New Mexico Historical Review

Volume 33 | Number 2 Article 4

4-1-1958

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THE PUBLIC DOMAIN IN NEW MEXICO 1854-1891

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(concluded)

Within a few years of the passage of the Homestead Law, it was evident that its application to the arid lands of the West was not practical. A quarter-section of land where rainfall was plentiful was valuable to its owner, but the same area west of the one hundredth meridian was usually of value for growing crops only if irrigation was applied.

It was to cope with this situation that the Desert Land Act was passed on March 3, 1877. The law had weaknesses that made its application difficult from the start. One of these was the size of the area sold. The passage of the act was attended by much debate on this point. It was pointed out that well-tended irrigated land is exceedingly productive and the question was raised why a person should be allowed 640 acres of such land and only 160 acres under other land laws? The Senator who sponsored the bill illogically replied, "Simply because it is very expensive and difficult to conduct water to the land."

That view was all the more reason for limiting the size of the tract because allowing the larger amount was simply an inducement to acquire it for grazing purposes. This was a purpose of promoters of the law. Existing laws prohibited the sale of public lands except in a few instances. This bill allowed for purchase and the amount allowed was more worthwhile for grazing than the previous maximum of 160 acres. Yet this was an irrigation and not a grazing law.

The value of small tracts intensively cultivated was well recognized in New Mexico where irrigation had been practiced for centuries. For the average settler, large acreage meant a large mortgage and the interest took much of the profit. More land than a farmer could care for himself meant hiring help and payments on the mortgage might preclude this. A good living could be had on 60 to 80 acres and often persons who had more than that sold part of it.

Another weakness was the looseness with which the bill was drawn. A liberal construction would allow title to pass with very little water put on the land. A strict interpretation would require that all the land be irrigated. Except in rare instances it was impossibly expensive to irrigate fully the entire 640 acres. In New Mexico easily irrigated land had long been privately owned and what was left called for more cash to reclaim than the average person could afford.

The General Land Office adopted a strict interpretation of the law from the start, although Commissioner Williamson recognized that it would probably defeat its operation and beneficial results. On the other hand, a liberal construction was certain to permit easy evasion of the law and render it a mockery.

The tract allowed was too small for a stock range and too large to irrigate by most persons using only their own resources. It was held that all the land must be irrigated within the required three years for a patent to be legally issued. "This was expecting a miracle second only to the rainmaking act of 1873." On the other hand, the area was too small to attract investment capital to develop the large-scale storage of water needed to irrigate the arid regions.

The General Land Office had misgivings about the application of the Desert Land Law in New Mexico. Eight months after it was passed, all entries under the act were suspended and hearings ordered to determine their legality. They were to be most thorough and were to reveal whether any of the land entered would produce an agricultural crop without irrigation, whether any had been previously cultivated by residents or semi-residents, and whether entries had been made by parties other than real applicants. Such development of the facts were to be made as would "fully protect the interests of the United States, prevent the success of fraud and secure the rights of all persons who [had] made entries in good faith under said law."

This order for suspension was revoked within a month at the insistence of Secretary of the Interior Schurz. At the same time, however, specific instructions were issued that

any cases suspected of fraud were to be immediately reported to the General Land Office.

There was justification for these suspicions. The law specified that entries must be in compact form; yet, it was less than a year old when numerous persons desired to take out entries in contiguous subdivisions of 40 acres. The obvious purpose was to control a maximum acreage adjacent to a stream or series of springs. This could be important for irrigation purposes, but even then to irrigate the whole claim would be expensive and difficult to accomplish in three years. Far more important, such control of a source of water gained the owner dominion over large quantities of grazing land in areas back from the water. For example, "Senator Dorsey [owned] all the springs on 160 acres, and this [controlled] the whole 10,000 acres back of it."

