DIGEST OF DECISIONS

OF

THE DEPARTMENT OF THE INTERIOR

AND

GENERAL LAND OFFICE

IN

CASES RELATING TO THE PUBLIC LANDS;

ALSO

TABLES OF CASES REPORTED AND OVERRULED; STATUTES CITED AND CONSTRUED; CIRCULARS; AND RULES OF PRACTICE CITED AND CONSTRUED.

VOLUMES I TO XXX INCLUSIVE.

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I. GENERALLY.

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While Congress has made no provision for determining the extent of the claims of the Greco-Russian church, or the validity of its title thereto, yet the possessory claims of said church have been protected in executive action taken by the State, War, and Treasury Departments, and allowed to remain in the hands of the church; but in the absence of statutory authority therefor, the Interior Department can not undertake to identify, by survey, the lands of the church and determine the title of the church thereto. XXII–330

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I. GENERALLY—Continued.

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II. RIGHTS OF NATIVES; POSSESSORY CLAIMS.

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II. RIGHTS OF NATIVES; POSSESSORY CLAIMS—Continued.

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The open, notorious, exclusive, and continuous possession from the date of the act of May 17, 1884, of lands by Indians is notice to the world of their rights, and sufficient to prevent any one from becoming a *bona fide* purchaser of said lands. XXVIII–427

If section 11, act of March 3, 1891, is not such "future legislation" as contemplated in the act of 1884, then lands in actual use and occupancy of Indians are not subject to disposal under the town-site law; and if said section conferred upon the Indians the right to take title under the town-site law, no other person could lawfully acquire title to such lands, as town-site entry is made solely for the several use and benefit of the occupants of the land entered. XXVIII–427

III. ACT OF MARCH 3, 1891.

The right to enter nonmineral land for the purpose of trade and manufactures is limited to one entry of not exceeding 160 acres of contiguous lands, and as nearly as practicable in square form. XIII–608

The provisions of section 12 should be construed to mean that Congress intended to permit persons or corporations to purchase only so much land as is occupied, but in no case to exceed 160 acres. XX–434

Alaskan Lands—Continued.

III. Act of March 3, 1891—Continued.

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The language "to be taken as near as practicable in a square form" means that the land should be laid off as nearly as practicable in square form, but so taken as not to interfere with the occupancy of any other qualified person or corporation. xx–434; xxiii–335

The requirement that land shall be taken in "square form" means that the tract should be surveyed in the form of a rectangular equilateral parallelogram, as nearly as the configuration of the land will permit. xxiii–283

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Alaskan Lands—Continued.

III. ACT OF MARCH 3, 1891—Continued.

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The word "trade," as used in section 12 of said act, is employed in its commercial significance, and Congress, by its use in defining the character of occupancy which would authorize a purchase of land, did not intend to include thereby lands used for farming, cattle grazing, or fox raising. XXVI–232

An entry for purposes of trade and manufacture must be limited to the land possessed and occupied for such purposes alone, when taken in the form prescribed by the statutes, and not include lands used for agricultural purposes incidental to the business of the purchaser. XXVI–305

The provisions of said act contain no authority for the purchase of, to be used and occupied for railroad purposes. XXVI–558

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Surveys under the act of 1891 are not authorized in the absence of a formal application therefor, verified by affidavit, showing the character, extent, and approximate value of the improvements owned by the claimant. XXIV–545

Directions given that whenever a survey of, is desired, due compliance with the regulations of June 3, 1891, in the matter of written applications and otherwise, shall be exacted in each instance. XXVI–513

A survey of, as provided for in said act, is special in its character, and there is no authority therefor except as preliminary to a purchase; and before such a survey is made there should be a *prima facie* showing of the right to purchase, and due compliance with the departmental requirements regulating applications for the survey of said lands. XXVI–232

Alaskan Lands—Continued.

III. Act of March 3, 1891—Continued.

Where a survey of, with a view to purchase under section 12 of said act, has been made without written application therefor, as required by departmental regulations, and amendment of such survey is found necessary, it will not be allowed until due application therefor has been made in conformity with said regulations; and prior to the execution of such amended survey a deposit of an amount sufficient to defray the expense thereof, and all expenses incident thereto, must be made. XXVI–512

On the survey of, with a view to the purchase thereof under section 12, articles of personal property should not be included in the estimated value of improvements on said land. XXVI–568

The fund available for the compensation of a deputy surveyor for surveying a claim under said act is not limited to the deposit made under the estimate furnished by the surveyor-general, and prior to the instructions to the deputy or the commencement of the survey. XXVIII–433

Funds deposited after instructions to the deputy surveyor should not be applied in the settlement of his account without due notice to the applicant for survey, and opportunity for him to present objections to the allowance of the account. XXVIII–433

A supplemental showing of improvements made after survey may be accepted in proof of actual occupancy of land applied for under said act where the necessity for such occupancy, the use of the land prior to application, and the good faith of the applicant are manifest. XXVIII–55

There is nothing in said act which would preclude one claiming land under sections 12 to 14 from giving a mortgage or creating a charge or lien upon the property to obtain money to carry on business thereon, nor that would prohibit giving an option to the holder of such mortgage, charge, or lien, to demand and receive a conveyance of an undivided interest in the property, after patent, in lieu of payment of the moneys due him; and it would not affect the case at all if the holder of such mortgage, lien, or option is an alien. XXX–397

IV. Act of May 14, 1898.

In all cases where applications to purchase were filed prior to January 21, 1898, and remained pending at the passage of the act of 1898, the survey of such claims must be considered and approved by the Commissioner of the General Land Office before entry can be allowed. XXVII–627

Alaskan Lands—Continued.

IV. ACT OF MAY 14, 1898—Continued.

In the disposition of claims initiated under section 10 the survey of the land does not come before the Commissioner of the General Land Office for consideration until after the entry is allowed, or upon appeal from rejection of the application. XXVII–627

An application to purchase, under the provisions of section 12, act of March 3, 1891, can not be perfected under the proviso to section 10, act of 1898, if the claim so presented under the act of 1891 was not authorized thereby. XXVII–335; XXIX–416

The provision in section 10, act of 1898, for the protection of rights initiated under the act of March 3, 1891, works no enlargement of said rights as to the area of land that may be taken, or the water front thereof. XXVII–355

In determining the extent of the water front of claims under sections 1 and 10 of said act abutting on navigable waters, the measurement should be made along the meanders of the bank or shore. XXIX–95

Water-front privileges should not be disturbed by the allowance of tramroad right of way. XXIX–447

The Department is without authority to approve an application for permission to occupy a portion of the roadway reservation, along the shore line of Alaska, for the purpose of a passage over said reservation of an aerial tramway, and the erection thereon of buildings to be used in connection with said tramway. XXIX–684

Alien. See *Alaskan Lands; Contest*, sub-title *Homestead; Filing; Homestead; Mining Claim; Naturalization; Settlement.*

Instructions of June 12, 1883, and January 31, 1884, to foreign-born applicants for public land. II–194, 195

Right of election as to citizenship conferred upon Mexicans only by the treaty of 1848. I–489

May hold realty until office found. IV–565

Can acquire no right to public land before filing declaration of intention to become a citizen. VI–98, 615

Can acquire no rights by settlement. I–444, 489; XI–89

The disability of alienage is removed when the settler becomes a citizen, and, in the absence of any adverse claim, his right relates back to the date of settlement, though made when he was an alien. VII–229; X–475

Over twenty-one years of age who enlists in the army of the United States and is honorably discharged therefrom occupies the status of one who has declared his intention to become a citizen. XVI–352

Alien—Continued.

A mineral entry made by an alien is not void, but voidable, and while of record, the land covered thereby is segregated from the public domain. XII–345

The act of March 2, 1897, in defining and regulating the right of, to acquire real estate in the Territories, has reference only to lands the title to which has passed from the United States, and does not confer upon aliens the privilege of occupying or purchasing mining claims from the government under the mining laws. XXVIII–178

Any restriction placed by section 2, act of March 3, 1887, upon the acquisition of public lands by a corporation in which a part of the stock is owned by persons, corporations, or associations, not citizens of the United States, was removed by the act of March 2, 1897. XXVIII–178

Can acquire no right to public land before declaration of intention to become a citizen, and his subsequent qualification will not relate back to the exclusion of an intervening adverse right. X–463; XIV–664

Right of, who submits homestead proof and receives final certificate relates back to settlement where he is subsequently naturalized and no adverse rights intervene. XIV–568

Can acquire no rights by settlement entry or filing as against a *bona fide* adverse claimant; but the claim of another set up in bad faith to wrong and defraud the settler will not defeat his right to file declaration of intention and perfect his title. XIII–242

Alienation. See *Entry; Final Proof; Practice*, sub-title No. IX.

I. GENERALLY.
II. COAL LAND.
III. DESERT LAND.
IV. HOMESTEAD.
V. MINING CLAIM.
VI. OSAGE LAND.
VII. PREEMPTION.
VIII. TIMBER CULTURE.
IX. TIMBER LAND.

I. GENERALLY.

Not proved by showing the execution of a power of attorney to sell. IX–311

Right of, exists where there has been due compliance with law and the final certificate has issued. I–494; III–23; IV–136, 350, 544; V–170, 315, 609, 702; VI–122, 517; VII–368; XVII–377

Alienation—Continued.

I. GENERALLY—Continued.

The protection afforded by equity to a *bona fide* purchaser without notice extends only to a purchaser that holds the legal title. XI–123

One who loans money upon or purchases unpatented land is not an innocent purchaser, but a conditional incumbrancer or purchaser. XIII–389

Purchaser, after entry and before patent, takes only an equity, and is charged with notice of all defects in the title. III–23; V–55, 442; VII–327; VIII–46; IX–316, 480, 573; X–415; XIX–363

After entry and before patent confers no better title than the entryman had. II–795; III–393; IV–347, 570; V–55, 276, 589; VI–263, 503; VII–236, 287; VIII–269, 331, 524; IX–159, 316, 329, 580; XI–123; XVII–171

While the transferee, after entry and before patent, has no greater right than the entryman, yet there should be no excessive search for objections to defeat him. VI–606

The words, "For the right of way of railroads," as used in section 2288, R. S., are not limited to the width of the railroad track, but include space necessary for side track, stock yards, or other purpose incident to the proper business of a railroad as a common carrier. XXVIII–561

There is no statutory inhibition against the sale and transfer of the right of purchase accorded by the act of August 7, 1882. (Omaha lands.) XXVIII–183

After final proof, but prior to the issuance of final certificate, will not defeat the right to a patent where the proof shows due compliance with law. VI–218; VII–292, 455; VIII–268; IX–101; XVII–366; XXV–137

After final proof and prior to the issuance of final certificate, will not necessarily defeat the right to a patent, though the non-alienation affidavit was not furnished, if the preëmptor had in fact complied with the law at the time of making proof and could have then truthfully made such affidavit. VIII–486

Purchaser of land prior to the issuance of patent therefor entitled to be heard in defense of the entry. IV–544, 570; V–22, 170, 276, 589, 603; VI–263, 440, 503, 770; VIII–641; IX–481, 561, 576

The right of a transferee to be heard in defense of the entry will not be defeated by the fact that the transfer is not of record. VIII–283, 526

The right of a transferee to be heard in defense of an entry should not be defeated through the collusive and fraudulent acts of the entryman. XIV–32, 85

Alienation—Continued.

1. GENERALLY—Continued.

A transferee claiming under the swamp grant, who has duly notified the land department of his interest, is entitled to notice of subsequent proceedings affecting the validity of his title. XIV–511

Purchaser, prior to patent, not entitled to be heard in contest proceedings against the entry. I–106

A mortgagee, or purchaser, who does not file in the local office a notice of his interest can not call in question the validity of proceedings against the entry. XII–462; XIII–556; XIV–126; XVI–47

Transferee who files statement in the local office showing his interest in an entry is entitled to notice of all proceedings against the same. V–603; VIII–641; IX–561, 576; X–566

A certified abstract filed in evidence is sufficient notice to the local office of a mortgagee's interest. XV–228

A mortgagee whose interest appears should be given notice of all action taken, and, in the absence of such notice, his right to be heard is not defeated by an adverse decision. XV–224; XVII–48

Equitable consideration will be given to evidence submitted by a transferee in defense of the entry. VIII–486, 618, 641

Transferee may submit testimony to show that the entryman had complied with the law and not disqualified himself for the execution of the necessary proof of non-alienation. VIII–486

No authority of law for the substitution of the mortgagee in the place of the entryman. VI–263

One who purchases land during the pendency of an appeal involving the validity of the title thereto is charged with notice of the appeal. X–415

A mortgagee is not entitled to plead the status of an innocent purchaser where there is a contest of record at the date of the execution of the mortgage. XIV–305

Prior to the enactment of section 7, act of March 3, 1891, a transferee had no greater rights than the entryman. XIV–87

Prior to enactment of section 7, act of March 3, 1891, there was no such thing as an "innocent purchaser" before patent. XIII–389

A transferee who purchases after judgment of cancellation is not entitled to be heard in defense of the entry on the ground that he had no notice of the cancellation and purchased the land without notice of fraud on the part of the entryman. XIII–305; XXIII–28

An entry made in pursuance of section 1, act of October 1, 1890, is not invalidated by an agreement to convey the land covered thereby, made prior to the consummation of the transfer authorized by said act. XXII–375

Alienation—Continued.

II. Coal Land.

Transferee claiming under a coal entry takes no better title than the entryman has to confer, and the right thus acquired is subject to the subsequent action of the General Land Office. XV–588

Sale of land included within a coal declaratory statement prior to final proof and entry defeats the right of the claimant to purchase the land, and an entry made in his name must be canceled. XVII–351

The sale of a claim after the execution of the final proof, but prior to its filing and the payment of the purchase money, does not necessarily warrant the conclusion that the entry was made for benefit of another. XVII–382; XXVI–413

III. Desert Land.

A purchase prior to patent of land covered by a desert-land entry does not make the buyer an "innocent purchaser." II–25

An oral promise to convey, after perfection of title, a portion of the land in payment of money advanced for the reclamation of the land does not necessarily call for the cancellation of a desert entry. XI–27

An agreement to convey title to the land after the submission of final proof will not operate to defeat the entry, where said agreement was entered into after the passage of the amendatory act of March 3, 1891, which recognizes the right of assignment, and where the initial entry appears to have been made in good faith. XXIV–100

An agreement made subsequent to the initial entry, to convey title to the water supply after the submission of final proof, is not ground for cancellation, if it appears that such agreement was afterwards, and prior to final proof, repudiated. XXIV–100

IV. Homestead.

Purchaser after commutation and prior to patent takes, subject to the action of the land department. IV–347

The attempted transfer of a homestead claim before final proof gives the transferee no standing before the Department. X–548

Homesteader may, before issuance of final certificate, for any purpose not inconsistent with good faith, mortgage his claim. VIII–243

Assignee of a certificate of soldier's additional homestead right takes it subject to all defects; is not an innocent purchaser. II–235

After due compliance with law by the homesteader, payment of fees, and submission of final proof, but prior to the issuance of final certificate, does not defeat the right to a patent. X–142

Alienation—Continued.

IV. HOMESTEAD—Continued.

Right is defeated by the sale, prior to final proof, of an undivided half interest of the land entered, and such defect can not be cured by a reconveyance in the presence of a contest charging said illegality. x–274

Homestead right not defeated by a deed prior to survey in adjustment of possessory rights, but revoked before entry when found to cover a part of the homestead claim. VI–95

An agreement to convey part of the land covered by a homestead entry after final proof, with possession given under such contract, calls for cancellation of the entry, although the agreement may have been made in the compromise of a prior contest against the entry in question. XXIV–155

An agreement between an entryman and an adverse claimant, whereby the entryman, for the purpose of avoiding a contest, undertakes to relinquish a specified part of the land covered by his entry, is not in violation of section 2290, R. S., as amended by the act of March 3, 1891. XXVII–711

The sale of part of the land settled upon and claimed by a homesteader disqualifies him as an applicant. XXIII–87

The execution of a deed to a half interest in the land covered by a homestead entry, prior to the submission of final proof, defeats the right to patent, though it may appear that the entryman had lived on the land for five years prior to, and that the grantee under the deed is asserting no claim thereunder. XXIV–337

A homestead entry must be canceled where it appears that prior to making such entry the homesteader verbally agreed to enter the land for town-site purposes, and after making entry executed a written agreement to the same effect, and the rescission of said agreement prior to contest will not operate to relieve the entry of its illegal character. XXVI–708

A written agreement to convey the land covered by a homestead entry, made prior to the submission of final proof, will defeat the right of the entryman to perfect his entry. XXIV–79

A written agreement, executed by a homesteader and operating as a mere lease of a part of the premises, and the grant of an easement, the use of which would tend to improve and increase the value of the land as a homestead, is not an alienation of any part of such land and no bar to the perfection of the entry. XXVIII–155

A contract to convey after final proof will not in itself defeat a homestead claim, though it raises a presumption of bad faith. VI–95

An agreement to convey part of a homestead after final entry violates section 2290, R. S. II–55

Alienation—Continued.

IV. HOMESTEAD—Continued.

An attempted sale of a homestead will not warrant cancellation of the entry, but it raises a presumption of bad faith. II–143, 233

A written agreement to execute, after acquiring title, a warranty deed to part of a homestead does not affect the entryman's status, as it is illegal, because prohibited by law or by public policy, and can not be enforced; only an absolute conveyance, which can be enforced, defeats his right. (Overruled, 15 L. D., 201.) II–71

A bond for a deed of half the land, conditioned upon payment within three years, is in fraud of the law (sec. 2289, R. S.). II–97

A quitclaim deed executed under duress will be treated as null and void. II–86

A deed executed prior to final proof, in anticipation of death and for the purpose of securing the land to the children, will not defeat the right of the homesteader. XVIII–251

Where a homesteader immediately prior to his death conveys his interest in a homestead to his wife, as his widow, for the purpose of avoiding the expense that would attend the settlement of his estate, the instrument, though in form a deed, must be regarded as testamentary in character. XX–428

A charge of, is not supported by showing that the entryman executed a deed to the land prior to final proof, where it appears that said instrument was intended as a mortgage to secure the payment of money advanced to the entryman for his personal use, and the improvement of his claim. XXVII–148

Quitclaim deed made prior to original entry, for small part of claim, does not impeach good faith. III–284

After issuance of certificate and prior to patent, of a portion of the land is at the peril of the entryman, for if new proof is required the claimant will not be able to make the affidavit required by section 2291, R. S. XII–132

An offer to sell, made by a homesteader after the expiration of the statutory period of residence and the submission of final proof, but pending the allowance thereof, is not inconsistent with good faith on the part of the entryman. XXII–328

An agreement for conveyance that could not be enforced in a suit to compel specific performance, and that may be avoided by the payment of a money consideration, does not operate as a disqualification of a homesteader, nor will a contract that is simply a pledge for the payment of money; and especially will such contracts be so regarded where they appear to have become of no effect prior to the date of the entry. XXII–544

Alienation—Continued.

IV. HOMESTEAD—Continued.

The Department has no jurisdiction to vacate a contract providing for the sale of a possessory right to a tract of land entered into by adverse claimants therefor, or enforce specific performance thereof, but it may consider and interpret said contract for the purpose of determining the qualifications and good faith of the parties thereto, as applicants under the homestead law. XXV–399

V. MINING CLAIM.

The purchaser of a, after entry, but prior to patent, takes the land subject to all the infirmities of title, so far as the government is concerned. XXII–704

A transferee of a, whose interest is acquired during the pendency of departmental proceedings involving the status of said claim, takes no right better than that possessed by his grantor. XXVI–122

VI. OSAGE LAND.

If settlement is made in good faith under the act of May 28, 1880, a subsequent agreement to convey the land will not in itself invalidate the entry. VIII–173

Of Osage diminished reserved land not unlawful after compliance with law and issuance of final certificate. IX–98

The fourth section of the act of May 28, 1880, recognizes the right of an Osage entryman to sell the land covered by his entry after submission of final proof and payment of the first installment of the purchase price. XX–411

VII. PREËMPTION.

Prior to final proof defeats the right of preëmption. VI–746

The doctrine of "*bona fide* purchaser" does not apply to purchase of a preëmptor before patent; if the entry is fraudulent or void, the purchaser takes nothing. II–599; III–393

The execution of a warranty deed by preëmptor prior to entry is a legal bar thereto, but does not vitiate the preëmption right; hence the entry may be admitted on reconveyance by the grantee. I–407, 453

Where the land is not subject to preëmption the entryman acquires no interest in it by his entry, and therefore can convey none; his grantee prior to patent is not a *bona fide* purchaser. II–782, 795

The rescission of an agreement to convey will not validate acts of settlement that were invalid when performed, because made for the benefit of another. III–488; VI–285

Preëmption right not defeated by a contract to convey which is rescinded prior to final entry. II–638

Alienation—Continued.

VII. PREËMPTION—Continued.

The intent to sell after final proof may be compatible with good faith, and not defeat the right of entry. XII–20

Of inconsiderable quantity of land without fraudulent intent not regarded under section 2262, R. S. I–453

Whether an assignment by the prëemptor after entry was made to a *bona fide* purchaser is immaterial as affecting the right of the entryman to assign. III–23

Agreement to convey any part of a preëmption claim to another, made prior to final proof, will defeat the exercise of the preëmptive right. XVI–113

A contract made by a preëmptor to convey the land on receipt of final certificate renders the entry fraudulent and requires its cancellation. VIII–269; XV–201

Preëmptor may mortgage his claim to secure money for the purpose of making final proof and payment. I–409; VI–340; IX–337

Preëmption claim not invalidated by intention to mortgage the land, on receipt of final certificate, to secure the purchase money. V–701

A mortgage given in good faith on the purchase of the improvements and possessory right of another, and to secure the repayment of money advanced to pay the government price of the land, does not defeat the preëmptive right. XIII–198

The purchaser of a void title can not set up the rule of equitable estoppel; that loss should fall on that one of two innocent persons whose conduct rendered the injury possible. II–797

That one made a speculative settlement under section 2262, R. S., may be proved by a contract before entry to convey after entry; but an agreement or contract causing title to "inure" could only be made by a formal conveyance. II–781

The clause in section 2262, R. S., concerning *bona fide* purchasers refers to sales before, and not after, entry; it has respect to the effect of the conveyance as between grantor and grantee, and not as between either party and the government; it is to be enforced in the courts, and not in the land department. II–779, 781, 783

VIII. TIMBER CULTURE.

Making a bond for a deed after a patent, with delivery of possession, retaining only the right of entry for breach of condition, is holding the claim for another's use and benefit, and works a forfeiture, notwithstanding resumption of possession. II–329

A contract of sale in which the entryman is bound to execute a warranty deed to another, on securing title to the land covered by his entry, defeats the right of the entryman. II–329; XVIII–196

Alienation—Continued.

VIII. TIMBER CULTURE—Continued.

A timber-culture entry will be canceled where it appears that the entryman has disposed of all his interest in the land, and is holding the entry for the benefit of the party purchasing such interest. XXII–21

The revocation of a contract of sale after the initiation of a contest against the entry charging the fact of, will not relieve the entryman from the consequences of his illegal act. XVIII–196

A contract of sale to be consummated by delivery of deed after the submission of final proof and the issuance of patent is in violation of law; and where after such alienation the entryman dies, his heirs are entitled to no greater rights under the entry than he had at the time of his death. XXVI–378

IX. TIMBER LAND.

Prior to patent will not abridge authority of the Department over an entry under the timber and stone act. IX–573; XVII–468

Purchaser of land held under final certificate takes an equity only, and is charged with notice of all defects in the title. X–415; XVII–468

The phrase "*bona fide* purchaser," as used in the timber and stone act, is not applicable to a purchaser before patent. XIV–618

Transferee under a timber-land entry is not an innocent purchaser where the entry is fraudulent and the transferee is a party to the fraud. XII–313

A purchaser, prior to patent, of land entered under the timber and stone act, takes but an equity, and can not plead the status of an innocent purchaser, nor can it avail such purchaser that the matters wherein the entryman testified falsely were solely within the knowledge of such entryman. XIV–392

A contract or agreement that does not affect, in whole or in part, the title to the land is not within the inhibitory provisions of section 2 of the timber and stone act. XXII–234

A power of attorney executed and delivered by a timber-land applicant, prior to final proof and entry, authorizing the sale of the land, is an agreement in violation of the act of June 3, 1878. XXIX–149

Allotment. See *Indian Lands.*

Amendment. See *Application; Contest; Entry; Filing; Practice.*

Annual Proof. See *Entry*, subtitle, *Desert Land.*

Appeal. See *Practice.*

Does not lie from application of the local office on claims presented on the Vigil and St. Vrain grant. XII–226

Appearance. See *Attorney; Practice*, subtitle No. IX.

A defendant may so far appear as to object to the jurisdiction, and such appearance is "special;" but if he seeks to call into action any powers of the court except such as pertain to its jurisdiction the appearance is general. XII–620

The effect of a general appearance can not be modified by a subsequent allegation that it was special in character. XII–14

Appearance of, is general in the absence of expressed limitation. VI–269

The appearance is "general" where defendant's attorney appears and cross-examines the witnesses; the effect of such appearance can not be avoided by calling it "special." X–405

For the purpose of securing a new trial on the ground that proper notice was not given of the former proceedings, confers jurisdiction upon the local offices for the purposes of the motion. XV–404

Appearance of attorney in a case is general if he seeks to call into action any powers of the court except such as pertain to its jurisdiction. XII–620

A party may not plead a special, where the record discloses a previous general, appearance without limitation as to the purpose thereof. XVII–393

At a hearing without objection to the notice waives any defect therein. XVII–393

For the purpose of securing an order to take testimony by deposition and a continuance until said testimony is taken and returned is general, and confers jurisdiction on the local office. XVII–159

Application. See *Contest; Railroad Lands.*

I. GENERALLY.
II. AMENDMENT.
III. DESERT LAND.
IV. HOMESTEAD.
V. PREEMPTION.
VI. PRIVATE ENTRY.
VII. TIMBER CULTURE.
VIII. TIMBER AND STONE.
IX. WITH CONTEST.
X. WITH RELINQUISHMENT.

I GENERALLY.

A rule of the local office regulating the presentation of, adopted to avoid confusion, is conclusive upon parties taking action thereunder without protest. XVIII–14

Regulations of the local office governing the manner of making, on opening public lands to entry, conclusive upon parties taking action thereunder without protest. XIV–370

Application—Continued.

I. GENERALLY—Continued.

In the absence of, the right to make an entry will not be considered. IV–310; VII–254; IX–194

To enter, must show residence and post-office address. Circular of October 25, 1886. V–198

That is indefinite in its description of the land can not be allowed. XXI–445

The failure of an applicant to sign his, is not a fatal defect, where the accompanying affidavits are properly executed; the local office in such a case should suspend action on the application, and allow the applicant a reasonable time within which to cure the defect. XXVII–156

A nonmineral affidavit, sworn to before a notary public, and forwarded to the local office with the fees and commissions required on making homestead entry, can not be regarded as an application to enter, and operating to segregate the land. XXV–475

When filed, name of applicant to be noted thereon. V–198

When presented due record of action thereon should be made. I–81; IV–350, 535; XI–191

It may be fairly presumed that the proper tender of money was made therewith, where the record is silent as to such tender, and the application is rejected for a reason not involving any question with respect to the tender of money. XXI–187

Not defeated by failure to fill a blank left in the prescribed form of preliminary affidavit where the intended use of said blank is not apparent. VI–365

To make entry that does not show the applicant's qualifications may be properly rejected, and a defect in such respect can not be cured by subsequently calling attention to another record. XIV–531

To enter filed since the act of August 30, 1890, must be accompanied by an affidavit showing that since said act the applicant has not filed upon nor entered a quantity of land that would make, with the tract applied for, more than 320 acres. XVI–271

To enter must show the present status of the land and qualifications of the applicant. X–364; XIII–365

In the case of, to make entry, filed subject to prior adverse applications, the qualifications of such applicant should not be determined before an adjudication of the relative rights of the parties in interest. XXVI–553

To enter, based on application and preliminary affidavit, executed while the land is not legally liable to disposal, should not be allowed. I–164; II–269; III–320; XIV–127; XVII–345, 529; XVIII–482; XIX–178; XXII–276

Application—Continued.

I. GENERALLY—Continued.

The validity of, is not affected by the fact that the preliminary affidavit is executed before the land is formally declared open to entry, where, prior thereto, the land in question was restored to the public domain by an act of Congress. XIX–570; XXII–110, 486

That an entry is allowed on papers executed prior to the time when the land is open to such disposal, is a matter as between the entryman and the government, where the entryman, as the prior settler, is entitled to make entry of the tract involved. XXVII–305

Preliminary affidavit accompanying is invalid if sworn to before the township plat is filed. I–157

Preliminary affidavit with, may be received though executed while the land was covered by a prior entry. (Commissioner's instructions.) I–121

Filed before cancellation of an entry (after relinquishment), with fees and commissions, gave applicant no rights. II–49

Allowed on preliminary papers executed while the land is covered by the prior entry of another is not void but voidable. The defect in such case may be cured in the absence of any adverse claim. XX–13, 57

Acceptance of, with agreement to place of record when a previous entry is canceled confers no right. II–49

The presentation of papers to the local office, with instructions to file them under certain contingencies, is not a legal. VI–365

Transmitted by mail is to be regarded as filed at the moment it reaches the local office (9 a. m.), though the letter of transmittal is not opened until afterwards. II–326

Presentation to, and acceptance by, the local officer (receiver) at a place other than the local office is unlawful, and does not bar an application properly, but subsequently, filed on the same day. II–320

Not invalidated because received out of office hours. V–694; VI–1

Handed to one of the local officers out of the office, not in office hours, and without the required fee, is not legal. III–108

It is no objection to, that it is tendered prior to business hours in the local office where retained by the local officers and acted upon during the business hours of that day; nor does the fact that it bears the date of the day previous impair its validity, when it was presented on said date and refused because filed out of business hours. XIX–547

For public land may be withdrawn at any time. V–222; IX–29

Application—Continued.

I. GENERALLY—Continued.

To enter, presented while business in the local office is suspended by order of the Commissioner, confers no right upon the applicant. XIV–316

Order of June 13, 1896, with respect to, filed during vacancy in local office. XXII–704

To enter received during a vacancy in the office of the register must be treated as simultaneous, on the resumption of business in the local office. XXII–612

Made during vacancy in local office confers no vested right. I–150; IV–170

Filed during a vacancy in the register's office is, in contemplation of law, submitted for official action when the vacancy is filled. XII–297

The tender of, at a time when there is a vacancy in the office of the register, and when, under the rulings then in force, such papers should have been received and held to await the resumption of business, entitles the party making such tender to have said papers treated as though filed, though in fact they were returned on account of said vacancy. XXVI–363

In case of simultaneous, the right of entry may be disposed of to the highest bidder. XXI–444

All presented at opening of new land office treated as simultaneous. I–157

Of two persons held simultaneous where both were present at the same time and the papers of one were filed while the other was engaged in examining the tract book. XIV–145

In the case of simultaneous, where one of the applicants has settled upon and improved the land, and the other has not, the priority of right should be accorded to the actual settler. XXII–612

The right to make entry in cases of simultaneous, should be sold to the highest bidder in the absence of settlement and improvement. III–312, 535; IV–190; XVI–302

Rules for the reception of, on filing new plats only applied in like cases. IV–318

Not simultaneous where a few seconds intervene. III–419; IV–190

Reliance upon bid to determine preference in case of simultaneous applications precludes setting up after-acquired improvements. IV–190

In determining priority of, the statements of the local officers, contained in their report made in the ordinary course of business, are entitled to due weight and consideration. XIX–547

Application—Continued.

I. GENERALLY—Continued.

To enter tendered in person, or sent through the mail, should be acted upon in the actual order of arrival and presentation at the local office; and the refusal of said office to observe such order of precedence will not defeat the right of an applicant to have his application subsequently treated as though acted upon in its proper order. XVII–113

To enter presented in accordance with an order of the local office at a time when on account of press of business it could not be acted upon, and on which the fees were tendered in a reasonable time, confers upon the applicant a right superior to that acquired under a subsequent entry by another. XXVIII–48

An applicant for the right of entry who, under a rule adopted by the local office, deposits his, and receives a number corresponding to his place in the line of applicants, and thereafter fails to respond to such number when it is reached and called, loses his priority as against a subsequent intervening applicant. XXII–295

Where a settler applies to enter land in two districts, and files simultaneously in each district an application for the specific subdivision lying within said district, and one of said applications is allowed, and the other rejected on account of the suspension of the township, the rejected application may be revived and allowed as of its original date, on the removal of the suspension. XX–412

Rights under relate back to date when actually made, irrespective of a later date shown by the papers through no fault of the applicant. XII–173

The rights of an applicant under a pending, should be protected as against intervening adverse claims, where the delay in perfecting entry is not due to negligence on the part of the applicant. XXVII–619

To enter while pending reserves the land covered thereby from any other disposition until final action thereon. II–43; III–156, 218, 344; IV–350, 455; V–424; VII–136; IX–29, 92, 545; X–192, 510; XII–47, 324; XIII–56; XVI–352; XXVI–219.

To make mineral entry, duly presented but held without action during the absence of the register, reserves the land covered thereby until final action thereon. XI–213

To purchase under the act of June 15, 1880, reserves the land covered thereby until final action thereon. XI–416

To enter is equivalent to an actual entry so far as the rights of the applicant are concerned. XII–324, 643

Application—Continued.

I. GENERALLY—Continued.

To enter land subject thereto is equivalent to an actual entry so far as the rights of the applicant are concerned, and, in the event of his death, his heirs are entitled to complete the entry. XX–535

To enter, properly rejected does not operate to reserve the land covered thereby, even though an appeal is taken from the order of rejection. XX–93

To make entry of land embraced within the uncanceled entry of another gives the applicant no right, even though the statutory life of the record entry had expired at the date of said application. XIX–467

To enter, properly rejected on the ground that the land is covered by the entry of another, and appeal from such action, confer no right upon the applicant as such. XIX–442; XX–135

To enter, and while pending, is only equivalent to an entry on the part of the applicant where the land is subject thereto and the application is improperly refused.

XIII–71, 498, 502; XVIII–14, 45; XX–288, 389

To enter, under which no rights can be acquired, properly rejected and pending on appeal, will not defeat a subsequent indemnity selection. XVIII–163

To reinstate canceled entry reserves the land. II–43; IV–446; XV–569

For the reinstatement of an entry for land embraced within the intervening entry of another is at once effective on the cancellation of such intervening entry and segregates the land covered thereby. XI–375

To make a second entry reserves the land while pending. XX–123

There is no difference in principle between the case of a filing (homestead application) made of record and that of one offered and erroneously rejected. II–37, 548

To enter a tract, pending at the passage of the act of March 3, 1887, does not except such tract from the operation of said act. XIV–498

Informally made to surrender a patent and take certain other land, in order to correct an error of the land department and avoid litigation, reserves the land thus applied for from other disposition. XIV–59

To locate a warrant upon a specific tract, duly filed with the Commissioner, reserves the tract applied for, even though the warrant and fees are lost in the General Land Office, and, in consequence thereof, no record of the location is made in the local office.

XIV–278

To select school indemnity reserves the land until final action thereon, and, if accepted, takes effect as of the date presented.

XIV–72

Application—Continued.

I. GENERALLY—Continued.

Of a railroad company to select indemnity pending on appeal precludes the acquisition of adverse rights by settlement or filing. XIV–418

To enter can not be allowed during the pendency of an appeal from a decision holding for cancellation the existing entry of another for the land. XI–469; XII–334; XIV–423

To enter or file when the land is not subject thereto confers no right. XII–188, 261; XVI–199

To enter land included within the existing entry of another confers no rights upon the applicant and should not be allowed. XIII–381; XV–27, 309; XX–389, 535

To enter lands covered by the existing entry of another confers no right upon the applicant; and if rejected and appeal taken it is not a pending application that will attach on the cancellation of the previous entry. XIII–502; XVI–44

An appeal from the action of the local officers properly rejecting an application because the land described therein is not subject to entry, confers no right upon the appellant, even though the land becomes subject to entry during the pendency of the appeal. XXX–220

To enter can not be allowed for land embraced within a *prima facie* valid timber-culture entry (made by a married woman). XVI–130

To enter land covered by the prior entry of another can not be entertained in the absence of a charge against the validity of such entry. XI–179, 327

To enter conflicting in part with the prior entry of another may be allowed as to the part not in conflict, and rejected as to the remainder. XXI–145, 444

If a part of the land covered by an, is subject to entry, and a part is not, the application should not be rejected as an entirety, but may be allowed for the land subject to such appropriation. XXV–108

To enter, embracing in part land not open to entry, while pending, operates to protect the right of the applicant as to such portion of the land as may be subject to appropriation at the date of his application. XXVI–159, 163

To enter, rejected on account of partial conflict with a prior entry, does not operate to reserve the land not in conflict, where instead of appealing from said rejection the applicant contests the prior entry; nor does the pendency of said contest reserve the tract not in conflict for the benefit of the applicant. XXI–208; XXVII–144

Can not be allowed for land embraced within a private cash entry, even though such entry may have been irregularly allowed. XV–257

Application—Continued.

I. GENERALLY—Continued.

An applicant for the right to make homestead entry of a tract covered by a donation claim is not entitled, on appeal from the rejection of his, to raise a question as to the citizenship of the donation claimant. XXVI–565

To select, filed by a State when the lands are not subject thereto, confers no right. XVII–417; XXII–385

Where the applicant alleges a prior settlement right as against the entry of another, a hearing should be ordered to determine the rights of the parties.

V–526; VI–330; VIII–528; XV–379; XVI–310; XVIII–23

To enter, must be rejected where the land is covered by the prior entry of another and embraced within a pending contest.

II–55; IX–578; XII–11, 377

To enter, should not be allowed for land included within the prior pending application of another.

XII–47; XVI–292; XXI–145; XXVII–150

To enter, presented while the land in question is involved in the pending application of another, should be held to await the final disposition of the prior application. XVII–148, 592

To enter, held to await action on the prior application of another, protects the applicant as against subsequent claims, but in no manner can affect the disposition of the prior pending claim.

XXI–434

It is not necessary for the protection of a settlement claim, on land included in the prior pending, of another, that the settler should assert his right by an application to enter while the land occupies such status. XXVIII–490

To enter, should not be allowed for land included within a preëmption claim under which notice of intention to submit final proof has been published. VIII–406, 414; IX–175, 215; XVI–520; XVII–381

To enter, may be allowed during the period accorded for the exercise of the preference right of a successful contestant, subject to such right. I–162; II–321; IV–534; VI–643; IX–70; X–221

The acceptance of an application to enter, subject to the preferred right of a successful contestant, does not vest in such entryman any right as against the contestant, but protects him against the intervening applications of other parties. XVIII–504; XIX–160

To enter, tendered during the period accorded to the contestant for the exercise of his right, and held in abeyance under said rule, will take effect on the land covered thereby, not taken by the contestant, to the exclusion of a subsequent application of another therefor. XXI–187

Application—Continued.

I. GENERALLY—Continued.

To enter, improperly held to await prior proceedings involving the land, when allowed, will relate back to the time when it was received with the proper fees, and cut off intervening adverse claims. XXII–571

To enter, filed subject to a contestant's preferred right of entry take precedence in the order of filing, if the contestant fails to exercise his privilege. XXII–203

Of a third party to enter land embraced within a judgment of cancellation, rendered by the Department, should be received and held to await action on the part of the successful contestant; and if the preferred right of the said contestant is subsequently waived, the application to enter, so held in abeyance, is entitled to precedence as against other claims arising subsequently thereto. XXIV–404

To enter, accompanied by relinquishment of entry under contest, made by a stranger to the record, should be held to await the expiration of the time allowed a successful contestant for the exercise of his preferred right of entry, or may be allowed if it appears that such contestant is disqualified to make entry, or has waived his preferred right. XXIV–81

Circular of March, 25, 1897, with respect to, pending contest, and during the period accorded a successful contestant. XXV–61

To enter land, made after a final judgment canceling a prior entry thereof, is entitled to the same consideration, and has the same force and effect as against all persons other than the successful contestant, as if no preference right had been awarded. XXVII–185

Circular of July 14, 1899, directing that no, will be received for a tract embraced in an entry of record until such entry has been canceled in the local office, and making provision for applications tendered during the period accorded a successful contestant. XXIX–29

To enter, not received during pendency of contestant's preferred right; Allen *v.* Price. XV–424

To enter, may be received during the time allowed for appeal from a judgment of cancelation, subject to such appeal, but should not be made of record until the rights of the former entryman are finally determined. VI–563; X–221; XII–243; XIII–600; XX–147

To enter, should not be received during the time allowed for appeal from a judgment canceling a prior entry of the land applied for; nor the land so involved held subject to entry, or application to enter, until the rights of the entryman have been finally determined. XXIV–81, 209

Application—Continued.

I. GENERALLY—Continued.

The rule laid down in Cowles *v.* Huff, 24 L. D., 81, with respect to, made after judgment of cancellation and prior to appeal therefrom, but within the time allowed therefor, is applicable to pending cases. XXV–341

Under the first rule announced in Cowles *v.* Huff, 24 L. D., 81, no rights are acquired to lands involved in a pending contest by an application to enter filed before the rights of the entryman have been finally determined. XXVIII–515

To enter, will not be received, nor any rights recognized as initiated by the tender thereof, for a tract embraced in an entry of record, until said entry has been canceled on the records of the local office. XXVIII–515

On the judicial vacation of a patent the land involved should not be held open to, until the entry is canceled of record in the local office. XXIX–178

On denial of a motion for the review of a decision that refuses the reinstatement of an entry, the land involved is thereupon subject to entry; and an application tendered therefor, prior to the receipt of notice at the local office of the decision on review, must be regarded as legally made. XX–391

Can not be allowed during the pendency of a departmental order directing that no entries be allowed pending the final determination of an alleged right under the town-site laws. XXI–71

Lands embraced within a departmental order directing their reservation until further instructions are not subject to entry during the pendency of said order. XXIV–284

To enter, filed within the pendency of an executive withdrawal of the land for a public purpose, confers no right; but it is within the exercise of departmental discretion, on the removal of the reservation, to recognize applications so filed, subject to prior adverse claims. XXIV–462

To enter, filed for lands restored to entry under a decision of the supreme court, prior to the time fixed therefor by the Department, should not be allowed. XXIII–407

To enter, rejected on account of a reservation for the benefit of certain Indians, may be allowed in the event that the lands so applied for are restored to settlement and entry after due investigation. XVIII–38

To enter land reserved for the benefit of an Indian confers no right upon the applicant that can be recognized on the removal of the reservation, in the presence of a valid intervening adverse claim. XXV–95

Application—Continued.

L GENERALLY—Continued.

To enter lands withdrawn for railroad purposes confers no rights. A new application will be necessary on subsequent restoration of the land. XIV–613; XV–91

To enter lands within railroad grant, pending on appeal, may be allowed on the forfeiture of the grant. VI–679

Though properly rejected because prematurely made, may be subsequently allowed on the removal of the bar. VI–679

To enter can not be allowed for land embraced within an existing railroad indemnity withdrawal. XII–27; XX–462; XXV–394

Rejected on account of railroad indemnity withdrawal, may be allowed, when the withdrawal is revoked, as of the date when the land was opened to entry. VI–309, 378; VII–241

Rejection of, for lands withdrawn for railroad purposes does not preclude the settler from making entry thereof on the subsequent restoration. XIV–525

To enter a tract "listed as railroad land," and rejected for that reason, and pending on appeal, will attach at once, as of the date of the application, on the cancellation of the list as to said tract. XXI–109

To enter can not be accepted for land embraced within a prior railroad indemnity selection. XII–386

To enter, in conflict with a railroad indemnity selection, may be considered in connection with final action on the selection. XXIII–513

To enter lands formerly embraced within the withdrawal for the Marquette, Houghton and Ontonagon road may be accepted for lands covered by unapproved selections, subject to the claim of the company. XIII–56

To enter lands embraced in the order restoring to entry lands certified for the benefit of Bay de Noquet grant confers no right if filed before the day fixed for such restoration. XVI–332

To make entry of land within a pending rejected indemnity selection may be allowed on a record showing of a *prima facie* prior settlement right (and where the company declines to furnish the requisite basis for a hearing), and the conflict remain for determination on offer of final proof or under the selection. XIV–79

No rights are required under an application to enter land covered by a railroad indemnity selection made in compliance with law. XXVII–382; XXVIII–298, 371, 431; XXIX–125, 442

Application—Continued.

