

virtue of their long occupancy of the 20-acre tract above referred to. It is also unquestionably true that, after the first decision of the supreme court, there was an expectation among the citizens of Hot Springs that congress would pass some act for the disposition of that reservation, and that occupation and improvement would be among the matters considered by congress in such disposition. Defendant, after receipt of title, several times promised to carry out his contract.

Upon these facts, I think it very clear that the claim of defendants that this contract was without consideration, or that the consideration was illegal, cannot be sustained. Obviously there was a settlement between the parties. The plaintiff William H. Gaines had some claims, as between himself and defendant, to the ground, and probably to the buildings, which were settled and adjusted by this deed and contract. He unquestionably had that prior occupancy which it was thought might be of value in the future acquisition of title from the government, and which in fact proved to be of value, the benefits of which the defendant sought to acquire, and did acquire. The plaintiff was not simply contracting to furnish testimony to support a claim of the defendant believed to be good, or believed to be fictitious; but he was contracting with a view of preserving his own rights, and uniting the claims of himself and defendant in the one person, for the greater convenience, and in the hopes of better success, in any proceeding which might be initiated. The fact that he contracted to furnish the testimony, and did in fact furnish it, works no estoppel as between himself and defendant. *Hobbs v. McLean*, 117 U. S. 567, 6 Sup. Ct. Rep. 870.

The contract which was made, was in no manner a violation of any act of congress, nor did it contravene any public policy. It was a contract between two parties who might possibly be contesting claimants under some future act of congress for a settlement of their respective claims. The case of *Southerland v. Whittington*, 46 Ark. 285, is very much in the point, and the decision of that learned court is in accord with the views I have expressed. See, also, *Lamb v. Davenport*, 18 Wall. 314.

A decree will be entered in favor of the plaintiffs as prayed for.

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### HOLT v. WINTERS.

(*Circuit Court, S. D. New York. February 23, 1887.*)

#### COSTS—SECURITY FOR—NON-RESIDENCE.

Where defendant moved for an order on the plaintiff to furnish security for costs, because plaintiff was not a resident of the state of New York, and it appeared that plaintiff was set up in the proceedings as such resident, and on all the papers nothing appeared but that he was so set up properly and correctly, the motion was denied.

In Equity.

*Ellison & Gill*, for plaintiff.

*Foster & Wilson*, for defendant.

WHEELER, J. The defendant moves for an order on the plaintiff to furnish security for costs, because he is not a resident of the state of New York. He is set up in the proceedings as such resident. On all the papers it does not appear but that he is so set up properly and correctly. The motion is therefore denied. This is not intended to imply that the motion would be granted if he was shown to be a non-resident.

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UNITED STATES *v.* ORDWAY and others.

(*Circuit Court, D. Oregon.* March 7, 1887.)

1. PUBLIC LANDS—CUTTING TIMBER—ACTION FOR DAMAGES—PARTIAL DEFENSE.  
A partial defense to an action or in mitigation of the damages claimed therein ought to be pleaded in the answer as a distinct defense; and an allegation that the defendants cut and removed certain timber from alleged public land, believing that it was the land of the Northern Pacific Railroad Company, from which they had a license, is such a defense, where the damages claimed in the complaint are based, not only on the value of the timber in the standing tree, but also the value bestowed on the same in converting it into lumber, and putting it into market.
2. SAME—GRANT TO THE NORTHERN PACIFIC RAILROAD COMPANY.  
The grant of certain odd sections of the public lands to the Northern Pacific Railway Company, by the act of July 2, 1864, (18 St. 365,) does not give the corporation any such present right to or interest in any one of such sections as authorizes it to waste the same, by disposing of the timber thereon before it is earned by the construction of the section of the road adjacent and opposite thereto. The case of *U. S. v. Childers*, 8 Sawy. 171, 12 Fed. Rep. 536, distinguished from *Butte v. Northern Pac. Ry. Co.*, 7 Sup. Ct. Rep. 100, and followed.
3. SAME—EARNED LANDS.  
On the construction and acceptance of any section of the road of the Northern Pacific Railway Company, the coterminous odd sections vest absolutely in the corporation, and thereafter the patent therefor may be considered as having issued.

(*Syllabus by the Court.*)

Action to recover damages for cutting timber on the public lands.

*Lewis L. McArthur*, for the United States.

*Rufus Mallory*, for defendants.

DEADY, J. This action is brought by the United States to recover damages for cutting and removing timber from the public lands, and converting the same to the use of the defendants. Substantially, it is alleged in the complaint that on March 1, 1883, and on divers other days between then and the commencement of this action, the defendants unlawfully entered on the S. W.  $\frac{1}{4}$  of section 11, in township 2 N., of range 5 E. of the Wallamet meridian, the same being public land of the United States, situate in the territory of Washington, and did unlawfully cut and remove therefrom 6,000,000 feet of timber, and manufactured the