The matter of contiguous entries was dealt with by Land Office ruling. Desert land entries could be made on unsurveyed land. Without survey lines as a guide, a great deal of looseness arose as to what constituted *compact form.* Even in surveyed areas entries frequently followed streams in a comparatively narrow strip. It was ruled that entries must be made as nearly as possible in the shape of a legally subdivided section which, of course, was a square. Parts of more than one section might be admitted if they conformed to the proper shape. Merely contiguous small pieces of land, joined end to end, were ruled to be illegal whether on surveyed or unsurveyed land.

But this did not end fraudulent use of the land. Since it was required that only twenty-five cents per acre be paid at the time of entry, and since the entryman had three years to make proof of reclamation and complete the payment, and could relinquish areas and make entries in other names, a way was opened to control large bodies of land along streams at what amounted to a nominal rental. In this way thousands of acres of land in New Mexico were held as a lease for three years by the payment of twenty-five cents an acre. Officials there regarded desert land entries as a fruitful source of a great deal of "crookedness."

Through 1891 there were 415,203 acres in original entries

and 66,725 acres in final certificates. Through 1894 (when entries made in 1891 would normally be completed) acres in final certificates had more than doubled to 139,622. Only about 33 per cent of entries made by 1891 were proved up by the end of 1894. Since two-thirds of the entries were never completed by conducting water upon the land, it is evident that it was used for other than irrigating purposes. This could only be for grazing on 57 per cent of it, that being the percentage of entries made in townships where crops could not be grown without irrigation and where there was no irrigation. Also, 75 per cent of entries made through 1891 were made in townships where there was no irrigating in any part of the township at that time. Furthermore, by 1891 only about 47,000 acres had been added to the total under cultivation by irrigation during the fifteen years the law was in force, as opposed to 415,203 acres in original entries. There were nearly nine times as many acres in original entries as were added to the irrigated total. By 1894 there were nearly three times as many acres in final certificates as were added to the total brought under cultivation by irrigation through 1891.

All the land brought under irrigation was not public domain. Conservatively, 40 per cent was by private irrigation companies operating on land purchased from grants and individuals. So almost fifteen times as much land was entered, and nearly five times as much acquired by certificates, as public domain brought under irrigation while the law was in effect.

Registrars were not very discerning in the entries they allowed to be filed. A number of consecutive entries in the same township on the same day was rather common. These groupings are bound to stand out when they are surrounded by completely random entries.

Although the Desert Land Law was badly misused, the fifteen years the original law was in existence was practically concurrent with a mushroom growth of the cattle industry. The intention of a large element in this industry was to make a quick return on an investment and be prepared to get out — something like hitting the peak in the stock market and

then unloading. This segment of the industry stopped at nothing to acquire land for their operations; however, many of the cattlemen themselves deprecated these tactics.

Nationally there was a marked decrease in desert land entries by 1887. The cattle industry reached its maximum development by the middle eighties and the demand for land fell off. Profits of the industry showed a sharp decrease beginning with 1885 because of overstocking and the severe winters. In New Mexico the decrease in desert land entries did not come until 1891 when original entries dropped to 19,548 acres from the figure of 55,534 in 1890. Likewise the depressed period in the cattle industry came to New Mexico in the early 1890's. The winter of 1886-1887 was unusually severe on the northern plains and cattle losses in some herds were as high as eighty per cent. The winters were milder in New Mexico and losses not heavy; consequently, the cattle depression came later here than in the North, and when it came, was caused by drouths, overstocking, and low prices.

The decline of the cattle industry brought a new epoch to irrigation. "In 1882, there were no irrigation works built on sound engineering principles, but by 1888, investors were turning from ranching to the rapidly developing irrigation companies."