I. GENERALLY—Continued.

Where an order canceling a list of railroad indemnity selections provides that no disposal of the lands shall be made until pending applications therefor have been adjudicated, and a hearing is subsequently directed as between said applicants, at which they appear, they will not be held in default, as to the timely assertion of their settlement claims, on account of failure to make application to enter within three months after said cancellation. XXIX–125

An applicant for the right of entry, who attacks the validity of a prior indemnity selection, is entitled to the allowance of his application, if the company, after due notice, fails to respond. XXIX–218

To enter land covered by the claim of another is not recognized as the initiation of a contest against said claim. XV–415; XX–135

To make homestead entry can not be allowed for land covered by a school selection. X–263

To make entry of land covered by an illegal school indemnity selection should not be allowed, but taken as an attack upon the selection. XV–549

To enter barred by invalid school selection; but as the application is in the nature of an attack upon such selection it may be allowed on the cancellation of the selection. VI–439

To make timber-land entry of lands embraced within an existing State selection confers no right upon the applicant. XXV–432

To enter, presented after a school indemnity application, but prior to its allowance, may be noted of record and take effect as of the date presented if the claim of the State fails. XIV–72

To enter land involved in a contest must remain in abeyance until final disposition of the contest. IX–578

For land covered by *prima facie* void entry should be held till the status of the entry is settled. III–181; IV–448

To enter should not be allowed during the pendency of a charge affecting the good faith of the entryman. X–402

To enter land certified to a State under a railroad grant will not be entertained. X–575

To enter lands covered by unapproved railroad selection, procedure in case of. X–504

To enter rejected by final decision of the Department is *res judicata*, and can not be reinstated with a view to its allowance under a changed construction of the law. XIX–459

To enter, properly rejected by final decision of the Department, under the rulings then in force, can not be reinstated with a view to favorable action under a changed construction of the law. XXIII–452; XXVI–444

Application—Continued.

I. GENERALLY—Continued.

The tender and rejection of, can not operate to deprive the claimant of his right to again present his application for proper action thereon. XIX–547

If rejected, rights thereunder can only be saved by appeal. III–473; XIII–250, 365

Instructions with respect to the proper procedure in case of rejected, or amendment thereof after rejection. III–119

To enter properly rejected, and pending on appeal, does not oust the local office of its jurisdiction over a subsisting entry of the land involved. XIX–442

Failure to appeal on rejection of, does not defeat the right of the applicant if the requisite notice in writing of such adverse action is not given the applicant. V–377; XI–191; XVI–111; XVIII–6; XXII–576; XXVII–632

If rejected, the applicant should be informed of his right of appeal; and in the absence of such information, failure to appeal will not defeat the subsequent right of the applicant to be heard. V–377; XII–235, 684; XXVII–632

The failure of an applicant for a tract of land to appeal from adverse action of the local office will not be held to prejudice his rights where such action is not indorsed on the, and the applicant notified of his right of appeal. XXII–630

The time within which appeal may be taken from the rejection of, is limited by the notice of such action, and not by the action itself. XIII–598

Failure to appeal from rejection of, will not bar a subsequent assertion of priority where such failure is due to erroneous information received from the local officers as to the record status of the land. XII–550

Failure to appeal from rejection of, will not preclude subsequent assertion of priority where at the date of such action the title to the land was erroneously believed to be not in the United States. XVI–368

Failure to appeal from the rejection of an application to file a declaratory statement defeats all rights that might have been secured thereunder, and such failure is not excused by the fact that the title to the land was erroneously believed to not be in the United States. (See 16 L. D., 368.) XVII–494

An applicant who fails to appeal from the rejection of, loses all rights; nor can the heir of such applicant be heard to subsequently assert any claim thereunder. XX–459

Application—Continued.

I. GENERALLY—Continued.

Failure to formally appeal from the rejection of, will not defeat th right of an applicant who by his subsequent diligence secures a examination of the record. XX–55

Failure to appeal from the erroneous rejection of, defeats the righ of the applicant where the adverse application of another inter venes. Ard *v.* Brandon, 156 U. S., 537, cited and distinguished XXVII–68

On appeal from rejection of, the applicant need not serve notice upon other applicants for the same tract where the question is solely between each applicant and the government. XIII–39

On appeal from rejection of, the applicant is not required to serve notice on a subsequent applicant for the same tract. XVI–285

Appeal from the rejection of, will not be entertained in the absence of notice to adverse claimant of record.

XI–621; XVII–325; XIX–482.

The local office has no authority to stipulate that a rejected, shall be held in abeyance, without appeal, to await departmental action in a similar case. XIII–250

Appeal from the rejection of, does not operate to save or create rights not secured by the application itself. XIII–502

An appeal from the rejection of, on the ground that the existing entry then covering the land is invalid, confers no right upon the applicant where said entry is under investigation by the Department. XIII–386

Failure to make written, held without prejudice on account of erroneous advice of the local officers. I–151

Rights of an applicant not prejudiced by mistake of the local office. XI–191

To enter not defeated through the failure of the local office to note of record an order canceling a former entry of the land applied for. XII–643

Corroborated affidavits showing the filing of, may be accepted as conclusive, where the records do not disclose the fact of such filing, nor tend to contradict the showing made by the applicant. XVII–53, 279

Made in due compliance with existing regulations is not prejudiced by a subsequent change of regulations, made prior to action on said application, especially where the applicant complies with the later construction of the law when notified thereof. XII–297

In the case of a valid, that has been held for a long period without action, the local office should give the applicant at least thirty days' notice in calling upon him to appear and exercise his right of entry. XXVII–619

Application—Continued.

I. GENERALLY—Continued.

No right is secured by, to make entry, that will bar the allowance of a hearing, as to the status of the land involved, on the prior application of another party. XXV–337

To enter, made pending appeal from the rejection of a former application, is in effect a waiver of the first. IX–29

To enter is not affected in its legal operation by the second application of the same party. XIII–56

A second, made under an erroneous direction of the General Land Office, will not be considered, on the intervention of an adverse claimant, as a waiver of rights secured under the first, that in fact was legal in all respects, and entitled to recognition at the date of action thereon by the General Land Office. XXVII–135

To enter not required for the protection of a settler as against an adverse entryman, where the settler, within three months after settlement, applies to contest such entry, alleging his own priority. XVI–266, 270; XVII–345

II. AMENDMENT. See *No. VIII; Entry; Filing*, sub-title, *Amendment.*

To amend an entry reserves the land covered thereby. II–43; III–156; IV–365; V–149; VI–264; XII–558; XV–579; XXIV–429

To amend a filing protects the preëmptor as against intervening claims, and if granted relates back to the date when it was made. IX–139

To amend a filing takes precedence over a subsequent filing by another for the same land. VII–324

During the pendency of, to amend an existing entry, no other person should be allowed to make entry of the tract covered by such application, but where it is denied, an entry allowed during the pendency of the application may remain intact, notwithstanding the irregularity of its allowance. XXVIII–387

To amend a filing will protect the applicant as against the subsequent settlement of another. IX–98

The right to amend not to be abridged by technical rules. III–429

Of homestead, irregular because executed while land was appropriated, allowed (there being no adverse claim). II–270

The right to file an amended affidavit, showing qualification to make entry, will not be defeated by the pendency of a contest, where the contestant is not qualified to take the land in the event that he secures a judgment of cancellation. XIX–282

An amendatory, or supplemental application to enter, filed under a practice of the local office that called for such action, will not be regarded as an abandonment of rights secured under the original application. XVIII–486

Application—Continued.

II. AMENDMENT—Continued.

To enter that is defective, when tendered, in matters that may be supplied by amendment, and is returned by the local office without rejection or official notification of the reasons for such return, is a pending application that will protect the applicant against intervening claims. XXVIII–333

To enter, suspended on account of defects therein, with notice of such action to the applicant, operates to reserve the land from other disposition until final action thereon. XXVI–389

Where found irregular in form, and returned to the applicant for correction, should be regarded by the local office as pending for a reasonable time, and excluding, during said period, other applications for the land. XXI–60; XXVIII–73

Timber culture, erroneous in form (naming wrong act) and returned for correction, takes effect as of the date upon which it was first received. II–44

Timber culture, may not be altered or amended by an attorney so as to include a different tract. II–261

For public land should be rejected if defective when presented; and the right of the applicant, in such case, to thereafter perfect his application can not be recognized in the presence of an intervening adverse claim. (See 26 L. D., 54.) I–164; XIX–37

A change in the description of the land included in, pending final action thereon, is subject to intervening settlement rights. IX–302

To amend an entry does not excuse the claimant from compliance with law while pending. V–349

To amend an entry, suspended on account of a prior existing entry covering the land, confers no right upon the applicant, as against a settler, in the event of the cancellation of the prior entry. XXV–448

When an application is rejected for defect the applicant may amend or appeal, but can not do both, and in neither case can the land be reserved awaiting such choice of action. III–120

Coal land, improperly made by an agent, may, in absence of adverse filing or complaint, be made *nunc pro tunc*. II–735

III. DESERT LAND.

Is the initiation of the claim. VI–541

To make desert entry, accompanied by the purchase money, segregates the land. V–694

For desert-land claim, either under the Lassen county act or the general law, exhausts the right of the claimant. XVIII–99, 580

If in accordance with existing regulations, should not be rejected because not in conformity with later requirements. VIII–408

Application—Continued.

III. DESERT LAND—Continued.

To make desert entry can not be allowed while the land is covered by a previous timber-culture entry of the applicant. x–541

To make desert entry must show that the applicant's knowledge as to the character of the land is derived from a personal examination of the same. VII–312; VIII–96; XIII–21

Based on preliminary papers executed before a deputy clerk outside of the county in which the land is situated, can not be accepted; but the applicant may file a new affidavit, subject to intervening claims. XVIII–364

Declaration, and affidavits therewith, made outside of the county in which the land is situated, are invalid and can not be accepted. XX–482

Can not, under the act of May 26, 1890, be executed before a commissioner of a circuit court outside the county in which the land is situated. XVI–271

A desert-land declaration may be executed before the judge of a county court. XIX–160

The preliminary affidavits of an applicant for desert entry and his witnesses must be made at the same time and before the same officer. XIII–21

Personal inspection of the land prior to desert land confers no rights as against other applicants or settlers. XIII–207

To enter desert land that is covered by the entry of another is not a claim protected by the act of August 30, 1890, and on the subsequent cancellation of such entry the applicant will be restricted to an entry of 320 acres. XIV–636

Desert-land, irregular in the matter of initial payment, received and marked "filed," must be treated as allowed so far as to protect the claimant against the limitation of acreage by the act of August 30, 1890. XIV–551

IV. HOMESTEAD.

Applicant alien born required to furnish proof of declaration of intention to become a citizen. II–194

To make homestead entry, made by an alien prior to declaration of intention to become a citizen, confers no right under the homestead law, and a settler occupying such status is without protection as against an intervening adverse claim of record. XXIV–60

To make homestead entry should bear a date approximate to the date of the preliminary affidavit. XIII–205, 506

To make entry under section 2294, R. S., as amended, circular of June 25, 1890. X–687

Application—Continued.

IV. HOMESTEAD—Continued.

Made under section 2294, R. S., is for the protection of the settler's claim against strangers; if executed prior to, but received at the local office subsequent to, a private entry, the settler has priority of right to the land. II–123

Based on preliminary affidavit executed before a clerk of court, without the prerequisite residence, confers no right as against an intervening adverse claim.

II–93; VI–425; VII–245; VIII–1; IX–209; XIII–686; XV–337; XVI–98

The preliminary affidavit required in all entries made since August 30, 1890, can not be received if made outside of the land district in which the land is situated; but in the absence of any adverse claim, the applicant may file a new affidavit. XVIII–232

A preliminary affidavit executed before a United States commissioner outside of the county in which the land is situated is irregular, and a new affidavit should be required. XXII–486

The preliminary affidavit (Form 4—102b) should be executed within the district in which the land is situated; but where not so made, an entry may be equitably confirmed for the benefit of a purchaser whose good faith is apparent. XXII–114

Distance from the local office, expense, etc., warrant making preliminary homestead affidavit before a clerk of the county court, under the act of May 26, 1890. XV–156

Distance from the local office, character of the country, and season of the year, may be properly considered in determining whether a homestead preliminary affidavit may be made before a United States court commissioner in the county where the land lies. XXV–420

Section 2294, R. S., as amended by the act of May 26, 1890, warrants the allowance of, sent by mail, where it is made to appear that the homesteader, by reason of poverty, and distance from the local office, is unable to present his application in person. XXVII–156

A homestead entry, based on a preliminary affidavit executed before a clerk of court on the false allegation of "distance" from the land office, and filed by mail to secure an advantage over applicants in person, will be canceled. XX–300

An affidavit made before a United States commissioner, or clerk of court, is not valid and lawful unless it shows that the applicant "is prevented," by reason of distance, bodily infirmity, or other good cause, from personal attendance at the district land office. XXI–294

Application—Continued.

IV. HOMESTEAD—Continued.

To make entry prepared before a clerk of court, or other officer remote from the local office, takes effect only when filed in the proper land office. XXI–294

The act of August 4, 1894, validates preliminary affidavits executed before United States court commissioners, instead of United States circuit court commissioners, if no other objection to such affidavits exists. XX–482

A nonmineral affidavit of a homesteader alleging personal knowledge of the land, when in fact the affiant had no such knowledge, does not render the entry illegal, and in the absence of any charge that the land is mineral in character, the defect may be cured by filing a proper affidavit. XXV–471

As between two applicants for the right of entry where the question of priority depends upon the time of settlement on the part of one, as against the time of application by the other, the settler will be given precedence, if it can not be satisfactorily determined that the adverse application was regularly tendered prior to the act of settlement shown, and entitled to consideration at such time. XXVIII–267

To make homestead entry not accompanied by the requisite fees does not reserve the land. VIII–224

Returned because accompanying fees are insufficient will be accepted if refiled before other rights intervene (contest or entry). II–279

To make homestead entry not defeated for want of a tender of fees and commission and preliminary affidavit where it was rejected on account of the preferred right of another. VII–186

Erroneous refusal to accept homestead claim, on ground that land was reserved as saline, does not prejudice the claim; entry must be allowed as of date of application. II–848

To make homestead entry protects the applicant from the intervention of any adverse claim until final action thereon.

IX–29, 92; XIII–154; XIV–658

Of homesteader dying before entry reserves the land and entitles the heirs to complete the entry. II–77; VI–134

Not containing the names of all the minor heirs, on whose behalf made, may stand. Patent to issue in the name of the minor heirs. V–222

In due form, to make homestead entry, signed for the applicant by his attorney, may be accepted where it appears that such act is authorized by the applicant. XV–156

Application—Continued.

IV. HOMESTEAD—Continued.

A woman who states in her preliminary affidavit that she is the head of a family, a single person, and a native born citizen, fulfills the personal qualifications required of a homesteader, and should not be required to make an additional statement as to her age. XX–233

To make homestead entry, by a single woman duly qualified under the homestead law, and erroneously rejected, may be thereafter allowed on appeal as of the date of the application, notwithstanding the fact of the applicant's subsequent marriage. XVIII–45

To purchase under the act of June 15, 1880, reserves the land. IV–32

To make homestead entry, filed by a timber-culture claimant with the relinquishment of his previous entry covering the same land, does not defeat the adverse right of a settler then on the land. XIV–439

Irregular allowance of homestead, for land covered by the entry of another, and subsequent compliance with law by the applicant, gives him a right that will attach on the cancellation of the prior entry to the exclusion of one who then applies to enter but alleges no prior right. XIV–490

Time within which to make, accorded the homestead settler by the act of May 14, 1880, does not run as against the settler during the pendency of an erroneous application theretofore filed by him for the land in question. XII–631

When a homestead applicant contests an entry successfully, on the ground of prior settlement, he is entitled to the statutory period of three months from date of settlement in which to make, and in the computation of this period, the time between his original, and the date of legal notice of cancellation, should be excluded. XXVI–1

To file homestead declaratory statement may be made through the mail. XX–459

To file homestead declaratory statement made through the mail should not be received. XXII–392

To enter embracing noncontiguous tracts may be allowed to stand, as to the contiguous tracts, on the applicant's relinquishment of the noncontiguous subdivision. XIX–547

V. PREËMPTION.

Made by an alien prior to declaration of intention to become a citizen confers no right under the preëmption law, and a settler occupying such status is without protection as against an intervening adverse claim of record. XXIV–60

Application—Continued.

V. PREEMPTION—Continued.

To file, made pending appeal from the rejected timber-culture application of another, may be received. II–276

May not be filed prior to adjudication of an occupant claim in Arizona. II–343

To file should not be allowed for lands covered by a pending railroad selection until after disposition of such selection. X–454

To file a declaratory statement does not segregate the land, but the subsequent application of another is subject thereto. X–616

To file declaratory statement for lands included within an existing indemnity withdrawal confers no right. XIII–214

To file declaratory statement should not be allowed for land covered by pending selection at date of settlement. XII–448

To make preëmption filing should not be received for land involved in a rejected railroad selection pending on appeal, nor any action taken with respect to such land without special notice to the company. XII–18

To file declaratory statement should not be allowed for land embraced within a pending order for its sale as an isolated tract. XII–397; XIV–458

VI. PRIVATE ENTRY.

To make private entry of lands not subject thereto confers no right, nor can any right thereafter be acquired through such application by reason of the changed status of the land. VI–522

To make private entry must be made in writing to the register. VI–805

Nonmineral affidavit may be made by the applicant's attorney in case of private entry. XIV–461

To purchase at private cash entry not considered by the Department except on appeal from the Commissioner's decision. VI–805

Of contestant claiming a preference right does not entitle him to make entry of land not subject thereto. VIII–282

To make private entry should not be accepted and held with time allowed for the applicant to examine the land and file the requisite nonmineral affidavit, but in the absence of any intervening claim such action will not defeat the right of entry. XIV–461

Pending for land covered by a private claim should not be disposed of without opportunity for the assertion of rights thereunder in the event of the disallowance of such claim. XXIII–185

For reinstatement of, under act of April 7, 1896, should not be rejected on account of adverse claims, without due notice and opportunity to be heard. XXIII–582

Application—Continued.

VII. Timber Culture.

To enter, not settlement, initiates right under the timber-culture law. XXIII–1

And affidavit therewith considered as one paper in timber-culture entry. I–157

Timber-culture application not fatally defective for want of applicant's post-office address. III–468

To make timber-culture entry must be presented within a reasonable time after the execution of the preliminary affidavit. X–325; XIII–365

The preliminary affidavit can not be made before a notary public under the act of May 26, 1890, amending section 2294, R. S. XV–294

In which the preliminary affidavit is executed outside the district is defective, but in the absence of an adverse claim the defect may be cured by amendment that will relate back. IV–491; VI–762; VII–50; VIII–478; XV–403

To make entry confers no rights if not accompanied by the requisite preliminary affidavits, and the right to make new application is subject to intervening claims. XV–249

The preliminary affidavit of a timber-culture applicant must be executed in person and before an officer within the district where the land is situated. VI–601; XIV–466

To make timber-culture entry must be made in person and within the land district in which the land is situated. IV–491; VI–601, 762

To make timber-culture entry received, noted of record, but returned for amendment of preliminary affidavit, reserves the land as against a subsequent applicant. XI–326

Applicants alien born must accompany their affidavits with proof that they have declared their intention to become citizens. II–194

Affidavit as to citizenship, in case of entry, sufficient where it follows the statute. IV–191

Applicant for entry not required to furnish more than the statutory evidence to show that he has declared his intention of becoming a citizen. III–606

For timber-culture entry can not be made in good faith when the applicant has not seen the land. III–152; VI–282

Without tender of fees does not give the applicant right of entry. II–276

With check for fees will not bar a subsequent application with payment of fees in money (filed on the same day). II–320

With worthless check for fees confers no right upon the applicant. XXI–137

Application—Continued.

VII. TIMBER CULTURE—Continued.

Erroneous rejection of timber-culture application and appeal protect applicant; whether he tendered his oath and the fees is immaterial. II–321

Where erroneously rejected, the right of entry is not prejudiced and inures to the benefit of the heirs. II–546; XXIV–280

With request to be held in abeyance will not be received pending a contest against prior timber-culture entry in same section. II–34

Will be received during the existence of, and subject to, a preferred right of entry acquired by successful contest. (See Allen *v.* Price, 15 L. D., 424.) II–276, 321

Denying that land is timbered must be received subject to satisfactory proof of the facts. II–274, 850

To make timber-culture entry allowed under rulings in force when offered. VI–217

To make timber-culture entry will not be allowed on the ground that it should have been accepted under the rulings in force when presented. VI–772

Where there are simultaneous applications for the land, the privilege of making the entry shall be put up at auction and sold to the highest bidder. I–157; II–687, 689; III–535

To make timber-culture entry segregates the land. IX–578

To make second timber-culture entry reserves the land embraced therein. IX–383

The repeal of the timber-culture law by act of March 3, 1891, does not preclude allowance of, filed on that date. XV–142, 403

To make timber-culture entry, not received at the local office until after the repeal of the timber-culture act, is not a "lawfully initiated" claim protected by the repealing statute. XIII–169; XIV–417; XVII–273

For the reinstatement of an illegal timber-culture entry, pending at the passage of the act of March 3, 1891, secures no right under said act. XIV–704

To enter filed with a contest prior to the repeal of the timber-culture law saves the right of the applicant to perfect his entry after said repeal if the entry under contest is finally canceled. XV–436; XVII–53, 279; XXII–182

A successful timber-culture contestant who files, with his contest, has no right that is protected from the operation of the subsequent repeal of the timber-culture law if he fails to exercise his right within the statutory period. XVII–117

Application—Continued.

VII. TIMBER CULTURE—Continued.

A successful timber-culture contestant who files, at the time of initiating contest and secures cancellation prior to the repeal of said law, but fails to exercise his preference right until after said repeal, is protected by the repealing act, where his failure is due to the fact that he did not receive notice of the cancellation. XVII–147

A successful timber-culture contestant, whose suit is begun prior to the repeal of the timber-culture law, but not concluded until after said repeal, is not entitled to make a timber-culture, if no application to enter under said law was made by him prior to said repeal. XXVI–474

To make entry, filed by a successful contestant at the initiation of his suit, and rejected prior to the repeal of the timber-culture law, under the circular order of August 18, 1887, confers no right that can be asserted after said repeal. XVI–370

To make entry of land withdrawn for railroad purposes confers no right, and after the repeal of the timber-culture law, there is no right in the applicant that can be recognized as within the protective terms of said repeal. XXI–298; XXIV–434

For land covered by a valid subsisting railroad indemnity selection creates no right that is protected under the saving clause in the act repealing the timber-culture law. XXV–3; XXVII–310

To make second entry, pending at the repeal of the timber-culture law, is protected by the terms of the repealing act, though amendment may be necessary. XV–39

Based on settlement prior to the repeal of the law is not a claim protected by the statute of repeal. XV–513

The ruling of the United States supreme court in the Ard-Brandon case, that the failure of a settler to appeal from the rejection of his, did not defeat his rights, where he remained in the occupancy of the land, should not be extended to the case of a timber-culture applicant, especially in view of the repeal of the timber-culture law. XXVII–86, 310

VIII. TIMBER AND STONE.

To purchase, under the act of June 3, 1878, does not reserve the land. II–333, 336; IV–176, 238; VIII–414; IX–335; XX–391

To purchase, under the timber and stone act confers no vested right. XII–58, 326

To purchase, under the act of June 3, 1878, land previously withdrawn does not except the land covered thereby from the operation of the act of October 1, 1890, providing for the reservation of certain forest lands in California. XII–58, 326

Application—Continued.

VIII. TIMBER AND STONE—Continued.

An application initiates a valid claim to the tract in like manner as a preëmption declaratory filing; the applicant has a preferred right against everybody but the United States and one claiming a prior right to the land. II–333, 335; VIII–412; XX–391

An application to purchase, under said act should not be rejected on account of a temporary order of reservation made by the General Land Office after the application was filed and notice thereof given. VIII–412

Application apparently not in good faith should be rejected and those of doubtful character noted for investigation. III–85

There is no authority under the law for holding a timber-land, subject to the submission of final proof by an adverse preëmption claimant. XVIII–306

Preliminary affidavit in entry compared to that required under the timber-culture law. VII–10

To purchase, under the act of June 3, 1878, is not abandoned by a second, for the same land. XIII–598

Preliminary affidavit should be made upon personal knowledge of the land. VI–115; VII–10; XI–599

The departmental regulation requiring the applicant to personally examine the land prior to application is within the intent of the act. XI–599; XXII–719

To enter, under the timber and stone act may be received, though the applicant has not actually been on the land in question, if his personal knowledge thereof is sufficiently shown. XIV–436

Failure of timber-land applicant to personally examine the land before making, does not defeat the entry where the application is made under the instructions of the local officers and no adverse claim exists. XVI–560; XXII–337

Where the applicant falsely makes oath in his preliminary affidavit that he has examined the land and knows from his personal knowledge that it is of the character contemplated by the act, the right of purchase should be denied. XI–599

Published notice of, sufficient where it contains the statutory requirements and is made on the form furnished by the land department. XXI–121

To make a timber-land entry may be changed as to the land included therein on a satisfactory showing that after the date of the original application and prior to the time fixed for the completion of the entry the timber on the tract first applied for was destroyed by a forest fire, through no fault of the applicant. XXII–424

Application—Continued.

IX. With Contest. (See subtitle herein, No. VII.)

To enter, filed by a homestead contestant with his contest serves no purpose. II–40, 65; III–209; IV–424, 462; XXII–96

For the land (homestead or timber-culture) must be filed with the application to contest a timber-culture entry. II–245, 275, 285, 294

A request, in the affidavit, that the contestant "be allowed to enter said tract under the homestead laws" is sufficient. II–42

For the land, with new contest, may be filed where the first was dismissed, in the absence of adverse rights. II–245, 290

For the land, must be accompanied by affidavit showing qualifications. II–292

To enter, filed with an invalid contest, but not accompanied by the required affidavit as to the qualifications of the applicant, or a tender of fees, is not sufficient to reserve the land as against the subsequent application of another. XVIII–557

Affidavit as to qualification, with application to enter, though informal, sufficient in case of timber-culture contest. III–419

Is not barred by a pending contest which is illegal (without application for the land, or with application to preëmpt) or void on its face (alleging failure to cultivate the first year after entry). II–248, 259, 282, 293, 297

The offer to file an application for the land with a contest against a timber-culture entry protects the contestant, though he failed to file it because erroneously informed by the local officers that it was unnecessary. II–245, 319

No rights secured under, accompanying a timber-culture contest, filed at a time when the land is involved in a prior contest, if the proceedings under the prior suit result in the cancellation of the entry. XXIX–537

Timber-culture, considered as the foundation for action in case of contest. IV–540

A mere expression of willingness to file an application for the land with the contest (timber-culture), which the local officers declared to be unnecessary, without tender of it, does not protect the contestant. II–290

Of a timber-culture contestant is not defeated by the possession of a defaulting entryman. IV–508

To make timber-culture entry, filed with contest, reserves the land pending final action thereon. IX–161; XIII–124

To enter, filed with a timber-culture contest, is equivalent to an entry so far as the rights of the contestant are concerned. VII–335

Application—Continued.

IX. With Contest—Continued.

To make timber-culture entry on a quarter section, filed with a contest, precludes while pending the allowance of a similar application filed by another for a different tract in the same section. XIV–315

To enter, filed by a successful contestant at the initiation of a timber-culture contest, when allowed, relates back and takes effect as of the date thereof, to the exclusion of intervening claims. VII–330

The right of an actual settler on a tract of land embraced within a railroad indemnity selection who applies to enter, accompanying his application with an affidavit of contest against the railroad selection, and thereafter dies before any action is taken on his application or contest, descends to his heirs, and may be perfected by them on the elimination of the indemnity selection. XXVII–621

To make timber-culture entry, filed with a timber-culture contest, entitles the heirs of a deceased contestant to the right of entry on the successful termination of the contest. IX–161; XIV–65

To enter, filed with timber-culture contest, fails on the rejection of the contest. VII–352

Rights secured by, filed with a timber-culture contest, depend upon the establishment of the charge, and if the contest fails, the application falls with it. XV–405

The rejection of an application to contest carries with it the rejection of the accompanying application to enter. IX–211, 569; XI–102

To enter, filed with a timber-culture contest, takes effect as of the date when filed on the cancellation of the entry under attack, and excludes intervening adverse claims. XIII–401

To enter, filed with a timber-culture contest that is accepted and then dismissed on technical grounds, takes effect as of the date when filed, on the subsequent relinquishment of the entry, and precludes other disposition of the land until the contestant has been heard. XIII–289

To enter, filed by a timber-culture contestant, confers no right if abandoned prior to the termination of the contest. IX–193

To enter, filed by a second contestant with his affidavit of contest against a timber-culture entry, reserves the land, subject only to the rights of the first contestant. VII–26; X–532; XV–173, 184

To enter, filed with a timber-culture contest, is dependent upon the result of the contest, whether it be the first or second contest; and where for any cause the second contest fails, or never attaches by reason of the cancellation of the entry under the first contest, the application filed with the second contest does not serve to reserve the land after the disposal of said contest, but falls with it, and confers no right upon the applicant. XXIII–119

Application—Continued.

IX. With Contest—Continued.

To enter, filed with a second contest, does not secure any right to the applicant if the successful contestant in the prior suit fails to exercise his preferred right. XXIII–378

Filed with contest confers no right if not followed up by entry after judgment of cancellation. II–50

To enter, filed by timber-culture contestant, may be amended at the hearing. V–211

To enter under the timber-culture law, filed with a timber-culture contest, estops the contestant from claiming another tract under said law as against a subsequent settler thereon. XIII–283

To enter, filed with a contest, stands rejected without further action if the contestant fails to exercise his preferred right within thirty days after notice of cancellation. XIII–670

The circular instructions of August 18, 1887, to the effect that all, filed with timber-culture contests shall stand rejected if not perfected within thirty days after notice of cancellation, are not applicable if the application is not returned to the local office. XXII–182; XXIII–259

To enter, filed with a timber-culture contest, should be returned for allowance on the successful termination of the suit, after due showing of qualifications and payment of requisite fees. XV–436

Failure of successful contestant to make, until after the repeal of the law, defeats the exercise of such right under said law, though such failure may be due to the negligence of the local office. XV–539

X. With Relinquishment.

Accompanied by a relinquishment is at once effective on the filing of the relinquishment. I–122, 155; IV–188; X–139

Accompanied by relinquishment relates back upon cancellation, under section 1, act of May 14, 1880. IV–123

To enter accompanying a relinquishment takes the land as against a settler on the land. V–149

To enter, filed immediately after the relinquishment of a previous entry of the tract, is defeated by the prior settlement right of a third party. XIII–148, 192; XVI–386

Accompanied by relinquishment should be received subject to adverse claims. V–451

To make entry pending, will take precedence over one filed with a relinquishment. VIII–559

To file a declaratory statement, accompanied by relinquishment, presented during the pendency of a contest, can only be received subject to the right of the contestant. IX–269

Application—Continued.

X. WITH RELINQUISHMENT—Continued.

Accompanied by relinquishment of the prior entry of another may be received, though the affidavit therewith is executed prior to the cancellation of said entry. (See sub-title No. I.) I–121

As between one applying to enter under a relinquishment and another applying for the right of contest, the judgment of the register at the time, on the question of priority, will be accepted in the absence of clear showing of error therein. XIII–541

To enter, accompanied by a relinquishment of the prior entry of another, filed simultaneously with an affidavit of contest, defeats the right of the contestant to proceed against the entry thus vacated. XIV–144

To enter, filed by a contestant with a, should not be allowed during the pendency of a second contest charging the speculative character of the first. XVIII–358

Approximation. See *Entry; Railroad Lands; Reservation*, sub-title *Forest Lands*.

Arid Lands. See *Desert Land; Reservation; Reservoir Lands*.

Circular of August 5, 1889, calling attention to the act of Congress October 2, 1888, and directing the reservation of lands included therein. IX–282

Circular of August 9, 1890, calling attention to former instructions and the reservation of said lands under the statute. XI–220

Circular of September 5, 1890, calling attention to the act of August 30, 1890, repealing in part the original act. XI–296

Instructions of October 5, 1893, with respect to the insertion of reservation of right-of-way privileges in patents and final certificates issued on original entries made after the act of October 2, 1888. XVII–521

All rights of entry are suspended on lands falling within the plan of irrigation contemplated by the act of October 2, 1888. XIII–45

Mineral lands not excepted from the operation of the act of October 2, 1888. XV–418

Homestead entry of, is protected by the act of August 30, 1890, and may be perfected if not selected for a reservoir. XIV–123

The withdrawal of, under the act of October 2, 1888, did not affect or impair rights acquired by settlement and preëmption filing prior to the passage of said act. XXV–221

Arkansas. See *States and Territories*.

Armed Occupation Act. See *Patent*.

A permit to settle on a specified tract is a condition precedent to obtaining title thereto under the act of August 4, 1842. XXI–87

Attorney. See *Affidavit; Appearance; Practice*, sub-title *Notice.*

Qualifications required of, who practices before the Department. III–113

Regulations as to recognition of. Circular of 1886. V–337

Regulations affecting the practice in the local offices. Circular of March 19, 1887. V–508

Right to appear and file motion not recognized until due compliance with departmental regulations with respect to admission to practice before the Department. XXIV–525

The restrictions of section 190, R. S., apply to all the Departments. IV–179

The acceptance of a new appointment after June 1, 1872, brings such person within the inhibition of section 190, R. S., though his original appointment may have been prior to such date and his service thereafter continuous. IV–179

A claim for title to public land is a "claim against the United States" in the meaning of section 190, R. S., and the disability therein created extends to the prosecution of such a claim. (Overruled, 17 L. D., 216.) IV–179

The phrase "claim against the United States," as employed in section 190, R. S., must be construed as meaning a money demand against the United States; and it therefore follows that the inhibition contained in said section does not extend to a former employé of the General Land Office who appears before the Land Department in behalf of an applicant for a tract of public land. XVII–216

Official order under act of July 4, 1884, as to former employees of the Department. IV–220

Objection to, on the ground that he is disqualified under section 190, R. S., comes too late when raised for the first time on review. XIII–615

A clerk in a local office is within the provision of section 190, R. S., and can not appear as, during the period specified in a case that was pending in said office while he was a clerk therein. XI–25

Holding appointment as U. S. commissioner will not be admitted to practice before the Department. IV–55

Will not be recognized in a case where it appears that he is an officer of the Department. XX–523

Must file oath of office. V–341

In good standing, admitted to practice before the Department, is not required to file written authority to appear on behalf of his client. I–480; XVIII–88; XXIV–472

At law, who appears before the local office, required to file written appearance, stating specifically for whom he appears. IV–299; VI–509

Attorney—Continued.

Failure of, to file written authority for appearance before local office will justify said office in refusing to recognize said attorney, but the absence of such authority can not be afterwards taken advantage of by one who has otherwise authorized such appearance. XXVIII–8

In fact required to file written authority. IV–299; VI–509

Address of and name of party represented must be stated. V–343

Must be recognized under departmental regulations prior to the exercise of rights. XXII–434

Required to file written authority in hearings under circular of July 31, 1885. IV–504

The statute authorizes the requirement of July 31, 1885. IV–527

Circular requirement of July 31, 1885, as to written authority of, not applicable where appearance was entered prior thereto. IV–527

Circular requirement of July 31, 1885, in appearance for alleged fraudulent entrymen not applicable in practice before the General Land Office or the Department. V–340

Empowered to act before the land department under words of general authority. III–262

Authority of, presumed from appearance. V–342, 400

Authority of, is presumed, but not conclusively, and may be inquired into. VI–269, 509

Authority of, to enter appearance presumed from subsequent employment. VI–335

If authority of, is questioned, due showing may be made in response. IX–525

Authority of, to appear in a case can not be questioned by one who, in the service of papers in said case, relies upon notice to such attorney. IX–11

Or agent can not substitute another, unless by prior power of substitution or subsequent ratification. II–214

A power of attorney is revoked by principal's death. II–241

In case of widow's marriage or death her attorney does not thereby become the children's attorney. II–241

Death of client terminates authority of. XI–604

Is without authority to enter appearance where his client dies prior to the hearing. XI–604

Action of, in dismissing a suit without authority of the party he represents should not conclude the interest of such party. XIV–373

Having been employed to do certain things, the attorneyship ceases with the performance of the engagement. III–127

Authority to act in a case is concluded by relinquishment of the claim he is engaged to represent. XX–95

Attorney—Continued.

Power of, properly revoked on the withdrawal of claim. v–222

The action of an attorney of record in the dismissal of proceedings will be held conclusive upon the party he represents, where his appearance is general in character and no showing of fraud or collusion is made. xix–211

Where a party is represented by two, of record, he is bound by the action of either, and will not be heard to plead a private understanding between himself and said attorneys by which the authority of one of said attorneys is limited. xxv–34, 294

The right of, to bind his client in the compromise of a case will not be recognized, in the absence of specific authority therefor. xix–266

Whether a power of attorney given to an attorney while disbarred may be used after his reinstatement: *Quære.* ii–214

Pending the adjustment of a claim the revocation of a power of attorney will be recognized on proper showing. iii–261

Claim of, to a power coupled with an interest not recognized in the case of one representing alleged derivative claimants of a State, where want of good faith in the claim is apparent from the record. vi–403

A power of, executed and delivered, that does not contain the name of the appointee, is with an implied authority to complete the instrument, and make it effectual, by filling in the blank, where it is apparent that such was the intention of the party executing the power. xix–64; xxi–228

Does not become a party in interest by advancing money for the prosecution of a contest. xi–65

Has no lien that the Department can enforce by refusing to recognize the entryman's right to relinquish his entry. xv–307

Practicing before the Department presumed to know the rules of practice. iii–250; vi–236

Rules as to, established in the courts followed so far as practicable in the Department. v–400

Not of record in a case may not inspect the papers. ii–222

Extent of right to examine records in the Department. (Rule of Practice 108 amended.) iv–336

Right of, to examine record preliminary to actual appearance. v–400

Right of, to examine papers upon which action has been taken recognized. v–400

In good standing before the land department is entitled to inspect reports of special agent on which final action has been taken by the General Land Office adverse to the interest of his client. xxiv–379

In good standing may examine records, etc. v–340

Attorney—Continued.

Appearing as *amicus curiæ* may file a brief with due service of copies. XVII–369

Brief of, containing scurrilous and impertinent matter will be stricken from the files. IX–130; XVI–130

Brief of, that contains charges of corruption against officers of the land department will be stricken from the files. XIV–445

The judge and clerk of the same court can not act in public-land cases, one as an attorney before the other, and the other judicially, in the same cases. III–112

Of record in a case can not, as a notary public or clerk of court, administer oaths in the case. II–112

As notary, may, if not prohibited by local laws, administer oaths to his client in the preparation of contest affidavit. IV–126; XXIV–45

Not to act as notaries. IV–299; XX–523

Evidence in cases contested should not be taken before, acting as notary. III–98, 250

Signature as one of two witnesses to an affidavit of contest does not invalidate it. II–217

Stipulation of, as to matters of evidence binding upon the parties. XI–71

May fill in the date of entry (timber culture) in an application for contest. II–260

May not alter or amend an application for entry (timber culture) so that it shall embrace a different tract. II–261

Rights not acquired by acting upon erroneous information by. II–56

Action of, conclusive upon his client. IV–267

Rights lost through action of, not restored after intervention of adverse claim. IV–267

Apparently representing different and conflicting claims suggests speculative collusion. IV–197

Disbarred from practice before the land department will nevertheless be recognized as a notary public. II–214

Acting for entryman and for adverse claimants, and also endeavoring to secure the land for himself, will be disbarred. II–62

Proceedings for the disbarment of, should be reported to the Department. IX–520

It is not the province of the land department to inquire into conduct of attorneys in matters not affecting the title to public land. II–616; VII–356

Engaged in fictitious and speculative contests should be reported to the Commissioner. III–120

Who procures a fraudulent entry to be made should be disbarred. XVII–28

Attorney—Continued.

Speculative collusion suggested by alleged agreement. IV–268

Questions between client and, not considered where the claim under prosecution is abandoned. VII–356

Who is appearing on behalf of a contestant can not at the same time assert a right to the land embraced in such proceedings. XXII–86

Attorney-General.

Opinions of, advisory, and not obligatory upon the heads of Departments. VII–100

Cases not referred to, except where the Secretary of the Interior is in doubt as to the correct conclusion. V–277

Boundary of State. See *States and Territories.*

Burned Timber Entry. Circular of February 2, 1895. XX–98

California. See *School Lands; States and Territories.*

Cancellation. See *Entry*, sub-title No. X; *Judgment.*

Canals and Ditches. See *Right of Way.*

Cemeteries and Parks. Circular of May 23, 1892, issued under the act of September 30, 1890, authorizing cities and towns to make entry of public lands for park and cemetery purposes. XIV–560

Certificate.

Final, until approved by the General Land Office, is only *prima facie* evidence of equitable title. VII–86; VIII–269

Issuance of final, by the local office does not prevent the land department from subsequently inquiring into the good faith of the transaction, and canceling the entry if allowed in violation of law. XIII–383; XVII–468; XXVII–716

Final, issued on timber-culture proof prematurely made should not be canceled, but suspended. VII–231

Of entry at variance with application not conclusive. IV–422

Rights not prejudiced by delay in the issuance of final. VI–218, VII–292, 455; VIII–268, 475; IX–101; X–144; XIV–32; XVII–293

Final, issued without authority is void. VI–444

Final, issued to preëmptor is only *prima facie* evidence of payment. II–48

Issuance of final, not a matter of judicial inquiry prior to patent. XV–145

Error in final, as to the name of the entryman, may be corrected *nunc pro tunc.* XXI–377

Loss of swamp indemnity, being shown, a certified copy of the record may be issued in lieu of the original. XIX–257

Certificate of Deposit.

Circular instructions concerning. III–350, 599; IV–488

Issued under section 2401 *et seq.*, as amended by act of August 20, 1894. See circular of August 7, 1895. XXI–77

On account of surveys is assignable. III–4

Certificates of deposits for, may be assigned under act of March 3, 1879. I–309

Issued on application for survey is assignable under act of March 3, 1879, whether issued before or after said act. XII–23

To secure survey receivable in payment for any public land entered under the homestead or preëmption law. I–522

For survey returned if the entry fails. I–533

In excess of the cost of land entered by one person may be used by another on making his payment. III–348

For survey issued before March 3, 1879, used only for purchase of lands in township surveyed. IV–328, 488

Issued for deposit made since the act of August 7, 1882, to recover excess occurring under contract made before said act, is receivable for any public land entered under the homestead or preëmption law. IV–326, 488

Certificates issued for deposit to secure the survey of a private claim can not be used in payment for lands entered under the preëmption or homestead laws. II–463

Used in payment for land may be returned where the entry fails and the certificate remains in the control of the Commissioner. I–533

The provisions of section 2403, R. S., as amended by the act of March 3, 1879, with respect to the assignment of, are not applicable to such certificates issued on deposits for surveys in the Territory of Alaska. XXII–289

Issued on account of deposit to secure the survey of Alaskan land can not be accepted in payment therefor. XXVI–305

Certification. See *Patent.*

Certiorari.

Application for, should be under oath, and the affidavit should, in effect, set forth the verity of the allegations relied upon as the basis of the application. XVI–125; XVII–100

Application for, must be under oath. IV–31, 558; VI–605; XI–238

Petition should be accompanied by copy of decision complained of or specific recital thereof. II–68; III–184; IV–31; V–588; IX–648; X–159; XVI–481

The rule requiring a copy of the Commissioner's decision to accompany the application has been uniformly followed though not included in the Rules of Practice. XIII–635

Certiorari—Continued.

Failure to file a copy of the Commissioner's decision with the application can not be cured by filing such copy after the application is dismissed. The Department may waive this objection. XIII–635

Application for, should be accompanied by a copy of the decision denying the right of appeal. XIV–176

Rule 85 provides for a period of suspension of the Commissioner's decision, where the right of appeal is denied, but is no limitation on the power of the Secretary to grant an application for, even though it is not filed within said period.

XVIII–41; XX–287; XXIV–385

Delay in application for, and the allowance of an adverse entry under the decision complained of, will not defeat the right of the applicant to a decision on the merits where rights of third parties are not affected thereby and the status of the adverse party is not due to delay on the part of the applicant, and where the entry of such party is made with full notice of the applicant's rights.

XXIV–385

Notice of application for, should be served upon the opposite party. XIII–673

Notice of an application for, need not be served on the attorney of the opposite party where due service is made upon the party himself. XIII–520

Application for, should set forth specifically the grounds on which it is made and the facts relied upon. I–565, 628; VI–605; IX–170

Assignment of errors not required on application for. I–565

Application for, suspends action in case. IV–314

On the filing of an application for, the local officers should be at once directed to suspend all action under the decision in question. XX–464

Application for, when filed in the General Land Office, should be forwarded. IV–314

Is not a writ of right, but issues in the discretion of the petitioned tribunal on a *prima facie* showing of substantial injustice in the action of the court below. I–565; II–769; III–503; IV–32; V–205; IX–172; X–160; XXIII–529

Applicant for, must make a *prima facie* showing of matter subject to supervision, so that a reasonable presumption of error or oversight is raised and the Department convinced that its intervention is required for proper administration of public business or prevention of possible injury. I–569; II–215, 419; III–183, 594

When it is made to appear that the supervisory authority of the Secretary should be exercised, the application should be granted whether made formally or otherwise. VII–494

Certiorari—Continued.

