

No. 2400

**In the United States Circuit  
Court of Appeals**

**Ninth Circuit**

OREGON & CALIFORNIA RAIL-  
ROAD COMPANY, a corporation, et  
al,

Defendants and Appellants,

JOHN L. SNYDER, et al,

Cross-Complainants and Appellants,

WILLIAM F. SLAUGHTER, et al,

Intervenors and Appellants,

vs.

THE UNITED STATES OF AMERICA,  
Complainant and Appellee.

Appeal from the United States Circuit Court for  
the District of Oregon.

**Brief for Cross-Complainants**

A. W. LAFFERTY,

Attorney for Cross-Complainants.



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(a)

STATEMENT OF CASE.

John L. Snyder started this litigation by filing in the United States Court at Portland, on Sept. 16, 1907, his suit to compel the defendant railroad company to sell him 160 acres of the land involved.

Snyder became an actual bona fide settler on the land before applying to purchase same under the Act of May 4, 1870. Following Snyder's suit 64 other bona fide settlers filed identical suits.

The Cross-Complainants maintain that actual settlement on the land is necessary as a prerequisite to applying to purchase or filing suit. They oppose the contentions of the "Intervenors," who merely applied to purchase but were not actual settlers.

The Court sustained the Demurrers of the Defendants to the Bills of the Cross-Complainants and they have appealed to this court.

(b)

### SPECIFICATIONS OF ERROR.

The Court erred in sustaining the Demurrer of the Defendants to the Bills of Complaint of the Cross-Complainants by holding that the acts of congress of April 10, 1869 and May 4, 1870, granted estates upon condition to the defendant railroad company instead of estates in trust, as maintained by Cross-Complainants. This is the decisive point in the case.

(c)

### BRIEF OF ARGUMENT.

The grant is one in trust and not an estate upon condition.

Platt vs. Union Pacific, 199 U. S., 48-60.

United States vs. Michigan, 190 U. S., 379.

- United States vs. New Mexico, et al, District Court New Mexico, unreported but copy will be presented.
- United States vs. Des Moines, etc., Co., 142 U. S., 527.
- Colfield vs. McClelland, 16 Wallace, 331.
- Goldberg vs. Kiss, 5 S. Dak., 169.
- Stingfellow vs. Kane, 99 U. S., 610.
- Mills Co. vs. Railroad Companies, 107 U. S., 507.
- Morgan vs. Rogers, 79 Fed., 577.
- Rice vs. Railroad Company 1 Black, 378.
- Railroad Co. vs. Prescott, 16 Wallace, 607.
- Topeka Commercial Security Co., vs. McPherson, 7 Okla., 332.

The two decisions last cited show that the railroad company has no right to pay taxes on these lands and thereby assume the position of a fee-simple owner. All the foregoing decisions show that this was a conveyance in trust and not a conveyance on a condition subsequent.

Respectfully submitted,

A. W. LAFFERTY,

Attorney for Cross-Complainants.