In New Mexico there were 19 irrigation companies incorporated in 1888; 32 in 1889; 23 in 1890; and 14 in 1891 — a total of 88. Conservatively estimated 40 per cent of the land brought under irrigation during the decade of the 1890's was by these companies. Purchases under the Desert Land Act were minor because they needed land in large quantities for economical development of irrigation facilities. Land in excess of amounts allowed by desert land entry was acquired from individuals and land grants. The Springer Land Association purchased 130,000 acres from the Maxwell Land Grant Company. Other areas of successful development were along the Rios Pecos, Grande and San Juan and in the Mimbres Valley. Some companies chose areas that were impractical for irrigation development and failed. Two of these were in Bernalillo County; one in Tijeras Canyon and the other along the Rio Puerco.

It was evident that a land law which gave no consideration to the problem of water needed substantial revision. Congress took a half-hearted step in that direction in 1888 when it passed an act providing for the withdrawal of irrigable land from entry. By this act, 39 reservoir sites were selected in New Mexico totalling 40,170.20 acres.

These withdrawals (repealed in 1890) were very unpopular with the people of New Mexico, who felt that the Territory was as much entitled to national aid for irrigation purposes as other sections were entitled to aid for rivers and harbors. It was acknowledged that the withdrawals covered potentially irrigable lands, but it was the feeling that nothing would come of this action and the immediate result would be to keep settlers from filing entries and making developments on their own initiative.

Starting in 1877, there had been a determined movement to repeal the entire desert land policy. This movement was not successful and a new era in irrigation started in 1891 with the problems of operation still unsolved.

Warnings appeared by 1879 that title to much public land was being acquired in a manner and under conditions not contemplated by law largely because the land laws were not being adapted to the arid West. Large-scale prosecution of fraudulent practices began with the advent of the Democratic administration in 1885.

The decade of the 1880's in New Mexico saw the expansion of railroads and a boom in land entries. By December 7, 1878, the Atchison, Topeka and Santa Fe Railroad reached the northern boundary of New Mexico and a subsidiary, the New Mexico and Southern Pacific, started to build south from there. Progress was slow. It was not until April 5, 1880, after a burst of activity, that the line reached Albuquerque.

There followed immediately an unprecedented increase in land entries. The largest number of original homestead entries previous to 1880 was in 1870 when there were 96. In 1880 there were 181 entries. In 1876 there were 35 final homestead certificates, the largest number in any year previous to 1880, and in 1880 there were 98. The high for donation notifi-

cations prior to 1880 was in 1877 when there were 38. In 1880 there were 172. The increase was even greater in the case of donation certificates. The largest number previous to 1880 was in 1873 when there were 27; in 1880 there were 162.

This increase was permanent and steady as is shown by a comparison of the entries in the dozen years following 1880 with the same number previous to 1880:

Kind of entry	Inclusive years prior to 1880			Inclusive equivalent number of years after 1880		
	Years	Entries	Acres	Years	Entries	Acres
Orig. Homestead	1868–79	441	63,515	1880–91	6,343	877,313
Final Homestead	1873–79	88	12,951	1880–86	1,538	199,372
Orig. Timb. Cul.	1875–79	38	5,422	1880–84	385	52,240
Donation Notif.	1858–79 (22 yrs.)	168	26,101	1880–82 (3 yrs.)	297	47,197
Donation Cert.	1870–79 (10 yrs.)	64	8,840	1880–84 (5 yrs.)	274	43,149
Pre-emp. Decla.	1861–79 (19 yrs.)	616		1880–91 (12 yrs.)	7,041	
Mineral Appl.	1869–79	62		1880–89	546	
Orig. Desert L.	1877–79	45	16,668	1880–82	122	30,484
Mineral Sales	1870–79	8	129	1880–88	377	6,438
Cash Sales	1868–79	352	47,142	1880–91	3,398	437,231

Land for grazing purposes was needed in ever increasing quantities — far more than could legally be acquired under the land laws.[1] Competition for grazing rights on the public domain was becoming so keen that it was becoming ever more desirable to acquire title to land — especially land that controlled water. The consequence was an epidemic of fraudulent manipulation of the land laws. Prior to this decade there had been only four indictments for land fraud in the Territory. None of these had resulted in a conviction.