The origin of, in the requirement that on denial of right of appeal the case shall be forwarded to the Department. I–628

Instituted to secure a review where the right of appeal does not exist. III–325; IV–269, 314, 559; XVII–111

Provided to cover cases where the Commissioner formally decides against the right of appeal. IV–314; V–673

Will be denied if it does not appear that the applicant has first sought relief by appeal. XI–558; XX–178; XXIV–244

A writ of, will not be denied on the ground that the applicant did not seek relief by appeal, where the General Land Office erroneously denies the right of appeal before an attempt to exercise the same is made. XXI–90

Matter which might and should have been set up on appeal, but was not within the prescribed time, is not good ground for. IX–668

Not granted where the right of appeal is lost through failure to file the same in time. IV–331; V–235; VI–122; XII–62; XIII–397, 478; XIV–154; XX–89

The writ of, will not issue where it is apparent that the applicant has not been diligent in the prosecution of his claim before the Department. XX–137

Will not lie where the right of appeal to the Department is lost through failure to appeal from the local office. XI–473

An application for, will be granted where the right of appeal is denied on the ground that it was exercised out of time, and the record does not show that notice of the decision appealed from was served on the applicant. XIX–472

An application for, may be allowed where the appeal is dismissed because taken out of time, and it is shown that the applicant was misled, as to the time allowed for appeal, by the action of the General Land Office. XVIII–41

Application for, may be granted where the failure to appeal in time is due to a mistake that is satisfactorily explained, and where such action will not injure innocent parties. XV–527; XVII–63; XXIV–570

Will not be granted if it is apparent that the failure to be heard on appeal, or through motion for rehearing, is the result of the applicant's negligence. VIII–396

Will lie where entry is canceled without notice and appeal denied because not filed in time. IV–11

Writ will not issue though the case is *ex parte* and the right of appeal is lost through the negligence of attorney. VI–122

Will not be allowed where the right of appeal is lost through the attorney's negligence. XII–388; XIV–176; XVIII–452

Certiorari—Continued.

An application for a writ of, on the ground that the right of appeal was lost through the fault of the applicant's attorney, must be denied in the absence of any specific charge of fraud or collusion on the part of said attorney. XXV–345

Might be allowed, on proper showing, in lieu of appeal when the latter was not filed in time. IV–226

Appeal may be allowed in lieu of, where the appeal was delayed on account of temporary closing of local office. II–211

Where the application is an appeal in effect, it may be treated as such. V–392

May be granted if it appears that the applicant is entitled to relief, though he may have failed to appeal in time. VIII–423

Will not be granted where the right of appeal is not asserted, nor denied by the Commissioner. XV–290

Will not be granted unless the right of appeal has been denied and such denial results in serious injury to the applicant. X–491

Application for, will not be granted unless it is shown that the Commissioner's decision is erroneous, though he may have erred in declining to transmit the appeal. XIV–67; XX–544

The writ of, will not be granted if the petitioner fails to show that the decision complained of is erroneous, and did not render substantial justice. XXIV–570

An applicant for the writ of, who alleges that the Commissioner erred in not reviewing the decision of the local office under rule 48 of practice, should set forth specifically the alleged irregularity on the part of said office, or wherein, with respect to the interest of the government, the decision of said office is contrary to existing laws or regulations. XXV–345

A petition for, will not be granted in the absence of a *prima facie* showing that calls for a reversal of the action below. XIX–331

Will not be granted if the right of appeal is not wrongfully denied, unless the facts set forth show that the applicant is entitled to relief under the supervisory authority of the Secretary.
X–572; XV–126; XVIII–91; XX–116; XXI–122; XXV–466

Though an applicant for, may not be entitled thereto on the ground of the wrongful denial of his appeal, yet, if he is justly entitled to relief, it may be granted, under the supervisory authority of the Secretary. XIX–32

Will not lie where the applicant has suffered no material injury, or where the petition fails to allege such an injury.
III–183, 594; IV–28, 277, 559; VIII–485; X–159; XX–130

Application will not be granted if substantial justice has been done, though the proceedings may have been defective and informal.
IX–170; XI–473

Certiorari—Continued.

Not granted if on the showing made it is apparent that the applicant's appeal if before the Department would be dismissed.
VI–315; XI–78, 430; XVII–298; XXIV–230, XXVI–348

Will not be granted where it is apparent that the decision below would be affirmed if before the Department.
XIV–205; XXI–109; XXIII–492

The Secretary may issue the writ to the local office in a case that calls for such action. X–689; XXV–76

Will not lie to review an interlocutory order of the local office where the ordinary methods of procedure afford relief. X–689

An application for a writ of, directed to the local office must be denied, where it is apparent that if the appeal from the action of said office had been forwarded it would be dismissed. XXV–466

Will lie to review an order of the General Land Office for a hearing.
V–175; XIII–259

To review an order of the Commissioner directing a hearing will not be granted unless a clear abuse of discretion shown.
III–530; X–250, 491

Discretionary authority of the Commissioner will not be controlled by the Department in the absence of an apparent abuse.
V–412; IX–530, 626, 633; XI–260, 273

Supervisory authority of the Secretary should be invoked by, when an abuse of the Commissioner's discretionary authority is alleged.
IX–530

The writ of, will issue to review final action of the General Land Office that is in effect the determination of a substantial right, and where the right of appeal therefrom is denied. XX–211

Where on motion for review new facts are set up and a hearing thereon asked, and the motion is denied by the Commissioner, the right of the applicant, on due showing made, may be reviewed under a writ of certiorari. XXI–130

Supervisory authority may be exercised on motion for review of a decision denying the writ. VIII–423

The supervisory authority of the Department is exercised under certain rules formulated to avoid confusion in practice. VIII–396

Supervisory authority not exercised except upon grounds appealing to executive discretion. I–630

Does not lie to correct errors arising from negligence of parties.
I–570

Will not be granted upon allegation by a stranger that contest was initiated for speculative purposes. II–67

An application for, will be denied where it appears that the applicant is not a claimant for the land involved under any of the public lands laws. XX–287; XXI–90

Certiorari—Continued.

Granted where it appears that the whole case was not before the Commissioner. IV–31

Will be granted where it is made to appear that the record should be reviewed for the consideration of the errors alleged. XII–230

Rule of June 19, 1885, requiring application to be filed in General Land Office. III–595

Application for, denied for want of formality, can not be amended, but is no bar to a new application. XI–346

Where the applicant for, alleges the right to be heard on appeal as a contestant, he must affirmatively show by what proceedings he acquired such status. XIV–42

On application for, final judgment may be rendered on the merits of the case without calling for the record, where the showing made justifies such action. XVIII–420

Cherokee Nation.

Courts of, recognized as courts of record. IV–535

Cherokee Outlet. See *Indian Lands; Oklahoma Lands; Townsite.*

Circular of September 1, 1893, with the President's proclamation opening lands to entry. XVII–225

Chippewa Pine Lands. See *Indian Lands.*

Circulars. See *Tables of;* also *Statutes.*

Intended to be in harmony with the law and general rules of practice. V–671

Regulations provided by, authoritative after promulgation. V–134

In conformity with the statutes have all the force and effect of law. II–709; V–169; VI–111; IX–86, 189, 284, 353; XII–138; XIV–587

Regulations made by, will not be permitted to defeat a statutory right. II–283; V–429

Citizenship. See *Alien; Naturalization.*

Proof of, in case of entry, sufficient where it follows the statute. III–606; IV–190; VI–620

Voting not conclusive evidence of, but raises a presumption which may be accepted in the absence of proof to the contrary. IX–173

Evidence of voting will raise a presumption of, as fraud on the part of the voter is not to be presumed. XIX–270

Secondary evidence of, accepted. VI–631

Children born of a white man (a citizen of the United States) and an Indian (his wife) are by birth citizens of the United States. XIII–683; XXIV–311; XXX–606

Citizenship—Continued.

An Indian born within the United States who has abandoned the tribal relation, and adopted the habits and customs of civilized life, is a citizen of the United States. XXII–215

A claim of membership in an Indian tribe may be established by the laws and usages thereof, although such recognition may not be in harmony with the general rule that among free people the child of married parents follows the condition of the father. XIX–311; XXVI–71

The act of June 7, 1897, making provision for the recognition of the rights of children born of a marriage between a white man and an Indian woman by blood, is inapplicable to the case of a child born of a half-breed woman and a white man, where such woman is not recognized as a member of the tribe, or as having any tribal rights. XXVII–386

A corporation organized under the laws of a State is a citizen of the United States. XIX–141, 148; XXII–1; XXVI–503

Proof of, on behalf of a corporation, shown by authenticated certificate of incorporation. XXII–83

Proof of, by a corporation, is made by filing a certified copy of its articles of incorporation; such certificate being made under seal of the officer having custody of the records where said articles are recorded. XXVII–351

The children of a citizen of the United States, though born in a foreign country, are citizens of the United States by virtue of their father's citizenship. XIX–282

A citizen of the United States who, in order to practice his profession while residing in a foreign country, takes an oath of allegiance to the reigning ruler thereof, without renouncing his own citizenship, does not thereby expatriate himself. XIX–282

A presumption as to the continuity of alienage, when once shown, may be overcome, where no record of naturalization is found, by a presumption of, growing out of a long-continued exercise of the rights and duties of a citizen; and the son of an alien, in such case, is entitled to the benefit of such presumption of citizenship, where no record of the naturalization of the father during the minority of the son can be produced. XXVI–565

The residence of an alien in this country the last three years of his minority, who is otherwise within the terms of section 2167, R. S., qualifies him in the matter of, to the extent that he may initiate a homestead claim by settlement, without having previously filed a declaration of intention to become a citizen. XXVIII–138

Claims. See *Accounts.*

Made under a statute must be brought strictly within the statute. II–79

Can not be made by mere words, without attempt to reduce to possession land already another's possession by color of law. II–186, 637

He who takes the initial step, if it is followed up to patent, is deemed to have acquired the better right to the premises. I–405; II–167; IV–582; VI–631; IX–443; X–228

Coal Lands. See *Application*, subtitle No. II; *Mineral Land.*

Sale of, circular of July 31, 1882. I–687

And iron lands in Alabama, circular of April 9, 1883. I–655

In Alaska, instructions of June 27, 1900, under act of June 6, 1900. XXX–368

Application for the survey of, under the act of August 20, 1894; see circular of August 7, 1895. XXI–83

Coal lands are mineral lands within the meaning of the act of June 4, 1897 (forest reserves). XXX–92

Coal lands are not mineral lands within the meaning of the act of June 3, 1878 (timber cutting). II–827

The words, "the existing mining laws of the United States," are to be construed, in legislative enactments, as embracing sections 2347 to 2352, inclusive, R. S., commonly known as the coal-land law. XXX–92

Prior to the passage of the act of March 3, 1883, were open to entry and private sale the same as agricultural land, subject only to certain limitations as to price and quantity. (Alabama.) VI–493

The character of land claimed as coal must be determined by the actual production from mining on the tract or by satisfactory evidence that coal exists thereon in sufficient quantity to make it more valuable for mining than for agriculture. V–126; XII–612

The character of land alleged to be valuable for the coal it contains must be established as a present fact, and from the actual production of coal, but it does not follow that there must be an actual development of coal on each forty-acre subdivision. XIX–168

It is not necessary to show that coal has been developed on all parts of a forty-acre tract; if coal has been discovered thereon, the applicant is entitled to the whole of such legal subdivision. XXIII–116

Under an entry made by an association, the land must appear to be mineral in character as a present fact and from actual production of coal, but the development of coal on each forty-acre subdivision is not requisite. XXIII–127

Coal Lands—Continued.

An entry can not be allowed in the absence of evidence showing the existence of merchantable coal within the boundaries of the tract in question. XX–220

An entry made by an association under the proviso to section 2348, R. S., may embrace by legal subdivisions 640 acres, including the legal subdivisions on which the mining improvements are actually situated, whether the land covered by said improvements is coal or agricultural land. XXIII–127

In determining the character of land alleged to be valuable for coal, the extent of the deposit may be shown by the testimony of geological experts and practical miners, taken in connection with the actual production of coal. XIV–113

In determining whether land is subject to entry as, the means of transportation can not be taken into consideration as affecting the value of the coal shown to exist. XV–321

There is no authority for segregating the coal from other land within a legal subdivision. III–65

Must be entered by legal subdivisions. III–65

If it is shown that a legal subdivision entered as, it is not in fact of such character, the entry should be canceled as to such tract. XV–588

Entry of, attacked by subsequent homestead claimant may be canceled as to the legal subdivisions in conflict that are not valuable for coal. XV–361

An entry made under section 2347, R. S., must be restricted to contiguous tracts. VII–172

Entry of, not allowed for noncontiguous tracts. XII–419

Entry embracing noncontiguous tracts, made in good faith, under the existing practice, may be patented as made, or amended so as to include contiguous tracts VII–577

A filing appropriates the land and bars subsequent applications. II–728

Failure to file declaratory statement within sixty days after date of actual possession, and make payment within one year from the expiration of the time for filing, renders the land subject to the entry of another who has complied with the law. X–160

The time within which a claim must be perfected by purchase, where the filing when first offered is properly rejected on account of a defective township plat of survey, and is thereafter allowed on the correction of said plat, should be computed from the date when the corrected plat is filed and the land opened to disposal. XXVI–107

Coal Lands—Continued.

A claimant who appears, on the last day of the life of his filing, at the local office and within the business hours designated by official regulations, and is prevented from submitting his final proof and making payment at such time by the receiver's office being closed contrary to said regulations, should not be regarded as in default, where such proof and payment are tendered on the next business day. XXIV–46

Final proof and payment must be offered within one year after the expiration of the time allowed for filing a declaratory statement therefor. XX–422

Failure to make proof and payment within the statutory period does not forfeit the right of purchase in the absence of an adverse right. X–508

Failure to perfect entry within the statutory period defeats the right of purchase in the presence of an intervening adverse claim. XIX–522

On the failure of a coal claimant to perfect title within the statutory period, the work done by him inures to the benefit of a valid adverse claim then asserted for the land involved. XXIII–243

On failure to make proof and payment within the statutory period the filing should be canceled if, after due notice, the claimant does not comply with the law. X–508

Prior possession, without filing, will not avail as against an adverse claimant who has complied with the law. IV–96

Priority of possession and improvement of, followed by filing and development of the mine, entitle the claimant to the preference right of purchase. XI–515

As between two claimants, both claiming the land on account of the coal therein, priority of application and good faith in improvements should govern the award. XXI–197, 493

The preference right of purchase under section 2348, R. S., requires actual possession at date of application and improvement sufficient to indicate good faith. XI–32

The preference right of entry conferred by section 2348, R. S., is dependent upon the opening and improving of a coal mine on public land that is in the actual possession of the applicant. XXIII–110

The declaratory statement and affidavit must be made by the applicant himself; subsequently certain proofs and acts may be made by an agent; where the declaration was improperly made by an agent, in the absence of adverse filing or conflict it may be made *nunc pro tunc.* II–735

The affidavit at the time of purchase must be made by the claimant himself. XXI–302

Coal Lands--Continued.

A declaratory statement for, can not be filed for unsurveyed land. XX-556

Though the statute provides that but one entry shall be made by the same person, said prohibition does not relate to the declaratory filing, as is the case in the preëmption laws. VII-181

A second declaratory statement can not be filed in the absence of a valid reason for failure to perfect title under the first. X-539; XI-32, 351; XV-310

Second filing for same tract not allowed to one who has failed to make proof and payment within the statutory period. X-508

Second declaratory statement authorized as of the date made, though filed without authority therefor. VII-181

Declaratory statements for, may be filed on sections 16 and 36, with opportunity to the State (Colorado) to be heard. VII-490

Declaratory statement for, should not be received while the land is covered by the existing homestead entry of another. XI-515

A declaratory statement offered during the pendency of a previous application to file, made for the benefit of the same party, though in the name of another, confers no right as against an intervening adverse claim. XI-32

Entry of, based on a second filing, may be permitted to stand, where the first filing was abandoned on account of the worthless character of the claim. XXIX-328

An entry allowed on defective declaratory statement and irregular proof may be equitably confirmed, in the absence of any adverse claim, where a proper declaratory statement is subsequently filed and the requisite additional proof furnished. XIX-18

Sections 2348 and 2349, R. S., do not require that a coal claimant must have opened a mine on the land at the time of filing a declaratory statement therefor. XXII-539

Declaratory statement for, is void if prior thereto no coal has been discovered on the land. XIV-633

The right of purchase is not initiated by filing a declaratory statement, but by actual discovery of coal on the land, and the performance of some act of improvement sufficient to give notice of an intent to purchase under the coal-land laws. XXIX-615.

Each member of an association must show qualification. V-224

The law requires that no member of a company shall be interested in other land claimed or owned under the coal law at date of the entry. II-729

An application by an agent of an association to file a coal declaratory statement must be made in the manner provided by the departmental regulations, and show what improvements have been made, and the qualifications of the persons composing the association. XVII-411

Coal Lands—Continued.

Entry must be made in good faith and not for the benefit of another. x–160

No vested rights are secured through filing a declaratory statement; and a sale of the land thereafter by the claimant, prior to final proof and entry, defeats his right to purchase said land, and an entry thereof made in his name must be canceled. xvii–351

A possessory claim must be maintained and asserted in good faith, and for the use and benefit of the claimant only, to entitle him to be heard in his own right as against the application of another. xx–422

Final proof will not be accepted on a declaratory statement filed in the interest of another. xv–310

An application to purchase can not be allowed if made in the interest of another who has exhausted his right. xiv–633

Entry of, made for the benefit of another is illegal and must be canceled. vii–422; xxi–300

Procured in the name of qualified person, but for the benefit of an association, invalid. vi–371

Where one files and assigns to a company, the company may enter as assignees. ii–728

The purchaser of the improvements made by a prior claimant under a coal declaratory statement acquires no priority of right thereby, if an assignment of the right to purchase from the government has not been made as provided in paragraph 37 of the regulations of July 31, 1882. xxii–538

One who purchases the possessory right to a developed vein of coal while the title to the land is still in the United States, and thereafter remains in actual possession thereof, is entitled to file a declaratory statement and perfect title thereunder. xxii–306

Entry voidable for illegality may be passed to patent for the benefit of a transferee in view of the price paid for the land and the fact that repayment can not be allowed. viii–140

Where a patent has been issued, through mistake of the entryman, for land not intended to be entered, the mistake may be corrected for the benefit of a transferee in good faith of the land actually improved and developed as a mining claim, and intended to be entered. xxviii–307

On application for reissue of patent, after amendment of entry to describe the land actually improved and developed, an intervening entry by one having full knowledge of the prior adverse occupation and possession of the applicant, is no bar to the favorable consideration of the application for amendment. xxviii–307

Only one entry allowed to the same person or association. vi–371; viii–140

Coal Lands—Continued.

An applicant for the right to make an entry of, is not disqualified by his having been, previously to such application, the owner and intermediate assignor of a preference right to enter other coal lands. XVIII–414

The right of a coal-land claimant to make entry is not affected by his sale of an option to purchase an assignment of such right, where the option expires with no advantage taken thereof. XXIX–615

A private entry of, may not be allowed to embrace one tract, taken in the capacity of an assignee, and another under the individual right of the purchaser. XVII–22

An entry embracing land not included in the declaratory statement, but necessary to the working of the mine and not in excess of the legal acreage, may be allowed to stand where good faith on the part of the entryman is manifest. XVII–268

Cash entry of, may be amended after patent, when the mistake was caused by the indistinct marks at section corners. VIII–303

Settlement of an alien on, affords no claim thereto under the acts of 1864 and 1865 as against the withdrawal of such land for the Northern Pacific. XIV–484

In entry of, proof of citizenship is sufficient if made in conformity with the regulations prescribed for carrying into effect the law providing for the sale of such lands. VI–620

A prior possessory right, set up to defeat a private entry of coal land, must rest upon actual and *bona fide* occupation of the land. IX–15

The possession of a claim by an agent is the possession of his principal, and all acts of said agent toward perfecting title will inure to the benefit of the principal. XXVI–107

Where a claimant prior to survey locates a claim for himself, and an adjacent claim for another party, as agent, and it transpires after survey that the improvements made on behalf of the latter claim are within the lines of the former, such improvements inure to the benefit of said claim, so far as third parties are concerned, and the claimant is not required to open and improve a mine on the land he claimed before survey. XXII–11

On the relinquishment of a coal declaratory statement the improvements made thereunder inure to the benefit of a valid adverse claim then asserted for the tract involved. XXII–539

In determining the "continued good faith" of the applicant his degree and his condition in life may be considered. XIII–414

Entry of, disallowed as inconsistent with original claim. V–224

Proximity to a city does not affect claim. V–126

Coal Lands—Continued.

Covered by a homestead entry on March 3, 1883, must be publicly offered on the cancellation of such entry (Alabama). IV–367

That coal may be found upon land claimed by a preëmptor is immaterial if such mines are not known at date of entry. III–169

Status of, at date of proof and payment, with respect to distance from a completed railroad determines the price. I–540; II–730; X–422; XIII–397

Price of, dependent upon distance from a completed railroad at date of entry, and not at date of application. XXIV–11

Price of, determined by distance from a completed railroad, irrespective of distance from nearest shipping point on such road. XXIX–637

Price of, within fifteen miles of a completed railroad, is not affected by the fact that there is an inaccessible range of mountains between the lands and the railroad. II–733

Where the public surveys were erroneously extended over part of the Ute reservation (west of the one hundred and seventh meridian), and persons went upon the land and filed prior or subsequently to its suspension from sale on October 7, 1880, they were trespassers until the act of July 28, 1882, legalized their occupancy; the completion of a railroad meanwhile within fifteen miles of the land enhanced its value. II–733

An entry allowed in accordance with existing regulations that did not require affirmative proof as to the location of the land with respect to completed railroads should not be canceled for the want of such proof. XVIII–382

On the offer of final proof and the appearance of an adverse claimant who protests against the allowance of said proof, the protestant should not be required to introduce testimony if the final proof as submitted is clearly insufficient under the regulations. XXII–538

Colorado. See *School Lands; States and Territories.*

Commissioner of the General Land Office. See *Land Department.*

Commutation. See *Entry*, subtitles XIII and XV; *Final Proof*, subtitles X and XII; *Homestead; Indian Lands; Residence; Oklahoma Lands.*

Confirmation. See *Credit Entry; Graduation Entry; Private Claim; Railroad Lands.*

I. Under Section 7, Act of March 3, 1891, Generally.
II. Under the Proviso.
III. Section 23, Act of March 3, 1891.

I. Generally.

Instructions of May 8, 1891, issued to chiefs of divisions in the General Land Office, with respect to the provisions of said section. XII–450

Ex parte cases falling within said section may be, by motion, advanced on the docket. Rule of April 8, 1891. XII–308

Rule of the General Land Office for examining cases under said section on motion. XIII–416

The rule of April 8, 1891, for the disposition of cases under said section is not applicable to cases ready for disposal in their regular order. XVI–336

An entry will not be taken up under the rule of April 8, 1891, unless sufficient facts are stated to bring the case within the operation of said section. XIII–111

The rule of April 8, 1891, has reference only to cases then pending before the Department. XV–595

The rule of April 8, 1891, does not contemplate the advancement of cases in which the matter of confirmation has been considered below. XV–362

A case involving the reinstatement of an entry can not be advanced for consideration on motion for confirmation. XVI–358

The confirmatory provisions of said section were not intended to disturb vested interests acquired prior to the passage of said act. XX–488

A claim of, will not be considered where the entry is found regular and legal in all respects. XX–346

Refusal of the Commissioner, on motion, to confirm an entry is not a final decision from which an appeal may be taken. XIII–462

An entry falling within the confirmatory provisions of said section is confirmed as an entirety, to the exclusion of all other claims to any portion of the land. XIX–441

The General Land Office has no jurisdiction over an entry confirmed by section 7, except to pass the same to patent. XVI–46

The confirmatory provisions for the benefit of transferees are not limited to cases where the incumbrance has been made of record. XXIII–481

The record should disclose the actual consideration paid by a purchaser who invokes the confirmatory operation of said section. XV–50

Confirmation—Continued.

I. GENERALLY—Continued.

A deed purporting to convey the title of one holding a power of attorney from another in whose name a soldiers' additional entry has been made by such attorney in fact is not proof of a sale that brings the entry within the confirmatory provisions of section 7; nor will a deed executed subsequently by the principal and based on an additional consideration operate to cure the defects in the former conveyance so as to bring said entry within the terms of said section. XVII–483

An entry that has been canceled by a decision that became final before the passage of the act of March 3, 1891, is not within the confirmatory provisions of section 7 of said act.

XII–446, 610; XIII–33, 388, 452; XVI–47, 358

An entry canceled prior to the act is not confirmed, nor does the pendency of proceedings under permission to show cause why such entry should be reinstated bring it within the confirmatory operation of said section. XVI–430; XIX–435

Confirmatory operation of the section not defeated by an order of cancellation made subsequent to the passage of said act. XV–568

Does not provide for the reinstatement and confirmation of canceled entries. XIII–452, 574; XV–421

The expiration of the statutory life of an entry does not exclude it from the confirmatory operation of said statute. XIII–6

Confirmatory effect of said section not invoked where the pending contest is dismissed on the merits. XII–497; XV–445

An entry against which there is no adverse claim pending at date of, is confirmed by said section, where the land, after entry and prior to March 1, 1888, is sold to a *bona fide* purchaser.

XII–250, 279, 600; XIII–181

A preëmption entry is not confirmed where at the date of final certificate the homestead entry of another for the same land exists of record. XV–503

An adverse claim originating prior to final entry defeats confirmation under the body of said section. XIV–431; XV–162

The occupancy of land by townsite settlers at the time of soldiers' additional entry is an "adverse claim" that defeats confirmation under the body of the section. XIV–367

A mortgagee is not entitled to invoke the confirmatory provisions of said section where at the date of the incumbrance the records disclose the fact that the entryman had disposed of the land prior to the submission of final proof and payment of the purchase price. XX–403

Confirmation—Continued.

I. GENERALLY—Continued.

A mortgagee is not entitled to protection if the mortgage is executed prior to the submission of final proof and issuance of certificate thereon. XVII–524

The confirmation of an entry under section 7 for the benefit of a transferee is not contemplated by said statute in case of a transfer prior to the issuance of final certificate. XXIII–333

To bring a transferee within the confirmatory provisions of said section 7, act of March 3, 1891, satisfactory proof of sale or incumbrance and good faith between the parties must be furnished. XII–305, 540, 571; XIII–429

The allowance of a filing for land within a canceled entry will not defeat confirmation for the benefit of a transferee where said entry is reinstated and intact upon the record at the passage of said act. XV–111

Fraud on the part of the entryman will not defeat the confirmatory effect of said section where the entry is allowed in the absence of an adverse claim, and the land transferred prior to March 1, 1888, to a purchaser in good faith for a valuable consideration. XII–444

A claim of prior Indian occupancy set up to defeat confirmation under the body of said section can not be entertained where the entry was allowed in accordance with existing regulations and the claim is not asserted for a term of years. XVI–78

The confirmation of an entry under the body of section 7 is not defeated by a claim based on the alleged prior occupancy of the land by a nonreservation Indian, where at the date of said entry there was no authority for such occupancy. XVII–317

Execution of mortgage on the land and contract to sell the standing timber thereon, prior to final proof, do not defeat confirmation of an entry made in good faith. XVI–156

Confirmation is not defeated by want of good faith on the part of the entryman and his immediate transferee where subsequently, and prior to March 1, 1888, the land is sold to a *bona fide* purchaser. XIII–537, 581; XVI–156; XVIII–44

Of an entry by said section for the benefit of a transferee is not defeated by want of good faith on the part of the entryman or his immediate transferee if subsequently, and prior to March 1, 1888, the land is sold to a *bona fide* purchaser; nor is such purchaser bound to take notice of a prior order of cancellation that is void for want of jurisdiction. XXII–174

The Department is without jurisdiction to try a contest that is initiated after a transfer of the land in case of an entry confirmed under said section. XVII–48

Confirmation—Continued.

I. GENERALLY—Continued.

The body of said section contemplates the relief of the incumbrancers and purchasers named therein, and the illegality of the entry or the pendency of a contest does not defeat confirmation thereunder. XII–571; XIII–292, 537; XIV–349; XVIII–44, 324

Pendency of application to contest an entry at the passage of said act does not defeat confirmation for the benefit of a transferee. XVI–78

The confirmatory provisions for the benefit of a transferee are not dependent upon the entryman's compliance with law. XIII–108, 152; XV–507

An entry made by one not shown to be qualified in the matter of citizenship is confirmed by said section if, prior to March 1, 1888, the land is sold to a *bona fide* purchaser, and there was no adverse claim at date of entry. XII–637; XVI–157

The provisions of said section for the benefit of a "*bona fide* purchaser for a valuable consideration" extend to a transfer from the husband to the wife in good faith where the local laws recognize such transfer. XV–50

A transferee does not occupy the status of a "*bona fide* purchaser" under said section if he is aware prior to purchase of the entryman's noncompliance with law. XIII–419

A trust company holding a mortgage deed, executed to secure the payment of bonds, may properly, for the protection of the bondholders, invoke the confirmatory provisions of said section. XIII–581

A purchaser of land covered by a Sioux half-breed location, made under a power of attorney that is in effect an assignment of the scrip, is charged with notice that said scrip is not assignable, and is therefore not a *bona fide* purchaser within the terms of said section. XVIII—562

A mortgagee can not be considered a *bona fide* purchaser where at the date of mortgage the entry is held for cancellation on the report of a special agent. XV—278

A transferee is not entitled to the benefit of said section where at the time of his purchase the records of the local office show that the entry in question was held for cancellation. XIX–435

The fact that proceedings have been instituted by the government against an entry at the date of its incumbrance does not defeat confirmation thereof for the benefit of a transferee. XXIII–481

Does not confirm an entry fraudulent in inception and transferred and mortgaged prior to March 1, 1888, where at the date of said mortgage the entry is under attack on the charge of having been made in the interests of the transferee, and the charge is duly established. XIII–556

Confirmation—Continued.

I. GENERALLY—Continued.

An incumbrancer or transferee, whose right is acquired after cancellation of the final certificate, can not invoke the provisions of, as a *bona fide* purchaser, as he is charged with record notice of the cancellation. XIV–85; XVI–140

An entry that is fraudulent in its inception, and is transferred prior to March 1, 1888, is not confirmed where at the date of said transfer the entry is under attack, as shown by the records of the local office. XVII–277

For the benefit of one who in good faith buys the land prior to March 1, 1888, not affected by the fact that the final deed correctly describing the land was not executed until after said date. XVI–518

A mortgagee is not entitled to the benefit of, through a prior incumbrancer, where no privity exists between said parties. XV–278

Can not be invoked by the entryman, nor any one claiming under him, where the incumbrance, by reason of which confirmation is sought, has been released. XV–348

An entry not confirmed by said section, for the benefit of a transferee, if fraud on the part of such transferee is found through investigation by the government. XII–440

In determining the right of a transferee, the transfer is protected by the presumption of good faith up to the point where sufficient evidence is furnished to overcome it. XIV–651

A transferee who, prior to purchase, examines the premises can not be considered a *bona fide* purchaser where an examination would disclose the fact that the entryman had not complied with the law. XVI–358

A transferee who employs another to procure title to a tract does not occupy the status of a *bona fide* purchaser if the agent secures such title through an entry made in the interest of the transferee, even though the transferee had no knowledge of the fraud. XVII–28

Where the record calls for an inquiry as to the good faith of a transfer, in determining whether an entry is confirmed, the government is not precluded therefrom by its own proceedings prior to the passage of said act in which the status of the transferee was not involved. XVIII–93

Where a case is returned to the General Land Office for adjudication under said section and an appeal is taken from the Commissioner's action therein, the Department will not order a hearing on an issue involved in its former consideration of the case. XVIII–299

Confirmation—Continued.

I. GENERALLY—Continued.

A charge of fraud, and that the transferee had knowledge thereof, should be investigated before determining whether the entry is confirmed under such section. XVI–338

An entry allowed in conflict with a railroad grant, but relieved therefrom by the forfeiture of such grant, may be confirmed under said section, notwithstanding the previous adverse claims of the company. XII–540

An entry is confirmed where, at the date of said act, the land is held by a transferee who is entitled to confirmation and is subsequently purchased by another in good faith. XIV–573

An entry erroneously canceled on the report of a special agent without notice is confirmed for the benefit of a transferee thereunder as against a claim for confirmation set up by a transferee under an intervening entry, allowed while the order canceling the first entry was in force. XVIII–311

Where an entry has been canceled without notice thereof to the entryman or his transferee, and the land entered by another prior to the act of March 3, 1891, and said transferee invokes the confirmatory provisions of section 7, the claim of the intervening entryman is subject only to the right of said transferee to show that the entry was improperly canceled. XX–311

The cancellation of an entry without notice to the entryman is absolutely void, and an entry so canceled at the passage of the act is in law an existing entry, and confirmed by said section, if otherwise within the provisions of said section; and the right of a transferee in such case is not limited to the privilege of showing that the entryman had in fact complied with the law. XXII–174; XXIII–162

An entry erroneously canceled prior to said act without opportunity of defense given to the entryman, or the *bona fide* incumbrancers, must be regarded, so far as the incumbrancers are concerned, as an existing entry, and therefore within the confirmatory provisions of said section. XX–553

An order of cancellation without notice to a record transferee is irregular, but not void; and an entry thus canceled prior to the passage of said act is not confirmed by section 7 thereof, as the provisions of said section are only applicable to entries subsisting at the passage of the act. XXIII–175

A mortgage given before final payment on an Osage entry does not bring such entry within the operation of said section. XV–348, 450

Confirmation—Continued.

I. GENERALLY—Continued.

The receipt issued to an Osage claimant on his first payment is a "final receipt" that entitles a subsequent purchaser of the land to the benefit of the confirmatory provisions of said section, if otherwise within the terms thereof. XVIII–441; XX–411

A cash entry under section 2, act of June 15, 1880, is not susceptible of confirmation where the land is transferred prior to final entry. XIII–545

Transferee of homesteader who makes cash entry under the act of June 15, 1880, in the presence of a contest is not a *bona fide* purchaser where he has full knowledge of the asserted adverse claim of the contestant. XVI–183

Provisions of, do not cover a cash entry under section 2, act of June 15, 1880, made by one who has theretofore relinquished his interest in the original entry. XXII–81

A soldier's additional, transferred to a *bona fide* purchaser prior to March 1, 1888, is confirmed, even though the alleged military service of the entryman is not verified by the records of the War Department. XV–186

The purchaser of a soldier's additional homestead right is entitled to the benefit of the confirmatory provisions of said section. XXII–651

A soldier's additional homestead on which final certificate has not issued is not confirmed by said section. XV–136

Of a soldier's additional homestead entry, is not defeated by the failure of the register to issue the formal final certificate, where it appears from the record that the soldier complied with all the requirements of the law and regulations thereunder. XXIV–58

The certificate of the register and receipt of the receiver issued on the allowance of a soldier's additional homestead entry are sufficient to bring such entry within the confirmatory provisions of said section. XXII–690

A purchaser of land sold under a power of attorney that amounts to an absolute sale of a soldier's additional homestead right prior to the exercise thereof is not a *bona fide* purchaser under said section. XVI–484; XVII–512

A soldier's additional homestead based upon service in the Missouri Home Guard may be confirmed in the interest of the transferee. XIV–457, 522, 649

The confirmatory provisions of, extend to a soldier's additional homestead entry made on a certificate of right based upon alleged service in the Missouri Home Guards, though the records of the War Department fail to show such service. XVII–305

Confirmation—Continued.

I. GENERALLY—Continued.

A soldier's additional homestead entry based on an invalid certificate of right is confirmed under the body of section 7 if otherwise within the terms of said section. XVII–168

The body of the section is not applicable where the mortgage is not made till March 1, 1888, nor the proviso where the entry is held for cancellation within two years from allowance. XIII–524

Confirmatory provisions of the section, for the benefit of *bona fide* purchasers, extend to a preëmption entry based on a second filing. XVI–536

Provisions of, for the benefit of incumbrancers extend to a homestead entry made by one who had previously secured title to another tract under the homestead law. XVI–540

A desert-land entry of double minimum land allowed at single minimum is confirmed under the body of the section, if otherwise within the terms of the statute. (See 16 L. D., 407.) XVII–115

The confirmatory provisions of the body of the section extend to an entry made by a minor if such entry is otherwise within the terms of said section. XVII–523

The sale of an undivided interest in the land covered by an entry does not bring it within the confirmatory provisions of said section. XIV–1; XVI–28; XXI–12

A *bona fide* purchaser of the land covered by an entry who subsequently sells a portion of the land embraced therein, and then joins in the release to the United States of all title held under said entry, except as to one tract, may properly invoke the confirmatory provisions of section 7 as to said tract. XVII–377

An entry may be confirmed, under said section, as to a specific tract embraced within the purchase of a transferee, though the entry as an entirety is not within the confirmatory operation of said act. XIX–496

A mortgage covering a legal subdivision, with the exception of one acre thereof, is such an incumbrance of the entire subdivision as to bring the entry thereof within the confirmatory provisions of said section. XXI–303

An entry may be confirmed under the body of said section as to a specific subdivision held by a transferee, and under the proviso as to the remainder of the land, if no action adverse to the entry has been taken within the period fixed by the statute. XX–411

Is applicable to an entry of Osage land made under the act of May 28, 1880. XII–442; XIII–58

An entry of Otoe and Missouria land may be properly regarded as a preëmption entry within the intent of said section. XIII–78

Confirmation—Continued.

I. GENERALLY—Continued.

A purchaser under section 3, act of September 29, 1890, is entitled to the confirmatory provisions of the act as a preëmptor. XXII–131

The provisions of said section are applicable to an entry of Mille Lac Indian lands made under the general laws prior to July 4, 1884. XXII–500

Transferee is entitled to confirmation of soldier's additional, though the original entry may have been canceled. XIV–648

As between a purchaser from the entryman and one holding under a subsequent tax sale of the land, the benefit of the confirmatory provisions of section 7 must be accorded to the holder of the tax title. XXIII–139

Irregularity in entry does not require equitable action if said entry falls within the confirmatory provisions of the section. XIII–37

In applying the confirmatory provisions of, an intervening entry should not be canceled without due notice to the entryman, with opportunity to be heard. XVII–20

The act of March 3, 1893, conferring the right of purchase upon transferees holding under invalid certificates of the additional homestead right does not restrict the confirmatory operation of section 7, but provides for a class of cases not confirmed by that act. XVII–168

II. UNDER THE PROVISO.

The statutory period of two years designated in the proviso contemplates calendar years without regard to the number of days they may contain. XXV–157

The proviso to said section does not relieve entries from the effect of contests pending at the passage of said act. XII–522

The actual date of the receiver's receipt fixes the commencement of the period within which action must be taken to defeat confirmation under the proviso. XV–228

A pending protest defeats the confirmatory effect of section 7, act of March 3, 1891. XII–440

An entry is confirmed by the proviso to said section where two years have elapsed since final receipt issued and no contest or protest is pending at the passage of said act. XII–313, 334, 344; XV–145

To defeat the confirmation of an entry under the proviso it is necessary that action be taken within two years from the issuance of the receiver's receipt. XXIX–539

An entry of Alabama land, reported valuable for coal prior to the act of March 3, 1883, and not thereafter offered at public sale, is within the confirmatory provisions of the proviso, if there was no action against the validity of the entry within two years from the issuance of the receiver's receipt. XXVIII–90

Confirmation—Continued.

II. UNDER THE PROVISO—Continued.

Homestead entry of Alabama land returned as valuable for coal, confirmed under the proviso. XXIX–539

A contest pending at the passage of the act of March 3, 1891, defeats the confirmatory effect of the proviso to section 7, act of March 3, 1891. XII–459

The protection extended to pending contests and protests by the proviso to said section is limited to entries falling within the terms of said proviso, and does not include entries specified in the body of the section. XIII–292

The word "proceedings," as used in the instructions of July 1, 1891, and the circular of May 8, 1891, to designate such action as will defeat confirmation under the proviso, means any action, order, or judgment had or made in the General Land Office which, if not complied with, calls for cancellation of the entry. XIII–1

A requirement, prior to the lapse of two years from the date of entry, that an entrywoman shall furnish additional proof as to her qualification to make entry, is such a "proceeding" as will defeat confirmation under the proviso. XXI–345

Proceedings by the government, begun within two years from the issuance of final certificate, defeats confirmation under the proviso to said section. XIII–1, 332

Adverse decision of the General Land Office, on proceedings by the government, will not defeat confirmation under the proviso to said section if said proceedings are not begun within two years after issuance of final receipt and the entry is otherwise within the terms of said proviso. XII–610

A judgment of cancellation rendered on a special agent's report within two years from the final entry defeats confirmation. XIII–419

Confirmation under the proviso is not defeated by an order directing the investigation of an entry, and the favorable report of the special agent thereon, within two years from date of final certificate. XIII–553

Suspension of an entry after the lapse of two years from the issuance of final certificate does not operate to except such entry from confirmatory operation of the proviso to said section. XIII–39

An entry reinstated for the purpose of examining into its *bona fide* character, and so remaining for the period of two years, is not confirmed by the proviso. XVII–512

Where it does not affirmatively appear that an entryman has received notice of a requirement of the General Land Office, made prior to the passage of said act, the proceedings thus taken will not be held to defeat confirmation. XXI–12

Confirmation—Continued.

II. UNDER THE PROVISO—Continued.

A proceeding against an entry, instituted by the General Land Office many years prior to the passage of said act, but of which the entryman was never notified, held to have been abandoned and to have abated, and hence is no bar to confirmation of the entry under section 7. XXIX–423, 525

The commencement of proceedings against an entry within two years from date of final receipt defeats the confirmatory operation of the proviso to section 7, whether notice of such action is given within said period or thereafter. XXVII–522

An order of the General Land Office made prior to the expiration of two years from date of final certificate, requiring the entry to approximate one hundred and sixty acres, defeats confirmation, though the notice of such requirement was not given until after the expiration of said two years. XVII–362

An order of the General Land Office, made within two years after the issuance of final receipt, requiring a locator of scrip to show his right of possession thereto, defeats confirmation under the proviso to said section. XIII–94

An application to contest which has not been allowed, and which can not be allowed under the rulings of the Department, is not a "protest" nor "contest" that defeats confirmation under the proviso. XIII–458, 553

The pendency of an application to contest an entry will not defeat its confirmation under the proviso where such application must be rejected on account of prior proceedings by the government, though said proceedings were begun too late to prevent confirmation. XVII–125

A pending valid application to contest an entry defeats confirmation under the proviso. XV–114

Where a pending contest fails, and more than two years have elapsed since the issuance of final certificate, the entry is confirmed by section 7. XIII–489, 527

If a contest against a homestead entry fails, and more than two years have elapsed since the allowance of the entry, it is confirmed under the proviso to section 7, though under the body of said section the entry is not susceptible of. XXVI–239

An entry is not confirmed under the proviso where a right to the tract under a congressional grant is asserted at the date of said entry and remains unadjudicated without laches on the part of the grantee. XX–259

An informal charge of fraud, by one who alleges no interest and serves no notice on the entryman, is not such a "protest" as will defeat confirmation under the proviso. XIII–553

Confirmation—Continued.

II. Under the Proviso—Continued.

The cancellation of a soldier's additional entry prior to the passage of the act of March 3, 1891, does not defeat confirmation of a cash entry based on said additional entry and made under the act of 1880, in accordance with existing regulations. XIII–118, 386

A soldier's additional homestead entry, suspended after the lapse of over two years for the investigation of the original entry, and released from suspension prior to the passage of the act of March 3, 1891, is confirmed by the proviso to said section, and is not subject to contest. XIX–573

A soldier's additional homestead entry regularly made under a certificate of right, and power of attorney, exhausts the additional right of the soldier, and a subsequent exercise of such right is not confirmed by the proviso. XVIII–129

A cash entry under section 2, act of June 15, 1880, by a transferee holding under a soldier's additional entry is confirmed by the proviso to said section where the validity of said cash entry is not questioned within two years from the issuance of final receipt and no protest or contest is pending. XIII–118

A soldier's additional homestead entry allowed on a certificate of right issued on account of service in the Missouri Home Guards is confirmed by the proviso if otherwise within the terms of said section. XVII–170

A homestead entry allowed under a defective notice of intention to submit final proof may be confirmed under the proviso to said section if otherwise subject to such disposition. XIII–6

An entry that is a nullity under the law as it existed prior to the act of March 3, 1891, is not susceptible of confirmation under section 7. XIII–484, 533

A contest against a preëmption entry, as to part of the land covered thereby, on the ground of a settlement right, and failure on the part of the preëmptor to comply with law, is barred under the proviso if, after the lapse of two years from the issuance of final receipt, there is pending no contest or protest involving the land in question. XXV–14

Preëmption entry made by one who had previously filed a declaratory statement for another tract is confirmed by the proviso if otherwise within terms of said section. XVI–465

Preëmption entry of Alabama iron land, based on settlement and filing made prior to the act of March 3, 1883, by one who removed from land of his own in the same State to make such settlement, is confirmed by the proviso if otherwise within the terms of said act. XVI–544

The proviso covers a preëmption entry allowed in violation of 2260, R. S. XIII–392; XVI–467; XVIII–164

Confirmation—Continued.

