State v. Alaska Land Title Ass'n 1983

In territorial days road easements were created across public land under *43 U.S.C. § 932*, *repealed by Pub.L. No. 94-579, Title VII, § 706(a)* (1976), a statute remarkable for its brevity, which provided: The right-of-way for the construction of highways over public lands, not reserved for public uses, is hereby granted. This blanket grant had to be accepted. A common method of acceptance was the building of a road by a public authority. *[FN10]* But other methods of acceptance were also recognized. As we stated in *Hamerly v. Denton, 359 P.2d 121 (Alaska 1961)* with respect to *43 U.S.C. § 932*:

FN10. See Clark v. Taylor, 9 Alaska 298, 303 (D.Alaska 1938);

Hamerly v. Denton 1961

The question to be decided is whether this road is a 'highway' within the meaning of *Section 932, Title 43 U.S.C.A.*, which provides: 'The right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted.' **[1][2]** The operation of this statute in Alaska has been recognized. *[FN1]* The territorial District Court and the highest courts of several states have construed the act as constituting a congressional grant of right of way for public highways across public lands. But before a highway may be created, there must be either some positive act on the part of the appropriate public authorities of the state, clearly manifesting an intention to accept a grant, or there must be public user for such a period of time and under such conditions as to prove that the grant has been accepted. *[FN2]*

FN1. Berger v. Ohlson, D.C.D.Alaska 1938, 9 Alaska 389; Clark v. Taylor, D.C.D.Alaska 1938, 9 Alaska 298; United States v. Rogge, D.C.D.Alaska 1941, 10 Alaska 130.

Prior to statehood, the District Court of Alaska in
Clark v. Taylor,[12] found that the Alaska Road Commission could obtain a prescriptive easement across an unpatented mining claim. The width of the easement was limited to the width actually used.