

witnesses were subjected to cross-examination; but the whole record fails to show that claimant "built a house on the land entered and otherwise improved the same, and actually entered into the occupation thereof and cultivated a portion of said land for the period required by law."

The decision appealed from is therefore affirmed.

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**CONRAD WILLIAM BOESCHEN.**

Motion for rehearing of departmental decision of June 6, 1912, 41 L. D., 309, denied by First Assistant Secretary Adams October 23, 1912.

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**HOLMAN ET AL. v. STATE OF UTAH.**

*Decided July 15, 1912.*

**MINERAL LANDS—DEPOSITS OF CLAY AND LIMESTONE.**

The mere fact that land contains deposits of ordinary clay, or of limestone, is not in itself sufficient to bring it within the class of mineral lands and thereby exclude it from homestead or other agricultural entry, even though some slight use may be made commercially of such deposits. There may, however, be deposits of clay or limestone of such exceptional nature as to warrant the classification of the lands containing them as mineral lands.

*ADAMS, First Assistant Secretary:*

This is an appeal by A. Holman *et al.* from the decision of the Commissioner of the General Land Office of April 6, 1911, affirming the recommendation of the register and receiver and dismissing their protest against indemnity school land selections, Nos. 1435-6-7-8-9 and 1468, filed February 15 and March 12, 1907, by the State of Utah at Salt Lake, Utah, except as to the SW.  $\frac{1}{4}$  NW.  $\frac{1}{4}$ , Sec. 9, T. 5 S., R. 2 E., S. L. M. The protest charged, as stated in the notice of hearing issued by the register and receiver, that the following tracts, the SW.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ , NW.  $\frac{1}{4}$ , E.  $\frac{1}{2}$  SW.  $\frac{1}{4}$ , W.  $\frac{1}{2}$  SE.  $\frac{1}{4}$ , Sec. 5, NE.  $\frac{1}{4}$  and E.  $\frac{1}{2}$  SE.  $\frac{1}{4}$ , Sec. 8, S.  $\frac{1}{2}$  NW.  $\frac{1}{4}$  and SW.  $\frac{1}{4}$ , Sec. 9, T. 5 S., R. 2 E., contained—

valuable deposits of fire clay, gold, silver and copper and are more valuable for mineral than for agricultural purposes; that mining claims have been located thereon and mineral mined therefrom and sold at a profit; that on the lime-kiln claim \$500 has been expended in development work and that lime in paying quantities has been manufactured and sold therefrom; that on the Tunnel lode \$800 has been expended, that a tunnel some 300 feet in length has been run, 20 feet of which is in a valuable deposit of fire clay.

At the hearing, the NW.  $\frac{1}{4}$ , Sec. 5, was excluded from the protest. The register and receiver found that the protest had not been sustained, except as to the SW.  $\frac{1}{4}$  NW.  $\frac{1}{4}$ , Sec. 9, which contained a quarry of limestone and a limekiln.

The State of Utah has not appealed from either of the decisions below. After careful consideration of the entire record, the Department finds that the allegations of the protest have not been sustained as to the subdivisions now under consideration by virtue of the appeal.

It is not the understanding of the Department that Congress has intended that lands shall be withdrawn or reserved from general disposition, or that title thereto may be acquired under the mining laws, merely because of the occurrence of clay or limestone in such land, even though some use may be made commercially of such materials. There are vast deposits of each of these materials underlying great portions of the arable land of this country. It might pay to use any particular portion of these deposits on account of a temporary local demand for lime or for brick. If, on account of such use or possibilities of use, lands containing them are to be classified as mineral, a very large portion of the public domain would, on this account, be excluded from homestead and other agricultural entry. It is safe to say that every kind of material found in land in its natural state may under some circumstances be put to non-agricultural uses. Local demand for building of levees or railroad embankments, filling up low places and the like, may make any particular land more valuable for the time on account of the material it contains than on account of its agricultural possibilities, but it is clear that such considerations can not be given weight in determining what lands are reserved for special disposition because mineral in character. In one sense, all land except portions of the top soil is mineral. The term, however, in the public-land laws is properly confined to land containing materials such as metals, metalliferous ores, phosphates, nitrates, oils, etc., of unusual or exceptional value as compared with the great mass of the earth's substance. It is not intended hereby to rule that there may not be deposits of clay and limestone of such exceptional nature as to warrant entry of the lands containing such deposits under the mining laws.

With this modification, the decision appealed from is affirmed.

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#### HOLMAN ET AL. v. STATE OF UTAH.

Motion for rehearing of departmental decision of July 15, 1912, 41 L. D., 314, denied by First Assistant Secretary Adams, October 19, 1912.