II. Under the Proviso—Continued.

A preëmption entry made by one who enters upon and uses the land for purposes of business only, and in fraud of the possessory right of an Indian tribe, is not confirmed by said section. XVI–209

A preëmption entry including double minimum land erroneously allowed at single minimum price is not confirmed by the proviso. (See 17 L. D., 115.) XVI–407; XIX–279

An entry allowed where the husband and wife claimed separate residence in a house built across the line between two settlement claims is confirmed by said section if two years elapse from the issuance of final receipt and no protest or contest has been filed. (Overruled, 13 L. D., 1.) XII–443

The fact that an Osage entryman had previously made a preëmption filing does not defeat confirmation under said section. XX–411

In determining whether an entry of Osage land falls within the proviso the lapse of time must be computed from the date of the last payment and final certificate. (Overruled, 18 L. D., 441.) XIII–529

An entry that may be confirmed either under the body of said section or the proviso should be adjudicated under the latter. XIII–55, 58; XIV–120; XVIII–164

The proviso is not applicable in a case where there has been a transfer and the entry can not be confirmed on account of fraud on the part of the transferee. XIII–641

III. Section 23. Act of March 3, 1891.

Second entry of Osage land is confirmed by section 23, act of March 3, 1891, if allowed in the absence of adverse claims, and due compliance with law is shown. XIII–299, 700

Contest. See *Affidavit; Application; Contestant; Evidence; Jurisdiction; Practice.*

I. Generally.
II. For What.
III. Charge.
IV. Initiation of.
V. Death of Party.
VI. Interest of the Government.
VII. Second.
VIII. Speculative.
IX. Desert Land.
X. Homestead.
XI. Preëmption.
XII. Swamp Land.
XIII. Timber Culture.
XIV. Coal Land.
XV. Timber Land.

Contest—Continued.

I. GENERALLY

Docket of, to be kept in the local office (circular of December 18, 1885). VI–12

Should be noted on tract book. V–597

What constitutes, and how distinguished from proceedings on protest. II–581; III–399; VI–765; XIX–442, 467

A case, arising on a claim of alleged priority of settlement right, as against a scrip location, and wherein each party pays his own costs, is not a "contest" within the intent and meaning of the act of May 14, 1880, by which a preferred right of entry can be secured. XIX–547

Whether a, should be allowed against a final entry rests in the discretion of the Commissioner of the General Land Office, subject to appeal if a hearing is denied. XV–352

The allowance of an application to contest a final entry is a matter resting in the sound discretion of the Commissioner, and the denial thereof will not be disturbed unless an abuse of such discretion is made to appear. XXII–159

Local officers have no authority to order a hearing involving an entry on which final certificate has issued. X–694; XII–305; XIII–429; XVI–152

No rights secured under a hearing ordered by the local office without authority. X–694

The receiver, acting alone, has no authority to dismiss a. XXIII–548

Initiation of, a waiver of pending appeal. V–350

Withdrawal of, by attorney conclusive. IV–267

Dismissed on order of the contestant's attorney without the authority or consent of the contestant should be reinstated. XIV–373

Should be reinstated where it was dismissed in the absence of the contestant and said absence was through the fault of the defendant. VII–60

Will not be reinstated on the ground that notice of decision was not received, where the failure to receive such notice is due to the contestant's negligence. XIV–319

The contestant may dismiss the contest at the local office while it is pending on appeal (by the contestee). II–298

A motion for withdrawal, at or before day of hearing, is an interlocutory proceeding, and will be decided on the day of the hearing; if the contestant does not appear, he will be regarded as in default. II–218

The withdrawal of, leaves the issue as between the entryman and the government. X–133; XII–334; XVIII–233

Contest—Continued.

1. GENERALLY—Continued.

Withdrawal of, will not prevent the government from taking advantage of the evidence submitted.
v–40, 385; vii–394; xi–166; xii–495; xiii–121, 437

A contestant who, on the day of hearing, files a dismissal of the, together with a new affidavit of, with a view to proceedings thereon, may be permitted, prior to further action in the premises, to withdraw the said dismissal, and submit evidence under the original charge. xxii–26

An amicable agreement settling the controversy may be properly recognized. ii–257; v–119

The terms of a stipulation entered into between parties to a contest should not be enforced to the exclusion of the real question at issue therein where it is apparent that said stipulation with respect to such matter is without consideration and made apparently through inadvertence. xvii–519

On alleged priority of settlement being withdrawn on a disclaimer of interest on the part of the adverse entryman, and his application to amend his entry so as to embrace different land, should be reinstated, with all rights incident thereto, on the withdrawal of the entryman's application for amendment. xxiii–341

Rights of adverse entrymen, dependent upon priority of settlement, may be adjudicated in the absence of a formal contest as between them on evidence submitted by them in defense of their rights against a third party. xxiii–400

On the cancellation of an entry and the subsequent homestead entry of the same tract by another, the latter is not required to establish residence pending the disposition of an appeal from the order of cancellation, taken before the homesteader was bound to establish his residence. (Overruled, 14 L. D., 429.) vi–688

Entryman must comply with the law during the pendency of.
i–404; v–104; ix–24; x–618; xi–256; xiii–271

During the pendency of a, in which each party alleges priority of settlement, both are bound to comply with the law; and if the successful party fails so to do, such failure is properly the subject of inquiry on behalf of the losing party. xxviii–480

If an entryman fails to maintain his residence, during the pendency of a, involving priority of settlement, his laches can not be cured by the resumption of residence prior to the institution of proceedings by the adverse settler charging said default.
xxix–54, 203, 704

Contest—Continued.

I. GENERALLY—Continued.

Where a successful contestant, in a suit involving priority of settlement, makes entry, and is granted a leave of absence, a stranger to the record is not entitled to be heard on an allegation that involves the entryman's residence during the pendency of the contest. XXIX–222

Pendency of, does not excuse compliance with law where one is irregularly allowed to enter land thus involved. XIV–429

A timber-culture entryman who makes entry of a tract involved in a pending controversy can not thereafter be heard to plead the pendency of said contest as an excuse for noncompliance with law. XVIII–504

During the pendency of a, the entryman is not excused from compliance with the law; and upon the death of the entryman the law casts upon his heirs the burden of showing due compliance with the terms of the statute (timber-culture). XXV–65

Hearing ordered as to status of land does not involve the applicant's qualifications to enter. III–253

In the absence from the record of contest papers, a contest may not be assumed, to detriment of one complying with the law. II–57

May be properly dismissed when continued by stipulation to a day certain, and the contestant fails to appear. XIII–390

Is discontinued by agreement of counsel to indefinite postponement of hearing. X–459

A defendant who elects to plead a statutory defense and submits no evidence is not entitled to a further hearing in the event his defense is held not good. XVI–348

Not defeated by a previous extrajudicial opinion expressed by the Commissioner on the partial and *ex parte* statement of the contestee. IX–182

Must be prosecuted with all reasonable diligence, and where such rule is not observed the government may properly regard the contest as abandoned and proceed accordingly. XVIII–366

Should be dismissed where the contestant fails to appear, either in person or by counsel, on the day fixed for hearing. III–565; VII–252

Should be dismissed if not diligently prosecuted to trial and judgment. XXV–8

Should not be dismissed, on motion of stranger to the record, prior to the day of hearing and without notice. II–217, 220; IV–255

Should not be dismissed without notice, and prior to the day set for hearing. IV–488; VI–268

Contest—Continued.

1. GENERALLY—Continued.

In which an intervener has been recognized should not be disposed of prior to the day fixed for hearing and without notice to said intervener. XIII–24

Dismissal of a, by the local office, and failure to appeal therefrom effects a final disposition of the case. XIII–196

May be properly dismissed where the contestant states under oath that he was mistaken in the matters alleged against the entry. XIII–693

May be properly dismissed where the contestant declines to pay the cost of taking the testimony on the part of the contestee, and waives the preferred right of entry, and it is apparent that such waiver is not in good faith. XXII–296

Contest will not be dismissed on motion of stranger to the record alleging initiation for speculative purposes, and he has no right of appeal nor ground for a writ of certiorari. I–68

Should not be dismissed if *prima facie* case is made out. V–3; VI–682

The failure of a party to proceed with a hearing in accordance with departmental directions does not estop him from asserting his priority of right as against the intervening adverse claim of a third party. XVII–519

It is within the proper exercise of the supervisory authority of the Secretary to order a hearing between one holding under an entry secured as the result of a contest and an intervener alleging residence upon and improvement of the land prior to said contest, and that the entry in question was improperly allowed as the result of the prior proceedings. XXVIII–339

Where several, are filed they should not be consolidated or heard at the same time, but where such action is taken and the several contestants submit testimony that calls for cancellation of the entry the case may be disposed of on the record so made. XIX–501

The relinquishment of a part of the land covered by an entry relieves the tract so relinquished at once from its former state of reservation, and a subsequent contest brought against the entire entry could give the contestant no right or interest in said tract, though his right to proceed against the remainder of the entry would not be affected by the relinquishment. XXII–128

A successful, against an entry from which one of the tracts is eliminated as noncontiguous on an intervening order from the General Land Office, confers no right as to the tract so released. XXI–451

Irregular action of the local office in ordering a hearing should not be permitted to defeat the right of a settler to show the facts with respect to his settlement claim. XX–317

Contest—Continued.

I. GENERALLY—Continued.

Will not lie against an entry that is canceled of record prior to the initiation of the adverse proceeding. XXII–415

Apparent error in allowing, may be explained by testimony, but not taken advantage of by stranger to the record. III–531

Failure to serve notice of, and the initiation of new proceedings is an abandonment of the first, and warrants the dismissal thereof. X–268

A charge of bad faith against a claimant finds corroboration in his unexplained failure to testify in support of his claim. IX–175

A charge of fraud against an entry can not be established by evidence showing the fraudulent acts of a third party in relation thereto, if the connection of the entryman therewith is not proved. XVIII–467

Ex parte showing, without notice to the entryman, will not justify cancellation. IX–522

Local officers may inspect the land involved after due notice to the parties and during the trial. VI–626; VIII–38; XVI–95

When a decision against a party is final, he becomes a stranger in the case, though with the right to see that judgment is properly executed. II–595

Validity of, is not affected by the fact that the contestant is an alien. XVII–503

May be instituted by a citizen regardless of his own right to enter the land. XI–575

Against an entry will not be entertained where it appears that the entryman is of unsound mind, and has no curator or guardian through whom his interests may be protected. XXIX–281

Concurring decision of the local officers should be signed by both, but the failure of one to attach his signature in such a case will not warrant a reversal of the judgment. XII–642

Proceedings at the instance of an attorney who is not entitled, under section 190 R. S., to appear will not be recognized. XI–25

II. FOR WHAT.

Right of, as against any statutory claim to land. IX–332

May be properly entertained against a location of Chippewa scrip. XIV–576

Against a location of Sioux half-breed scrip, on unsurveyed land, will not be dismissed on the ground that prior to the survey of the land, and adjustment of the location, such a contest is premature, where the evidence shows the invalidity of the location. XXI–411

Contest—Continued.

II. For What—Continued.

Will lie against an entry of Kansas Indian-trust land for noncompliance with law or other sufficient cause. IX–329

Will not lie against an Indian allotment that has been finally approved by the Department. XIX–167

The action of the Office of Indian Affairs on allotments is conclusive as to whether the Indian was a settler on the land and whether he was entitled to receive an allotment. XXIV–424

On proper charge made, may be entertained against an approved Indian allotment. XXIV–264

Land included in a suspended Indian allotment is not subject to a, filed subsequent to the order of suspension.

XXVII–554; XXVIII–196

Should not be allowed against an Indian allotment pending departmental inquiry as to the validity of the allotment claim.

XXVIII–519

A preferred right of, as against a town-site selection, may be equitably accorded a *bona fide* homestead settler on a tract covered by a town-site declaratory statement. XIII–143

A pending town-site claim, under which final proof has been submitted that establishes the right of entry, is properly the subject of. XXVIII–530

Against an entry of lands withdrawn for the benefit of a railroad grant confers no right as against the grant. XIX–11

Purchase of homestead improvements gives no preferred right of contest. II–62

Not allowed to the holder of a relinquishment.

III–150; V–5; XVIII–144,358

On the ground of relinquishment and abandonment, begun for speculative purposes by one who holds the relinquishment, and subsequently files the same, confers no right on cancellation. XIII–493

Not required to call attention to irregularities in final proof, a protest sufficient. IX–495

The regularity of an entry can not be called into question except by one who shows that the allowance of such entry is in violation of his prior right or equity. XII–639

A hearing will not be ordered on an allegation of irregularity in presenting an application for the right of entry, where it is apparent from the record that the right of the applicant is not dependent upon priority of application. XXV–92

Proceedings initiated by one claiming a superior right to the land are in the nature of a contest, and must be governed by the rules provided therefor. VIII–493

Contest--Continued.

II. For What--Continued.

A hearing on protest against final proofs (preëmption) does not initiate a contest. II–581; III–399

May be allowed where the life of the entry has expired without final proof, or the entryman may be called upon to show cause why his entry should not be canceled. IX–287

On the ground that the entry was made while the land was in the possession of another good under the general circular of 1879. II–67

Based on a prior settlement right, to be effective as against the subsequent entry of another, should be brought within the period provided for the assertion of settlement claims. XV–397; XVI–266, 270

One who seeks to rescind a contract for the withdrawal of a, on the ground of fraud, should establish the charge by irrefragable evidence and tender a return of the consideration received. XV–451

It is no ground of, that the entryman, for a consideration, agreed to contest a prior entry of the land, and, if successful, to waive the preference right in favor of contestant, and that said entryman thereafter refused to abide by said agreement, but, having secured the cancellation of the prior entry, entered the land himself. XVIII–577

One who assists another to procure an entry by furnishing the money for the requisite fees, will not be permitted to attack the good faith of said entry in his own interest. XXIII–186

The failure of an intervening entryman to specify any reason, on due opportunity given, why his entry should not be canceled and the preferred right of a successful contestant recognized, warrants the cancellation of his entry and precludes such entryman from thereafter attacking the entry of the successful contestant on a charge that should have been set up under the rule to show cause. XXIII–522

A charge of fraud in the procurement of a relinquishment will not be entertained, as against a record entryman, on behalf of a third party who alleges that he is in possession of a prior relinquishment and intended to enter the land in controversy. XXII–150

An allegation that an entry is made in bad faith and for the purpose of speculation, and not for the purpose of actual settlement and cultivation, warrants investigation as to the matter so charged. XXII–245

On a charge against an entry that it was secured through a speculative, the entry must be held intact, where it appears that the entryman's status as a successful contestant did not operate to defeat the claim of any applicant for the land. XXIX–74

Contest—Continued.

II. For What—Continued.

The charge that a, was begun under a speculative contract with a third party, if proven, will not affect the subsequent entry of the tract involved, after its restoration to the public domain, by the widow of the contestant in her own right, the contestant having died prior to the conclusion of the suit. XXIII–256

A charge of collusion between a contestant and the entryman presupposes that the entryman is in default as to some requirement of law, and that the collusive, is brought to shield him from the consequences of such default, by preventing an honest contest. XXIX–211

General charge of fraud not ground for. IX–545

By issue raised, after final proof, as to compliance with the law. IV–20

Preferred right of, awarded to conflicting entryman. IV–304

Local office may not direct, as between preëmptor and timber-culture claimant. I–481

Will lie for fraud or failure to comply with the law at any time before patent issues. III–142

The enforcement of contracts between claimants for public land is not properly within the scope of a, before the land department. XX–13

The land department has no jurisdiction over disputes between settlers as to the ownership of improvements. XX–3

Rights as to the ownership or possession of improvements, placed on public land without authority of law, are not determined by a judgment of the Department sustaining the validity of an entry of said land. XXVIII–250

It is not within the province of the Department to determine the mental capacity of an entryman on a charge that he is an "idiot and incompetent to enter public land," in the absence of proper judicial proceedings (see 12 L. D., 690). XV–399

III. Charge. See *Affidavit; Practice*, subtitle, *Amendment*.

The Rules of Practice do not require an affidavit of, to be executed before the local officers. XVII–540

Affidavit of, in the nature of an information and not essential. VI–299; VII–41

Affidavit of, may be based upon the information and belief of the contestant. III–513; XV–114, 301

An affidavit of, may be properly rejected if not executed in due form, and the contestant in such case acquires no rights thereunder. XII–545

Contest—Continued.

III. CHARGE—Continued.

Contest based on verbal information will not be dismissed when no objection was made at the hearing. III–310; IV–255

Affidavit of, is in nature of an information, and when accepted, notice issued, and service made, jurisdiction is acquired. V–657

It is not the affidavit, but due notice to the settler, which vests jurisdiction in the local officers. II–58, 312; IV–255

Any question involving the sufficiency of the information upon which the local officers elected to proceed disappears from the moment that notice to the settler has been issued. II–58, 65; III–208, 248, 278

The sufficiency of an information on which the local office has issued notice of, is not a matter of review in the Department, as it is by notice the local office secures jurisdiction, and not by virtue of the information on which the citation issues. XXVII–654

A motion to dismiss a, for informality in the affidavit of contest, and the want of a corroboratory affidavit, may be properly overruled by the local office, as its jurisdiction is not dependent upon the affidavit of contest, but upon the service of notice. XXIV–382

The sufficiency of a charge will not be considered if the question is not raised before the submission of testimony. I–114; IX–255; XVII–4; XVIII–540

The defendant only can object as to the sufficiency of the charge. III–57; V–639

Objection to the sufficiency of the affidavit of, can only be raised by the defendant, and not by him prior to the day set for the hearing. XIII–258

After the local officers have accepted an affidavit of, and issued notice thereon that has been duly served, the contest should not be dismissed on the motion of a stranger to the record, alleging that said affidavit fails to set forth a cause of action. XXVIII–147

Informalities in, may be excepted to only on the day set for hearing, and then only by a party to the record; if not then excepted to they are to be regarded as waived; if a motion to dismiss therefor be made, it should be granted, or an amendment of the affidavit may be allowed. II–217, 221; III–374; IV–255; V–657

Sufficiency of affidavit for contest not considered except on objection. IV–425

Objection to an affidavit of, is not waived by going to trial after such objection is overruled. X–181

Local officers should carefully examine the contest papers, point out their defects, and allow immediate amendment. II–260

Affidavit of, should be dated and show continuance of default alleged. IV–84

Contest—Continued.

III. CHARGE—Continued.

A clerical error in dating an affidavit of, by which the contest is made to appear premature, affords no ground for the dismissal of the. XIX–210

Should not be dismissed because the affidavit of, is not dated. XI–346

The amendment of an affidavit of, relates back to the original, and excludes intervening contests, where the said amendment does not introduce new grounds, but merely makes more specific and definite the original charge. XIX–309

Affidavit of, may be amended on the suggestion of the entryman's death and his heirs made parties to the suit; and the right to so amend is not defeated by the pendency of a contest filed by another party at the same time, against the entry in question. IV–538; X–261; XVIII–583

Affidavit of, if not properly corroborated, may be rejected by the local officers. IV–255; VIII–446; XI–325; XVI–391; XVII–125; XIX–453

An affidavit of, based upon information and belief, and corroborated by statements showing no specific knowledge of the facts alleged, may be properly regarded as not affording a basis for a hearing. XX–13

Affidavit of, if made upon facts within the knowledge of the contestant, may be corroborated by witnesses who testify on information and belief; but if the contestant's allegations rest upon information and belief they should be corroborated by witnesses whose statements are based on personal knowledge of the facts. XVI–391

The corroboration of an affidavit of, is for the information and protection of the local officers, and after a hearing is ordered the absence of such corroboration is immaterial. XXV–380

The purpose of the rule requiring an affidavit of, to be corroborated is to assure the government of the good faith of the contestant, and not that jurisdiction may be vested in the local officers, that being obtained by service of notice only. XXVII–555

A corroboratory affidavit of, based on personal observation is sufficient. XXI–211

In the matter of the affidavit of, the testimony of one corroborating witness is sufficient. XIII–24; XIV–696

A letter from the receiver of a local office attached to an affidavit of, in support of the charge therein, may be accepted as due corroboration where said charge involves a matter of record within the official knowledge of said officer. XIII–333

Affidavit of contest signed by contestant's attorney as one of two witnesses is valid. II–217

Contest—Continued.

III. CHARGE—Continued.

When irregularly allowed (during suspension of the entry) on uncorroborated affidavit, the uncontradicted testimony thus submitted by the contestant may be afterwards taken as corroborating the affidavit and warrant proceedings when the entry is relieved from suspension. XVII–96

An affidavit of, may be properly rejected if not corroborated; and where the contestant in such case waives the right of appeal and subsequently furnishes the requisite corroborative affidavit, his right to proceed dates from such time, and should not be recognized in the presence of an intervening contest regularly initiated, and if so recognized, the preferred right must be accorded to the intervening contestant. XIX–453

After a hearing has been directed by the Department on the charge set forth in an affidavit of, the subsequent retraction of the statements in the corroboratory affidavit does not warrant the General Land Office in revoking the order for the hearing issued under departmental direction. XXIII–285

It is properly within the discretion of the Commissioner to deny a hearing on an affidavit of, corroborated by a witness who has been convicted of perjury in making said corroboratory affidavit. XXII–159

Affidavit of, may be corroborated on information and belief of affiant. XIV–588; XV–300

The sufficiency of a corroboratory affidavit is a question resting in the discretion of the Land Office, and as a rule the defendant only is entitled to be heard on objection thereto. XV–415

Should not be allowed where the corroborating witness swears to the facts set forth as true "to the best of his information and observation." I–140

After hearing and judgment against contestee on the merits by the local officers it is error to dismiss contest for want of the corroborating affidavit of one or more witnesses. II–61, 210, 312

Affidavit filed as the basis of, does not justify hearing thereon unless it sets forth clearly charges that will warrant cancellation if proven. III–378; IV–369; VII–452; XI–325; XVII–125, 177

The allegations in affidavit of, will not be held insufficient if the charges therein, taken together, set forth a state of facts that warrant cancellation. XVIII–2

To determine the sufficiency of an affidavit of, as the basis for a hearing it is necessary to consider whether or not, if any one or more of the charges taken singly, or all the charges taken together as a whole, are established, the entry must be canceled. XXVI–151

Contest—Continued.

III. CHARGE—Continued.

Where an affidavit of, contains an allegation as to a condition existing at the date of the contest, which from its nature must also have existed at the date of the entry, the allegation will be regarded in the same light as if the condition had been alleged to exist at the inception of the entry. XIX–108

A general charge that an entry is not made for the benefit of the entryman will not justify a hearing, if the facts on which such allegation rests are not specifically set forth, and the sources of information disclosed. XXV–506

Though the charge may be general in character, it will not be held error on the part of the local office to proceed with the hearing where the alleged fault, if found true, calls for cancellation of the entry. XXII–89

A charge that an entryman has sold the land embraced within his entry must fail if it appears that the alleged sale was the result of coercion or duress. XXVIII–160

In matters not specifically charged the issue is solely between the entryman and the government. VII–408; X–232; XVI–380; XIX–172

In absence of a specific charge, and proof thereof, the contest must fail, leaving the issue between the entryman and the government. XVII–452

An indefinite and general charge that an entry is made for speculative purposes does not warrant an order for a hearing. XVIII–20

The local officers may properly reject an application to contest an entry if in their judgment the charge as laid against the entry does not justify a hearing. XVIII–465

Affidavit of, setting forth "upon information and belief that said homestead entry was not made in good faith, but was made for the purpose of speculation and sale," states a cause of action, and is sufficient to put the defendant on notice of the charge to be met. XXI–211

May be dismissed and the entryman allowed to submit the requisite supplemental proof in support of his entry where the charge as laid is not supported by the evidence and the entryman's good faith is apparent. XI–246

Must fail if the charge as laid therein is not established by a preponderance of the evidence. XI–75; XVII–129

Where the charge as laid fails, the contestant can not insist on a judgment of cancellation for some default not charged; and where rights of third parties are not involved and bad faith is not manifest the government will not insist upon forfeiture. XIII–527

Failure of the specific charge leaves the issue as between the entryman and the government. IX–327

Contest—Continued.

III. CHARGE—Continued.

The dismissal of, on the failure of the specific charge, does not relieve the entryman from the consequences of his noncompliance with the requirements of the law. XVII–452

Not material that affidavit of, was executed before a person that subsequently represented the contestant. VII–42

Should not be dismissed on the ground that the information was sworn to before an attorney of record in the case. XIII–121

Affidavit of, not invalidated by omission of venue. V–12

The insertion by an attorney of the date of entry in a blank form for contest, after the execution, is permissible. II–260

When accepted, the defendant is the only person entitled to complain of irregularity in the application. VIII–241

After affidavit of, has passed from the affiant's control and inspection the attorneys should not make additions thereto. XI–293

Affidavit of, not invalidated by contestant's attorney adding thereto, at contestant's request, letters and figures that do not modify the charge, but show matters of record which the local office should embody in the notice. XI–293

Dates in contest papers should not be changed by an attorney after the execution of such papers and prior to the filing thereof, though such action will not be held to invalidate affidavits so changed. XXII–242

A supplemental affidavit of, does not constitute an abandonment of the prior charge or waive rights secured under a hearing subsequently had thereon. XI–407; XIII–105

The amendment of an affidavit of, by adding an additional charge does not preclude proof of the default as originally charged. XI–423

In case of a hearing ordered on affidavit of, that is defective, but susceptible of amendment, it is not necessary to remand the case for amendment of the charge, and further hearing, where, at the hearing held, the contestee did not appear, or make objection to the sufficiency of the affidavit, and no one sought to intervene, and the evidence then submitted establishes the fact that the entryman had failed to comply with the law. XXVIII–380

If a defendant desires to test the sufficiency of the affidavit of, without a decision on the merits, he can decline to plead and allow judgment to go as for want of plea, and appeal therefrom, assigning as error the order overruling his demurrer. XIII–348

IV. INITIATION OF.

Not initiated until issuance of notice, but the contestant, on filing affidavit of, acquires a right to proceed against the entry that can not be defeated by a subsequent relinquishment. X–302

Contest—Continued.

IV. Initiation of—Continued.

The right to proceed against an entry dates from the filing of the affidavit of, and such right can not be defeated by a subsequent relinquishment. XVIII–92

Affidavit of, will be held to have been accepted on the date when notice issues where date of filing does not appear. VI–825

Not considered as initiated until the affidavit of, is received and accepted. VI–825

Affidavit of contest dates from the time received at the local office. VI–530

The initiation of, so far as the rights of the entryman are concerned, must be considered as of the date of his appearance at the hearing, in the absence of record evidence of notice. XI–400

An affidavit of, left with the register, but not made of record nor deposited for such purpose, does not confer upon affiant the status of a contestant, nor any right that he can assert as against one claiming under subsequent relinquishment. XII–113

Date when the affidavit of, is received and accepted determines whether the contest is premature. VII–346

Though improperly received, may proceed in the absence of prior adverse right. V–436, 446

Applications for the right of, take precedence in the order in which they are actually received at the local office. XIII–162, 190

When a statutory ground of cancellation is set up and notice issues thereon, the suit is regularly initiated so far as a stranger to the record is concerned, and can not be dismissed prior to the day fixed for hearing and without notice to the contestant. XIII–124

When affidavit of, is presented ready for the administration of the oath thereto by the contestant and his corroborating witnesses, it is the duty of one of the local officers, if called upon so to do, to administer said oath, and the failure or refusal to take such action will not defeat the priority of the contestant. XI–218

May be rejected if offered outside of the hours set apart for the filing of such papers. VII–504

Order of June 13, 1896, with respect to applications filed during vacancy in local office. XXII–704

To contest an entry confers no right if presented while the local office is closed for the transaction of all business requiring joint action of the officers. XIV–506

An application for the right of, sent by mail to the local office during a vacancy in the office of the register, and there remaining unacted upon during said vacancy, is properly held subject to a similar application presented by another party on the opening of the office to business. XX–276

Contest—Continued.

IV. Initiation of—Continued.

Affidavit of, received through the mail and placed on record before office hours and prior to the opening of the office for business, takes precedence over one filed on the opening of the office. IX–54

As between two applications for the right of, one received by mail in due course, and lying unopened on the register's desk at 9 o'clock in the morning, and one presented in person at such hour, priority should be accorded the latter. XXII–242

If a few seconds intervene between two applications to contest an entry, precedence should be given to the one first actually received. VIII–241

A changed date (from an earlier to a later), in a stamped filing mark, on an application to contest an entry, may be accepted as establishing the actual priority of such application as against another, bearing a stamped filing mark of the later date, though the latter application bears the lower number. XVIII–455

Application for the right of contest should be granted to the highest bidder where two are presented simultaneously. XIV–506

An applicant for the right to contest an entry who does not give his proper post-office address will not be heard to complain that he was not notified that the right of, would be awarded to the highest bidder. XXIX–25

In case of conflicting application for the right of, the only person that can object to the award made is the unsuccessful applicant. X–459

Not held as filed where the papers are placed in the hands of a special agent by the contestant. VII–212

The local officers must examine carefully all applications for contest and point out their defects. II–260

An application to contest an entry, if rejected, confers no right in the absence of appeal. XI–179

Rights under, not defeated by the failure of the local office to act on the application. XI–199; XIV–306

Failure of the local office to order a hearing on a charge that calls for such action will not defeat the right of the contestant as against the subsequent relinquishment of the entry under attack and the intervening entry of another. XVIII–108

Not initiated by a mere application to enter the land covered by the claim of another. XV–415; XVI–44

V. Death of Party. See *Contestant.*

The death of the entryman after appeal by him from an adverse decision of the local office does not abate proceedings. VI–483

Contest—Continued.

V. DEATH OF PARTY—Continued.

The claimant not entitled to a dismissal of, on showing the contestant's death, as the Department may proceed against the entry. VIII–598

On death of preëmptor with contest pending the case will be disposed of as though the original parties were existing. III–544

Against the entry of a deceased homesteader, wherein the decedent is made the sole party defendant, is a nullity, and the rights of the real parties are not affected thereby. IX–308

Death of the entryman prior to the day fixed for hearing is not ground of dismissal or suspension of proceedings when the entryman has sold the land and the transferee is in court. X–624

The heirs and legal representatives of a deceased entryman need not be made parties to a proceeding against an entry held by a transferee who is duly served with notice. XI–321

Death of the entryman after appeal by the contestant does not deprive the land department of jurisdiction. VI–781

Where a claimant dies during the pendency of adverse proceedings in the local office the proceedings should be discontinued and the decedent's successors in interest notified of their right to be heard. XI–306

Where the entryman dies prior to service of notice his heirs and successors in interest should be made parties to the action and duly served with notice. XI–604

On the death of the entryman, pending proceedings, subsequent action on behalf of the decedent must be authorized by the heirs or legal representatives. XIII–60

Against the entry of a deceased homesteader requires notice to the heirs and legal representatives of the decedent. VI–241; XII–510

In proceedings against the entry of a deceased homesteader the heirs of the entryman are entitled to notice. XIII–371; XV–27

In a, against the entry of a deceased homesteader the heirs should be made parties thereto, but if they are not so included in such proceeding, and the Commissioner thereafter remands the case with leave to amend, such right of amendment, so allowed, is not defeated by a subsequent intervening contest. XXIII–55

In a, against the heirs of a homesteader, on the ground that they have failed to comply with the law, it is essential that the death of the entryman should be alleged and proven. XXVII–344

In a proceeding on the charge that the entryman died leaving no heirs or beneficiaries under section 2291, R. S., the administrator of the entryman's estate is not entitled to notice of the hearing. XXII–446

Contest—Continued.

V. Death of Party—Continued.

On the death of the entryman and substitution of the widow as defendant she is entitled to notice and must be brought into court through process of law or voluntary appearance. XII–14

Must be against the heirs or legal representatives of a deceased timber-culture entryman. III–592; V–398; VIII–452

The sole devisee of a deceased timber-culture entryman is entitled to be heard as the party defendant. VIII–452

Against the entry of a deceased timber-culture entryman, where the decedent is made the sole party defendant, is a nullity and must be dismissed. X–152; XVIII–294

Death of the timber-culture entryman before initiation of, being shown, the contestant should by amendment and due notice make the heirs parties, and a continuance for such purpose should be allowed. X–261

Against the heirs of a deceased entryman on the ground of non-compliance with law can not be properly maintained by one of said heirs; and no rights are secured through a contest of such character. XVIII–431

Right of amendment, on suggestion of the timber-culture entryman's death, not defeated by an intervening. X–261

In proceedings against the timber-culture entry of a decedent the infant (sole) heir and the guardian should be made parties thereto in accordance with local procedure. XI–252

In proceedings against the heirs of a timber-culture entryman all the heirs must be made parties thereto. XVII–532

As against the heirs of a timber-culture entryman it is necessary to allege and prove the death of the entryman. XXVII–510

Against the claim of a deceased timber-culture entryman must show affirmatively that the proceedings are regular and that the entryman or his legal representatives have failed to comply with the law. XI–252

Death of a defendant suspends action against desert entry until his heirs or personal representatives are substituted as defendants and are brought into court by proper notice, or voluntarily appear. XVI–146

VI. Interest of the Government. See subtitle No. VII.

The government is a party in interest. I–77; II–95; IV–263, 462, 512; V–372, 395; VI–300; VII–394; X–19; XIV–587

Government has the right to appear in and cross-examine witnesses, or have the case continued. VIII–2

While the government is an interested party, it is not a contestant or a protestant in the sense in which those terms are used in section 7, act of March 3, 1891. XII–334

Contest—Continued.

VI. INTEREST OF THE GOVERNMENT—Continued.

Whether fraud, illegality, or non-compliance with the law constitutes the basis of contest, the government is a party to the inquiry; if the suit is withdrawn, the papers should be forwarded to the General Land Office for suitable action. III–120

The government is a party in interest and entitled to a judgment on the facts, however disclosed and whatever the rights of the parties as against each other may be. IX–391; XXI–461

Questions raised by a, may be considered where the interest of the government is concerned, even though the contestant can secure no personal benefit from an order of cancellation. XIV–194

Though fraudulent, the government may take advantage of facts proven. VI–27

Government may take advantage of evidence brought out in a contest, though on a point not charged in the affidavit of. II–95, 97; VII–395

Withdrawal of the contestant will not prevent the Department from considering the evidence and passing upon the rights of the entryman as between him and the government. V–40, 385; VII–394; XI–166; XII–495; XIII–121, 437

On the withdrawal of a contestant the case is left as between the government and the entryman. X–133; XII–334; XVIII–233

Failure of the contestant to appeal will not preclude the Department from considering the evidence with a view to protecting the interests of the government. VII–177

The fact that a contestant may waive a charge, made by him against an entry, does not relieve the Department from the duty of ascertaining from the record the facts, bearing on an alleged violation of law, that may directly affect the integrity of the entry. XXVI–273

Failure to establish the specific charge as laid in the affidavit of contest leaves the case as between the entryman and the government. IX–327

In matters not specially charged, the issue is between the government and the entryman. VII–408; X–232; XVI–380; XIX–172

Though the government is indirectly a party, yet it will not of its own motion cancel an entry where bad faith is not clearly shown. IX–148; XI–166

One who files an affidavit of, against an entry and pays or deposits the requisite fees acquires a right under the act of May 14, 1880, that can not be defeated by subsequent proceedings initiated by the government against such entry. XI–278

The government may, while dismissing the, institute proceedings on its own motion. V–58

Contest—Continued.

VI. Interest of the Government—Continued.

Rights of third parties will not be considered in the disposition of a withdrawal of suit filed by the contestant. III–301

Proposal of the contestant to withdraw his suit on condition that another contestant will do the same will not limit the action of the Department nor abridge the right of the other contestant. XIII–693

VII. Second.

Two contests at the same time against the same land not allowed. I–36; III–564, 565, 590

Affidavit of, though filed, not necessarily a bar to the subsequent suit of another. III–569

A defective affidavit of contest (lacking corroborating affidavit) returned by the local officers for amendment, and duly amended, will be regarded as filed, so as to bar another contest. II–39

Not allowed until the first is finally adjudicated, except when the first is illegal. II–216, 248, 282, 293, 297

Not allowed until final determination of first. I–132, 155; II–295; IV–470; XII–334

Not barred by a contest illegal on its face. II–259

Affidavit for contest against an entry already involved in litigation should be received, but no action taken thereon until the pending case is determined. III–512; V–231, 263, 350, 435, 453; VII–26, 400, 423, 430; IX–18, 227, 490, 579

Proceedings under a second, should not be allowed pending the final disposition of a prior case involving the same land. XXI–275

While pending, precludes action on the subsequent application of another to proceed against the entry in question. XV–27

Allowed during the pendency on appeal of a prior suit involving the same land is without jurisdiction. XXIII–377

During the pendency of an appeal the local office has no jurisdiction to entertain a, affecting the land involved, and evidence submitted at such a hearing can have no effect as against the entry under attack. XXIII–448

The fact that notice issues on a, before a prior contest against the same entry has been formally closed, will not prevent a consideration of the case on its merits, when the defendant participates in the trial, and appeals asking for a judgment on the merits, as well as on the jurisdictional question, and no prejudice is alleged or shown. XXVIII–34

Against an entry that is involved in a pending application for the right of amendment that necessarily calls for a cancellation of such entry confers no right. XVI–476

Contest—Continued.

VII. SECOND—Continued.

Within the terms of the circular issued on the ruling in the Bundy case, and subsequently held void from inception, no bar to second. v–231

Raising new question may be filed, but should be held for disposition of the pending case. IV–99, 121, 234, 463, 529; VI–234

An affidavit of, filed pending the disposition of a prior contest should be received and held without further action until final determination of the prior suit; but the right of the second contestant will be held to take effect by relation as of the date when his affidavit of contest was filed. VI–530; XIII–196, 438

Allowed during the pendency of prior proceedings involving the same land can not operate to confer any right as against the successful party in said proceedings. XXVI–188

Affidavit of, filed during the pendency of a prior contest, confers no right, if the entry is canceled under the prior proceedings, as against the intervening application to enter filed by a third party after the cancellation of the entry under attack. XVI–111

A second contestant who, in addition to the charge made in the prior suit, alleges that the contestant therein is disqualified as an entryman is not entitled to be heard thereon during the pendency of said proceedings; and in the event of the cancellation of the entry under attack as the result of said proceedings, such contestant is entitled to no priority of right to proceed against the subsequent entry of the successful contestant. XXII–658

Pending, attacked for fraud should be disposed of before proceeding with second. IV–504

Where a pending suit is attacked on the ground of fraud by one who applies to contest the entry in question, notice should not issue on such application, but the matter be held for the final disposition of the pending suit. XI–315; XVII 60; XXVI–703; XXVIII–147

Filed during the period within which the first contestant is entitled to the right of appeal from an order dismissing his contest, is subject to the first if the appeal is taken in time. XII–525

Rejected for illegality, but pending on appeal, bars proceeding under second, though affidavit therefor may be filed. IV–583, 589

No rights acquired by second, if the prior pending suit results in cancellation. I–42; XVI–111; XVIII–6

No rights are acquired under a, filed after a departmental decision canceling the record entry, though the time allowed for filing a motion for the review of said decision has not expired when the contest is filed. XVIII–557

Contest—Continued.

VII. SECOND—Continued.

Not allowed on issues tried and determined in the first. I–163; III–390; VIII–444; IX–217, 584; X–232, 253, 318, 451; XV–352; XIX–499; XXII–91, 415; XXIII–485; XXIV–61

A second, or second hearing on the same charge, is rarely permitted, but the fact that a charge has formed the basis of a, which failed for want of sufficient proof, will not preclude consideration of the same matter, if the legal title to the land still remains in the government, and it is made to appear that adherence to the former decision will lead to patenting public land in violation of law. XXVI–49

A second, may be properly entertained on a charge that the entryman has failed to comply with the law since the hearing in the former suit. XIX–499; XXIII–317

An entryman is entitled to be heard on an issue raised as to the qualifications of an adverse claimant, though such issue may have been tried and determined as between said claimant and a third party in a prior proceeding. XXIII–479

Where a second, is filed on grounds set forth in the first, with an additional allegation as to the disqualification of the first contestant as an entryman, and the entry under attack is canceled as the result of the first suit, and the contestant therein makes entry under his preferred right, it is not competent for the local office to order a hearing on the second, as against the entry then of record. XXIII–522

The failure of the local office to dismiss a, for default on the part of the contestant will not operate to prevent the filing of a second, and the issuance of notice thereon, nor interfere with any rights attaching thereunder. XXIII–234

Dismissed for want of due service of notice on the defendant is no bar to a second suit by the same party against the entry in question on the same grounds as set forth in the first. XX–271

Withdrawal of, at or before hearing treated as a default and a bar to second contest by the same party, on the same ground. I–163

Where contest is filed pending a prior contest and after relinquishment of land it is of no legal effect. II–619

Should not be allowed when the government has in its own interest commenced proceedings against the entry. II–785; VIII–301, 573, 578; IX–66, 211, 490, 569; XIII–94, 459

May be refused in the discretion of the commissioner when the entry in question is under investigation by a special agent. VIII–139

Offered pending proceedings by the government should be received and held subject to the result of such proceedings; and if they fail the contestant is then entitled to proceed as of the date when his application was filed. IXII–105

Contest—Continued.

VII. SECOND—Continued.

Hearing on, should not be ordered during the pendency of government proceedings. XIII–555; XVI–58

Will not lie against an entry that is held for cancellation on proceedings by the government. XV–154

Proceedings by the government are no bar to a, where they are abandoned without a hearing therein. XVI–22

Will not be allowed against an entry during the pendency of a rule to show cause why the same should not be canceled for failure to submit final proof within the statutory period. XI–102, 193

Filed during the pendency of government proceedings confers no right upon the contestant, but may be received and held subject to the final disposition of said proceedings. XIV–83; XVI–35

Begun during the pendency of government proceedings against the entry or while all adverse proceedings against such entries are suspended by general order confers no rights. X–657; XV–234

Suspended on account of pending proceedings by the government takes effect as of the date filed on failure of such proceedings. VIII–579

In proceedings by the government a stranger to the record will not be allowed to set up an intervening settlement claim, but must await the disposition of the pending action. XI–507

In proceedings by the government to determine whether an application by an Indian to select certain tracts as an allotment shall be allowed, a stranger to the record, alleging prior settlement rights, will not be heard to set up his claim, but must await the disposition of the pending action. XXVI–207

Filed during the pendency of proceedings against the claim in question should be suspended until the disposition of the pending suit, and if cancellation results therefrom the second contest must be dismissed. XII–157

No preferred right is secured under a, filed during the pendency of government proceedings against the entry of record, if such entry is canceled as the result of said proceeding. XXV–63, 229

Will not be allowed on a charge that has been made the subject of investigation and final decision by the Department. XII–317, 520, 600; XIV–245

Not barred by rejection of final proof by the Commissioner and the pendency of appeal from such action when the original entry was not held for cancellation. VI–833; XIV–408

Affidavit of, filed after issuance of notice to the entryman to show cause why his entry should not be canceled for failure to submit final proof will not defeat equitable confirmation if the showing made is satisfactory. XIV–83

Contest—Continued.

VII. SECOND—Continued.

The local office has no jurisdiction to entertain, during the pendency of a departmental order suspending the entry involved, and the subsequent approval of such action by the General Land Office after the revocation of said order will not give effect to such proceedings. XV–234

Not allowed while the question of the cancellation of an entry is pending. II–134

As to the validity of an entry can not be entertained while the right to make said entry is pending on appeal. IX–161

Election to proceed anew a waiver of rights acquired under former suit. II–69; III–591

Suit abandoned by express waiver no bar to second. IV–382

May be attacked on charges of fraud or collusion. IV–490, 504; V–360, 387

Good faith of a, may be inquired into on the hearing. VIII–248

When good faith of, is attacked, a hearing may be ordered on that issue. X–114

Invalid on its face and abandoned by the contestant is no bar to new proceedings by said contestant. X–268

The failure of a contestant to prosecute his suit, and a resulting order of dismissal for want of prosecution, will defeat the right of such contestant to be afterwards heard on a charge substantially the same as that presented in the first instance. XXVI–450

The institution of a second, waives all rights that the contestant may have had under the first. VII–346; XXIX–16

May be brought by an unsuccessful contestant on new grounds, in which the good faith of an intervening contest may be attacked. VII–468

Failure of local officers to enter or record a, and issue notice thereon will not render such contest subject to the intervening right of a second contestant. X–210

Wrongful dismissal of, in the local office and intervention of a second will not defeat rights under the first if said dismissal was not through any fault of the first contestant. VII–129

A contestant may, if in good faith, dismiss a contest and commence another against a different person. II–64

Right to proceed under, when held in abeyance pending final action on the prior suit of another against the same entry, matures on the withdrawal of such suit. X–199

Right to proceed under second, on dismissal of the first, can not be defeated by the intervening suit and entry of another, allowed without notice to second contestant that the first contest had been dismissed. XVII–53

Contest—Continued.

