully there, if such entrance proved advantageous in the race on April 22. The language regarding entrance upon the lands is general and comprehensive. Its purpose was to secure equality among all who desired to establish settlement in Oklahoma district.

Sooner or later many a sooner sold out to a willing purchaser. Before boards established under act of Congress allotted townsites, some lots had been transferred a half dozen or more times, most of them with the acquiescence of the city authorities. This situation presented no easy question for Congress in phrasing a townsite law, or for officials in administering it. It was not right to discriminate against men who bought property in good faith from others who went there first. What opportunity had they to investigate and determine whether a man was there five minutes or five hours before "twelve o'clock, noon" on April 22? When a purchaser in good faith came to a man in possession of a lot or a quarter section and wanted to buy the rights of the man in order to erect a house, the purchaser should be protected and his home not taken from him simply because he purchased from one who went there before the hour of the opening. It would be unjust to take the property from the purchaser after he gave his money and time in building up the

<sup>47</sup> Monroe et al. v. Taylor, 21 L. D. 264 (1895). The decision of John H. Burford and John C. Delaney, register and receiver of the Oklahoma City land office, is in *Oklahoma Daily Journal*, June 24, 1891.

new country. There was no law that gave the innocent purchaser any power to determine whether the vendor was a violator of the law or whether he was there lawfully. A person who entered Oklahoma District in violation of the prohibitory clause could not acquire title to a town lot through a board of townsite trustees. A qualified person who first established the fact that a lot or a quarter section was being held by a sooner, and laid claim to it, should have his rights protected as against an innocent purchaser of the sooner's claim. The question also arose as to how "innocent" the purchaser was.

Legal sooners who took a lot or homestead were in a position to profit thereby in selling relinquishments. Those who made homestead entry, by taking an appeal of their cases to the Commissioner of the General Land Office or to the Secretary of the Interior, might prolong the period during which they could exploit the resources of the land, and find a desirable purchaser for its relinquishment. The Commissioner of the General Land Office began by being quite lenient toward legal sooners. The Secretary of the Interior exercised the power of a czar in deciding land contests, the courts sustained him, and he generally dealt severely with legal sooners.