By 1881, the incidence of fraud was such that Elias Brevoort, Receiver in the land office at Santa Fe, on December 5, informed Commissioner N. C. McFarland, in a letter of far-reaching consequence, "That I have quite recently become impressed with the belief there has been for some

1. It has already been shown tht much of the land entered under the land laws was illegally acquired in the interest of stock graziers.

months past a system of frauds perpetrated in making entries of lands." He named, as principal suspected parties, José de Sena, former register at Santa Fe; Antonio Ortiz y Salazar, former probate judge of Santa Fe County; John Gwyn and Thomas Gwyn of Santa Fe, the latter a former register; Miguel Salazar, Las Vegas attorney; Alexander Grzelachowski, better known as "Polaco"; Celso Baca of San Miguel County; and Miguel Martin, Leandro Urtadio, José Trejora, Luis F. Garcia, Hilario Montana, Ignacio Valdez, Tarivio Martin, Frank Unruh, and B. F. Houx, all residents in the vicinity of Cimarron in Colfax County. There were also, he believed, many others.

The practice was to have witnesses furnish false affidavits, dating back the time of settlement to suit the case, and the entrant then acquired the land without ever having seen it. Afterwards the principal manipulators and advisors purchased it for a mere nominal sum. Another practice was for stock-raisers to have their laborers make false entries for their employers' benefit.

Brevoort suggested that a special agent of the Interior Department be sent to the Territory at once to investigate. He should be "a man firm and resolute, and beyond the reach of bribery, who should be paid *double* or *treble* the usual salary of special agents, with all expenses paid, for the reason that the risk of life [was] great, not only to him, but to persons giving information of the frauds in question. . . ."

Brevoort left office on December 8, 1881, three days after his communication with the Commissioner. It is probable that he had no axe to grind on the troubled wheel of Territorial politics since his name drops completely from the resulting investigations, charges, and counter-charges.

As a direct result of Brevoort's charges, on August 5, 1882, Robert S. Graham, a clerk in the General Land Office, was appointed for a period of one month to investigate fraud in New Mexico. This was later extended for an additional thirty days. He found that conditions warranted a much more extensive scrutiny than originally contemplated. By the end of 1884, at least seven special agents of the General Land Office had conducted investigations in the Territory. These

were Richard J. Hinton, H. H. Eddy, John M. Dunn, Frank D. Hobbs, John G. Evans, A. R. Greene, and Charles A. Walker.

With the evidence unearthed by these agents, Secretary of the Interior Teller and Commissioner McFarland set in motion the wheels of justice through indictments for fraud.

Through 1891 there were 3,633 criminal cases in the five Federal District Courts in New Mexico. Of these 641 involved land fraud; however, there were only four such cases prior to 1883. Perjury accounted for the most cases with a total of 442. Unlawful inclosures followed with 78 cases, and violation of timber laws accounted for 64. Other categories were subornation of perjury, conspiracy, official misconduct, abstraction of records, bribery, forgery, false certificate and unlawful obtaining of land.

There were only 15 cases with a jury verdict of guilty, but this does not tell the entire story. In 82 cases the defendant was not found by a United States Marshal. These Marshals repeatedly wrote on subpoenas that after a diligent search they were unable to find the defendant and did not believe the person existed. This was probably true because one Grand Jury foreman pointed out that many entries were made with fictitious names. Some of these defendants may have skipped the country but in either instance they were presumably guilty. Also, in 209 dismissed cases, all or part of the records are missing from the transcript. Many dismissed cases were not prosecuted by the U. S. Attorney because records were lost or stolen from the files. This was a serious difficulty then because all affidavits, etc., were in long hand with a single copy and, if missing, were hard to duplicate. Without the missing transcripts, it is impossible to say how many of these cases were not prosecuted because the record had already been stolen at the time for prosecution. The fact that the records were lost or stolen is a strong presumption of guilt in all these cases. Then too, in 28 cases the verdict is in neither the docket nor transcript and here also there is a possibility of guilt.