VII. SECOND—Continued.

The right of a second contestant to be heard, who alleges the collusive character of the prior, in addition to his charge against the entry, can not be defeated by subsequent intervening entry made on relinquishment of the entry under attack, and with notice of the second contest. XXII–346

The right of a second contestant to a judgment on the charge as made by him and established by the evidence can not be defeated by acts performed with a view to curing the alleged default after such contest is filed, but before notice thereof, and pending the disposition of a prior collusive contest. XXII–466

Filed during the pendency of a prior suit must fail if before service of notice thereunder the entryman without knowledge of such contest has cured his default, and it is neither alleged nor proven that the prior suit was collusive. XXIII–558

A second, filed subject to a pending suit abates in the event of cancellation under the prior proceeding. XXV–488

Rights under second, abate, if the entry under attack is relinquished during the pendency of the prior suit. XX–3

Though a, will not be allowed on a question that has formed the basis of a prior adjudication between the same parties, such fact will not prevent the government from canceling the entry in question if it is clearly illegal. XXII–217

The fact that the Department declines, on motion for rehearing, to remand a case for the submission of testimony on a matter newly alleged as a basis therefor is no bar to a subsequent contest in which such matter is properly put in issue. XXII–324

A decision of the Department denying a motion for rehearing does not preclude the General Land Office from directing an inquiry, in the nature of a new contest between the parties, to determine questions arising since the original hearing.

XXV–329, 471; XXVI–163

VIII. SPECULATIVE.

No rights acquired through speculative and fraudulent.

IV–332; V–358; VI–25, 164, 530; X–250, 404

No rights can be acquired or defeated through a fraudulent or collusive. II–583; IX–225, 314

If illegal, no preference right is acquired thereby. III–341

Is speculative if brought for the purpose of securing a speculative entry. VIII–248

Initiated for the purpose of fraudulently defeating rights acquired in good faith under a relinquishment confers no right. XIV–383

Contest—Continued.

VIII. SPECULATIVE—Continued.

Instituted for the purpose of protecting an interest sought to be obtained through a fraudulent entry is speculative in purpose, and confers no right upon the contestant. XIX–360

Brought in collusion with the contestee for the purpose of defeating justice will be summarily dismissed. II–259

One person may at the same time contest one homestead and one timber-culture entry, or he may contest two timber-culture entries, if he is qualified and intends to make a homestead and a timber-culture entry. II–277

Several, by same party indicative of speculative intent. V–358, 387

Where one in good faith withdraws one contest he may initiate another against another person and other land. II–64

The procurement of a friendly suit may be proven in support of the charge that the entry was fraudulent. VI–268

Initiation of, and withdrawal before trial indicates bad faith. V–360

No rights are acquired through a speculative, that can be asserted as against an intervening entry. XIII–132

IX. DESERT LAND.

Against desert entry, if successful, secures the rights conferred upon contestants by the act of May 14, 1880. III–69; V–694, 708; VI–1, 572; VII–186; XII–41

Against desert entries follows the practice in preëmption contests. VI–1

In case of joint, where all the contestants unite in similar charges, such common allegation may be taken in corroboration of the separate affidavits of. XVI–329

Common allegations, in pending applications of different parties to contest the same desert entry, may be accepted as corroborative of the separate affidavits of. XVIII–148

The right of two or more contestants to unite in a contest against a desert-land entry can not be recognized to the exclusion of intervening contestants. XVIII–148

A charge that the tract of land is not now nor never was desert land in character or quality is sufficient to warrant a hearing as to the character of the land. XVIII–148

An allegation, equivalent to a charge of illegality in that the land was non-desert at date of entry, is sufficient to warrant a hearing. XVIII–420, 465

Forfeiture not warranted except on a clear preponderance of the evidence. IX–6

Must fail if the default is cured prior to notice and such action is not induced by knowledge of the impending suit, but is the result of a previous *bona fide* intent. X–657

Contest—Continued.

IX. DESERT LAND—Continued.

The acts of July 26, 1894, and August 4, 1894, extending the time for the submission of final proof, are applicable to an entry made under the act of 1877, in default as to final proof at the passage of said acts; and an entry occupying such status is not thereafter subject to attack for non-compliance with law, until after the expiration of the extended period provided for in said acts. XXV–150

The pendency of a departmental order suspending an entry deprives the local and the General Land Office of jurisdiction to hear and determine a. X–657; XVI–35; XVIII–420, 465

On the ground of nonreclamation is premature, if the entry in question was at one time suspended, and the statutory life of the entry has not expired exclusive of the period of suspension. XXV–533

In determining whether a, is premature where the entry has been suspended, and the order of suspension revoked, time should be held to run against the entryman from notice of the revocation. XXI–394

The suspension of an entry does not preclude, where the order has been vacated, and the entry has run the statutory period, exclusive of the period of suspension. XX–324

Application to proceed against a suspended entry should be held until the suspension is removed, and where the order removing the suspension recognizes the right of the contestant to proceed an intervening relinquishment will not defeat such right. XVI–329

A charge of non-reclamation, within the statutory period, should not be entertained where it appears that the land has been reclaimed prior to the initiation of the contest. XXV–303

Filed at a time when the entryman is engaged in curing his default will not defeat his right to perfect his claim with a view to equitable action where he has shown diligence from the first and his failure to effect reclamation is due to a mistake. XVI–366; XVIII–96

On the ground of non-compliance with law must fail where it appears that prior to the expiration of the entry the land was effectually reclaimed and that the failure to maintain the requisite water supply was due to the wrongful act of the contestant; nor will such a contest defeat equitable action on the entryman's final proof submitted out of time. XVII–36

On the ground of failure to effect reclamation within the statutory period must fail where the government has already examined into the status of the entry and held the same intact. XVII–255

A charge of failure to reclaim is not sustained if water in sufficient volume has been brought on the land and so disposed as to render it available. XVIII–16

Contest—Continued.

IX. Desert Land—Continued.

The failure of an entryman, who made an entry under the act of 1877, to advise the government, within the lifetime of such entry, of his intention to accept the provisions of the amendatory act of 1891, leaves said entry subject to contest as if said act had not been passed. XIX–121, 231

In case of a, against an entry made under the act of 1877, where election to proceed under the act of 1891 is pleaded by way of special defense, it is incumbent upon the defendant to establish the facts necessary to sustain the plea. XX–218

On the ground of non-compliance with law, filed during the pendency of the general order of February 7, 1882, suspending such proceedings, confers no right. X–657

The local officers may properly reject if in their judgment the charge is premature. XXI–494

A stranger to the record will not be heard to allege that a contest is premature where prior to the day set for hearing the entry is reliquished. XV–319

The right to proceed with, is not defeated by a subsequent relinquishment. XV–320

Reclamation by a transferee prior to initiation of, will not prevent cancellation if it is shown that the entry was secured by false testimony. XV–5

Pendency of, does not excuse non-compliance with law. XIII–271

X. Homestead. See sub-title No. v.

Application for the land is not required.
II–40, 65; III–209; IV–424, 462

An application to enter filed by the contestant at the time of filing his affidavit of, confers no right in the event of his securing a judgment of cancellation, and can not be used by him in the exercise of his preferred right. XXII–96

Does not require that the contestant should assert a claim to the land involved. II–219; VIII–584

May be instituted by alien. V–259

Offering a relinquishment for sale is not a sufficient ground of contest. II–40; IV–553

May be properly entertained upon any charge affecting the legality of the claim. IX–209

Local office may order, on charge of illegality. IV–461

Charging the incompetency of the entryman under the law to perfect his entry is a good ground for. X–274

Contest—Continued.

X. Homestead—Continued.

Charging illegality—in that the residence, prerequisite to the execution of preliminary entry papers before a clerk of court, had not been acquired—warrants cancellation if the charge is sustained. VI–425; VII–245; VIII–1; IX–209; X–61; XV–337

A charge that the preliminary affidavit was executed before an officer not authorized by law to administer the requisite oath, warrants the cancellation of a homestead entry if proven. XVIII–92

Will not lie on a charge that the preliminary affidavit was executed before a United States commissioner outside of the county in which the land is situated. XXII–486

A clerical omission occurring in an original homestead affidavit does not furnish proper ground for a. XXII–63

An allegation of settlement subsequent to that set up in support of a prior adverse entry affords no basis for. XIX–507

Speculative character of entry shown as charged by proof of intent to avoid compliance with law in the matter of residence. XVIII–55

In the case of a, against an entry made under the general homestead law by a native born Indian, who has abandoned the tribal relation, it is not necessary to serve notice upon the Indian agent or Commissioner of Indian Affairs. XXVII–502

Cultivation is an essential requisite to compliance with the homestead law; and a charge of failure to cultivate furnishes a proper basis for a hearing. XXIX–561

On the ground alone that the land embraced therein is unfit for cultivation, and of no value except for the timber thereon, will not be entertained. XXIV–310

Local office may order a hearing to determine the right of a homestead applicant as against a railroad grant. X–281

Will lie against soldier's homestead for failure to settle, improve, and enter within six months after filing, and the successful contestant has a preferred right of entry. III–17; XXII–245; XXVII–502

Soldier's homestead not subject to, for failure to settle and improve within six months from filing when initiated prior to December 15, 1882. III–213

General charge of abandonment not sustained by proof of failure to settle and improve within six months after filing under section 2304, R. S. III–507

Will not lie against an application to make a soldier's additional homestead entry. XV–147

Will lie against a soldier's additional homestead entry on the ground of its speculative character. XIX–163; XX–516

Contest—Continued.

X. HOMESTEAD—Continued.

A charge that a soldier's additional entry has been made through a sale of the right is a proper subject for investigation. XV–114

Will not lie against a homestead declaratory statement, as it does not constitute an appropriation of the land covered thereby, and is no bar to the entry of another. XVIII–494

Against a soldier's homestead declaratory statement is invalid, and a subsequent amendment thereof does not confer any priority as against an intervening contest begun after the homesteader has made entry under his declaratory statement. XXIII–2

A soldier's homestead declaratory statement does not segregate the land covered thereby, and is therefore not subject to contest; hence the proper method of asserting a settlement claim adverse thereto is by application to make entry within the statutory period after settlement. XXVII–597

A charge that a second entry under section 13, act of March 2, 1889, was allowed on a showing insufficient under the departmental regulations does not warrant a hearing, in the absence of affirmative allegations as to the entryman's actual disqualification under the statute. XXVII–557

Before final certificate an entry is open to attack on the ground that the land is mineral in character, without regard to the date of the alleged mineral discovery. XV–290, 514

Discovery of mineral on the land after final entry does not render the entry subject to. VII–570; XV–37

Against a homestead entry, commuted for town-site purposes, will not be allowed after the issuance of final certificate except upon a clear showing of facts that necessarily call for action on the part of the government. XIX–384

By preëmptor to clear record of subsequent homestead claim will not be allowed. II–584

Compliance with law pending, subject of another hearing. VI–28

For abandonment against settlers absent under act of June 4, 1880 (destruction of crops), would not lie until April 1, 1882. II–28

It is competent for a contestant alleging abandonment prior to April 1, 1882, to show that the settler did not meet with a loss or failure of crops. II–111

Leave of absence is no protection against a contest for abandonment where the entryman prior to such leave has failed to comply with the law. XVII–540

An allegation to the effect that the evidence on which a leave of absence was obtained is false and fraudulent, must be affirmatively established to warrant favorable action thereon. XX–319

Contest—Continued.

X. HOMESTEAD—Continued.

Leave of absence granted under section 3, act of March 2, 1889, does not preclude a, during such period on account of non-compliance with law prior thereto. XVI–348

A leave of absence procured by an entryman, who in fact had not established residence on the land, will not operate to defeat a subsequent, in which abandonment is charged against the entry. XIX–407; XXI–428; XXIX–54, 203

Where a leave of absence is granted a homesteader under the act of March 2, 1889, a charge of abandonment will not lie against the entry until the expiration of six months after the time for which the leave of absence was granted. XVIII–331; XXVI–268

For abandonment will not lie where the absence of the entryman from the land is due to forest fires, and is excused under the provisions of the act of January 19, 1895. XXVII–691

A homestead entryman who is improperly allowed an extension of time within which to make commuted payment, will be protected as against an intervening contest charging non-compliance with law, where it appears that he had complied with the law up to the time he left the land under authority of said extension. XXVIII–300

Based on a charge of non-compliance with law in the matter of residence and improvements should not be entertained where the entry is suspended on account of a defective survey. X–297; XII–56, 370

Where an entry is suspended, a, initiated prior to the expiration of six months from date of entry, excluding the period of suspension, is premature. XXII–692

A charge of failure to establish residence is fairly met where the evidence shows that during the period involved the township plat was suspended for the settlement of a private claim. XV–215

On the ground of abandonment must charge that the absence was not due to military or naval service during time of war; act of June 16, 1898, and circular of July 8, 1898. XXVII–146

The act of June 16, 1898, in requiring that under all contests in which the charge is abandonment, it must be proved that the settler's absence was not due to military or naval service, does not prescribe what shall be the measure of proof, nor of what it shall consist; and the proof in such case will be held sufficient when it shows with reasonable certainty that the absence was not due to such service. XXIX–625.

Contest—Continued.

X. HOMESTEAD—Continued.

The provision in the act of June 16, 1898, requiring in case of a, on the ground of abandonment at a time when the United States is engaged in war, an allegation in the affidavit that the absence of the settler was not due to employment in the army, navy, or marine corps, is mandatory, and noncompliance therewith can not be cured by amendment after service of process in a contest to which the statute applies, and in which no appearance is made by the defendant. XXIX–484

The requirement of the act of June 16, 1898, that the affidavit, in case of a, on the ground of abandonment, at a time when the United States is engaged in war, must allege that the absence of the settler was not due to employment in the army, navy, or marine corps, is for the sole protection of the settler, and will be considered waived by him where he personally appears at the hearing and makes a general defense, without specifically objecting to the affidavit because of the omission therefrom of the required allegation, although he in general terms challenges its sufficiency. XXX–57, 222

A long period of abandonment having been shown to exist at the time of the outbreak of war, the presumption is that its continuance during the war was due to the original cause or intent, and not to the entryman's employment in the army, navy, or marine corps. XXX–294

In determining whether the allegations in an affidavit of, are sufficient under the act of June 16, 1898, the matter to be considered is whether said affidavit charges abandonment during a time of war, and if it does, then the requirement that it must also contain the allegation that such abandonment was not caused by military or naval service, must be observed. XXX–464

For abandonment will not lie until the expiration of six months and one day after entry, exclusive of the day of entry. II–69, 151

A charge of failure to reside upon and cultivate land embraced within a homestead entry, filed prior to the expiration of six months from the date of entry, is premature. XXVII–247

The rule that a contest is premature if begun before the expiration of six months and a day after entry can only be invoked by the contestee. VIII–400

Where an affidavit of, is premature and subject to rejection for such reason, but such action is not taken, and the local officers, after the expiration of more than six months from the date of the entry, authorize publication of notice, the contest should not thereafter be dismissed as premature on the motion of a stranger to the record. XXI–467

Contest—Continued.

X. HOMESTEAD—Continued.

The authority of the land department to entertain a, is not abridged by the fact that the affidavit of, is filed before the expiration of the period covered by the charge, if the notice is served after such period. XXVII–654

The rule in Baxter *v.* Cross governs in all cases after it was rendered. III–15

On charges of abandonment, sale, and relinquishment not premature, though within less than six months after entry. V–262; XXVIII–315

Fraudulent intent in making an entry is not shown by the execution of a relinquishment or an offer to sell the improvements on the land. XXII–150

Charging sale of relinquishment must fail where it appears that the instrument was executed during the sickness of the entryman and when he could not go upon the land, was returned to him and retained in his possession. XIII–639

The sale of the land embraced within an entry is ground for, at any time after the fact of such sale becomes known. XII–510

A charge of abandonment will not lie against a homestead claimant prior to the allowance of his application to enter where his rights depend on such application. X–510; XXVI–219

A departmental decision awarding the priority of right to a homestead claimant as against a prior preëmptor, and directing the suspension of the preëmption entry to await the consummation of the homestead claim, does not relieve the homesteader from the necessity of showing compliance with law during the time prior to such decision where such question was not then taken into consideration. XIX–117

Charge of abandonment must fail when the absence is due to judicial restraint. V–6; VII–532; XV–554

Though premature, may be carried to cancellation in the absence of objection or appeal. IV–552

Initiation of, prior to the expiration of the six months allowed for establishment of residence will not prevent cancellation if the proof, submitted after such period, shows permanent abandonment. X–211

Charging abandonment and failure to establish residence is premature if brought prior to the expiration of the period accorded under the law for the establishment of residence. XVIII–144

To sustain the charge of abandonment it must be shown that such abandonment has continued for six months, and the complaint must so allege. X–105

Contest—Continued.

X. HOMESTEAD—Continued.

An allegation that the claimant has never resided on the land, that his home and place of business is elsewhere, is equivalent to a charge of abandonment, and a notice issued thereon to answer the charge of abandonment is not bad for variance. XIII–121

A charge of abandonment is not sustained by the mere fact that the entryman united with others in locating a placer claim, unauthorized by law, on part of the land covered by his entry. XVIII–416

A charge of abandonment and failure to reside upon the land is sufficiently specific where it is set out "that the defendant has wholly abandoned said tract, that he has changed his residence therefrom for more than six months since making said entry, and that said tract is not settled upon and cultivated by said party as required by law." XVII–540

Where abandonment and change of residence are charged, and the notice cites the entryman to respond to the charge of abandonment, the variance is not such as to prejudice the rights of the entryman. X–294

A charge of abandonment, change of residence, and failure to settle is not an admission that residence has been established and does not estop the contestant from proving failure to establish residence as required by law. X–346

A charge of abandonment is supported by evidence showing failure to establish residence within six months after entry. XI–418, 602

On the ground of abandonment should show that the alleged abandonment was prior to final entry. X–556

A charge of abandonment will not be sustained, where it appears that the entryman duly established residence on the land, and that during his absence his family remained thereon. XXVIII–181

Of divorced wife against the homestead entry of her former husband on the ground of abandonment must fail where it appears that his family lived upon the land during his absence and that she forcibly retained possession on his return thereto. VII–35

A divorced wife who remains on the land covered by the homestead entry of her husband, and shows the fact of his willful desertion and abandonment, is entitled to a judgment of cancellation with a preferred right of entry. XVIII–9

Of divorced wife against former husband's claim for abandonment permissible. I–89

The good faith of an entrywoman in securing a divorce, as affecting her qualifications under the homestead law, is not a matter for investigation through a, under the act of May 14, 1880. XXIX–96, 168

Contest—Continued.

X. HOMESTEAD—Continued.

Only the wife shall be heard to show her husband's desertion of her in proof of abandonment. II–81; VII–35; XXI–152

In a contest on the ground of fraudulent inception or abandonment priority of settlement can not be considered. II–119, 620

Failure of the wife to reside on the land until after notice of, does not impeach the good faith of the claimant where it is apparent that her final removal is in compliance with a previous *bona fide* intention of the claimant to make his home on the land. XI–543

Testimony to the effect that an entrywoman has married and moved to her husband's home, when the husband himself is at the same time a homestead claimant, is proper evidence under a general charge of abandonment. XXI–360

Charging abandonment and failure to maintain residence must fail where the entryman dies within less than six months after entry and prior to establishment of residence, but the heirs thereafter cultivate and improve the land. IX–31; XIV–141; XXII–181

The expired entry of a deceased homesteader can not be successfully contested for abandonment or non-compliance with law if it appears that the entryman in his life earned a patent to the land involved. XV–27

A charge of failure to improve and cultivate will not lie against the heirs where the entryman dies within less than six months of the expiration of the statutory period of residence required of the entryman. XV–182

A charge of failure to cultivate, brought against the heirs within six months after the death of the entryman, is not sufficient ground to support a. XXVIII–5

The failure of a homesteader in his lifetime to establish residence on the land, due time having elapsed therefor prior to his death, and the subsequent failure of his heirs to reside thereon, require the cancellation of the entry. XXII–511

A charge that neither the entryman nor his heirs have established residence must fail where it appears that the entryman's default is due to sickness and poverty and that the widow subsequently cultivated the land. XV–252

A charge of failure to comply with the law against the heirs of a homesteader can not be sustained, where such failure is due to the wrongful acts of the contestant. XIX–511

In determining whether the heir of a homesteader has complied with law in the matter of cultivation and improvement, the means at the command of such heir, his good faith, and the fact that such compliance with law had been resumed prior to the initiation of the contest, are all entitled to consideration. XXV–544

Contest—Continued.

X. HOMESTEAD—Continued.

Under section 2297, R. S., it is not essential that "abandonment" for more than six months "immediately preceding" the contest should be specifically charged. IX–255

Proof that the claimant has actually changed his residence or abandoned the land for more than six months at "any time" warrants an order of cancellation if the default has not been cured. IX–255

On the charge of abandonment may be entertained following a suit as to priority of right. V–149

In determining whether the charge of abandonment will lie the claimant's term of military service may be computed as forming a part of the requisite residence. XIV–507

The designation by the entryman, under a Territorial statute, of lands claimed as a "homestead," different from those embraced in his entry, does not raise any presumption of abandonment where said law permits a person to designate land on which he does not reside as a "homestead." XXII–248

Homestead entry not the proper subject of, seven years after date of entry. I–112

May be properly entertained on a charge of abandonment, though the statutory life of the entry has expired. XII–285

A charge of failure to submit final proof within the statutory period of seven years from the date of homestead entry states no cause of action against an entryman that is entitled to the additional year conferred by the act of July 26, 1894. XXIV–398

Proof of abandonment covering a period subsequent to the term of residence required does not warrant cancellation. XIV–507

Will lie against homestead entry after the expiration of seven years from date of entry. III–136; V–229; XV–27

May be entertained though not begun until after the expiration of five years from date of entry. X–111

A charge of abandonment against a homestead entry is not established, where the absence shown is subsequent to a period of five years' continuous residence on the tract involved. XXVII–308

Filed five years after entry is not sufficient if confined to the words of section 2297, R. S., but should set forth the specific default and that it has not been cured. IX–530; XX–185

After the expiration of five years under a homestead entry a charge of abandonment and change of residence will not be entertained against the same, in the absence of an allegation that the entryman failed to comply with the law as to residence and cultivation during the statutory period. XXIV–398

Against homestead entry for want of residence must follow section 2297, R. S. III–560

Contest—Continued.

X. HOMESTEAD—Continued.

Must fail if the default charged is in good faith cured prior to service of notice and such action of the claimant is not induced by the filing of the contest.
VII–198; IX–153, 299, 531; XI–400; XIV–141

An allegation of failure to comply with the law does not furnish a basis for cancellation if not made until after the alleged default has been cured. XXVI–384

A charge of abandonment against a homestead entry must fail where the entryman is residing upon the land when notice of the contest is served. XVIII–3

Under a, on the ground of abandonment, the default will be held to have been cured, where, prior to the issuance of notice, the wife of the entryman returns to the land, and it does not appear that he has established a residence elsewhere. XIX–515

An entry attacked for failure to reside on the land will not be canceled where the entryman in fact has established and maintained residence on an adjacent tract, to which he acquired title after his entry, but removed to the land covered by his entry prior to notice of the contest, and no bad faith is shown to exist. XXI–15

Actual knowledge of an impending contest will not prejudice the claimant if his subsequent compliance with law is in pursuance of a previous *bona fide* intent. IX–299

Acts in compliance with law performed by the claimant prior to notice, but induced by the impending suit, will not cure the default nor defeat the contest.
XIII–121; XXI–17; XXII–581; XXV–44

Against a final entry on the ground that the entryman is not a citizen must fail if the defect is cured prior to notice and such action is not induced by the initiation of. X–474; XI–71

On the ground of non-compliance against an entry made for the minor heirs of a deceased soldier or seaman must fail if the land is cultivated and improved for five years succeeding date of entry.
X–482, 528

Charging want of prerequisite residence in filing preliminary affidavit and alleging an adverse priority must fail if such priority is not established. IX–20

Acts performed after the initiation of, will not relieve the entryman of the consequence of non-compliance with law prior thereto.
X–133

An offer to sell the land may be proven in support of the charge that the entry was speculative and fraudulent. VI–268

Proof that an entry is made in bad faith and not for the purpose of actual settlement and cultivation warrants cancellation. XVIII–540

Contest—Continued.

X. HOMESTEAD—Continued.

A successful, against a homestead entry, embracing land covered by a prior preëmption filing, will not defeat the superior right of a minor claimant under the preëmption filing. XXV–384

The hardship resulting from an order of cancellation does not warrant the Department in ignoring the requirements of law. VII–584

Failure to establish residence within six months from the date of entry warrants cancellation if the default is not cured prior to. IX–523

A homestead entry must be canceled on due showing of a prior adverse settlement right. XXVI–301

The failure of a homesteader to make a living on his land is not necessarily any evidence of his lack of good faith. XX–319

A homestead claim set up to defeat the entry of another will be canceled if the evidence shows non-compliance with law. VI–294

An honest settler's rights may not be defeated on technical and speculative grounds. II–163

Against the entry of an insane homesteader must fail if it appears that the entryman had complied with the law up to the time wh[illegible]2 he became insane. XXIV–4[illegible]h

The physical condition and poverty of a claimant may be taken in[illegible]5 consideration, where good faith is apparent, in determining whethe[illegible]d there has been substantial compliance with the requirements [illegible]f the homestead law. XI–166; XXII–42[illegible]

On the ground of priority of settlement, must fail if the allegation is not established by some preponderance of the evidence. XXIII–50; XXIV–584; XXV–275

In a, involving priority of settlement, doubt as to the fact of priority, or a finding of simultaneous settlement, does not justify an arbitrary division of the land between the parties, or an award thereof to the highest bidder. XXIII–201, 400

On the ground of a prior settlement right, the burden of proof is upon the contestant to show that his settlement antedates both the entry and settlement of the contestee, and if he fails to show such priority the entry must stand. XXIII–201

The general rule that a settler claiming priority over one having an entry of record must establish his claim by a preponderance of the evidence may be so far departed from, in a special case, as to reach an equitable conclusion, where, on the facts shown, justice and equity require a division of the land between the parties. XXIV–158

No right can be secured under the contest of one attacking an entry on the ground of prior settlement, in the absence of some special equity shown, if the charge as made is not established by a preponderance of the evidence. XXIV–189

Contest—Continued.

X. HOMESTEAD—Continued.

On the ground of priority of settlement, must fail if it appears that the contestant's alleged acts of settlement were not followed up by the establishment and maintenance of residence.
XXI–97; XXII–279; XXIII–87; XXV–103, 279, 329; XXVII–562

In a, based upon alleged priority of settlement, it is not essential that the affidavit of, should set forth that the contestant has established residence on the land if, at such time, residence on his part is not necessary. XXV–380

Pending, will not bar relinquishment and right to make new entry under the act of March 3, 1879. I–93

XI. PREËMPTION. See sub-title No. V.

Should not be allowed against a preëmption claim before offer to make final proof. I–469; III–517; IV–134; V–176; IX–92

Against preëmption claims should only be allowed in exceptional cases prior to the offer of final proof. II–583; IV–235; VII–126

Against an expired and abandoned preëmption filing could not in any event inure to the benefit of the contestant, and will not be allowed. XXI–540

It is not the general policy of the land department to permit, against filings, yet judgment on the merits may be given where the defendant has made default and the evidence justifies cancellation. XX–33

A definite charge supported by evidence at time of final proof, with payment of costs, constitutes a, that is entitled to recognition. XX–325

After hearing and decision on the merits it is too late for the preemptor to suggest that the contest is premature. IV–236

Proceedings on offer to make final proof obviate the necessity of formal contest in case of conflicting preëmption claims. III–112

Proceedings on protest against preëmption final proof do not constitute. XXII–188

By a preëmptor to clear the record of a prior preëmption claim will be allowed in exceptional cases only. II–583

Will not lie against a preëmption filing for the purpose of securing a preference right through its cancellation. XII–639

Not allowed against a filing by a stranger to the record. I–435, 446

Preëmption claim, if put in issue, may be canceled before final proof is offered. V–260

By a subsequent adverse claimant will lie against a preëmption for non-compliance with requirements. II–596

Non-appearance of adverse claimant under notice of intention to make final proof, does not bar subsequent, on his part. III–142

Contest—Continued.

XI. PREEMPTION—Continued.

On allegation of fraud a hearing will be had even after approval of final proof and allowance of entry. III–54

A charge of fraud must fail if the allegation is not established by such evidence as will convince a reasonable mind. XIII–74

Where it is made to appear that the entry under attack was procured through false and fraudulent statements it must be canceled. XIII–594, 612

A final entry should not be canceled on the ground that it was made in the interest of another, except upon convincing proof. XV–445

Based on an alleged mineral character of the land requires proof that mineral was known to exist prior to final entry. XIII–108

Charge of abandonment will not lie on the ground of failure to establish and maintain residence prior to the allowance of application to file declaratory statement. X–616

Abandonment must be proved affirmatively by a contestant alleging it. II–625

An allegation of abandonment after the submission of final proof is not sufficient ground for. XII–492; XVIII–20

During the pendency of, the entryman must comply with the law. XI–256

XII. SWAMP LAND.

Will lie against a selection of swamp land. V–31; XIV–658

Against a swamp selection, if successful, may secure a right of entry. IV–497

Against a swamp selection is not a statutory right, but recognized as an aid in determining the true character of the land. XII–64

Against a swamp selection should not be allowed except on *prima facie* showing that would warrant rejection of the claim under the grant. XII–64

Against a selection of land reported as of the character granted should not be allowed, except upon a showing that would warrant cancellation if the allegations were proven. XIII–259

Against selections should not be allowed during the pendency of government proceedings instituted to ascertain the character of the land. XIII–259

The local office has no authority to entertain and act upon an application to contest an approved swamp-land selection. XXIII–591

XIII. TIMBER CULTURE. See sub-title herein, No. V, and *Application*, sub-title No. IX.

Forms for use in beginning. I–653

Rules governing homestead are applicable in timber-culture. I–132

Contest—Continued.

XIII. TIMBER CULTURE—Continued.

Circular regulations of August 18, 1887, directing the disposition of applications to enter, filed with the contest, on termination of suit. XIII–670

The wife of the entryman is entitled to notice where it is known that the entryman has disappeared and his whereabouts can not be discovered. XII–203

In proceedings against the entry of a deceased person the devisee of the sole heir of the entryman is the only party having an interest in the entry. XXI–8

An agent employed to care for a timber-culture entry may properly secure counsel to appear on behalf of the entryman in the event of a, against the entry. XVII–504

Should not be allowed to proceed while the section including the land involved is suspended from entry on account of conflict with a private claim. XVI–450

For default during period the township plat is suspended will not lie. XVI–403

Contestant need not be a party in interest. II–219

No authority for, in the absence of application to enter. I–152, 160, 626; II–290; III–513, 571

Section 3, act of June 14, 1878, not in conflict with section 2, act of May 14, 1880. A contestant under the later law is defined by the earlier. I–160, 626

Circular of December 20, 1882, issued on the Bundy-Livingston ruling. I–651

Circular issued under Bartlett-Dudley decision, February 13, 1883. I–652

The omission to file an application for the land in a timber-culture contest may be remedied prior to or at the hearing, if no other right has intervened. II–296, 319

Tender of application to enter by the contestant held sufficient to validate subsequent proceeding. II–245

Second allowed where first was dismissed under the rule in Bundy's case, with permission to use on stipulation evidence already taken. I–160

The contestant, having filed application to enter before the dismissal of his contest, is awarded a new contest from the date of such filing in the absence of an intervening adverse right. III–95

Right of, not defeated by defective application to enter when an offer to amend at the hearing was made. V–211

Contest—Continued.

XIII. TIMBER CULTURE—Continued.

If jurisdiction is lawfully acquired, it can not be divested by the subsequent act of the contestant, whereby he becomes disqualified to enter the land under the application filed with his contest. V–684

Held good, as it followed the practice in force and there was an application to enter prior to the order of dismissal. IV–587

Prosecuted to final judgment prior to the Bundy decision not affected thereby. IV–246

In the absence of objection from the defendants, the want of formal application to enter will be held as though waived. IV–241

Against timber-culture entry must show contestant's qualifications for entry. II–292

On initiation of, tender of entry fees and commissions (with application to enter) not required. V–684

Bundy *v.* Livingston overruled in general circular of June 27, 1887. VI–284

Application to enter not required at initiation of. VII–9; X–398; XI–199

Not by one who has exhausted his rights under homestead and timber-culture laws. II–276

The right of, against a timber-culture entry may be exercised by an applicant for the land under the preëmption law. (Overrules Buttery *v.* Sprout, 2 L. D., 293.) V–591

Follows right of entry in case of default by the entryman. IV–540

At the moment of default the land is open to entry by the first legal claimant, notwithstanding an illegal contest is pending against it. II–266, 283, 297, 318

To clear the record is of the nature of action *in rem*. IV–540

An application to enter land embraced within the timber-culture entry of another does not give the applicant the status of a contestant under section 3, act of June 14, 1878, in the absence of the prescribed notice to the record entryman of such application. XVII–585

An allegation of offer to sell the land not sufficient ground for. IV–370; V–314; VI–268; VII–262

Sale and relinquishment good grounds for. IV–245, 522; VIII–294; IX–565

Charging the execution of a relinquishment, if established, does not call for cancellation in the absence of fraud or bad faith on the part of the entryman. XV–405

A charge that the entryman "has failed to comply with the law" does not present any fact for proof, and on objection thereto should be amended. XI–575

Contest—Continued.

XIII. TIMBER CULTURE—Continued.

A general charge of abandonment, unaccompanied by a specific allegation of non-compliance with law, will not warrant a hearing. XIII–107

A charge of abandonment will not lie against an entry under which there has been full compliance with law for the statutory period. XXV–155

Under a general charge of non-compliance with law in the matter of cultivation and planting, the speculative character of the entry can not be shown. XIII–90

The defendant has the right to insist upon a specific statement of the grounds of contest, and a retrial will be directed where both charge and notice are indefinite and due exception is taken thereto. XIII–337

Will lie on a charge of non-compliance with law, coupled with the allegation that the pending suit of another against the entry is collusive. XI–179

A charge of relinquishment is not established by showing the execution of an informal relinquishment for the purpose of securing the payment of a note. XI–597

Charge of failure to raise more than one thousand trees held sufficient, being made eight years after entry. III–419

Case stated where the charge "wholly abandoned" is held sufficient. III–377

The allegation "the land is of the class that will not produce timber" is not a good ground of. VI–578

A charge of failure to plant the required number of trees the third year and failure to cultivate those planted sufficient. VI–299

False allegation in preliminary affidavit ground for. IV–239

On the ground of illegal execution of preliminary affidavit is good. XIV–466

Will lie against timber-culture entry for illegality. II–290, 304; III–185

For illegal inception may be initiated without special authority of the Commissioner. II–302; IV–239, 492

That an entry is held for the benefit of another is a good ground of. VI–791

The possessor of a relinquishment is not entitled to, but should file the relinquishment and apply to enter. III–150

Will not lie against an entry after the filing of a relinquishment. II–304, 327

Will not lie against an entry not of record in the local office and under which no right was ever asserted and where the land was subsequently in good faith entered by another. X–59

Contest—Continued.

XIII. Timber Culture—Continued.

A charge of non-compliance with law made prior to the expiration of the first year after entry is premature and does not authorize proceedings against the entry. IV–241; X–268

An allegation of non-compliance with law will not lie when made prior to the expiration of the year in which it is alleged to have occurred. VII–452; IX–148; XXVIII–245

Affidavit of contest against timber-culture entry must be executed after the expiration of the year in which the failure is charged. II–249

May be entertained, though affidavit of was filed before the expiration of the period covered by the charge, where the notice was served after such period. VI–299

Entry perfected July 5, 1882, contest affidavit filed July 5, 1884, charging failure to break requisite ten acres: Held, not premature nor in abridgment of entryman's defense. VI–795

Where the charge as laid practically covers the year and the usual planting seasons embraced therein, and where the notice is served after the expiration of the year, and the hearing is after its expiration, evidence should not be excluded as to said year because it has not quite terminated at the date of filing contest. XXI–191

Not premature when the day set for hearing is subsequent to the expiration of the year in which the default is charged and the notice is not served until after the expiration of said year. XIII–258

Begun prior to the expiration of the year in which the default is charged should not be dismissed prior to the day fixed for hearing and without notice to the contestant. XIII–124

An extension of time under section 2, act of June 14, 1878, does not during its existence protect the entry from. IX–350; X–302

A stranger to the record can not be heard to allege that a contest is premature. X–108

Affidavit of, should charge the continuance of the default alleged. II–301; IV–84; X–593; XX–275

An allegation as to the existence and continuance of default is sufficient if such default is alleged to exist at the time the affidavit of contest is made. VI–530

Affidavit of, must show the continuance of the default alleged; but leave to amend may be given where the complaint is defective in this particular. X–181

A charge that no part of the first five acres was cultivated the fourth year and that there has been no cultivation of any portion of the tract is equivalent to an allegation that the default continues to exist. IX–644

Contest—Continued.

XIII. TIMBER CULTURE—Continued.

Resting on specific charge as to one year does not include previous years. V–329

Against timber-culture entry, alleging abandonment for the year next preceding and failure to cultivate as required and to break five acres, is sufficient. II–220

Will not lie when default is cured prior to initiation of suit. I–142, 146; II–262, 302; IV–368, 494; VI–825; VII–440; X–591

Will be dismissed where default is cured prior to contest, and the entryman, if he continue to comply with the law, will be entitled to commute under the act of March 3, 1891. XXIX–641

Must fail if the entryman, prior to the initiation thereof, commences in good faith to cure the default. II–263; IX–644; X–232, 373

Must fail if the default charged is cured before service of notice. VIII–552; XI–5

Good faith an important element in considering evidence as to compliance with law between the dates of filing affidavit of contest and service of notice. VIII–552

An attempt to cure a default before service of notice can not be accepted as evidence of good faith if such action is induced by the impending contest. IX–289; XII–403

Should be dismissed when the default charged was not due to the neglect or bad faith of the entryman and was cured on the day that notice issued for publication. VII–8

Actual knowledge of an impending, will not prejudice the claimant if his subsequent compliance with the law is in pursuance of a previous *bona fide* intent. XI–5

Must fail where the defendant cures his default prior to legal service of notice, and it does not appear that the compliance with law was induced by knowledge of the impending suit. XXI–335

Acts in compliance with law, performed after initiation of, but prior to service of notice, may be accepted as indicative of good faith if not induced by actual notice of the pending suit. XI–189; XII–568

Acts in compliance with law, performed after initiation of, will not relieve the entryman from the effect of a default existing at date of contest. XI–423

If good faith is apparent, failure to fully comply with the law may be excused where such failure is the result of a mistake and an effort is made to cure the default prior to the initiation of. XI–252

The entryman's good faith may be properly considered. VI–755; VII–331, 365, 440, 441, 468

Charging speculative entry should clearly demonstrate the fact to warrant cancellation, especially when brought after years of labor upon the land. VI–610

Contest—Continued.

XIII. TIMBER CULTURE—Continued.

Should not be sustained unless substantial non-compliance is shown under a specific charge. IX–148; XVII–504

Clear preponderance of evidence required to warrant judgment of forfeiture. I–129, 153; VI–660; VII–373

Judgment of cancellation not warranted if the specific charge, as laid in the affidavit of contest and notice, is not sustained by the evidence. XVI–380

Failing on the issue joined, the contestant will not be heard to say that the entryman can not show compliance with the law in the statutory period. II–305; X–232

If the specific allegations fail for want of evidence, advantage can not be taken, under a general charge of non-compliance, of evidence showing a default not specifically charged. In such a case the issue is between the entryman and the government. VII–408

The acts or omissions of the entryman after date of initiation of the contest do not affect the contestant's rights. II–280

On the ground that the land is not "devoid of timber," must fail if it appears that the entry was allowed in accordance with the rulings then in force.
V–261; VI–225; VII–75; VIII–534; IX–95; X–190; XXV–65

Proof of an offer to sell does not in itself justify a conclusion that the entry was not made in good faith. X–20

Proof of an offer to sell and conditional acceptance thereof will not authorize cancellation. IX–609

Evidence showing contract of sale, made after three years' compliance with law, does not establish the charge that the entry was made with a speculative intent. IX–327

Execution of power of attorney containing, among other things, authority to sell is not sufficient to warrant cancellation. VII–493

Proof of sale and removal from the land of a small quantity of stone will not warrant cancellation. X–20

The right of, on the ground of non-compliance with law is not defeated by showing that the contestant was employed to do the necessary work if it appears a special contract was made that said work was to be paid for in advance, and was not performed for the reason that the payment was not made as stipulated. XXII–480

The contestant cannot be heard to complain of the entryman's failure to comply with the law if such failure is the result of the wrongful act of the contestant. X–318, 585; XI–177

Contestant is estopped from charging non-compliance with law where he, as agent, had undertaken to fulfill the requirements of the law. IV–205; VII–24; XVI–365

Contest—Continued.

XIII. Timber Culture—Continued.

Charges of non-compliance with law must fail if it is shown that the alleged failure was due to the illegal and adverse possession of another. x–57

Non-compliance with law may be excused where due to threats of personal violence, but the showing should disclose reasonable grounds to fear personal injury. xiv–65

Failure to break or cultivate the first year does not warrant cancellation where a former entryman has left the land in a condition of cultivation to be utilized in compliance with law.
i–137; iii–482; iv–175, 543; x–322; xv–9

Failure to break the full amount required the first year does not necessarily call for cancellation if good faith is manifest.
vi–829; vii–365, 441

Cancellation not warranted by failure to break the requisite number of acres where the entryman supposed that he had complied with the law and made good the deficiency as soon as discovered.
ix–180

Failure to break the requisite acreage within the statutory period may be excused where it is not the result of negligence and the default is in good faith cured as soon as possible, though not till after the initiation of. x–153

That part of the breaking, through mistake, is not on the land entered does not call for cancellation. x–585

Slight deficiency in acreage will not justify cancellation where a greater number of trees are growing on the land than is required on the statutory ten acres at final proof. ix–567

Failure to plant the full acreage or secure the requisite growth of trees does not necessarily call for cancellation where good faith is manifest. xii–254

Failure to secure a growth of trees does not call for cancellation if such failure is not due to negligence. x–591;
xii–502; xiii–90; xiv–423; xix–172, 499

Charging failure to plant the requisite acreage within the statutory period must fail if such default is solely due to the unusual inclemency of the weather. x–470

Must be dismissed although the requisite number of trees are not shown where the entryman has for a number of years complied with the law in good faith and the default is not attributable to negligence. vii–27

Failure to secure the requisite growth of trees calls for cancellation where the absence of good faith in the matter of planting and cultivation is apparent. xxvi–690

Contest—Continued.

XIII. Timber Culture—Continued.

Failure to secure the required growth within the statutory period casts upon the defendant the burden of showing that such failure was without fault on his part. VII–47, 63

Where the rights of a third party are not involved the government will not insist on forfeiture unless bad faith is shown. VII–89; X–107

Based on a charge of noncompliance with law may be defended by an intervening entryman claiming under a relinquishment. X–302

Partial compliance with the law being shown by the entryman, he may amend his entry, retaining such portions as he is entitled to by his said compliance, the contestant taking the remainder by virtue of his preference right. VI–689

One who alleges and proves a substantial failure on the part of the entryman to comply with any statutory requirement is entitled to a judgment of cancellation as against the entire entry (Linderman *v.* Wait, overruled). XIII–459

No defense to a charge of noncompliance with law that the entry was included within a swamp selection. XIX–484

No defense to a charge of noncompliance with law that the land would not grow trees without irrigation, and that such treatment of the land was not practicable. VIII–511; XVI–115; XIX–493

Plea of sickness not a good defense against a charge of concompliance with law if the claimant was in default at the time he was disabled for further compliance. X–352

Cancellation warranted where, after the lapse of six years, no trees are growing on the land and no excuse is offered for such failure. VII–61

Not a good defense that the default was the result of the negligence of entryman's agent. I–120; IV–493; VII–63; X–341; XI–161

Proof of "plowing" is an answer to the charge of failure to "break." VI–669

An entryman may declare his intentions, make timber-culture entry, and absent himself from the country for two years or more without forfeiting the entry, provided that he returns and that the law is complied with. II–251

Against an entry that appears of record through the failure of the local office to act upon the relinquishment thereof must fail where the party filing such relinquishment has thereafter complied with the law in the belief that his entry of the land has been allowed, and the contestant begins proceedings with full knowledge of the facts. XI–592

Contest—Continued.

XIII. TIMBER CULTURE—Continued.

For failure to break the requisite five acres the first year must fail where it appears that through an error of the local office in describing the land applied for the breaking was done on an adjacent tract. XIII–116

Charging non-compliance must fail where it appears that the requisite acts of cultivation were performed in good faith prior to the time fixed therefor and that the result of such course was not injurious to the growth of the trees. IV–175; XV–591

Against an entry for invalidity because made by an employee of the land department must fail, where it appears that the entry was allowed under express ruling of the Commissioner, and the entryman afterwards complied with the law and was not in government employ at the time of the contest. (See 2 L. D., 314.) XVII–85

A charge of failure to submit final proof within the statutory life of the entry, must fail where it appears that under the extension of time authorized by the act of May 20, 1876, the entryman is not in default. XXI–315

A charge of failure to submit final proof within the statutory period will not defeat equitable action on the entry if such failure is satisfactorily explained. XXV–501

Right to proceed with pending, not defeated by the commutation privilege conferred by section 1, act of March 3, 1891. XIX–38

Against an entry, initiated after the passage of the act of March 3, 1893, in which the charge is non-compliance with law, presents no cause of action, in the absence of an allegation of default on the part of the entryman occurring during the first eight years of the entry. XXVI–670

XIV. COAL LAND.

May be entertained against a coal entry, and if successful a preferred right of entry secured thereby. XII–336

XV. TIMBER LAND.

Will lie against an entry under the act of June 3, 1878, with a preferred right to the contestant if successful. XVII–151

Contestant. See *Application; Contest; Practice*, sub-title No. VI; *Relinquishment.*

I. GENERALLY.

II. PREFERENCE RIGHT.

I. GENERALLY.

Right of, first regulated by the act of May 14, 1880. I–76; II–60

An alien is not disqualified to initiate contest proceedings against an entry. XVII–503, 530

Contestant—Continued.

I. GENERALLY—Continued.

Qualifications as an entryman not requisite. III–18; IV–185; V–259, 296; XI–575; XXII–205

Validity of contest not affected by the fact that the contestant is a minor. XVI–403

The qualifications of a, are not material until such time as he may apply to exercise the preferred right of entry accorded to the successful contestant. XIX–106

In a contest wherein the, alleges a superior right in himself to the land it is incumbent upon him to establish his qualifications as an entryman. XXIII–472

A tenant at will of a homesteader is not, by reason of such relation to the entryman, precluded from contesting his entry. XXII–581

The right of a party to be heard as a, against an entry, and applicant for the land covered thereby, will not be recognized where it appears that he is at the same time the attorney of another claimant for the same tract. XXII–86

Generally must be a party in interest. II–219

A guardian of the minor children of a deceased soldier may institute a contest on behalf of his wards, and exercise the preference right by filing a soldier's declaratory statement for said minor children; and this right will not be defeated by the failure of the guardian to set forth in the affidavit of contest the capacity in which he was then acting. XXIV–472

Party without interest may institute contest against forfeited or abandoned homestead or timber-culture claims, but not against preëmptions. II–219

Distinction between "protestant" and. VI–763

A "protestant" does not become a, by filing an affidavit of contest in the absence of official action thereon. XV–23

One who prefers charges against an entry, furnishes evidence in support thereof, and pays the cost of his own testimony is a contestant, though he may formally waive the statutory preference right. XIII–722

A stipulation that a hearing ordered on a protest shall be treated as a contest, will not give the protestant the rights of a contestant, if he has not brought himself within the rules regulating the initiation and prosecution of a contest. XIX–442

An order for a hearing, based on an affidavit accompanying an appeal from the rejection of an application to enter does not confer the status of a contestant upon the applicant. XIX–442

Contestant—Continued.

I. GENERALLY—Continued.

That a party styles his proceeding against a homestead at the time of final proof a "protest" will not defeat his right as a, where he files at such time a corroborated charge, pays the costs, and claims a preferred right; nor can the entryman in such case defeat said proceedings by the withdrawal of his final proof. XX–342

A protest filed by a third party, during the pendency of a contest, setting up his own claims to the tract, and protesting against the recognition of any claims save his own in the event of the cancellation of the subsisting entry, does not confer upon said party the status of a, nor any right as against one claiming under a subsequent relinquishment. XX–147

One who appears at the time fixed for the submission of preëmption final proof and files a definite charge, in due form, against the alleged right of entry on the part of the preëmptor, pays the costs of the proceedings, and secures a favorable judgment, is entitled to the status of a successful contestant under the act of May 14, 1880. XX–325

Must pay the fees of the Land Office in the proceedings instituted to secure cancellation in order to acquire a preference right. XIV–299, 646; XX–153; XXII–419

Who, after the submission of his own testimony, declines to pay the further costs of the case is without interest in the controversy, and has no standing to complain of the refusal of the local officers to recognize him in the subsequent proceedings. XXII–462

Who desires to maintain his status as such must pay the expenses of a rehearing. XVI–481

On failure of, to pay the costs the case may thereafter be treated as between the entryman and the government. XXVI–210

A successful, who tenders all the fees required of him by the local officers at the time he applies to enter, loses no right that can be taken advantage of by an intervening entryman if the amount of the tender is less than the legal fees. XVI–514

An actual tender of the fees prescribed on the allowance of an entry, is not required of a successful, who applies to exercise his preferred right in the presence of an intervening adverse entry of record. XVIII–75

Protestant, by complying with the law and regulations, can secure the rights of a. VI–763

Can not transfer right of contest. I–76

Motive of, in attacking entry not material to defense. V–296

Right of the, dependent upon the successful issue of the contest. V–248; VIII–139, 357

Contestant—Continued.

I. GENERALLY—Continued.

Right of, dependent upon status of land at date of contest. IX–461

Right of the successful, rests upon the judgment and not upon the clerical act of cancellation. IV–248

Is not entitled to a preference right unless the cancellation or relinquishment of the entry is the result of the contest. XII–25

Is not entitled to a judgment of cancellation unless he shows a substantial non-compliance with law in a matter specifically alleged. IX–148

Right of the, must depend on his ability to sustain the charge, when the entry is canceled on intervening relinquishment not the result of the contest. VII–442

The right of a, to be heard will not be defeated by a hearing inadvertently ordered on a later contest. XXII–91

Right of, not affected by the failure of the local office to act upon the application to contest. IX–18

Right of, not defeated by a fraudulent intervening contest. IX–314

Right of a, not defeated by intervening claims. IX–269

The first, in time is entitled to the first process and hearing, and if, for any cause, he fails to sustain his charges, the second contestant in time is then entitled to be heard. XIX–501

Right of second, relates back to the date of filing contest affidavit. IV–506; VI–530

Right of second, can not be defeated by curing the default charged after contest is filed and pending the disposition of a prior fraudulent and collusive contest. VI–530

The right of a second, abates on the filing of a relinquishment in the pending suit. XX–3

Entry made by a, on a relinquishment, during the pendency of a second contest charging disqualification of the original entryman and collusion with the first contestant, permitted to stand, where the allegations in said contest are not supported by the evidence. XXIX–211

Second, can not question, collaterally, the sufficiency of the evidence on which a judgment of cancellation was rendered in the prior contest against the same entry. VII–400; XIX–488

Withdrawal of, will not prevent action of the Department on the evidence. V–40, 385; XII–495

Waiving his rights leaves the case as between the entryman and the government. III–408

Personal attendance of, at hearing presumptively essential, and the claimant can not take advantage of his absence where it was due to the fault of said claimant. VII–60

Contestant—Continued.

I. GENERALLY—Continued.

Circular instructions of the land department (that entry on land in the possession of a settler is invalid) in force at initiation of a contest, though subsequently revoked, protect the contestant. II–66

Right of, as against one claiming under a subsequent relinquishment attaches as of the date when the affidavit of contest is filed if the charge therein is sustained. XV–413

Takes nothing under a relinquishment that is not the result of his suit. In such case his rights depend on the establishment of his charge against the entry. XXI–333; XXII–71

Right of, to proceed against an entry not impaired by a relinquishment, accompanied by an application to enter, filed after initiation of contest. X–256; XI–65, 525

No rights of, defeated by a relinquishment filed pending contest. III–546; IX–440; X–105, 302; XIV–306; XVI–329; XVIII–92, 108

The right of a, to be heard on a charge of abandonment is not defeated by a subsequent relinquishment, and intervening adverse entry of a third party, even though the relinquishment is not the result of the contest. XIX–175

Where a relinquishment is filed during the pendency of a contest, on which notice has not issued and a third party is allowed to enter the land involved, the burden is upon the, to show that the charge in said contest is well founded. XXV–359

Rights of a, not defeated by a relinquishment filed during the pendency of the contest if the evidence submitted warrants cancellation on the charge as laid by him. XIII–19, 34

The relinquishment of a contested entry does not defeat right of a, if he can show that his contest caused the cancellation of the entry. XIII–437

Is entitled to the benefit of a relinquishment if filed as the result of a contest, though the charge is technically insufficient to warrant a hearing. X–105; XIX–8

Right of, not defeated by a relinquishment and the intervening entry of a third party filed during the pendency of the contest. II–265, 283; X–398; XVI–514

Right of, after award of preference right, not affected by a relinquishment of the contested entry. XXI–474

The failure of one holding a relinquishment to file the same until after the initiation of contest by another will not defeat or impair the right of the contestant. IX–269

In case of relinquishment pending contest, entry may be made subject to the right of contestant. III–546

Contestant—Continued.

1. GENERALLY—Continued.

Right of, under act of May 14, 1880, is personal, and on his death the question at issue is between the government and the entryman. III–5; V–369; VI–93, 755; VII–491; VIII–598; IX–287

The right of a, is personal, and the devisee of a contestant takes no right in the contest. XVIII–446

Right of the, is only held personal and terminating with his death where he has no other than the preference right of a successful contestant. VIII–405

The right to complete an entry initiated by one who contests a timber-culture entry and applies to enter the land covered thereby, but dies prior to the favorable termination of the suit, descends to the heirs. IX–161; XIII–34

The rule that the right of, is personal and does not descend to his heirs is not applicable to a case where the contestant asserts a prior-settlement right. XV–19

The right of a settler, with a pending application to make homestead entry, who dies before the determination of a contest instituted by him against a prior adverse entry, descends to his heirs, and may be perfected by them on the cancellation of the entry under attack; and this right is in no manner dependent upon the provisions of the act of July 26, 1892, with respect to the heirs of a. XXII–300

The right of a settler on a tract embraced within a railroad selection, who applies to enter, accompanying his application with an affidavit of contest against the railroad selection, and thereafter dies before any action is taken, descends to his heirs, and may be perfected by them on the elimination of the selection. XXVII–621

Act of May 14, 1880, amended, so that heirs of a deceased contestant may proceed with the suit. Circular of January 9, 1893. XVI–34

Under section 2, act of July 26, 1892, the heirs of a, if citizens of the United States, are entitled to continue the prosecution of a contest in the event of the contestant's death before the final termination of the suit. XVII–402

The act of July 26, 1892, amending section 2, act of May 14, 1880, and providing that the heirs of a deceased, may proceed with the contest, is not applicable where the contestant dies prior to said act. XVI–340; XVIII–446

Contestant's failure to file affidavit as to qualification can not be set up for the first time on appeal. III–513

Rights of timber-culture, defined and limited by the act of June 14, 1878. I–160

Right of timber-culture, who applies to enter depends upon establishment of default alleged. VIII–357

Contestant—Continued.

I. GENERALLY—Continued.

Of timber-culture entry may acquire a preference right under the act of May 14, 1880, though no application to enter is filed with the contest. VII–9; X–398

Who is successful must make affidavit that he has not exhausted his right since filing application before his entry will be allowed. III–360

Requiring the successful contestant of a timber-culture entry to file a supplemental affidavit as to his qualification to enter will not impair rights under his application filed at the initiation of the suit. VII–330

Of timber-culture entry can not insist on forfeiture of entire entry where only partial failure is shown and bad faith does not exist. (See 13 L. D., 459.) VI–689, 829

Of timber-culture entry estopped from setting up want of cultivation where he had charge of the land for that purpose. IV–205

Can not take advantage of evidence showing a default not specifically charged where the specific charges have failed. VII–89, 408

Who has obtained a judgment of cancellation as to part of an entry may waive the preference right thus secured and attack the entry in its entirety, or exercise such right and then proceed against the remainder of said entry. XIII–271

II. PREFERENCE RIGHT. See *Homestead*, sub-title *Act of June* 15, 1880.

One who contests an entry and secures the cancellation thereof is entitled to a preferred right of entry. XIII–113

It is offered as the only adequate means of protecting the United States against the illegal acquisition of public lands, and it is the duty of the land department to encourage the policy. II–260

Is akin to the law granting to the informer a moiety of the penalty in criminal cases; by acceptance of the information contestant acquires the right to furnish the proofs and obtain the reward. II–61, 167

In a hearing ordered between two settlers to test a question of alleged priority, a "preference right of entry" is not acquired as under a. XI–251

Who alleges the death of an entryman, and that the deceased left no heirs competent to inherit his rights, and secures the cancellation of the entry on the proof of such allegations, is entitled to a preferred right of entry. XXVIII–136

Contestant—Continued.

II. PREFERENCE RIGHT—Continued.

Who holds a relinquishment and brings a contest against the entry covered thereby, charging the fact of relinquishment, acquires no preferred right, if he subsequently files said relinquishment and the entry is canceled. XVIII–358

Who, pending his contest, purchases a relinquishment of the contested entry and files the same does not thereby acquire the status of a successful, and the right of a settler, who is then residing on the land, will take effect at once on the filing of the relinquishment and exclude the claim of the contestant. XVII–412

The preferred right of a, is not secured by the purchase of a relinquishment. XV–441

Acquired by successful attack for fraud or illegality. IV–370, 461

One who successfully contests a desert-land entry is entitled to a preference right of entry under the act of May 14, 1880. III–69; V–694, 712; VI–1, 572; VII–186; XV–320; XIX–382

A settlement claim, on unsurveyed land subsequently included within the desert-land entry of another, will defeat the preference right of one who successfully attacks said entry, if duly asserted on the survey of the land. XXVII–594

A preëmptor who contests and secures the cancellation of a prior desert-land entry in conflict with his filing, and thereupon perfects his preëmption claim, exhausts thereby his preferred right and has no claim as a successful contestant against the remainder of the tract covered by the contested entry. XVII–119

The successful termination of a homestead contest on any charge affecting the legality of the claim secures the right conferred by the act of May 14, 1880. IX–209

Of an entry under the timber and stone act acquires a preferred right if successful. XVII–151

May be properly awarded to one who has made application to contest, at his own expense, a coal entry, and furnishes information which leads to the cancellation of said entry on proceedings subsequently instituted by the land department. XII–336

Accorded a succesful contestant by the act of May 14, 1880, may properly extend to an agricultural claimant who successfully contests a mineral claim, and clears the record thereof. XVI–8; XIX–184

Of a scrip location is entitled to preference right of entry if successful. XIV–523; XXV–92

May be secured by contest against an entry of Kansas Indian trust land. IX–329

Contestant—Continued.

II. PREFERENCE RIGHT—Continued.

Not secured through contest against a preëmption filing. II–581; IX–92; XII–639

Not secured by proceedings on protest against an application to enter. XXIX–168

Acquired by successful attack upon swamp selection. IV–497; XIV–658

May be secured as to the land finally excluded from an entry allowed for more than 160 acres and contested for such irregularity. VIII–205

Is not accorded for successful contest against timber-culture entry for illegality. I–421

One who contests successfully an illegal timber-culture entry acquires a preferred right of entry. II–290, 304; III–185

Without the right of contest under the timber-culture law there can be no preference right acquired. I–626

Contestant against timber-culture entry has a preferred right of entry under section 2, act of May 14, 1880. II–323

Attaches where the contestant (timber-culture) has proved the charge, though he failed to file application for the land. II–307, 319

Timber-culture contestant who seeks to take the land as a pre-emptor acquires no right (overruled, 5 L. D., 591). II–293

Is personal and can not be transferred. I–42, 76, 487; VII–186, 491; X–560

Is a mere privilege, which the contestant may at any time waive. II–41, 257, 323; IV–535

The preferred right of a successful, is personal and can not be transferred to another. The transferee in such case acquires no right that he can assert as against the intervening entry of another. XV–394

Conceding that one who furnishes evidence on which a patent is set aside is equitably entitled to a preferred right of entry, there is no authority for recognizing such equity as the subject of transfer. XXIX–178

The preferred right of a successful, can not be defeated by the prior settlement of a third party who fails to assert his claim in the contest proceedings. XXV–289

A settlement on land covered by the entry of another, confers no right as against a successful, who secures the cancellation of such entry. XXIV–432

The preferred right of a successful, is not defeated or impaired by adverse settlement claims acquired subsequent to the entry under attack. XXIV–221; XXVI–31

Contestant—Continued.

II. Preference Right—Continued.

A settlement made subject to the right of a successful, defeats the subsequent entry of a third party who files a waiver of the contestant's preferred right. XV–443

Waiver of, confers no right upon a third party as against the original entryman. VII–381

May be waived, and after such waiver the land is subject to entry by the first qualified applicant. V–293; X–560

The right of the successful contestant to waive is one with which the government has no concern. III–560

Who, during the trial, waives his preferred right, is no longer a party in interest; and the case is thereafter a matter between the entryman and the government. XXIX–606

If sold, may be filed without specific authority therefor from the contestant. V–294

Where waived by an amicable and executed agreement with a third person whose entry has been allowed pending the contest the entries thereunder may be allowed to stand. II–257

Will not be held forfeited on a charge that the contestant has sold such right to another, where it appears that the contract of sale, if made, was not carried into effect, and that the contestant promptly applied to exercise his right. XVIII–330

Questions as to the preference right of a, can only arise on application to exercise such right, and should not be decided prior thereto. IV–393; VI–238; IX–391; XII–157; XIV–587; XV–415; XXI–461; XXII–22, 205; XXV–489

The rule that the question of preference right will be deferred until an application is made for its exercise, is not applicable where the record discloses that the, is disqualified as an entryman, or where the, is estopped from entering the land as against the adverse claim of another. XXVII–30

Under the act of May 14, 1880, is not secured unless the cancellation of entry is caused by the contest. IX–193, 211

Dependent upon ability to establish the charge against the entry. I–104; VII–46; IX–440

Awarded without respect to the allegations on which the contest was initiated. I–145

The right of a successful, accorded by section 2, act of May 14, 1880, is not dependent upon the truth of the charge as laid, if the cancellation of the entry is the result of a contest prosecuted in good faith. XXIV–221

Under the supervisory authority of the Department a preference right of entry may be accorded a party through whose efforts an entry is canceled, though he may not be entitled to be heard as a, against such entry. XXIII–514

Contestant—Continued.

II. PREFERENCE RIGHT—Continued.

Will not be affected by the contestant's former relation to the land. IV–19

None attaches where the contest has been improperly brought. II–285

Not dependent upon intention to use the same when bringing suit. V–360

No preference right acquired by, if the contest is not begun and prosecuted in good faith to acquire title to the land. XI–5

Not secured through a speculative or fraudulent contest. V–358; VI–164, 288; VIII–248; IX–491; X–250; XIII–132, 493; XVII–180; XIX–426

Can not be secured through a contest prosecuted in the name of another. VII–186

Will not be permitted to take advantage of his own wrong and thus secure a preference right of entry. IX–177

Not defeated because the entry was canceled on record evidence. IV–461, 517; V–404

Who files an affidavit of contest subject to the prior contests of two others is not entitled to a preferred right where he makes no charge against said contests and the cancellation of the entry is not the result of his suit. XV–375

A second, whose application to contest is held pending the disposition of a prior suit on the same ground, acquires no preference right if the entry is canceled as the result of a hearing ordered to determine all conflicting claims. XV–324

A second, who files an affidavit of contest secures no preference right thereby if the entry is canceled on the prior contest. XIII–696

Preference right of, not defeated by a hearing inadvertently ordered on the subsequent contest of another. XII–318

Not secured by one who simply avails himself of action already taken by the government. VI–833

Not secured by furnishing information as basis for special agent's report. VI–828

Not secured by a contest filed during the pendency of government proceedings against the entry if such entry is canceled as the result of said proceedings. IX–211, 569; XII–25

One admitted as *amicus curiæ* is entitled to a preferred right of entry under the act of May 14, 1880, if he procures a cancellation. III–21

Contestant—Continued.

II. PREFERENCE RIGHT—Continued.

Preference right of, not defeated by the cancellation of the contested entry on subsequent proceedings by the government where prior thereto the contestant had submitted testimony sufficient to secure cancellation and obtained the favorable judgment of the local office thereon. XII–285

Preference right of, will not be defeated though the entry is canceled on the subsequent contest of another, where said contest is allowed to proceed subject to rights secured under the first. XIV–373

One who fails to appeal from a decision of the local office dismissing his contest is not entitled to, in the event the entry under contest is canceled on the evidence submitted. X–584; XI–328, 416

The failure of a, to appeal from the rejection of his application to enter, filed on relinquishment of the entry, will not defeat his preferred right, as against an intervening entryman, who is prosecuting a contest, involving the same tract, in which the disqualification of said contestant is charged but not proven. XIX–425

Not defeated by a charge of having attempted to mislead the local office where the charge was ignored by that office. VI–342

The request of, for the dismissal of the contest will not defeat his preference right thereunder where he subsequently, in good faith, prosecutes the same to a successful conclusion. XII–265

The right of a successful contestant against a timber-culture entry is not affected by the possession of the defaulting entryman. IV–508

The preference right of the successful, can not be questioned by the defeated party after his entry is regularly canceled. XII–32

Can not secure a preferred right of entry by settlement on the land prior to the cancellation of the entry under attack. XVIII–358

Not secured by breaking five acres of land while it is covered by the uncanceled timber-culture entry of another. VII–352

Does not entitle the contestant to make private entry of a tract not subject thereto. VIII–282

Can not be exercised on lands reported valuable for coal prior to the act of March 3, 1883, and not thereafter offered. X–140

Can not be defeated by purchase under the act of June 15, 1880 made pending contest. II–164; IV–580; V–230, 608; VI–446, 641; VII–381, 500; VII–463, 579, 595; IX–18; X–111, 410, 678; XVI–183

Who applies to exercise a preference right must show his qualifications as an entryman at such time. IV–203; XIV–523

Contestant—Continued.

II. PREFERENCE RIGHT—Continued.

May be secured through contest against a homestead entry by alien if qualified when the entry is canceled and he applies to exercise the right. V–259; XVII–530

Can not be asserted by one who has disqualified himself to make entry prior to the final disposition of the contest. VII–542

A preferred right of homestead entry can not be secured through a contest instituted by a single woman, if she marries prior to the exercise of said right. XXIX–297

The right of a successful, to exercise the preferred right of entry accorded by the act of May 14, 1880, must be determined by his qualifications to make such entry at the time he applies therefor, irrespective of his qualifications prior thereto. XXV–311

The preferred right of entry given to the successful, by the act of May 14, 1880, can not be held to extend to one, who, under another statutory enactment, is disqualified and prohibited from entering the land involved. XXVI–34

Right of a successful, not defeated by the allowance of an intervening entry subject to the contestant's preferred right. XVIII–504

On the successful termination of a contest the land involved should be reserved for the benefit of the, during the statutory period accorded for the exercise of the preferred right.
XV–424; XVI–334; XX–233

The departmental instructions of March 30, 1893, with respect to the reservation of land covered by a canceled entry, for the exercise of the preferred right of a, are only applicable to contests prosecuted under the act of May 14, 1880. XIX–547

In the case of a departmental decision rendered prior to the change of practice, following the decision in Allen *v.* Price, but wherein notice of such decision is not given until after such change of practice, the, is entitled to the protection provided for under the new practice. XXIV–477

Does not operate to reserve the land during the period allowed for the exercise of such right. I–162, 486

An entry made pending a preferred right which the contestant relinquished while the question was on appeal is allowed to stand.
II–323

The existence of, does not bar an application which should be received subject to the preferred right. II–276, 321

Should not be exercised in the presence of an intervening entry until after due action had on notice to the intervening entryman to show cause why his entry should not be canceled.
VI–643; IX–491; X–18, 41

Contestant—Continued.

II. PREFERENCE RIGHT—Continued.

Where the record shows an intervening entry made after expiration of, such entry should not be canceled without hearing. VI–509

The entry of a successful, allowed during the existence of an intervening adverse entry of the same land is illegal, and he acquires thereby no additional rights to the land. XVIII–446

In the absence of specific charges against the right of a successful, a hearing will not be directed on the application of an intervening entryman. XV–358

In a hearing ordered between an intervening entryman and a successful, the issue is limited to the qualifications of the, and his right to make entry. XIII–35

On a general order to an intervening entryman to show cause why his entry should not be canceled and the preferred right of the contestant allowed, he may set up any charge involving the invalidity of said right. X–250

The period within which a successful, is required to assert his preferred right, does not begin to run until he is notified of such right. XXVIII–530

A successful, is not required to exercise his preferred right of entry until he has received due notice of the cancellation secured by his contest. XVII–530

The preferred right of a successful, will not be defeated by an intervening entry allowed without notice to said contestant of his right of entry. XX–397

Thirty days after the receipt of notice of cancellation within which to exercise the preferred right of entry allowed.
V–183; VII–553; X–41; XI–474

Is lost by failure to use the same within the thirty days accorded by the statute. V–115; IX–70, 478; X–297; XI–202

No preference right can be asserted, in the presence of an adverse claim, by a contestant who fails to make entry within the statutory period after notice of cancellation. XI–175, 208; XXI–542

Notice of cancellation to the successful, by unregistered letter is not sufficient. VII–335; VIII–477

Notice of cancellation to the attorney of, is sufficient.
III–409; IX–70, 478; X–324

Notice of cancellation to the attorney, erroneously entered of record, is not notice to the. VI–509

Who fails to give his proper post-office address can not set up want of notice of the order of cancellation as against an intervening entryman who has no notice of any defect in such service.
XI–574; XIII–670

Contestant—Continued.

II. Preference Right—Continued.

Notice of cancellation to a successful, must affirmatively appear of record to charge him with failure to exercise his preference right within the statutory period, if the absence of such notice is not due to the negligence of the contestant or his attorney. XVIII–439

Who resides upon and improves the land covered by the canceled entry, but fails through ignorance to enter the same within the statutory period, is not precluded from subsequently entering said land by the intervening entry of another secured through wrongful means and with notice of the contestant's claim. XII–533

Who does not exercise his preference right within the statutory period can not assert the same thereafter in the presence of adverse claims, even though he may have believed that his entry was in fact of record and under such belief had proceeded to comply with the law. XI–208

Failure to exercise the preference right within the statutory period will not defeat such right where the delay is caused by the local office referring the matter to the Commissioner for instruction. XIII–271

Failure of, to exercise preferred right within thirty days after notice of cancellation will not defeat said right where the contestant is informed in said notice that his right will not be recognized on account of an intervening claim. XIII–487

A successful, can not be held to be in default in the matter of asserting his preferred right, where he goes to the local office within the statutory period for the purpose of making entry, and is there informed that his application can not be allowed on account of a pending contest. XVIII–567

A successful, will not be held to have lost his preferred right of entry by failure to exercise the same within the statutory period, where his action is based on the advice of the local office as to the departmental practice then in force. XXV–377

A successful, who fails to exercise his right within the statutory period will not be heard to plead want of notice of cancellation as against an intervening claim where the notice is sent to the address given by his attorney. XI–574; XIII–670

Where the failure of, to receive notice of a decision of cancellation results from his carelessness or neglect, and other rights attach in the meantime, his preferred right of entry is lost. XXI–347

An intervening entry will not defeat the preferred right of a successful, who fails to receive notice of cancellation, if such failure is not due to want of diligence on his part. XXIII–259

Contestant—Continued.

II. PREFERENCE RIGHT—Continued.

Failure of a successful, to exercise the preference right within the statutory period can not be excused by the fact that he was imprisoned for a criminal offense during such period. XIV–529

Failure of a local office to give notice of, does not prejudice the contestant. II–323

Of contestant against homestead entry may be exercised on part of the land in contest and a contiguous tract; of contestant against a timber-culture entry is confined to land in contest, unless less than 160 acres, when an adjoining tract may be included. II–289

Payment of the land office fees is a prerequisite to the right, and will be presumed (on appeal) wherever the contrary does not appear. II–323

A ruling that the contestant is not entitled to, in a decision ordering a hearing, will not bar the subsequent assertion of such right, though no appeal was taken from such decision. VIII–400

As between two, attacking the same entry, the preferred right of entry should be accorded the first, though the judgment of cancellation may have been rendered on evidence submitted by the second, if the same judgment is warranted by the evidence adduced under the prior contest. XXV–143

Preferred right of entry may be accorded the first, though the cancellation is made on the subsequent suit of another, where the first had prior thereto submitted sufficient evidence, was not in default, and the second is charged with notice of the rights of the first. XII–525

Should not be allowed, on filing the relinquishment of the entryman, to exercise the right of entry during the pendency of a plea in intervention setting up fraud and collusion as against the contest. XIII–24

A preëmptor who appeals from the rejection of his filing is not entitled to a preference right as a successful, if his appeal results, on examination of the records, in the cancellation of a prior town-site entry. XVI–127

A contestant who secures a, prior to the repeal of the preëmption law, and is at such period residing on the land with intent to preëmpt the same, has a claim thereto lawfully initiated, that is protected under the terms of said repeal. XX–396

A contestant who secures the cancellation of an entry prior to the repeal of the preëmption law, but does not settle on the land until subsequent thereto, has no right that can be protected under the terms of said repeal. XX–181

Contestant—Contiuued.

II. PREFERENCE RIGHT—Continued.

Who fails to secure a judgment of cancellation until after the repeal of the preëmption law does not have any right thereunder that falls within the protection extended by the repealing act to claims "lawfully initiated." XVII–149

Who does not apply to make timber-culture entry until after the passage of the act of March 3, 1891, can not make such entry by virtue of his preference right. XIII–169; XXVI–474

Who fails to exercise his preferred right within the statutory period has no protection as against the subsequent repeal of the timber-culture law. XVII–117

Who commences action against a homestead entry and at the same time against a timber-culture entry, and files therewith an application to enter under the timber-culture law, is bound thereby as against one who subsequently settles on the homestead tract, and will not be heard to assert any right thereto under the timber-culture law. XIII–283

Who at the time of initiating contest applies to enter part of the land covered by the entry under attack, omitting certain tracts included within the settlement claim of a third party, and thereafter makes no protest against the occupancy of said tracts by such settler, is estopped from asserting, as against the settler, his preference right. XXVII–30, 658

Is estopped from asserting his preference right as against one with whom he has verbally agreed to waive said right, and thus induced said party to settle upon and improve the land. XIV–381

Who attacks a homestead entry of land that is embraced within the prior desert entry of another, against whom no default is charged, acquires no preference right in the event of success. XVI–310

Preference right not secured by a contest against an entry covering land reserved from such appropriation. XV–71

The standing of one who files a soldier's declaratory statement for a tract covered by the prior settlement right of another that is subsequently asserted in the form of an entry will not defeat the preferred right of a, who successfully attacks said entry. XX–334

Whatever preferred right may exist on the cancellation of the entry under attack, is defeated by an intervening proclamation by the President declaring the establishment of a forest reservation that includes the land embraced within the contested entry. XIX–489; XXX–6

Acquires no right by a contest against an entry of lands reserved on account of a railroad grant, that will defeat the right of the entryman, who is in possession as a licensee, to purchase the land under the provisions of section 3, act of September 29, 1890, and the amendatory act of January 23, 1896. XXIV–406

Contestant—Continued.

II. PREFERENCE RIGHT—Continued.

Land in the occupancy of an Indian is not subject to entry, and a contest against an entry of land so excluded from disposition will confer no right upon the, that will prevent the Department from subsequently holding the land in reservation, with a view to its allotment to the Indian. XXIV–413

The statute giving a preference right to the successful, has never been extended to Indian allotments for which trust patents have issued. XXIX–68

Who successfully attacks an entry covering a tract within the limits of a withdrawal for a public reservation, made after said entry was allowed, does not thereby secure a right that will exclude said tract from the reservation. XVIII–523

Right of, in the nature of an adverse claim that will defeat equitable action on the entry. I–78

Who, in exercising his preference right, locates a soldiers' additional homestead certificate upon the land formerly covered by the contested entry, and thereafter, under the belief that the first certificate is defective, locates another soldiers' additional right upon the same land, does not thereby waive any rights secured by the first location. XXX–61

An occupant of a town lot within an abandoned town-site claim acquires no right by his occupancy that will defeat the preferred right of one who successfully contests the town-site claim; nor will the homestead application of such occupant, tendered during the pendency of said contest, operate as a bar to the exercise of the preferred right. XXVIII–530

Continuance. See *Practice.*

Contract. See *Accounts.*

One who seeks to rescind a, on the ground of fraud should establish the charge by irrefragable evidence and tender a return of the consideration received. XV–451

Costs. See *Accounts; Fees; Practice*, sub-title *Costs.*

Court of Claims.

Jurisdiction of, to consider referred cases. IV–5, 14

Reference of cases to, discretionary with the Department. IV–443

Not an appellate court for reviewing decisions of the Department. IV–443

Case pending before the General Land Office not referred to. IV–375

Credit Entry. See *Entry*, sub-title No. VII.

Cultivation. See *Final Proof*, sub-titles Nos. X, XII, and XIV; *Homestead; Preëmption.*

Planting a crop with no expectation or intention of securing a return therefrom is not compliance with the law in the matter of. XXII–205

Of a tract under authority of a railroad company that has no right thereto confers no right as against others. XI–559

Death. See *Contest*, sub-title No. V; *Evidence*, sub-titles Nos. V and VI.

Decision. See *Judgment; Jurisdiction; Land Department; Res Judicata.*

In the preparation of, for the signature of the Secretary or Commissioner, where prior opinions are cited, the reference should be to the volumes published by the Department, if such opinions or decisions are found therein. III–419

Publication of a departmental, in the Land Decisions is not equivalent to an official promulgation thereof. XII–252

Of the local officers should be signed by both if they concur in the conclusions reached. XII–642

If, through inadvertence, either the register or receiver fail to sign an opinion that is in fact the opinion of both, the signature may be attached, *nunc pro tunc*, at any time before the record is transmitted. XII–642

Of the Department in matters of procedure is notice to all parties, equally with the rules of practice. XIII–635

Will not be made on hypothetical cases or questions irregularly presented. II–765; IV–310, 389, 393, 451; V–258; IX–194

Of the local office are not effective until passed in review by the General Land Office. III–567; V–246

Appeal will not lie from the promulgation of a departmental. XV–190

Decisions of the officers of the land department made within the scope of their authority are generally conclusive everywhere, except when reconsidered by way of appeal within the Department. XIII–15

Of the local officers as to the facts is entitled to special consideration, and the fact that they personally inspected the premises adds to the value of their conclusion. XVI–95

Of local officers as to matters of fact entitled to special consideration. IX–135; VI–225, 330, 660

Declaratory Statement. See *Entry*, sub-title *Desert Land; Filing; Homestead*, sub-title *Soldiers.*

Dedication.

Of land for municipal uses under statutory proceedings divests the government of title. x–375

Of land may be made by the United States. x–375

By the proceedings under the act of September 26, 1850, title was passed to the village of Sault Ste. Marie of the land set apart for cemetery purposes, and on the incorporation of the village said title vested in the municipal authorities. x–375

Deed.

From husband to wife recognized as valid if authorized under the laws of the State in which the land is situated.
iv–355, 432; viii–502; xii–244, 455

Though absolute on its face, may be shown to have been given as a mortgage. xiv–537

Though in form a, may be treated as testamentary in character.
xx–428

Deposition. See *Evidence.*

Deputy Mineral Surveyor. See *Land Department.*

Deputy U. S. Surveyor. See *Land Department.*

Desert Land. See *Application; Contest; Entry; Final Proof*, subtitles Nos. xi and xii; *Water Right.*

I. Generally.
II. State Selections.

I. Generally.

Circular regulations, June 27, 1887. v–708

The act of March 3, 1875, providing for the entry of, in Lassen county, California, is repealed by the amendatory act of March 3, 1891. xvi–467

Land which, one year with another for a series of years, will not, without irrigation, make a fair return to the careful, ordinarily skillful, and industrious husbandman, is. ii–19, 20

Land which produces a crop, though an inferior one, whether of grass, wheat, barley, or other crop to which the soil and climate are adapted, which is a fair reward for the expense of producing it, is not. ii–19

Annual rainfall taken into consideration in determining whether land is desert in character. xxviii–501

Though it may appear that the productiveness is increased by irrigation, such fact does not establish the desert character of land.
vii–425

Desert Land—Continued.

I. GENERALLY—Continued.

Land that without irrigation will produce grass in paying quantities is not subject to desert entry. II–18; IV–33; VIII–163; X–169

A tract bordering on a stream and containing living springs, and that includes land that produces a natural growth of grass in paying quantities, and trees of native growth, is not subject to desert entry. VII–180; X–558; XI–206

An entry should not be allowed of land on each side of living water, in the absence of the clearest proof of the desert character of the land. XXVII–123

Land that produces a natural growth of timber is not subject to desert entry, and it is immaterial whether such timber is of value or otherwise. V–595; VII–425; XII–34; XV–271

A natural growth of timber occupying a narrow non-irrigable ridge that forms a small part of a tract embraced within a desert entry will not be held to defeat the entry. XXII–412

A growth of mesquite trees will not exclude land from desert entry if it appears that said land will not, without irrigation, produce an agricultural crop. VI–662

Lands partly desert and partly agricultural can not be entered under the desert act. IV–33

Clear proof as to the character of the land required where the field notes describe it as "first-rate" and the plat shows a river crossing the section. IV–261

Strong proof will be required to establish the desert character of land returned as "good" or "first-rate" bottom land. VII–425

That the land was at one time included within a hay reservation raises a presumption against its non-desert character, but such presumption is not conclusive. X–313

Reclaimed land not subject to entry. IV–165; XIV–194

Case of Rivers *v.* Burbank cited and distinguished. IV–165

Already reclaimed and held by another not subject to entry. XVI–40

The mere fact that a tract of arid land is traversed by an irrigating canal is not sufficient to constitute reclamation thereof, nor take it out of the class of lands subject to desert entry. XXIII–138

Additional proof as to the character of land covered by an entry may be properly required by the Department. IX–379

Lassen county, California, lies in a section of the country designated by Powell as "the arid region." II–21

The degree of productiveness after irrigation does not necessarily determine the right of entry if the land is in fact desert and water sufficient for irrigation has been supplied. XIV–270

A small amount of non-irrigable land may be included in the entry. V–481; VI–23

Desert Land—Continued.

I. GENERALLY—Continued.

An entry will not be allowed of land chiefly valuable for the saline deposits thereon, and practically not susceptible of reclamation on account of its saline character. XX–299

A tract the greater portion of which is non-irrigable may not be taken as. VI–39

Entry not allowed to include a non-irrigable tract of eighty acres. VIII–113

On exclusion of non-irrigable land the entryman may elect which contiguous tracts he will enter. VI–38

In the absence of an adverse claim, an entry made in good faith will not be canceled though it includes non-irrigable land. IX–137

Of no consequence to the government whether the non-irrigable land covered by the entry is situated in one or more of the smallest legal subdivisions. VIII–48

The non-irrigable character of a portion of the land entered will not defeat the right to a patent if the land susceptible of irrigation is reclaimed and the remainder is of no value to the government. X–495; XXI–211

The non-irrigable character of the greater part of a 40-acre tract will not defeat an entry therefor if the land susceptible of irrigation is reclaimed in good faith and the remainder is valueless from its rocky and hilly character. IX–204

An entry will not be disturbed on the ground that the larger portion of each smallest legal subdivision is non-irrigable if the reclamation shown is otherwise satisfactory and the desert character of the land is apparent. XI–277

If negligence does not appear, the entryman may be permitted to relinquish the non-irrigable part of the land covered by his entry and submit proof for the remainder. IX–430

May be amended by substituting a tract not included therein for one of the subdivisions covered by said entry where after diligent effort it is found impossible to effect reclamation of said subdivision. XXI–265

The only reclamation specified in the act is by conducting water upon the land. III–9

The conversion of a worthless tract into grass-bearing land constitutes reclamation. III–9

Reclamation shown by crops actually raised. I–26

Fact of reclamation may be established without showing crops as the result of irrigation. V–120, 151; XV–535

Is not reclaimed unless water in sufficient quantity for cultivation is carried upon the land. I–26

Desert Land—Continued.

I. GENERALLY—Continued.

The water conveyed upon the land must be in quantity sufficient to prepare it for cultivation. II–692

Reclamation is an accomplished fact where the water in sufficient volume has been brought on the land, and so disposed as to render it available for distribution when needed. XVIII–16; XXI–211

A water supply derived from wells located on the land may be accepted as sufficient if it be shown that said supply is controlled by the entryman, is permanent in character, and effectively used for the purpose of reclamation. XIII–30

The present power to supply, by means of a pump and fixtures, water in a sufficient quantity to render the land productive, with due provision made for the distribution of the water, may be accepted as a proper showing, though at such time no crop is planted on the land. XXVII–516

Mode of irrigation not prescribed by the statute, but it should be such as to show good faith and reclaim the land. IX–419

There is no penalty provided for failure to reclaim, but in the place of forfeiture the purchaser is required to advance a part of the purchase price as an assurance of good faith. III–9

Entry will not be disturbed where the default in reclamation is cured before contest is brought. III–9

Relinquishment will be required of subdivisions not substantially reclaimed. VII–253

Failure to reclaim for four years after entry shows an entire want of good faith. II–18

The partial irrigation of a tract while held as a preëmption claim by the entryman will not defeat his right under the desert-land act where substantial reclamation remained to be effected after the original entry. VII–374

Partial reclamation prior to application calls for special showing as to the facts. IV–165

If taken under the homestead law, compliance with its terms must be shown. V–297

Declaratory statement filed for, under the Lassen county act, by one who holds another tract under a previous filing, confers no right as against the subsequent homestead entry of another. XIV–220

Under the act of August 30, 1890, a homestead entry of, subject to the arid-land act of 1888 is protected and may be perfected if not selected for a reservoir. XIV–123

For decisions on the price of, see *Public Land*, sub-title No. II.

Desert Land—Continued.

II. STATE SELECTIONS.

Regulations of November 22, 1894. XX–440.

Amended regulations of August 10, 1895. XXI–89

Regulations of September 20, 1898. XXVII–635

Regulations concerning the making of proof for desert lands segregated under section 4, act of August 18, 1894, as amended by the act of June 11, 1896. XXVI–480

A relinquishment by the State of, included in a contract made under section 4, act of August 18, 1894, must be executed by the officers designated by the State legislature to manage and dispose of said lands. XXIV–562

Under the provisions of the act of 1894, the departmental regulations thereunder, and the terms of the State act, the maps, and lists of selections shown thereby, are properly authenticated by the signature of the chief clerk of the State board of land commissioners. XXIV–562

Under the provisions of the State statute accepting the terms of the desert-land act of August 18, 1894, a contract on behalf of the State, with the United States, executed by the commissioner of arid lands for said State, is not valid if not approved by the governor and attorney-general of said State (Wash.). XXV–33

The provision in the act of June 11, 1896, that patents for, may issue to the States when an ample supply of water is actually secured, without regard to settlement and cultivation, is not limited to lands on which liens have been placed under said act, but is applicable to all lands donated by the act of August 18, 1894. XXVI–74

Deserted Wife. See *Contest*, sub-title No. X; *Entry*, sub-title No. XV; *Homestead*, sub-title No. IV; *Preëmption*, sub-title No. III.

Devisee. See *Final Proof*, sub-title *Homestead.*

Diligence.

In ascertaining the fact of cancellation of the entries must be exercised by settlers on abandoned-homestead claims. II–89

In land claims the party who takes the initial step, if it is regularly followed up to patent, is deemed to have acquired the better right to the premises. II–167; IV–582; IX–444; X–228

After filing application and depositing fees and commissions prior to cancellation of a prior entry, failure to enter for six months after cancellation shows want of ordinary diligence. II–50

District of Columbia.

Regulations of March 31, 1894, concerning the disposition of lands in, under the joint resolution of February 16, 1839. XVIII–285

Regulations of March 31, 1894, with respect to disposal of lands in, amended May 9, 1895. XX–435

District Officers. See *Land Department.*

Ditches. See *Right of Way.*

Divorce. See *Judgment.*

Donation.

I. NEW MEXICO.
II. OREGON AND WASHINGTON.

I. NEW MEXICO.

Provided to secure permanent settlement and occupation of the country. I–279

Claim may be relinquished and taken by the donee either as a homestead or preëmption. I–283

Where no certificate has issued the claim can not be docketed in the General Land Office. I–284

Under the act of July 22, 1854, residence and settlement must be contemporaneous, and settlement must have been commenced within the time specified in said act. I–279, 284; IV–501

Residence and cultivation must be in good faith. I–297

Under the New Mexican act selections were required to be made prior to January 1, 1858. I–279,284

A claim founded upon a settlement made subsequently to January 1, 1858, is invalid in its inception. II–406, 407, 408; III–189

Where claim is invalid for want of settlement prior to January 1, 1858, but the claimant has made *bona fide* improvements, he may be allowed to make preëmption or homestead entry. II–408, 409, 410, 411, 412

Where settlement was in fact made in 1853, though claimed as in 1863, the notification may be amended. II–409

The occupancy and improvements of claimant, though not of such character as to entitle him to the land under the donation law, may be protected under the homestead or preëmption law. I–284

A relinquishment of, made by a woman, without explanation of her relationship to the donee, will not be accepted as a basis for cancellation of the claim. III–94

II. OREGON AND WASHINGTON.

Circular of April 8, 1895, under the act of July 26, 1894. XX–290

No entry allowed until after public surveys are made. II–446

Donation—Continued.