The Democrats came into power in 1885, and with Com-

missioner Wm. A. J. Sparks leading the way, intensified the prosecution. In 1886 there were 351 cases; far more than in any previous or subsequent year. The Republicans, nevertheless, under Secretary of the Interior Teller and Commissioner McFarland had not only pressed charges in numerous indictments, but also conducted the investigations that were used as the basis for Democratic prosecutions. In Washington, Commissioner Sparks gave his Republican predecessors due credit for collecting information on land fraud; but, in New Mexico this courtesy was sorely lacking.

There was loud lamenting in Democratic Washington that convictions were almost impossible to secure in New Mexico. The sparseness of English-speaking people bore the brunt of the blame. Native New Mexicans were accused of being unreliable witnesses who would swear to anything, and native juries were charged with never returning a verdict of guilty regardless of the evidence. Sympathy was expressed for these people, however, because they were unaware of the law and could be deceived into signing fraudulent papers in the interest of others. Natives with honest intentions were frequently taken advantage of, it was pointed out, by unscrupulous manipulators who gave them false descriptions of the land they lived on prior to the time they filed this description in the land office. These descriptions were for worthless land. The settler filed the spurious description thinking it was for the land he had settled upon. His home was then filed upon by a person representing the party who supplied the false description and the settler was deprived of his valuable land in exchange for the worthless acreage he had filed upon. If he complained he was told that he had committed perjury by entering land he had never lived upon and that if he didn't keep quiet he would be arrested and prosecuted.

It is true that the native inhabitants were used by clever schemers who took advantage of their ignorance of laws and customs they were not acquainted with. It is also true that native juries returned few verdicts of guilty, but this must be explained. Juries then had to be selected largely from native inhabitants because they composed the bulk of the popula-

tion. There were two reasons why a verdict of guilty was seldom returned: fear of reprisal, and sympathy for anyone accused of a crime.

Then too, it was well known that a majority of the accused were innocent as to interest. They did not understand the English language, were ignorant of the land laws, were confiding, and were "mere tools in the hands of designing men as well as the betrayed of official corruption."

Far more important though, is that many cases with damaging possibilities never got to the jury. There is not a shred of evidence indicating that Washington officials were aware of the numerous times that U. S. Marshals were unable to find defendants, or of the really amazing number of records that were lost or stolen from the files. To blame juries for these conditions is unfair. The missing records had to be the work of persons who had access to the files; largely the attorneys in the cases. The U. S. Attorneys themselves are not blameless in the matter.

Persons and corporations against whom indictments were returned represented all classes in the Territory: Charles Ilfeld, Max Frost, Pedro Sanchez, Dubuque Cattle Company, Wm. H. McBroom, Luciano Baca, Red River Cattle Company, Lake Cattle Company, Palo Blanco Cattle Company, Prairie Cattle Company, Portsmouth Cattle Company, Stephen W. Dorsey, Miguel Martin, Cimarron Cattle Company, Wm. F. Purmont, George H. Purmont, Theo. Maxwell, Charles Blanchard, and M. A. Upson, to name only a few.

But one person was singled out over all the others; Max Frost, Register of the Land Office at Santa Fe. He came to New Mexico as a Sergeant in charge of the military telegraph line built into Santa Fe. During the years 1881-1883 he was Adjutant General of New Mexico from which he got his title of "Colonel." By 1884 he was prominent in politics and once unwisely boasted to Inspector John G. Evans that he had great influence with the grand jurors of his county and would have persons indicted who made an affidavit against him. He was likewise Secretary of the San Mateo Cattle Company, interested in a mining company, and connected with four newspapers. He was also an incorporator, in 1883, of the

San Mateo Cattle Company along with Amado Chaves and Simon Vivo. In 1884 he joined with H. M. Atkinson and W. F. McBroom, and three gentlemen from Kentucky, in forming the New Mexico and Kentucky Land and Stock Company.