II. Oregon and Washington—Continued.

Right to the land is not perfect and complete until the claimant has performed all the conditions imposed by law; prior thereto he has but a possessory right. I–279; II–437, 441, 451; III–471

Claim under which there has been due compliance with law constitutes an appropriation of the land. XIX–470

A claimant who has not fully complied with the terms of the law has no title that can be conveyed by devise. XVI–490

Until patent issues the Department has jurisdiction to determine whether the donee has complied with the requirements of the law. XV–511

Heirs of donee must show compliance with the law on the part of the ancestor. III–469

The act of July 6, 1894, providing for the completion of donation claims, treated lands covered by donation notifications as reserved thereby from other disposition. XXIII–569

Filing notification operates to segregate the land. I–303

Of a married man embracing more than 320 acres is not void, but voidable. XXIV–4

Consideration of the provisions in the several donation acts relating to notification. II–440

Rights of *bona fide* settlers who failed in the matter of filing notification protected by the act of 1864. I–305

The act of 1850 required residence for four consecutive years, provided checks against speculation, and avoids a sale before patent; act of 1853 permitted commutation of time into money where settlement had been followed by two years' residence and survey been made; act of 1854 reduced to one year the period of occupancy authorizing a purchase, but prohibited a sale except where there had been four years' residence. II–448

The act of June 25, 1864, was designed to place a donation claimant upon the same footing as a claimant under the preëmption law; that is, to give him a preferred right to the land until the time fixed for filing his notice, and afterwards, if no adverse right intervened, to extend the preferred right to the time at which he actually filed the notice. II–443

Failure to give notice and to prove settlement as required by sections 6 and 7, act of 1850, defeats the claim. II–446

Four years' residence are requisite to secure title by occupation. III–59

The acts of 1853 and 1854 grant the privilege of discontinuing the occupation required by the act of 1850 and making a payment in lieu thereof only to those whose claims were surveyed while their residence and cultivation were incomplete. II–438

Donation—Continued.

II. OREGON AND WASHINGTON—Continued.

If the husband could not have become a resident before December 1, 1850, or any time thereafter, no right was conferred upon the widow by section 8 of the act of 1853. I–296

Improvement without residence and subsequent removal to another part of the State and authorized sale of improvements is abandonment. II–427

Where settler has been driven away by hostile Indians he must return to the land when the cause of his absence ceases; otherwise the absence is abandonment. II–448

A sale of the claim prior to obtaining a complete right is an act of abandonment and a forfeiture of any privilege the claimant might have had to perfect it subsequently by a cash payment. II–438, 451

Where claimant's affidavit asking a hearing against charges of abandonment shows non-compliance with requirements, claim will be canceled without hearing. II–445

Failure of heirs to make final proof may be held to constitute abandonment. III–469

Section 8, act of September 27, 1850, prescribes no limit as to the time within which the heirs shall file proof of compliance with law up to the date of settler's death; and the failure of the widow to submit such proof for a term of years does not defeat her right to perfect title. XVI–490

On the death of a qualified claimant who has complied with all the requirements of the law in the initiation of his claim, and subsequent maintenance thereof, up to the date of his death, the heirs of such claimant become qualified grantees irrespective of any question as to their citizenship. XXIII–166

Under section 8, act of September 27, 1850, proof of compliance with law up to the date of the donee's death is all that is required in the matter of final proof on the part of the heirs, and it is not material in such case by whom said proof is submitted. XXIII–166

A plea of equitable estoppel set up by intervening adverse claimants, as against the rights of heirs under a, on account of their alleged failure to assert their rights in due season, can not be considered by the Department, if it finds that under the donation law said heirs are entitled to a patent; and especially is the Department limited to such course, in view of the fact that said law prescribes no limit of time within which final proof may be made by the claimant or his heirs at law. XXIII–166

The provisions of the act of July 26, 1894, are not applicable to a, pending before the land department at the passage of said act, and in which final proof had been submitted prior thereto. XXIII–166

Donation—Continued.

II. Oregon and Washington—Continued.

The settler is the actor in securing the grant, who alone represents the claim until the final proofs are made by him; his acts are the acts of his wife, his neglect her neglect, and his abandonment her abandonment. II–80

On the death of claimant certificate should issue in the name of the heirs at law. I–291, 304

There is no authority for partitioning the land among the donees in the event of the claimant's death. I–293

Where an alien claimant, having declared his intention to become a citizen, died before naturalization, his possessory right descended to his heirs and patent properly issued to them. II–439

On the death of the settler a new grant is made by the statute to the heirs at law, including the widow if there is one, and proof of compliance with the law up to the time of his death is sufficient. I–293

Though the claimant may be entitled at date of settlement to claim 320 acres, as a married man, if his wife dies before the period of occupancy has been completed, certificate can issue for but 160 acres. VII–545

Where the claimant, as a married man, claimed 320 acres he may be allowed to relinquish so as to approximate 160 acres and retain his improvements in the event that his wife dies before the period of occupancy has been completed. VII–545

The Land Office should render decision on each application under section 5 of the act of July 17, 1854, such decision to be final in the absence of appeal. IV–103

On approval the case to be sent to the Department for final action. IV–103

Under section 5, act of July 17, 1854, orphans left within the Territory are entitled to a quarter section of land if the parent at the time of death was qualified to initiate a claim under the donation law. IX–234

The word "orphan," as used in the fifth section of the act of July 17, 1854, means a child under twenty-one years of age bereft of both parents on or before the date when the donation acts expired. VI–596

Children not entitled under the fifth section of the act of July 17, 1854, if either or both parents have received a. V–427

There is no right in the parents or their children (as orphan heirs) to initiate a claim if the death of the parents occurs before they reach the State (Oregon). XVI–202

Donation—Continued.

II. OREGON AND WASHINGTON—Continued.

The act of August 6, 1888, confirms claims that were "set off to orphans of claimants," regardless of the qualifications of the original claimants, if at the date of said act there is no adverse claim and there has been due occupation and cultivation of the land. XIII–51

An adverse right existing at the date of the act of August 6, 1888, defeats the confirmation of a claim thereunder. XVI–202

The claim of a widow who showed residence and cultivation for four years is not recognized as falling within the provisions of section 5, act of September 27, 1850, the same being limited to "white male citizens." III–74

Amendment of claim, on completion of residence, to include other land not permitted. I–303

Patent to but one claim can issue to any person in his own right. I–292

Patent can not issue for land within the formal claim of another, though such action is sought as the result of an agreement between the parties. I–294

On the proper relinquishment of the tract erroneously included within the patent a reissue will be made in accordance with the official survey. III–139

Patent will not be reissued changing boundary lines and granting a greater quantity of land on the showing made. III–15

Duress.

Actual violence not necessary to constitute. VI–616; VII–249

Threats to constitute, must be such as are calculated to operate on a person of ordinary firmness in such a manner as to inspire a just fear of the loss of life or great bodily injury. IX–22; XXVII–555

Peaceably building a house within twenty-five feet of another (both near a spring) is not in itself an act of intimidation. II–630

A deed executed under duress treated as null and void. II–86

Judicial restraint does not interrupt the continuity of residence. V–6; VII–532; XV–550

If threats of personal violence are alleged as an excuse for non-compliance with law, it should appear that there was reasonable ground to fear personal injury. XIV–65; XXII–280

By judicial restraint can not be successfully pleaded for the reinstatement of an entry canceled for failure to submit final proof within the statutory period where an intervening adverse claim exists. XV–550

Duress—Continued.

A plea of, set up to avoid the withdrawal of a contest can not be accepted where it appears that the contestant subsequently ratifies the act of withdrawal in the absence of any threats or fears of violence. XVII–373

In determining whether a plea of, is good, the age and physical condition of the party setting up such plea may properly be considered. XXVI–616

Eminent Domain.

In the exercise of, a state may condemn for public purposes, under proper procedure, lands embraced within Indian allotments. XIX–24

Entry. See *Alienation; Application; Contestant*, sub-title *Preference Right; Equitable Adjudication; Final Proof; Relinquishment.*

I. GENERALLY.
II. EFFECT OF.
III. APPROXIMATION.
IV. JOINT.
V. AMENDMENT.
VI. SECOND.
VII. REINSTATEMENT.
VIII. SUBJECT TO PREFERENCE RIGHT.
IX. LAND RESERVED FROM.
X. CANCELLATION.
XI. BY EMPLOYÉ OF THE GENERAL LAND OFFICE.
XII. DESERT LAND.
XIII. HOMESTEAD.
XIV. PREËMPTION.
XV. TIMBER CULTURE.

I. GENERALLY.

Manner of making, under homestead, preëmption, and timber-culture laws. General circular of March 20, 1883. I–656

On land returned as swamp. Circular of December 13, 1886. V–279

Regulations of April 27, 1891, under the first six sections of the act of March 3, 1891, with a copy of said act. XII–405

The limitation in acreage prescribed by the act of August 30, 1890, applies equally to all the land laws and restricts the applicant to 320 acres in the aggregate. XII–81

Of land, valuable only for the timber and stone thereon, should not be included in the maximum amount of lands that may be acquired under the limitation imposed by the act of August 30, 1890, as construed by the subsequent act of March 3, 1891. XIX–299

Entry—Continued.

I. GENERALLY—Continued.

The provisions of the act of August 30, 1890, are prospective in character. XII–81

Papers pertaining to, belong to the permanent files of the General Land Office. V–258

Is made on land subject thereto when the application, affidavit, and fees are placed in the hands of the proper officer. IV–463; VIII–226

Not effected by application and preliminary affidavit unaccompanied by the legal fees. VIII–224

Allowed in accordance with departmental rulings should not be canceled. V–261, 292, 641; VI–225; VII–75; VIII–399, 535; IX–622; X–190

Must remain of record until relinquished or canceled (on contest or failure to make final proof) in regular proceedings. II–91

Failure to properly note of record in the local office does not defeat the effect of an entry. XIV–242

The right of one who duly enters a tract of land, and pays the fees and commission required by law, can not be defeated by the fact that the records of the local office fail to show the entry. XXVIII–335

Absence of record in the General Land Office showing allowance of, will not defeat rights secured by the submission of proof and issuance of final receipt. XIV–349; XVI–187

Right to make, not considered in the absence of an application for specific tract. IV–310; VII–254; IX–194

Must stand in the true name of the entryman. VI–329

Not invalid because allowed outside of office hours. VI–1

It is not invalid because allowed by the receiver, in the absence of the register, where both offices are filled at such time, and the register on his return approves the action of the receiver. XXVIII–8

Local officers should use all means of knowledge at command in ascertaining the validity of an entry. III–222

Local officers to consider objections to an entry. III–334

Strict enforcement of the law with reference to, in order to prevent abuses. III–152

Should not be made for land under a subdivisional description not shown by the public surveys. XVI–424

By contestant of a homestead entry may be for part of the land and contiguous land. II–289

By contestant of a timber-culture entry is restricted to land in contest unless less than 160 acres, when contiguous land may be included. II–289

Entry—Continued.

I. GENERALLY—Continued.

Covering tracts of land upon the opposite side of a meandered stream, allowed in accordance with existing practice, will not be disturbed. v–641; viii–62; xiv–591

The rule now followed, with respect to the non-contiguity of tracts lying on both sides of a meandered slough, will not be applied to a tract surveyed and entered under a practice that authorized a sub-division of such description and the entry thereof. xx–230

Should not be allowed for land on both sides of an existing meandered stream. xii–73; xv–98, 342

Of lands lying on both sides of a meandered stream will not be disturbed where it is shown by the records of survey that such stream should not have been meandered. xii–556; xxi–7

Canceled in part on account of embracing land on both sides of a meandered stream, may be reinstated, in the absence of any adverse claim, it appearing that said stream is not in fact meandered within the meaning of the law and regulations. xix–463

May stand intact though it includes tracts that according to the public survey are non-contiguous, by reason of their lying on both sides of a meandered lake, where it appears that said tracts in fact form a fractional quarter section, and where the rights of the entryman are entitled to an equitable consideration. xix–297

May stand intact as to the agricultural tracts, though they are rendered non-contiguous by a segregation survey made necessary by a mineral discovery after the original entry was made. ix–143

Embracing tracts that are non-contiguous by reason of a prior mining claim can not be perfected as to any part thereof where residence and improvements have been confined to a small tract not contiguous to the main body of land. xviii–141

When found to embrace non-contiguous tracts the entryman should be called upon to elect which tract he will relinquish; and if the entryman fails to take action the entry may be canceled as to such tracts as may be deemed proper, having due regard to interests shown by incumbrancers. xxiv–305

Embracing non-contiguous tracts may be referred to the board of equitable adjudication where the non-contiguity is caused by the cancellation of a part of the entry on account of the prior adverse right of another, and the original entry is made in ignorance of said adverse right. xv–119; xxiii–38

Tracts of land cornering on each other are not within the rule of contiguity. v–683; vi–621; xi–367

There is no law authorizing, of submerged lands lying within a navigable stream. xix–505

Entry—Continued.

I. GENERALLY—Continued.

Allowed in accordance with the plat in the local office may stand with a view to approval when the plat in the General Land Office has been corrected. XV–395

Made in the interest of another is fraudulent and must be canceled. XXIII–140

Secured through fraudulent and speculative contest is invalid. X–402

Rights under, lost through failure to act in good faith. IX–527

Whether fraudulent or speculative, not determined by a fixed rule. V–313

Legality of, will be considered by the Department when before it for action, though the character of the entry, when made, was known to the General Land Office. VI–371

A specific right of, accorded by departmental decision must be exercised within the period designated in the absence of good reason shown for delay. XIII–205

Where by the decision of the General Land Office the right to enter a certain tract is recognized, but no time is fixed in said decision within which such entry shall be made, the right so allowed may be lost if not asserted within a reasonable time. XXVI–268

In a case of conflict arising through a change of subdivisional descriptions, caused by a resurvey and the local office taking action without reference thereto, the rights of the prior entryman are superior. XIII–219

Right of, not defeated by the adverse claim of one holding under a quitclaim deed from the State. XII–519

Of land relinquished will not be questioned, so far as the status of the land at the date of the entry is concerned, where such relinquishment is shown, *prima facie*, to have been executed by the only qualified heir, and the statutory life of the entry thus relinquished has expired. XXII–415

Made by a contestant, on a relinquishment, during the pendency of a second contest charging the disqualification of the original entryman and collusion with the first contestant, may be permitted to stand, where it appears that the allegations in said contest are not supported by the evidence. XXIX–211

II. EFFECT OF.

Effect of, relates back to the proper initial steps. I–461

Reserves the land from the operation of an executive order creating an Indian reservation. XIV–589

Allowance of, segregates the land, even though the entry may not be made of record, and the failure of the local officers to place the entry of record will not affect the rights of the entryman. XI–356

Entry—Continued.

II. EFFECT OF—Continued.

In the case of, that is not of record in the local office, the land covered thereby must be held as open to settlement and appropriations subject only to whatever rights may exist on the part of such entryman. x–59; xxii–680

A *prima facie* valid entry of record operates as a reservation of the land. i–362; ii–98; iii–169, 217, 229; iv–210, 392, 441, 457, 586; v–174; vi–153, 425; viii–243, 528

Appropriates the tract against one alleging a superior claim until his rights have been finally determined. ii–34

Homestead or timber-culture, appropriates the land absolutely. i–30, 362, 449; iii–218; vii–140

Regularly made, though not for land subject thereto, while of record segregates the land. vi–819

Prima facie valid (made by married woman) while of record reserves the land from other disposition. xvi–130

Valid entry segregates the tract, and it is not again subject to claim (preëmption) until the entry is lawfully canceled. ii–294

Prima facie valid soldiers' additional, while on record, segregates the land and precludes the allowance of a preëmption filing therefor. xiii–297

Made by an alien is not void, but voidable, and segregates the land included therein from the public domain while of record. iv–564; xii–345; xxii–124

Made by a person previously adjudged insane is void *ab initio*. xiii–541

A voidable entry while of record is an appropriation of the land. iii–446, 506; v–118

Exceeding 160 acres is voidable only, and while of record is an appropriation of the land. iv–92, 441

Void, no segregation of the land. iv–449

If void, will not exclude the land from the incipient appropriation of a legal applicant. iii–181

Void, no bar to the legal application of the person who made such entry. iv–467

Is notice of the land claimed, and possession must be limited thereby as against subsequent settlers. i–457

When attacked, will be presumed valid. iv–62, 80; ix–538

Made under section 2, act of May 28, 1880, on payment of one-fourth of the purchase price and submission of proof, operates as a segregation of the land, subject to forfeiture if the subsequent payments are not made. xiii–524

Entry—Continued.

II. EFFECT OF—Continued.

The allowance of an entry under general laws providing for the disposal of the public lands, the final approval thereof for patenting, and the issue of patent thereon, is an adjudication by the land department that the lands entered are of the character and class subject to such entry, and necessarily determines that they had not been previously granted or otherwise appropriated. XXX–626

III. APPROXIMATION.

A quarter section is, under the homestead laws, 160 acres, and in fractional sections an entry must approximate 160 acres as nearly as practicable. II–129; IV–92, 441

One quarter, approximately of the number of acres in any section, may be entered under the timber-culture act. XIII–53

Timber-culture entry may embrace a technical quarter section without reference to its relation to the entire section. XI–378

May embrace a "quarter section," platted as such, regardless of the actual area. VI–797; VII–20; X–116; XIII–520

When the excess above 160 acres is less than the deficiency would be if the subdivision were excluded, it may be included in a homestead entry; where it is greater it must be excluded. II–88; III–459

Embracing tracts in two or more quarter sections must approximate 160 acres as nearly as practicable without requiring a division of the smallest legal subdivision. VIII–205

The rule of approximation will be applied to a homestead entry that embraces fractional subdivisions in two sections. XVII–205

Embracing tracts in different quarter sections is limited in acreage and must approximate 160 acres. VII–20; X–62, 524, 587

Rule of approximation applied only where the entry is of parts of different quarter sections. VI–797

Approximation required though the land had passed to a purchaser for a valuable consideration. V–154

Exception to the rule requiring approximation in acreage made in case of settlement before survey with valuable improvements on each subdivision. V–295, 298

Exceptions to the rule requiring approximation recognized where valuable improvements would be disturbed or other like injury follow the relinquishment of a subdivision. X–587

Containing an excess over 160 acres may stand where it approximates such area as nearly as may be without destroying the contiguity of the tracts embraced therein. XII–356

Entry—Continued.

III. APPROXIMATION—Continued.

Rule of approximation will not be enforced where it operates to deprive the entryman of his improvements and the difference between the excess and the deficiency is but slight. XIV–222; XXVII–78, 305

Rule requiring approximation waived in case of settlement before survey with valuable improvements on each subdivision and non-cultivable land falling within the claim on survey. V–631

An additional, of a contiguous subdivision under section 5, act of March 2, 1889, is not defeated by excessive acreage if the amount taken by both entries approximates 160 acres, as nearly as may be, without loss of the improvements or destroying the contiguity of the tracts entered. XIII–610

May stand as made where the difference between the excess and the deficiency that would be caused by approximation is slight. VIII–79

Allowed in violation of the rule of approximation segregates the land covered thereby, but is subject to attack. VIII–205

Approximation not required under a resurvey where the entry as made under the original survey was not in violation of the rule. XV–449

IV. JOINT.

Final proof must be submitted before the award of joint. VI–826

Joint entry only allowed where the boundary of the prior location excludes a portion of a legal subdivision. I–414

Joint, allowed where settlers prior to survey have improvements on the same legal subdivisions. VI–138, 826

A joint, can not be allowed where there is but one residence and set of improvements maintained and occupied in common by the parties, with the intention to take separate tracts when the land is open to entry. XIX–236

Joint, not determined by the amount or character of the improvements. VI–138

Joint, may be allowed in case of conflicting settlements prior to survey. III–609; IV–520; V–605; X–234; XIII–335

Joint, not allowed unless the settlement was prior to the survey in the field. VIII–536

Where settlement preceded survey and the parties had recognized a boundary line as indicating their possessory rights, joint entry was allowed. IV–27, 230

Joint entry allowed in case of conflicting homestead settlements where there is an agreed boundary line. II–104, 150, 585

Joint entry not allowed in case of conflicting homestead settlements prior to survey. I–414

Entry—Continued.

IV. JOINT—Continued.

Joint, not allowed for land settled upon after survey. IV–410

Under an award of joint entry the parties are not authorized to divide equally the forty acres in dispute and enter the same in accordance with such partition. VII–3

If either party refuse to make, the other may enter according to his filing. IV–231

An alien who settles prior to survey in the field and files declaration of intention to become a citizen before approval of the survey is entitled to make joint. VIII–536

Conflicting settlement rights acquired prior to survey may be adjusted by allowing either settler to enter the entire tract, on condition that he tenders the other a written agreement to convey to him that portion of the land covered by his rightful occupation. VI–826; VII–3; VIII–536; X–234; XIII–19, 335

A written agreement to convey to the other the land covered by his occupation, is sufficiently explicit if it follows the departmental award. XIII–19, 335

In case of conflicting settlement rights, arising through a mistake as to the exact location of a boundary line, an equitable apportionment of a tract may be made so as to give each party his improvements, though one of them settled after survey. XVIII–297

Joint, allowed under section 2274, R. S., in case of refusal to enter under an agreement to convey. VII–3

The extent of joint, allowed by section 7, act of July 23, 1866, is measured by the joint occupancy of the parties, and only includes such legal subdivisions as are required to adjust their coterminous boundaries. VI–434

In the consummation of joint, under section 7, act of July 23, 1866, each party is entitled to enter that portion of the land defined by his original purchase and separate occupation. VI–434

V. AMENDMENT.

Regulations with respect to amendment of. VIII–187

The right to an amendment of, lies within the discretion of the officers charged with the disposition of the public land. III–157

The rule permitting the amendment of, is liberally construed by the Department, particularly where through ignorance or misinformation the entryman is misled as to his rights, and no adverse claim has intervened. XXVII–389

Amendment of, not allowed except for good reasons shown. IV–365; VII–298

Entry—Continued.

V. AMENDMENT—Continued.

Where amendment is authorized, sixty days only are allowed for making it. II–206

Amendment of, not allowed in the local office. III–471

An application under section 2372, R. S., for the amendment of a cash entry must be supported by the affidavit of the original purchaser or his legal representative. XIX–112

The written opinion of the local officers, as provided in section 2372, R. S., may be required, out of due caution, in case of application for amendment of timber-culture. VI–644; VII–364

In applications for amendment the written opinion of the local officers, as provided for in section 2372, R. S., may be properly required in entries not expressly included within said statute. VII–155

The right under section 2372, R. S., to amend an entry "where the certificate of the original purchaser has not been assigned, or his right in any way transferred," is not defeated by the entryman's sale of the land where he subsequently acquires title thereto. XXVII–252

Can not be amended under section 2372, R. S., if the certificate of the original purchaser has been assigned, or his right transferred. XXIII–389

An intervening adverse claim of record bars the allowance of an amendment under the provisions of section 2372, R. S. XXIII–389

If the evidence in support of an application for amendment is not satisfactory, the case may be remanded for further showing under the rule requiring a written opinion from the local officers. VII–155

Distinction between amendment and second entry. VI–505

On application to amend it should be shown that the tract covered by the proposed amendment is the same as that originally selected after personal inspection, and that the error was made through no fault of the entryman. III–362; VII–219, 363

Application for amendment should show what efforts were made to learn the true description of the land and how the mistake occurred. VII–44

Amendment allowed on due showing of such care as a man of ordinary prudence would exercise. I–457; VI–355, 785

May be amended so as to take the lands intended to be entered where the mistake is satisfactorily explained. V–534, 583; VI–505, 644, 785; VII–155

May be so amended as to include a tract covered by the applicant's settlement and originally intended to be entered, but not so taken on account of misinformation as to its true status. XVIII–213

Entry—Continued.

V. AMENDMENT—Continued.

May be amended to include an adjacent tract that was not surveyed at the date of said entry, but was covered by the original settlement claim of the homesteader. XIX–177

May be so amended as to include land originally selected by the entryman, and improved, but not embraced within his entry for the reason that it was not then surveyed, and he believed that he would be entitled to make an additional entry thereof when surveyed. XIX–43

A homesteader who enters 120 acres, and contests an, embracing an adjacent 40-acre tract, may, in the event of success, be permitted to so amend as to include said forty acres, where by such action he secures the land originally intended to be entered. XXVI–663

May be amended to embrace an additional adjacent tract that was at the date of the original entry included in the existing entry of another, where such amendment corresponds with the original settlement claim, and no adverse claim exists. XXVI–69

A settler who makes entry for part of the land covered by his settlement claim, and contests a prior entry covering the remainder, may be permitted to amend his first entry, so as to include the whole of his original claim, on the successful termination of his contest. XXV–276

The right of a party to change so as to embrace other lands, on the ground that his entry, through an erroneous survey, does not cover the land intended to be taken, can not be recognized, where the entry was made with knowledge of the facts, carried to patent, and adverse rights have intervened that, by the record, are not in conflict with said entry. XX–124

Application for amendment of, based on the ground that the desired tract was not subject to appropriation at date of original application, not granted. V–534; VII–261; X–419

The right to amend, so as to include a tract that was omitted therefrom in the belief that it was not public land, will not be recognized, where no effort is made to ascertain the true status of the land on the records of the local office. XXI–556

The right of amendment can not be recognized on behalf of one who makes an entry, and takes less than he might have taken, had he informed himself of the status of the records of the local office. XX–186

Amendment not authorized unless it appears that the record fails to express the original intention of the entryman. III–362; IX–376

May be amended in accordance with the original application where the amount was improperly restricted by the local office. VIII–58

Entry—Continued.

V. AMENDMENT—Continued.

Can not be amended so as to embrace an additional tract where the entry as originally made covers the land intended to be taken. XV–548

Can not be amended for land not intended to be originally entered, and the repeal of the timber-culture act precludes a second entry embracing said tract. XIV–632

On amendment, may be allowed for 160 acres where the first, through mistake, covered but eighty. VII–363

Amendment or new entry allowed in case of non-contiguous tracts. IV–33

By way of, an entry as made through error of local office allowed to stand, though not for land originally applied for. IV–112

Amendment allowed where the error arose through the fault of the local office. IV–112

May be so amended, in the absence of adverse claim, as to avoid conflict with the subsequent entry of another, though taking land not originally applied for, where good faith is manifest and the parties were misled by error of the local office. XVI–171

Defect in, occurring through ignorance may be cured. I–46

Defect in voidable, may be cured prior to the intervention of adverse claim. V–248, 394; VI–425; VIII–1; X–61

Amendment of, to correspond with settlement allowed. I–159; III–157, 413; VII–159; XXI–372

May be amended so as to embrace the land covered by the actual settlement and improvements of the entryman; and such right is superior to intervening adverse claims made with a full knowledge of the facts. VII–387; XXVII–237, 522

The right to change from one tract to another can not be allowed in the presence of an intervening adverse right, even though the applicant may have been the prior settler on the tract thus applied for. XXII–585

May be amended to correspond with settlement, as against an intervening entryman, if priorty of settlement is shown by the applicant, and it does not appear that he is estopped by his own acts from setting up his right as against the adverse claimant. XXIV–135; XXV–526

The granting of an application to amend rests largely in the discretion of the land department, and where, during the pendency of the application, the relation of the applicant, or of another, to the land has become such as to make the allowance of the amendment manifestly inequitable, it will be denied. XXVIII–387

Right of amendment defeated by an intervening adverse claim. II–38, 577; VII–428; XVI–313, 424

Entry—Continued.

V. AMENDMENT—Continued.

Where an entryman fails to secure the land selected by him, and a part of the lands intended to be taken is included in the intervening entry of another, he may be permitted to amend by substituting for the tracts entered so much of the lands intended to be taken as remains open to entry, and make up the remainder from adjacent unappropriated land. XXVII–17

Amendment of timber culture, governed by the same rule as that under which homestead entries are amended. VI–355

Amendment of, is an *ex parte* proceeding after priorities have been determined. IX–455

Amendment of, not granted in the absence of good faith. I–456

An amended entry founded on a misrepresentation of the facts should be canceled. II–576

Application for amendment of, does not excuse failure to comply with the law. V–349

On application to amend, a mortgagee may submit evidence showing that the final proof did in fact apply to the land covered by the claimant's settlement and not that embraced within the final certificate. VI–834

There is no authority for the amendment of a patented, for the benefit of a transferee. XXI–37

The right to amend, so as to include other land therein can not be exercised by one holding thereunder as transferee. XXI–61

Allowed for adjacent land whereon the entryman had accidentally cut timber. II–808

Amendment of, allowed as against an adverse occupant who takes forcible possession with full knowlege of the claimant's right. XI–394

Where one enters a tract by mistake and intentionally settles on and improves another tract prior to act of May 14, 1880, he must amend his entry before intervention of a valid adverse right. II–575

Where settler entered the wrong tract by mistake and failed to reside on either tract by reason of his wife's sickness, he may amend so as to embrace the tract originally selected if no adverse rights have meanwhile attached to it. II–170

The heir of a deceased homesteader can not secure an amendment of the original by a new entry under section 2, act of March 2, 1889. XVI–350

Allowed after contest commenced where the tract was by mist[illegible] entered as an original instead of an adjoining farm homestea[illegible]

Entry—Continued.

V. AMENDMENT—Continued.

Pending applications for amendments should be adjudicated upon their merits and under the practice heretofore prevailing. VII–155

On allowance of amendment after patent reconveyance of the land improperly patented is required. VIII–303

An application to amend, should not be allowed without a hearing, where the entry as amended conflicts with the intervening entry of another. XX–41

An application to amend an entry does not in itself operate to render said entry void from the date of such application, or release the lands covered thereby from appropriation. XXVII–62

VI. SECOND. See *Homestead*, sub-title No. XIV; *Oklahoma Lands*.

Instructions of June 27, 1900, under act of June 5, 1900, relating to second homestead entries. XXX–374

Right to make second, not considered without application for specific tract. IV–310, 451; VII–[illegible]

An official certificate of the register as to the truthfulness of [illegible]e applicant may be accepted in lieu of the corroboratory affi[illegible]vit required in the case of an application to make second, where the failure to furnish such affidavit is satisfactorily explained

[illegible]IV–16

The right to make second, will not be considered in the ab[illegible]ce of an application to enter in due form. XIV–564

The right to make second, only allowed after careful [illegible]tiny.

III–161

Second, allowed prior to the actual cancellation of the first, though irregular, may stand, in the absence of other obj[illegible]ion.

XXIII–440

On allowance of second, the first must be relin[illegible]ed. VIII–429

On allowance of second, the entryman should [illegible]required to state under oath that the relinquishment of the fi[illegible]s not for the benefit of another. VIII–507

The right to make a second will not be accorded to one who relinquishes his prior entry on account of a [illegible]ney consideration or its equivalent. XXIII–87

Made in good faith for 160 acres, when the entryman was entitled to take but eighty acres, is illegal only as to the excess, and the entryman may be allowed to retain the eighty on which his improvements are situated, and relinquish the remainder.

XXVIII–11

[illegible]application for lands not intended to be taken under the original [illegible]try is for the privilege of making a second entry and not for the [illegible]ht of amendment. IX–207

Entry—Continued.

VI. SECOND—Continued.

Second, should not be allowed through the process of amendment. V–505

Second, allowed under the same principle that governs the allowance of a second filing. VI–290, 362

Failure to exercise the right once accorded to make the second, will, in the absence of explanation, preclude favorable action on a subsequent application of a similar character. IX–383

Second, not allowed in the absence of due care in selecting and entering the land desired. VI–353

An application for, based on the alleged worthless character of the tract covered by the existing entry, will not be granted, where it appears that the applicant did not make a personal examination of said tract prior to making entry thereof. XIX–483; XXVI–23

Second, may not be made by one who relinquishes the first because it does not cover the land selected and fails to show that the alleged error can not be corrected. XIV–564

ight to make second, recognized on relinquishment of the first, which was illegal because of conflict. I–45

Second, allowed where the first failed through a mistake of fact as the character and identity of a prior record claim. VI–362

Sec allowed for the same land under changed departmental rul s affecting the status of the tract. IV–249

Second ot allowed, though first was relinquished on erroneous advice local office. IV–188

A second, under which the entryman has shown due compliance with law, may be permitted to pass to patent, where the first was relinquish on erroneous advice, and without compensation, and the second allowed by the local office with full knowledge of the facts. XXIX–305

Second, allowed ere the first, through no fault of claimant, can not be carried atent. VI–353, 505, 645

Right to make sec d, recognized where the first, through no fault of the entryman, was not for the land intended to be taken. VIII–429; XXIV–16

Second, allowed wher he first, through no fault of the entryman, did not cover the land intended and amendment is barred by an adverse claim. VIII–239

Second, allowed where the first covered land not habitable and the reasons therefor were not discoverable by ordinary diligence. VIII–507

Where the right to make a second, rests on the non-inhabitable characte of the land covered by the first the facts as to the nature and condition of both tracts should be clearly set forth. IX–207

Entry—Continued.

VI. SECOND—Continued.

Second, may be allowed where the first through mistake, was for untillable land. I–56; X–557

Second, allowed where water fit for domestic use could not be obtained on the land covered by the first. I–54; IX–207, 333; XXI–390

A second entry is allowed where the land first entered fails to produce crops by reason of lack of rainfall or unfitness of soil. II–171

The right to make a second may be properly recognized where the first, in good faith, was abandoned on acount of poison ivy growing on the land, and the claimant's susceptibility to poisoning therefrom. XXV–132

May not be made by one who relinquished a homestead because of the ravages of grasshoppers. II–141

The right to make second, accorded when the first, through no fault of the entryman, was made for land covered by a prior *bona fide* preëmption claim. VIII–98; X–9

The right to make a second, may be properly recognized, where the first, through no fault of the claimant, was defeated by an intervening adverse claim. XVIII–145

The right to make a second, recognized where the first, made in good faith, was abandoned on account of conflict with the *bona fide* preëmption claim of another. VIII–100

The right to make a second, may be accorded to one who in good faith relinquishes the first on account of an adverse claim asserted to the land included therein. XXIV–531

Second, allowed where the first, for equitable reasons, was relinquished on account of conflict with the prior-settlement right of a preëmptor who was in default in the matter of submitting proof. II–102; VIII–131

Where an amendment would be allowed in accordance with the original intention of the applicant, but for the existence of an intervening adverse claim, the right to make entry has not been exhausted. VI–505

When it appears that an entry fails because of the entryman's negligence in the matter of ascertaining prior adverse rights, he will not be allowed to make a second, if at the date of his application for such privilege there is a qualified adverse claimant for the land applied for. XXIII–87

Second, will not be allowed to one who has perfected title under the first; and such an entryman will not be heard to allege that the first entry was in fact illegal and fraudulent, and hence no bar to the second. XI–507

Entry—Continued.

VI. SECOND—Continued.

The right to make second, for same tract denied where the first was made while claiming other land as a preëmptor, and commutation proof was submitted under the first, pending application to make the second. VII–215

Right to reënter same tract where the original entry was canceled for invalidity may be considered in the absence of intervening adverse rights. VI–831

Right to relinquish invalid, and make new entry of same tract defeated by the preference right of a successful contestant. VI–831

Right to make second, awarded on the assumption that no adverse claim exists, will not defeat the prior intervening claim of another. XVI–267

The right to make a second, will not be accorded where the first was for land subject thereto and failed through the fault of the entryman. VIII–96; XI–290

Second, allowed where the first was made in good faith for land afterwards held not subject thereto, and accordingly canceled on relinquishment. VIII–137

The right to make a second may be recognized where the first was canceled on account of the entryman's failure to establish residence and such failure was due to circumstances beyond his control. XXII–179

Second, may be made where the first was relinquished under the belief that it could not be maintained without danger to the entryman's life. VIII–587; XXII–380

New, allowed in place of illegal, good faith being manifest and no valid adverse claim. IV–492

Second, for the same tract accorded to one whose former entry, made prior to his majority, is canceled. II–113

The amendment of section 2289, R. S., by section 5, act of March 3, 1891, does not confer the right to make second, upon one who had theretofore entered a quarter section of public land under the homestead laws. XVI–512

Right to make second, under the act of March 2, 1889; circular of March 8, 1889. VIII–314

Circular of March 23, 1895, with respect to second, under the act of December, 29, 1894. XX–432

Application to make second, pending at the passage of the act of March 2, 1889, secures to the applicant the benefit of said act to the exclusion of intervening adverse claims. VIII–457; X–192

Entry—Continued.

VI. SECOND—Continued.

The right to make second, conferred by the act of March 2, 1889, validates one made prior thereto, though not authorized by law when made. IX–543

The right to make second, under the act of March 2, 1889, can not be exercised in the presence of an adverse claim arising prior to the passage of said act. XIX–184

The intent of section 2, act of March 2, 1899, was to afford relief to those entrymen who for some reason had lost their land, and, under the law, were precluded from making a second entry. It was not intended to allow those, who made entry before the passage of the act, to relinquish and make a new entry. (Overruled.) XIX–526

Section 2, act of March 2, 1889, provides for the allowance of a second entry in any case in which the appellant, prior to the enactment of the statute, made entry under the homestead law, but has not perfected title thereunder, either before or since that time. XXV–82, 311

On the relinquishment of a homestead entry, made prior to the enactment of March 2, 1889, a second entry of the same tract may be made by the entryman under the provisions of section 2 of said act. XXVII–538

A homestead applicant, whose application made prior to the act of March 2, 1889, is erroneously rejected, and who thereupon appeals, occupies under section 2, of said act, the same status as one who made entry prior to said act; and where said applicant subsequently under a departmental decision enters such portion of the land originally applied for as is then open to entry, reserving all rights under the first application, and thereafter relinquishes such entry, he may make a second entry of the remainder of said lands when it becomes subject to such appropriation. XXVII–290

The right to make second, under section 2, act of March 2, 1889, can not be exercised by one who since the passage of said act has perfected title to a tract under either the preëmption or homestead law, the right to which was initiated prior to said act. XIX–207

Right to make second homestead may be exercised by way of a transmuted preëmption claim under said act if initiated prior thereto. VIII–422; X–635

The phrase "had the benefit of such law," as used in section 2, construed. X–635

The right to make a second under section 2, act of March 2, 1889, can not be invoked for the protection of a settler who at the time of his settlement has an entry of record for another tract. XXII–490

Soldier's filing for one tract does not, under the act of March 2, 1889, preclude the entry of another. IX–145, 382; XI–384

Entry—Continued.

VI. SECOND—Continued.

Second, for the same tract, may be accorded under the act of March 2, 1889, when the first was illegal, when made, by reason of the entryman having previously filed a soldier's declaratory statement for another tract. IX–145

The right to make a second, accorded by section 2, act of March 2, 1889, to one who has theretofore exhausted his right by a soldier's filing, can not be exercised in the presence of an intervening adverse claim existing prior to the passage of said act. XV–139

A settler who, under the law as it stood at the time of his settlement, had exhausted his homestead right by a prior entry, is not entitled to make a second or additional, under the act of March 2, 1889, where prior to the passage of said act and prior to the initiation of a valid settlement claim, the land has been sold by a railroad company as part of its grant, and the right of the purchaser validated by the act of March 3, 1887. XXVI–504

A homestead declaratory statement filed and relinquished after the passage of the act of March 2, 1889, 25 Stat., 854, defeats the right to make second, under section 2 of said act, and it is also a bar to a similar entry under section 13, act of March 2, 1889, 25 Stat., 980. XVIII–520

New entry for the same land may be made under section 2, act of March 2, 1889, where the first was canceled because made during the maintenance of a preëmption claim for another. IX–312

Right is restricted to the exclusive use and benefit of the entryman, and on cancellation of an entry for non-compliance with law he can not reënter the same tract under said act for the benefit of a transferee. X–79

The right to make second, under the act of March 2, 1889, not defeated because the failure to secure title under the first was due to bad faith or non-compliance with law. XV–154

Second, may be made under section 2 of the act of March 2, 1889, where the title is not secured under the first through failure to comply with the law in the matter of residence. XIII–217

Second, of the same tract may be made under section 2, act of March 2, 1889, where the entryman, through non-compliance with law, fails to secure title under the first. XIII–436

Under the provisions of section 2, act of March 2, 1889, a second entry may be allowed, where the first was made prior to the passage of said act, but was afterwards canceled for failure to make final proof within the statutory period. XXV–475

The commutation of a homestead prior to the act of March 2, 1889, defeats the right to make a second homestead entry under section 2 of said act. XXI–283; XXIV–561

Entry—Continued.

VI. SECOND—Continued.

Second, is not authorized by section 2, act of March 2, 1889, where, prior to said act, the entryman has purchased the land covered by his first entry under the act of June 15, 1880; nor does the temporary suspension of the certificate issued under said purchase bring the applicant within the terms of said section. XIII–257; XIV–616

Second, not authorized by section 2, act of March 2, 1889, where the entryman prior to the passage of the act, has purchased the land covered by his first entry under the act of June 15, 1880. XIV–616

Second, under section 2, act of March 2, 1889, can not be held to relate back to a former entry of the same tract, and thus effect a reinstatement of said entry. XIV–305

The right to make a second, under section 2, act of March 2, 1889, can not be invoked in aid of an application to "amend" an entry made and relinquished after the passage of said act. XVII–152

The claimant, in making proof under a second entry allowed under section 2, act of March 2, 1889, is entitled to credit for such portion of his military service as was not applied to the first entry. XV–241

One who makes a second entry, under section 2, act of March 2, 1889, is entitled to credit for military service in making proof of residence, although allowed credit therefor under his former entry. XIV–604

Second, under act of March 2, 1889, not allowed for a quantity that, added to the first, will exceed 160 acres. X–661

May not be amended so as to embrace land not originally intended to be entered, but the applicant in such case may relinquish and make a second entry under section 2, act of March 2 1889. XII–268

The right to make second, of lands embraced within the Seminole purchase, accorded by the act of March 2, 1889, to those who have commuted a former entry, is restricted to persons who had thus perfected title prior to the passage of said act. XII–617

Under the provisions of the act of December 29, 1894, amending section 3, act of March 2, 1889, the right to make a second, may be recognized when the first is relinquished on account of the arid and unproductive character of the land. XX–308

The right to make a second, under the act of December 29, 1894, is not defeated by the fact that the first was relinquished, if the cancellation would have been ordered, on a disclosure of the facts to the land department. XXIX–716

Entry—Continued.

VI. SECOND—Continued.

An application to make a second, under the act of December 29, 1894, must be denied where the first entry is canceled on a contest charging abandonment. XXIII–404

The right to make a second, under the act of December 29, 1894, can not be recognized, where the first entry was abandoned without any attempt to raise a crop on the lands embraced therein. XXVI–23

The right to make a second, under the act of December 29, 1894, will not be defeated by the fact that the entryman sold the improvements on the land covered by his first entry, and relinquished his claim thereto, where it appears that, on account of a protracted drought, such action was made necessary to secure the means of subsistence. XXVI–549

Permission to make a second homestead, may be accorded where there is no adverse claim, and the first is relinquished on account of the worthless character of the land, and the applicant is not chargeable with negligence. XXVIII–259

One who makes homestead, of arid land in the belief that he can irrigate the same through the use of water to be obtained from a proposed government reservoir and abandons the land so entered, is not entitled to make a second, either under the general terms of the homestead law or the special provisions of the act of December 29, 1894. XXI–205

The language in section 2, act of September 29, 1890, authorizing a "second homestead entry" refers only to those who had theretofore made such entry but failed from any cause to perfect the same. XI–625

Same principle governs allowance of second timber-culture, as obtains in the case of a second homestead. VI–505

Second timber-culture, will not be allowed when the first was upon land not subject thereto. III–152

Second timber-culture, may be allowed where the first, through mistake, was for land not subject thereto, and good faith is apparent. VII–297

Second timber-culture, may be made where the first, through defective surveys, includes land not intended to be taken, and is for that reason relinquished. XV–39

A second timber-culture, may be permitted to stand where the first is relinquished for the reason that trees could not be grown on the land. XV–560

Second timber-culture, allowed to stand as an amendment of the first. II–852

Entry—Continued.