As a result of charges preferred by Francis Downs, a Santa Fe attorney, on October 30, 1883, and by R. W. Webb on January 8, 1884, Frost's conduct in office was thoroughly investigated by Inspector Frank D. Hobbs, and he was permitted to resign in March, 1885.

It is evident that the numerous investigations of land fraud in the Territory were a deterrent to this type of activity. In 1884, the first year that the numbers of reported fraud cases were published by the General Land Office, New Mexico led the nation with 827 cases followed by California with 574. Late that year the pressure of investigation reached a climax when Max Frost was put on the carpet by the Interior Department. The following year New Mexico dropped to eleventh place with only 63 cases. During subsequent years the entries reached their average of fifth place.

On July 14, 1886, an indictment was returned against Max Frost by the Grand Jury on a charge of official misconduct. On July 30, 1886, an additional fourteen charges were filed wherein Frost was either named as sole defendant or was named with others on conspiracy charges. In the examination into the complete record of the case, it appears that the first case filed was the key case of the United States Attorney, who was Thomas Smith. This case came on for trial first on February 24, 1887, and the jury verdict was guilty. Edward Miller was the foreman of the jury, and the jury verdict assessed a penalty against Frost of imprisonment for one year and a fine of $5,000.00. Immediately following this, Frost's attorneys moved for a new trial which was finally granted on a technicality. The new trial, which was held on August 17, 1888, and proceeded through an interpreter, resulted in a jury verdict of not guilty.

Max Frost was extremely fortunate in having all the charges against him disposed of in one way or another. The records in the case show that it was a real battle all the way.

Official files of some cases were missing from the office of the Clerk which undoubtedly helped.

Another matter of concern to the government was the unlawful inclosure of the public domain. As early as 1879 this was an issue with the Public Lands Commission. Inquiries revealed that there was then very little fencing in New Mexico, but that in most parts of the Territory cattle could safely be confined during the winter months when they were inclined to drift and break wire fences. Ranchers did not desire to fence the range because it was not crowded and there seemed to be plenty of room for all.

Early in the next decade this situation was changed. Large cattle corporations were being formed and land entries were being taken out in ever increasing numbers. The fight was now on to control water and range facilities.

The first complaint against large-scale fencing in the Territory was in 1883. On February 24 of that year, some two dozen petitioners complained of the unlawful inclosure of large tracts of land in Colfax and Mora Counties. Named in the petition were the Cimarron and Renello cattle companies.

On March 15 of the same year, more than 50 persons complained of fencing along the Ute Creek and other parts of the country by large stock companies and others. The chief offender in this case was the Dubuque Cattle Company. The fenced area was some of the best grazing land in the Territory. The only pretense of ownership to any of this land was by virtue of certain fradulent homestead claims.

It has been said that barbed wire fencing was economically a sound practice in New Mexico because of the comparatively large amount of land required to be inclosed to feed a given number of cattle. Statistics indicate otherwise. Reports of the General Land Office from 1885 through 1888 show New Mexico, with 3,438,830 acres reported as being acted upon or awaiting investigation, ranked third in the nation behind only Colorado and Kansas. New Mexico was well ahead of Nebraska, Montana, Utah, Wyoming, California, Nevada, Oregon, Idaho, and Dakota.

There were 78 indictments in the Territory for unlawful

inclosures. Of these, 6 were returned with a verdict of not guilty and 63 were dismissed without trial. In only one case was there a verdict of guilty, but in 6 cases the defendant was not found by the U. S. Marshal who attempted to serve a subpoena. In one other dismissed case the records are missing from the transcript in the office of the District Court Clerk which may have been the reason for dismissal. In another case the verdict is in neither the docket nor the transcript record of court cases.

In 1884 the General Land Office mailed a letter of inquiry to registers and receivers requesting information on land fraud in general as well as the effect of inclosures in their respective districts. The matter had attracted wide public attention and had been brought prominently before Congress. In 1885 Congress passed an act making the inclosure of public lands a punishable offense, and a vigorous campaign was started by the General Land Office to stop the practice.

By 1889 acreage inclosed was small, and only a few cases remained to be acted upon in 1890 and 1891.

Summary

While it is true that cattle graziers persistently violated the land laws of the United States, many of them did so knowingly and with the firm conviction that they had a strong moral, if not legal, case in so doing. The Federal land laws were not applicable to most of the arid land in the Territory. The land in New Mexico was suited principally for grazing, which required large amounts of land for successful operation. And yet the laws were designed to limit the amount of the public domain that could be acquired by one person and stipulated that the land must be cultivated by that person.

A water supply was an absolute necessity for the raising of stock. Water was scarce and if the springs and streams were taken up by settlers, the adjacent public domain was useless except in localities where water for stock could be obtained from wells. It was recognized that 10 or 12 head of cattle on 160 acres of land was the general maximum and

that as few as four was more often correct. These would not begin to support a family. Available watering places should have been calculated to serve as the nucleus for a suitable quantity of grazing land adjacent to it. This adjacent land should have been made available for adequate homesteads or sold at graduated prices so that the full potential value of the land would have been realized.

Since the bulk of the land was good only for grazing, it was natural that cattle ranchers sought the widely scattered springs and streams to water their stock. There was logic in their convictions that such water was more valuable for watering a large quantity of stock than for the possible garden patch that might be irrigated by that water. Large-scale storage of water for irrigating purposes did not begin until the late 1880's and irrigation before that was largely confined to areas where water could be diverted from living streams. Marginal irrigation was less valuable to the economy of the Territory than the same water used to support a large grazing area.

The real fight in New Mexico was over water and was as much between the have and have-nots in ranching as between ranching and agrarian interests. The land laws, limiting to an inadequate amount the quantity of land that could legally be acquired, encouraged the struggle over the really valuable land — the land with water. Had there been devised a system of parceling land in accordance with the nature of the country, much of the fraud in land matters would have been averted. Given a sensible system, sensible people would have largely followed it. Given an impossible system, even sensible people rebelled against it and, like a small force that can cause an avalanche, this rebellion grew to unmanageable proportions.

The situation encouraged the strong and the firstcomers. It was impossible to make a living on the amount of land that could legally be acquired under the land laws. There was provocation to break the law to some degree to make a living. Once this step was taken, who was to say how much was enough? Had cattle graziers been permitted to homestead land up to some such amount as the 2,560 acres recommended

by Major James W. Powell in his monumental report on the *Lands of the Arid Regions of the United States,* and had they been required to buy the arid land (even at a nominal price) to obtain a share in the water, the great baronial holdings of cattle interests would not have become a reality. There would have been far less cause to break the law in the first place and persons whose duty it was to police these laws would have had a less disillusioning task in doing so. There were always the greedy and deliberately lawless but the widespread breakdown in morality would not have had a reason to exist and a heartened law enforcement body could surely have been able to cope with the incorrigible element.

If this seems to place too much faith in the innate justice of human nature, there is the realistic consideration that land in the sensible quantity of sixteen times what was allowed would have meant only one-sixteenth the amount of checking for harassed land office officials who could have devoted the time saved to closer supervision of the larger amounts. This might as well have been done because many persons secured larger amounts by one method or another anyway.

It was common for hired hands to take out land entries for the benefit of their employers. Since the quantity allowed wasn't enough to do these hired hands much good, and since they received some remuneration for their service, there was reason to turn it over to their employers. Had they been able to secure enough land to make a living, many would have been reluctant to let it go. Indeed, large ranchers would have had more difficulty finding help with which to make such a bargain in the first place. There would have been a larger number of smaller ranches with consequent benefit to the economy of the Territory and a more rational serving of human justice. As it was, a few acquired early most of the water, and without that commodity, it was pointless for others to acquire land.