VI. SECOND—Continued.

Failure to secure growth of timber is not good ground for the allowance of second timber-culture. I–125

Second timber-culture, may be made where causes beyond the entryman's control prevent the use of the land first entered for timber-culture purposes. II–327

Second timber-culture, may be made by one whose former entry is canceled because made on land occupied and improved by another. II–118

Second timber-culture, may be made by a citizen who, when an alien, innocently made a prior entry which was canceled for noncompliance with law. II–250

Second timber-culture, may be made by one who was not allowed to amend a former entry because of the interposition of other rights where the equities were with him. II–253, 254

VII. REINSTATEMENT. See *Railroad Lands.*

Will not be reinstated where the petition therefor alleges no error in the judgment of cancellation. XIII–452; XV–64

Canceled on relinquishment filed under an erroneous ruling may be reinstated. VII–470

Canceled without notice may be reinstated for hearing. IV–397

Canceled on the erroneous report of the local office that no response had been made to notice of the adverse decision should be reinstated when the fact of such error is made known. XII–604

Canceled portion of, under changed conditions may be reinstated in the absence of adverse claims. V–333

Of railroad lands improperly canceled may be reinstated on the forfeiture of the grant and confirmation of entries made of the granted lands. VI–444

Under the graduation act, erroneously canceled, may be reinstated for the benefit of the heirs, though the entryman, in ignorance of his rights, made a homestead entry of the land which was afterward canceled for failure to submit final proof. X–569

Preëmption entry canceled for failure to comply with the law in the matter of residence can not be reinstated on a showing of subsequent residence and cultivation. XII–418

Should be reinstated where canceled on the report of a special agent. An intervening entryman in such case should be given opportunity for defense. XV–354

Canceled for failure to submit proof within the statutory period, such failure being due to the arrest and conviction of the entryman on a criminal charge, can not be reinstated in the presence of an adverse claim. XV–550

Entry—Continued.

VII. REINSTATEMENT—Continued.

Canceled for failure to submit final proof within the statutory period, can not be subsequently perfected in the presence of an intervening adverse right. XIX–419

Reinstatement of, that has been canceled without due notice, is not defeated by an intervening adverse claim. XXIX–233

Should be reinstated where canceled through inadvertency, notwithstanding the intervention of an adverse claim. XVI–353

Inadvertently canceled on the report of a special agent pending application for hearing should be reinstated. XXIII–54

Canceled by mistake, and without notice to the entryman of his right of appeal, and without his knowledge that such action was erroneous, may be reinstated on the application of the entryman's heirs, made within a reasonable time after learning the facts. X–569

On application for, the applicant should not be heard to say that he did not receive proper notice of the decision holding his entry for cancellation, where his failure to be heard on appeal is in no way due to the alleged insufficiency of such notice. XXVI–147

Where canceled on account of an adverse claim, when it should have been held intact subject to the perfection of said adverse claim, it may be treated, on application for reinstatement, as though the latter action had been taken. XXVI–213

Canceled with the view to allowing the entryman to make a second, may be reinstated, where on account of poverty he is unable to make the second, and his good faith is manifest. XXVI–427

An entryman who fails to appeal from a decision of cancellation and permits said decision to become final, is not entitled to reinstatement, in the presence of an intervening adverse right, even though the original judgment of cancellation was erroneous. XX–363; XXII–192

An entryman who fails to respond to a rule to show cause why his entry should not be canceled, or appeal from such order, is not, after the cancellation of his entry and the intervention of an adverse right, entitled to a reinstatement on the ground that he was not notified of the final order of cancellation. XXVII–548

Reinstatement of, for the benefit of heirs not defeated by the intervening entry of another, made with full knowledge that the heirs were in possession of, and residing upon, the land. X–570

Reinstatement of, for the benefit of heirs not barred by the unsuccessful contest of one of the heirs against an intervening entry alleging priority of settlement. X–570

Entry—Continued.

VII. REINSTATEMENT—Continued.

Where a homesteader dies and his widow fails to submit final proof within the life of the entry, abandons the land, and another settles thereon, there are no rights left to descend to the children (on the subsequent death of the mother), that warrant reinstatement. XX–141

A transferee is entitled to a reinstatement where the entry is canceled through collusion with the entryman and where no opportunity to show the validity of the entry has been accorded the transferee. XIV–85

Canceled for bad faith will not be reinstated on the application of a transferee except on a statement of facts showing the good faith of the entryman. X–566

Should not be reinstated in the interest of a transferee who is negligent in prosecuting his claim, and where in consequence of such negligence adverse rights have intervened. XIX–186

Can not be reinstated for the benefit of transferees on the ground of its cancellation without notice to said parties, where it appears that they were not entitled to notice and the adverse right of another has intervened. XX–488

Change of entry (cash) by A was allowed in 1855, but not perfected; in 1876 an additional homestead entry by B was allowed and patented; B's grantor surrenders the patent on ground that the land is occupied by C; D, a claimant under A, with recently acquired rights, applies for reinstatement of A's entry, and it is allowed. II–657

Where a desert-land entry is duly relinquished and canceled it will not be reinstated on the application of a stranger, though he claims to have purchased from the entryman a valuable interest in it. II–24

The right of one claiming under purchase of a tract for which final certificate has been issued, but is thereafter canceled, can not be recognized as against a subsequent entry, made on the relinquishment of the prior claim, if it does not appear that the intervening entryman was a party to or had knowledge of the alleged fraud upon said incumbrancer. XXII–163

Canceled on relinquishment prior to issuance of final certificate, and the land entered by another, can not be reinstated for the protection of a transferee who alleges that the relinquishment was in fraud of his rights, in the absence of evidence connecting the intervening entryman with such fraud. XVI–140

Reinstatement will not be made where negligence on the part of the applicant in the assertion of his claim appears and an adverse right has intervened. XXVI–147

Entry—Continued.

VII. REINSTATEMENT—Continued.

Right to reinstatement can not be recognized where the adverse action has become final and the claim of another intervenes. XVI–404

May be reinstated where canceled on account of a prior valid adverse claim, and said claim is subsequently withdrawn. XII–208

Erroneously allowed of land withdrawn for a private grant, and thereafter canceled for conflict with said grant, can not be reinstated, though the land is not included in the limits of the grant as adjudicated. XVIII–553

Properly allowed of public land subject thereto and canceled on the erroneous supposition that the land was not subject to such disposition, should be reinstated, if the land is still within the jurisdiction of the land department and subject to its control. XXVIII–330

The departmental instructions of April 28, 1899, relating to the reinstatement of cash entries canceled for supposed conflict with the Houmas private land grant, do not contemplate that such entries shall be reinstated by the land department of its own motion, and where those having rights under those entries do not assert them but allow the lands to be appropriated by others under the settlement laws, the presumption arises that they have acquiesced in the cancellation of the entries and abandoned any claim thereunder; and in such cases homestead entries for the lands, if the proofs be satisfactory, should be carried to patent regardless of such former canceled entries. XXX–495

Vested rights secured under a valid, are not defeated by an erroneous order of cancellation; and if the land yet remains within the jurisdiction of the Department, and the party claiming under said entry has not acquiesced in its erroneous cancellation, it is the duty of the Secretary to reinstate the same, and the intervention of adverse claims is no bar to such action. XXVIII–209

An entry erroneously allowed of land reserved for a railroad grant, and subsequently canceled, may be reinstated with a view to equitable action for the protection of a *bona fide* transferee, it appearing that the right of the railroad company has been forfeited by statutory enactment. XX–200

Made under the credit system, and forfeited for the nonpayment of the full purchase price, is by the act of March 31, 1830, reinstated, and should go to patent without further payment, where the amount of $3.50 per acre had been paid prior to the passage of said act; and an adverse entry made subsequent thereto will not defeat the right to such patent. XXVII–341

Entry Continued.

VIII. Subject to Preference Right.

Will not be allowed for land that is subject to the preferred right of a successful contestant. XV–424; XVI–334; XX–233

May be allowed during the period accorded the successful contestant, subject to his preferred right. I–162, 486; VII–186; IX–70, 491

Made during the thirty days accorded a successful contestant is subject to such right. IX–478, 491

On cancellation of, under contest the land covered thereby is open at once to appropriation, subject only to the right of the successful contestant. VII–186

Made during the thirty days accorded a successful contestant should not be canceled without due notice to the intervening entryman and action had thereon. VI–643; IX–491; X–18, 41; XII–285

After the expiration of the period accorded a successful contestant an entry by another is *prima facie* valid and should not be canceled without due notice to the entryman. VI–509; VII–49; X–41

Of intervening claimant must be canceled if, after due notice, he fails to show sufficient cause why the adverse right of a successful contestant should not be recognized. XI–474

Pending an invalid contest a relinquishment and change of entry may be made. II–220

Pending a contest a relinquishment and change of entry (timber-culture to homestead) may be made, subject to the preferred right of the contestant. II–265

Preferred right of, if not exercised within a reasonable period, should be held as abandoned. IX–541

Allowed on a relinquishment during the pendency of a contest should not be canceled in the interest of the contestant on the successful termination of the suit without opportunity to the intervening entryman to show cause why the contestant is not entitled to enter the land. XIII–34

IX. Land Reserved from.

An entry allowed in violation of the rule requiring notice of the filing of plat of survey will not give the entryman any advantage as against an adverse claimant who alleges priority of settlement. XIX–91

An order suspending all action as to certain land defeats an entry made thereon pending such order. III–238

During the pendency of a departmental order suspending, the local office is without authority to accept the relinquishment of said entry; and all action of the local office and General Land Office during the pendency of such order is without jurisdiction. XVIII–226

Entry—Continued.

IX. LAND RESERVED FROM—Continued.

Suspension of, does not relieve the land from reservation; and during such suspension the entry of another can not be allowed. XI–556

May not be made on a tract withdrawn for the purpose of a sale under section 2455, R. S. II–242; XII–397; XIV–458

Not allowed for land suspended from sale or entry by order of the surveyor-general pending the final location of a private claim. VIII–186

Right of, can not be exercised upon land embraced within a reservation created by executive order. XIII–607, 628

On land reserved by competent authority is illegal and can not go to patent, notwithstanding the fact that the records of the local office did not disclose the existence of the reservation, that the entry was allowed by the local office and great expense incurred. VI–585

Of land reserved, confers no right as against the government; but as between two claimants for such land, after it is restored to entry, priority of settlement may be considered. XIX–1

Not allowed of land held and actually occupied by the military under direction of the War Department. IX–600

Erroneously allowed for land within an Indian reservation may remain intact on the release of the land and take effect as of date when the land is opened to settlement. XI–231

Made in good faith, in ignorance of the fact that the land was included within a hay reservation, may stand where the reservation is subsequently abandoned and the land is restored to the public domain. (See 14 L. D., 233.) X–313

Of land partly within an Indian reservation must be corrected, though made in consequence of an erroneous survey and valuable improvements have been placed on the land that must be excluded. XII–437

Disallowed on account of conflict with a prior withdrawal of the land for Indian uses may pass to patent, where it appears that the land is not required for the purposes of the withdrawal. XVIII–604

Of land included within an executive order directing a survey for the purpose of establishing an Indian reservation may stand, where the subsequent order creating said reservation omits the land so entered. XX–414

Entry- Continued.

IX. LAND RESERVED FROM—Continued.

In accordance with the lines of survey, as shown by the map on file, but found to embrace land within a military reservation, may be equitably confirmed on the release of such land from the reservation. XII–192

Erroneously allowed of land within a military reservation, but afterwards opened to entry, may remain intact and take effect as of the date when the reservation was vacated. XV–546

Allowed for lands subject to Indian occupancy is in violation of departmental regulations and must be canceled.
III–371; VI–341; XIII–269, 302, 578; XV–19; XXVII–102

Will not be allowed for lands long occupied by Indians, with the consent of the government and under direction of the military authorities. III–203

Erroneously allowed while the land was suspended from entry may be allowed to stand on the restoration of the land, in the absence of an intervening claim. XX–12

Made on land covered by the prior timber-culture entry of another, not of record and under which no rights were asserted, is good as against every one except the timber-culture entryman. X–59

When priority of settlement is alleged under section 3, act of May 14, 1880, there may be a second entry, subject to an adjustment of the conflicting claims. II–146

Allowed during the pendency of the prior application of another confers no rights as against the prior applicant; and in the event that such application is allowed the intervening entryman should be called upon to show cause why his entry should not be canceled. XII–47

Irregularly allowed during the pendency of a prior adverse application may be permitted to stand, where the right of such adverse applicant has been eliminated and the entryman has in good faith, and at large expense, improved the land. XVII–235

A homestead entry made when the land embraced therein is covered by a "small holding" claim, duly filed with the surveyor-general and on which proof is subsequently submitted, is invalid and must be canceled. XXVII–278

Of a successful contestant allowed during the existence of an intervening adverse entry of the same land confers no right.
XVIII–446

Of land included within the entry of another is irregular, but *prima facie* valid on cancellation of the senior entry. VIII–378

Land embraced within a *prima facie* valid, not subject to entry by another. VII–444

Entry—Continued.

IX. LAND RESERVED FROM—Continued.

Allowed while the land is covered by the entry of another may be suspended pending determination of conflict. X–19

Two for the same tract should not be allowed of record at the same time. VI–425, 758; X–18, 43; XIII–686; XV–405

In the absence of an adverse right an entry based upon filing made while the land was included within a desert-land entry was allowed to stand. III–526

Irregularly allowed during the pendency of another's appeal, involving the same land, may stand in the absence of any adverse claim or charge affecting the integrity thereof. XV–389

Should not be allowed during the pendency of final proof submitted by a prior claimant. VIII–406, 414; IX–175, 215, 335; XIV–165

Should not be allowed for land involved in a prior contest pending an appeal. III–217; VIII–121; XIV–111

Should not be allowed during the pendency on appeal of the application of another to enter the same tract. XVII–592

Though made on land not subject thereto, on the removal of the bar may stand intact. II–244; VI–23, 425; X–313

Subject to rights existing under a prior filing. IV–262

Irregularly allowed of land reserved therefrom may remain intact on the restoration of the land, and in the absence of any adverse interest. XIX–1

Rejected application to file, pending an appeal, no bar to. IV–403

Not allowed on land improved by another and in his possession by color of law. II–44

Will not be allowed to embrace a tract actually sold by the government to another in accordance with the claim of such purchaser, but not described in the patent issued to him. XVI–69

While relinquishing for the purpose of changing a homestead to a timber-culture entry, but while still retaining possession of the tract, the entry of another barred. II–44

May be made by one relinquishing a claim pending contest against it illegally instituted. II–220

Not allowed for swamp land. X–39

Of lands withdrawn for the benefit of a railroad grant, confers no right as against the grant. XIX–11

Allowed at a time when the land is embraced within a railroad withdrawal on general route is not void, but voidable. XXII–213

Should not be allowed for land covered by railroad selection. V–396

Should not be allowed for land covered by a pending railroad selection; but if allowed will not be canceled, but treated as an application and held subject to the selection. VII–80

Invalid railroad selection no bar to. IV–405

Entry—Continued.

IX. Land Reserved from—Continued.

Pending appeal from the rejection of a railroad indemnity selection excludes land from. x–15

Allowed for unselected land within the limits of an indemnity withdrawal, subsequently revoked, will not be disturbed. vii–240

No rights are acquired under an, made at a time when the land is included within a railroad indemnity withdrawal; nor can any right under such entry attach on the revocation of said withdrawal, if, prior thereto, the company applies to select the land. xxviii–226

Irregularly allowed, of land withdrawn for railroad purposes, may be permitted to stand as of the date such land is restored. xiv–545; xix–575

Rejected on account of railroad indemnity withdrawal, subsequently revoked, may be allowed as of the date when the order of revocation became effective. vi–378

Permitted on showing compliance with law after the revocation of a former indemnity withdrawal covering the land. vi–382

Improperly allowed for land within a swamp selection may be permitted to stand, on the cancellation of the selection, if such action does not impair the right of an adverse claimant. xii–639

Good faith of, not impeached by the fact that an acre of the quarter section has been reserved for the location of a land office. xiv–13

Land lying within the banks of a meandered stream, and forming a part of the bed thereof as surveyed, but subsequently left dry by a change in the channel thereof, can not be entered where patents have issued for the adjacent lands. xxi–429

X. Cancellation. See *Judgment*.

The land department has full authority to cancel entries for illegality and fraud. ii–599, 783; iii–299; v–443; vi–503; viii–269; ix–316, 573

May be canceled by the Department, prior to issuance of patent, on sufficient proof that the land is not subject to such appropriation or that the entry is in fraud of the law. xi–484, 507

Ex parte report of a special agent is not ground for cancellation; there must be a hearing. ii–784; iii–504; iv–340; v–170, 313; vi–503

Of an entry on the report of a special agent is contrary to law, and an entry so canceled should be reinstated. The intervening entry of another in such case should not be canceled without opportunity for defense. xv–354

Not canceled except on conclusive evidence. v–313

Entry—Continued.

X. CANCELLATION—Continued.

Of record should not be expunged by the local office. IV–554

May not be canceled by local officers except under the act of May 14, 1880. III–567

Erroneously and inadvertently allowed, should not be canceled by the local office on its own motion, but where appeal is allowed from such action it will be treated as a decision recommending cancellation of the entry. XVIII–589

Properly made, when the land is subject to appropriation, must remain of record until properly canceled or results in a patent. XIII–686

May not be canceled by erasure on the record. VII–220; XVI–409

Should not be canceled on the ground of fraud in the absence of clear and convincing proof. XVI–130

The land department will take summary action when the record shows a fraudulent entry, notwithstanding contest allegation was abandonment and was not proved. II–95, 97

Diligence in ascertaining the fact of cancellation must be exercised by settlers on abandoned homestead claims. II–89

Erroneous cancellation does not subject the tract to appropriation by a stranger to the record who had located it while the entry (mineral) was subsisting. II–767

Is a mere formal method of executing the judgment of the land department against the entryman, and, so far as his rights are concerned, takes effect by relation as of the date that judgment becomes final. II–166

Procured through false and fraudulent testimony must be canceled. XIII–612

Can not be allowed to stand where it is procured through fraud and misrepresentation as against the heirs of a deceased adverse claimant. XIII–594

As to the rights of third parties cancellation takes effect (releases the land from reservation) by the formal act at local office. II–168

When final judgment of cancellation is rendered by the Commissioner the entry is thereby canceled and the land opened to appropriation without waiting for the expiration of the time allowed for appeal. (See 24 L. D., 81.) VI–563, 700; VII–163; X–221

Cancellation of, takes effect as of the date when the decision is rendered. VII–163; XII–59, 643; XVIII–558

A judgment of, takes effect as of the date rendered, and the land becomes subject to entry as of such date, without regard to the time when such judgment is noted of record in the local office. XIX–547; XX–191; XXII–77

Entry—Continued.

X. CANCELLATION—Continued.

Order of, is final as to the rights of the entryman in the absence of appeal, and no right under the canceled entry can be subsequently asserted as against the intervening claim of another. XVI–8

Voidable, that conflicts with prior rights may be set aside. V–379

Will be canceled where the law has not been complied with and further compliance is not possible, notwithstanding the plea of "hardship." VI–432

Set up to defeat the right of another must be canceled if the evidence shows non-compliance with the law. VI–330

An order of, is not effective in the absence of notice thereof to the entryman. IV–397; VII–42; XVI–353; XVIII–311, 421; XX–311, 553; XXI–169; XXII–174; XXIII–113, 162

Of an entry without notice to the entryman is void for want of jurisdiction. XXIV–52; XXVI–499; XXX–410

Of an entry without notice to a transferee, whose interest appears of record, while irregular, is not void for want of jurisdiction, if the entryman was duly notified of the adverse proceeding. XXIII–175

Though irregularly allowed should not be canceled without giving the entryman an opportunity to be heard in its defense. XII–47; XIV–111; XVI–117; XVII–189

Where a deserted wife has submitted final proof on her husband's homestead entry and by departmental decision is required to submit new proof, but does not do so, and the record does not show that she was notified of such requirement, the entry can not thereafter be properly canceled for failure to submit final proof within the statutory period, except after due notice to the wife. XXV–402

An entry should not be canceled, on the allowance of an adverse claim, without due notice to the entryman, with opportunity to be heard. XVII–20

An entry allowed by the local office should not be subsequently held for, without first affording the entryman an opportunity to show cause why such action should not be taken. XXII–606

That has been duly canceled is no bar to the subsequent settlement or entry of another. XII–488

Cancellation of commuted entry carries with it the cancellation of the original entry, and record of such action should be accordingly noted. IV–237; VI–8, 107; VIII–651; XII–243

By inadvertency and the intervention of an adverse claim, will not defeat the right to a full hearing in the premises. XVI–353; XXIII–54

Entry—Continued.

XI. By Employé of the General Land Office.

Origin and reason of the rule forbidding local officers and their employés from making entries of the public lands. II–107,314

Local officers and their clerks can not make, in their own districts, except under section 2287, R. S. VI–105

May be made by a local officer or clerk, but not by a special agent, in a district other than that in which he is stationed. II–313

Made by a special agent of the General Land Office is invalid, under the provisions of section 452, R. S., and must be canceled. XVIII–425

May be made by employés of land office in a district other than that in which they are located. VI–106

The mineral entry of a deputy mineral surveyor within the district for which he is appointed is not in violation of any statute or regulation, but care should be exercised in the allowance of such entries. VI–105

Clerks in local offices prohibited from making. IV–77

Of public land can not be made by an employé of surveyor-general's office (General Land Office). XI–96, 348

Of public land can not be made by a deputy United States surveyor. XVIII–394

The disqualification to enter provided in section 452, R. S., extends to officers, clerks, and employés in any of the branches of the public service under the control of the Commissioner. X–97

A homestead entry based upon a soldier's declaratory filed after appointment as receiver is wholly illegal. II–110

Whether or not a mineral "location" by a register is within the prohibition of circular of August 26, 1876, against "entry," a purchaser in good faith of the register's interest in such location may make entry. II–754

A receiver who files soldier's declaratory, prior to appointment may afterwards make preëmption, but not homestead entry, provided he was a *bona fide* settler on the land prior to appointment; if he has made homestead entry, but did not reside on the land prior to his appointment, his entry must be canceled. II–108

Where timber-culture entry was made when a receiver's clerk, but contest was brought after such service had ceased, in view of claimant's good faith, entry is allowed to stand. II–314

Timber-culture entry made by a special agent will not be canceled for invalidity, where it was allowed under an express ruling of the Commissioner, and the entryman subsequently complied with the law. XVII–85

Entry—Continued.

XI. By Employé of the General Land Office—Continued.

One who files desert-land declaratory, prior to appointment as register, and thereafter resigns and after acceptance of resignation, but while still performing the duties of the office, applies to relinquish part of the claim and make homestead entry thereon, is not entitled to such right. II–106

No presumption against the good faith of, can arise from the fact that the entryman was formerly the register of the land office where the entry was made. IX–534

Right of entry not defeated because the son of the entryman was chief clerk in the local office. IV–77

By the sister of a receiver is not necessarily invalid. II–105

One engaged as the agent or attorney of others in procuring information from the records of the local office for the benefit of such individuals is not by such employment disqualified under section 452, R. S., to enter public land. XVI–546

Made by one who has accepted an appointment in the local office, but has not yet entered upon his duties, is in violation of the spirit of the law which prohibits employés of the land office from becoming interested in the purchase of public land. XI–280

Section 452, R. S., does not prohibit a homesteader from completing title by due compliance with law who, after entry, accepts and holds an appointment in the General Land Office that gives no advantage in prosecuting his claim. XV–266

A settler in good faith who is subsequently appointed register before the land is opened to entry is entitled to perfect his claim under section 2287, R. S., the same as though it had been initiated by an application to enter. XI–18

XII. Desert Land. See *Desert Land; Final Proof; Payment.*

Circular regulations of June 27, 1887. V–708

Circular regulations of April 20, 1891, giving directions for the manner of proceeding in case of final entry before survey. XII–376

May be made prior to survey of land. V–528

When made prior to survey the entryman is entitled on survey of the township to have his claim properly described by legal subdivisions. VII–177

The act of August 4, 1894, extends relief to certain classes of; circular of October 11, 1894. XIX–298

Restricted to 320 acres by the act of August 30, 1890. XIV–336

Restriction in acreage under the act of 1890 not applicable where prior to the issuance of the circular of August 9, 1890, application is made and accepted for 640 acres, though an irregularity in the matter of the accompanying payment delays action thereon. XIV–551

Entry—Continued.

XII. DESERT LAND—Continued.

Sioux lands opened by act of March 2, 1889, not subject to. XXIX–541

Application to make, must show personal knowledge of the applicant as to the character of the land. VII–312; VIII–96

The preliminary affidavit must be made upon the personal knowledge of the entryman, derived from personal inspection of the land. XII–90

Will not be canceled for failure to show personal knowledge of the land if the entry was allowed under an existing practice which did not require such showing. XI–155

Application to make in accordance with existing regulations should not be rejected because not in conformity with later regulations as to the personal knowledge of the applicant concerning the character of the land. VIII–408

A personal inspection of the tract prior to application therefor confers no priority as against other applicants or settlers. XIII–207

Claim for, initiated by the application and not by settlement. VI–541

The initial act in establishing a claim is the payment of 25 cents per acre, and prior thereto no rights are acquired under the act of 1877. XIII–207

The essential act in making, is the payment of the first installment of the purchase price. XXI–189

Entry for, in the interest of another not permitted. IV–445; VII–337, 378

Allowance of initial, does not deprive the local office of jurisdiction in subsequent proceedings directed by the Department to ascertain the validity thereof. XII–34

That embraces some land not subject thereto is not necessarily fraudulent. XI–206

The law restricts one person to an entry of one tract, in a compact form, not exceeding 640 acres. I–28; II–22; III–215

An individual or corporation not permitted through indirection to secure more than one. VII–337

Entries for, treated as preëmptions under the act of May 14, 1880. III–69; V–694, 708; VI–1, 572; VII–186

But one declaration of intention to make entry allowed. V–414

Right of married woman to make, recognized. VI–114, 541; X–48

By the amendatory act of March 3, 1891, the right to make is restricted to resident citizens of the State or Territory in which the land sought to be entered is situated. XIX–495

The provisions of the amendatory act of March 3, 1891, requiring the entryman to be a resident citizen of the State in which the land is situated, are not applicable to entry made prior to the passage of said act. XXIV–466

Entry—Continued.

XII. DESERT LAND—Continued

Made under the act of March 3, 1877, by one not a citizen of the State in which the land is situated, but a qualified citizen of the United States, may be perfected under the amendatory act of March 3, 1891. XXIV–308

The limitation in section 8 of the desert-land act, as amended by the act of March 3, 1891, of the right to resident citizens applies at the final entry as well as at the original. XIV–565

Made subsequent to the act of March 3, 1891, limiting the right of entry to resident citizens, and in violation of such restrictions, must be cancelled, though allowed by the local officers before they learned of the passage of said act. XIV–596

The phrase "resident citizen," as used in the statute as amended March 3, 1891, embraces persons entitled to protection in the exercise of civil rights, and should be read in connection with sections 1 and 7 of said act. XIV–677

Under the provisions of the act of 1891 the assignee of a desert entryman need not show on final proof that he is a resident citizen of the State or Territory in which the land is situated. It is sufficient in such case for the assignee to show that he is a citizen of the United States. XX–67; XXII–1

A corporation organized under the laws of a State is in contemplation of law a citizen of the United States, and as such can take and hold by assignment a desert entry. XXII–1

The word "enter" as used in section 8 of the amendatory act of March 3, 1891, does not mean final entry, but should be construed as applied to the original entry. XX–67

An actual resident of the State or Territory in which the land is situated who has declared his intention to become a citizen is qualified as to citizenship to make entry under the amendatory act of March 3, 1891. XV–343

A claimant who has made entry under the act of March 3, 1877, at any time during the life of his entry, and after the passage of the amendatory act of 1891, may elect to proceed under the latter act. XX–218

An applicant for extension of time under section 6 of the amendatory act of March 3, 1891, should file in the local office a sworn statement of his intention to proceed under said act, showing what has been done by him in regard to the land, and that since he determined to take advantage of the act in question he has complied with the provisions thereof. XVII–398

After the expiration of three years from the date of the original entry, and subsequent to the intervention of an adverse claim or contest, it is too late to accept the option given by the amendatory act. XIX–121, 231

Entry—Continued.

XII. DESERT LAND—Continued.

The rule requiring claimants who elect to proceed under the amendatory act to file a sworn statement of the intention to so elect will not be held retroactive. XXI–233

There is no requirement in the act of March 3, 1891, that an entryman, who at the passage thereof has an entry under the act of 1877, and elects to proceed under the amendatory act, should at the time of election file a map showing the plan of irrigation. The right of the entryman, in such case, is protected if he formally elects to proceed under the latter act, and gives notice of such election. XXI–233

Where the election of an entryman to proceed under the act of 1891 is to the satisfaction of the local officers, and prior to the promulgation of the rule requiring a sworn statement as to such election, the rights of the entryman under the later law are duly protected, though the sworn statement as to his intention is not made as required by said rule. XXI–244

The failure of an entryman to file a map showing the plan of contemplated irrigation, as required by section 4 of the act of 1891, may be cured, in the absence of any adverse claim, by subsequent compliance with law, and furnishing a map on final proof showing the character and extent of the improvements. XX–61

An entryman under the act of 1877 who, after the expiration of his entry, and prior to the passage of the act of July 26, 1894, elects to proceed under the amendatory act of 1891, takes, by way of the extension of time under said act of 1894, the same privilege as though his entry had been originally made under said act of 1891. XXIII–293

The act of March 3, 1891, amending the act of March 3, 1877, operates to confer upon entrymen under the original act, at their option, the additional time for effecting reclamation provided for in said amendatory act, and an entry occupying such status, on which final proof has not been submitted, is within the provisions of the act of July 26, 1894, extending the time for making final proof and payment. XXIV–435

By the act of August 4, 1894, extending the time for compliance with the law, Congress relieved all entrymen from expenditure and proof for one year, and the entry year, not the calendar year, was meant. In the application of said provisions to particular cases, if the entryman was in default for a year ending in 1894 the act should be applied to cure the default for that year; if not in default for the year ending in 1894, he should be excused for the entry year beginning in 1894. XXIII–293

Entry—Continued.

XII. DESERT LAND—Continued.

The act of August 4, 1894, dispensing with annual expenditure on desert entries for that year, applies to entries existing at the time said act took effect, and does not operate to revive entries rightfully canceled prior thereto. XXVI–499

The act of August 4, 1894, relieving desert entrymen from annual expenditure during the year of 1894, is applicable to entries made in said year, and prior to the passage of said act; and the year so given should be computed from the date of the entry. XXVI–298

The cancellation of a, without due notice of such action to the original entryman, is unauthorized by law, and an entry so canceled prior to the act of August 4, 1894, must be held in law an existing entry, and therefore entitled to the benefit of said act. XXVI–499

An adverse settlement claim will not defeat a, if due priority of right is not shown thereunder. XXIII–436

Not allowed for land covered by the improvements of a *bona fide* settler. VIII–630

Though allowed, is subsequently subject to the supervisory authority of the Department. IX–379

In each the questions are: (1) Is the land desert in character and entry compact in form; and (2) is the entryman duly qualified, and has he shown due compliance with law. VIII–48

Must be compact in form. IV–34

Compactness of, how determined. IV–317

In determining whether a, is within the rule as to compactness no inflexible rule can be laid down, but each case must be considered in the light of the facts presented. V–4; XXIV–306

Circular regulations with respect to compactness modified. V–429

Decisions and regulations of the Department with respect to "compactness" cited and compared. VIII–104

In determining compactness the relation of the land to adjacent tracts may be considered. V–4, 642

The existence of prior adjacent entries and the topography of the country must be taken into consideration in determining the question of compactness. IX–248; XI–27; XXII–412

The non-irrigable character of adjacent tracts may be properly considered in determining whether a, is within the rule as to compactness. XXVII–123

Statutory requirements as to compactness must be followed rather than departmental regulations. V–429

Amendment required where the rule as to compactness has not been observed. VII–247

Entry—Continued.

XII. DESERT LAND—Continued.

Covering technical three-quarters of section is compact. IV–291

Is not compact that covers a narrow strip of land lying along and upon both sides of a stream. VI–536; IX–202

Two miles in length for 360 acres not compact. IV–445

On the adjustment of, to conform to the requirement of compactness, due regard may be given to the situation of the land and its relation to other lands at the time the entry was made. IX–202, 307

An entry allowed in accordance with existing regulations and for which proof was accepted will not be disturbed, though not within the later requirements as to "compactness." VIII–104

Allowed in conformity with existing regulations as to compactness should not be canceled under later regulations imposing a more rigid rule. VIII–231

The requirement of compactness is statutory; hence an entry in obvious violation thereof is not protected by the fact that it was made before the Department issued instructions as to said requirement. IX–202, 307, 379

Allowed for the land reclaimed on relinquishment of remainder. VII–23

Not assignable. I–28

Assignments before final proof recognized prior to April 15, 1880. V–21, 597

Assignments of entries made while the rule was in force allowing the same will be protected. III–214; V–167, 595

A claimant under an alleged assignment must show the fact of assignment and that it was made prior to April 15, 1880. XIV–123

One person can not take more than 640 acres, either as entryman or assignee. II–22; V–19, 167, 597

Patent will issue to entryman though assignment is recognized. III–216; V–167

Where an assignment of entry is recognized the assignee will be entitled to all the rights of the entryman. III–215

Right of an assignee under an assignment made prior to April 15, 1880, can not be defeated by a subsequent relinquishment of the entry. XVI–167

The provisions of the act of March 3, 1891, amendatory of the act of March 3, 1877, with respect to the assignment of desert-land entries are applicable to an entry made under the original act, but assigned after the passage of the amendatory act, and perfected in accordance therewith. XXVII–721

Entry—Continued.

XII. DESERT LAND—Continued.

A mortgage of land covered by a, can not be regarded as entitling the mortgagee to the status of an assignee of the entry until after foreclosure of the mortgage, if, under the laws of the State in which the land is situated, a mortgage of real property is not a conveyance thereof. XXIV–418

A mortgagee who secures the foreclosure of a mortgage covering land embraced within a, prior to the time when final proof is due on said entry, may be regarded as an assignee thereof, and entitled to submit final proof. XXV–375

An assignment of a, to one disqualified to acquire title under the desert-land law, does not render the, fraudulent, but leaves the title thereunder still in the entryman. XXV–323; XXVIII–497

The act of March 3, 1891, authorizes the sale and assignment of; and such a sale, made by the guardian of an insane entryman acting under an order of the court in accordance with the local statutes, will be recognized by the Department. XXX–71

Where the entryman, prior to survey, submits final proof, and then sells the land, such sale must be regarded as an assignment of the entry, proof of which should be furnished as required in other cases of assignment. XXIX–453

There is no authority for the acceptance of the proof of the assignment of a, and of annual expenditure, executed before a clerk of a court of record outside of the land district and State in which the land is situated. XXIX–355

May be allowed subject to the preference right of successful contest. (See Allen *v.* Price, 15 L. D., 424.) VII–227

The right by prior appropriation to the requisite water supply must be determined by the land department. IX–6

Should not be canceled in the absense of adverse claim, though on hearing it appear that the land was not reclaimed at date of final proof, but that reclamation was subsequently effected. VIII–48

Final, after expiration of statutory period allowed in the absence of adverse claims. IV–261

The right of an entryman, who has shown due diligence from the first, to equitable action on his entry, where he, through obstacles beyond his control, is unable to effect reclamation within the statutory period, is not defeated by a contest, charging such failure, begun while he is engaged in curing his default. XXI–211

Right of entryman who has shown diligence from the first to perfect his claim not defeated by an intervening contest where failure to effect reclamation within the statutory period is due to a mistake which he is engaged in rectifying at date of initiation of contest. XVI–366

Entry—Continued.

XII. DESERT LAND—Continued.

A contestant who submits proof showing failure to effect reclamation within the statutory period, does not thereby acquire the status of an an adverse claimant so as to defeat equitable action, where the government on its own motion has examined into the cause of said failure and held the entry intact with a view to its equitable adjudication. XVII–255

Equitable confirmation in case of failure to submit final proof within the statutory period not defeated by a contest directed against the subsequent entry of another for the same tract. XVI–310

May be equitably confirmed where allowed on final proof submitted after the expiration of the statutory period, and the delay is explained. XIV–493

Canceled for failure to submit final proof within the statutory life of the entry, will not be reinstated with a view to equitable action, unless it appears that the land was reclaimed within the statutory period, or within a reasonable time thereafter, and sufficient cause for the delay is clearly shown. XXVII–216

May be equitably confirmed when the failure to effect reclamation within the statutory period is due to obstacles that could not be overcome. VI–548, 799; VII–247; VIII–573; IX–631; X–598

Amendment after the period for reclamation has expired can only include reclaimed land. VII–247

Made in good faith, in ignorance of the fact that the land was included within a hay reservation, may stand where such reservation is subsequently abandoned and the land restored to the public domain. (See 14 L. D., 233.) X–313

The suspension of land from, on account of irregularity in the survey does not necessarily carry with it the invalidity of a desert-land entry made during such suspension. XVIII–185

Allowed to stand though made when the land was apparently not subject thereto, the bar having been removed, no adverse claim existing, and due reclamation shown. VI–23

Made after the passage of the act of October 2, 1888, of lands subsequently designated for reservoir puposes is invalid, but may be suspended under section 17, act of March 3, 1891, with a view to allowance in the event the land is not required for the purpose designated. XIII–45

The departmental order of September 12, 1877, suspending Visalia entries revoked and directions given for the disposition of pending contests against the same and the reception of final proof thereon. XII–34

Entry—Continued.

XII. DESERT LAND—Continued.

The period of time covered by a departmental order suspending entries should be excluded from the time accorded by statute for reclamation and final proof. XV–234; XVI–166; XXIV–435

A suspended entry does not run during the period of suspension, but it does run from its date to suspension, and then again, as if without interruption, from the date of the order revoking the suspension to the expiration of the term. XX–324

During the pendency of a departmental order suspending a desert entry the claimant is not required to proceed with the work of reclamation. XVIII–420; XIX–382

The departmental rule that excludes from the period allowed for the reclamation of land within a, such time as said entry may be suspended is within the scope of administrative authority, and not violative of the desert land law. XX–548

On the revocation of an order suspending a desert entry, time will not run as against the entryman in the matter of reclamation, in the absence of proper notice to him of said revocation. XXI–394, 494; XXV–323; XXVIII–497

The notice given an entryman of the revocation of an order suspending his, is insufficient if not definite and certain in its terms. XXIII–240; XXV–388

Secured by testimony falsely showing reclamation must be canceled, though it may appear that prior to initiation of suit the land was reclaimed by a transferee. XV–5

Made under the Lassen county act of 1875 since the repeal thereof must be canceled; but the claimant may, if qualified, make new entry under the amended act with credit for amount expended in reclamation. XVI–467

Made either under the Lassen county act, or the general act, and abandoned, exhausts the claimant's right under the desert-land law. XVIII–580; XXVI–673

Or declaration of intention to make entry, made under either the Lassen county act of 1875, or the general act of 1877, exhausts the right of entry under the desert-land laws, and precludes the allowance of a second entry. XVIII–99

The regulations adopted after the passage of the act of 1877, were formulated on a construction of said act, in connection with the Lassen county act of 1875, which held that the right of entry could not be exercised by the same person under both acts. XIX–247

Declaratory statement filed under the Lassen county act by one who holds at the same time another tract under a previous filing confers no right. XIV–220

Entry—Continued.

XII. DESERT LAND—Continued.

If the record shows the death of the entryman, the patent should issue in the name of the heirs generally. XIII–49

The right of an entryman under the act of March 3, 1877, who dies prior to the completion of his entry, descends to his heirs and may be perfected by them. XXVIII–343

The desert-land act of 1891 does not authorize taking annual proof before a notary public. XX–111

Orders of the General Land Office with respect to annual proof will be treated as interlocutory, from which no appeal will be allowed. XX–111; XXIV–306

The annual proof showing the expenditure of the requisite amount, if filed, preserves intact the entry during the three years, or prior to offering final proof. In *ex parte* cases the entryman's right to the land will not be passed upon until the submission of final proof. XX–111

The local officers should not reject annual proof. If said proof is found insufficient they should inform the entryman that adverse action thereon will be recommended, and that he will be allowed thirty days in which to file exceptions. The proof, recommendation, and exceptions should be transmitted to the General Land Office for consideration. XX–111

The provision in section 7 of the act of 1891, authorizing calls for additional proofs, has reference to entries made prior to the passage of said act in which the entryman has elected to perfect his entry under said act. XX–101

The cost of fencing may be properly shown as an expenditure authorized under section 2 of the act of March 3, 1891. XX–61, 81

Under section 1, act of March 3, 1877, the waters of non-navigable streams are open to appropriation for purposes of irrigation, and may be so taken by the entryman, if he is the first *bona fide* appropriator thereof; and the fact of such appropriation may be shown by parol evidence. XXVIII–512

The act of March 3, 1877, provides that the water right of a desert-land entryman shall depend upon prior appropriation, and evidence which satisfactorily establishes the fact that the entryman has thus acquired and possesses an undoubted right to the requisite supply of water, is sufficient. XXIX–133

XIII. HOMESTEAD. See *Homestead; Mineral Land; Oklahoma Lands.*

May embrace 160 acres in odd-numbered sections within railroad grant if excepted therefrom. XIV–71

Entry—Continued.

XIII. HOMESTEAD—Continued.

Can not be made by one who owns more than 160 acres of land since the amendatory act of March 3, 1891. XIII–437; XV–158

Validity of, is determined by the facts existing at the date it is made. XI–314

Statutory life of, does not run during the suspension of the official plat of survey. XXI–169

Voidable for illegality in preliminary affidavit. V–118, 248

Execution of preliminary affidavit before clerk of court without prior residence renders the entry voidable, not void, and the defect may be cured in the absence of an adverse claim. VI–425, 722; IX–20

Confers no right in the presence of a valid intervening claim where the preliminary affidavit was executed before a clerk of court without the requisite residence on the land. VII–245

Voidable where the preliminary affidavit was made before a clerk of court without the prerequisite residence on the land; but such defect may be cured prior to contest. VIII–1

Based upon preliminary affidavit executed before a clerk of court without the prerequisite residence on the land is voidable, and the defect can not be cured if, before such residence is acquired, the right of a contestant intervenes. IX–209; XIII–686; XV–337

Failure of the entryman to establish the prerequisite residence where the preliminary affidavit is executed before a clerk of court may be cured by the establishment of residence prior to the intervention of an adverse right, and a subsequent contest does not cut off the right of amendment. X–61

Based on preliminary affidavit made before a clerk of court not authorized to act in such matters is voidable only, and the defect may be cured by supplemental affidavit. V–394; VI–257

Right of entryman to file amended affidavit of qualification not defeated by a pending contest under which the contestant can secure no preference. XIX–282

The affidavit required in section 2294, R. S., may be made in the county to which the one is attached wherein the land is situated. VI–257

Of settler relates back under act of May 14, 1880, to date of settlement, to the exclusion of intervening claim. VI–257, 653; VII–537; VIII–448

Not allowed under section 3, act of May 14, 1880, until the record is cleared of adverse claims. I–449

Under section 2291 not allowed on proof submitted in commutation of the original entry. VIII–86

Entry—Continued.

XIII. HOMESTEAD—Continued.

Made under section 2293, R. S., without the required settlement and improvement ratified by the subsequent enactment of section 2308, R. S. I–362

For lands settled upon originally by the claimant and others as a town site and actually occupied for trade and business is illegal and must be canceled. IX–532

Not prevented by abandoned town-site settlement. V–180

Of land subsequently found to contain coal can not be completed. XIV–526

The conditions existing at date of final, determine whether land should be excluded from, on account of its alleged mineral character. XV–37, 290, 514

After final, the discovery of mineral on the land will not affect rights acquired thereunder. VII–570; XV–37, 514

Alleged to be in conflict with a mining claim may be disposed of without regard to such allegation, where, after due opportunity given, the mineral claimant fails to show the extent of said conflict. XIX–287

Of an alien relates back to settlement on subsequent naturalization in the absence of any intervening right. XIV–568

By alien who subsequently declares his intention of becoming a citizen not void. IV–564

May be equitably confirmed where through ignorance the entryman submits final proof prior to becoming a citizen. X–475

Made by an alien can not be confirmed under rule 32 of the rules of equitable adjudication, for the benefit of the heirs, where the entryman dies without having complied with the naturalization laws, or declared his intention to become a citizen. XVII–506

Embracing non-contiguous tracts, may be referred to the board of equitable adjudication where the non-contiguity is caused by the cancellation of a part of the entry on account of a prior adverse right; and the original entry is made in ignorance of such adverse claim. XXIX–721

Rights of, not acquired by the purchase of the improvements of a homesteader as against the prior adverse settlement of another. IV–121

Of land not subject thereto not legalized by subsequent residence, cultivation, and improvements. X–649

Allowed to two claimants, to correspond with their settlement rights, in place of a canceled illegal entry made by one for the joint benefit of each. IV–529

Entry—Continued.

XIII. HOMESTEAD—Continued.

Made while the entryman has a pending unperfected preëmption claim is not void, but *prima facie* valid, and only becomes voidable by the subsequent maintenance of the preëmption claim. VII–215

Made while the entryman has a pending preëmption claim of record for another tract is not necessarily void, for said claim may have been in fact abandoned. IX–63

Of land covered by the prior timber-culture entry of another not of record, without actual notice of any claim thereunder, is a valid claim, that will attach on relinquishment of the prior entry and exclude the right of a contestant against said entry. XI–356

By one who went upon the land as the tenant of another may be allowed where there is no fraud and where the latter has made no claim to the land. II–135

Failure to establish residence until after action upon the adverse report of a special agent does not in itself warrant cancellation. VII–464

Admitted against the claim of a railway company where final proof was to follow at once, the company to have special notice thereof. IV–256

Allowed in contravention of the terms of the act of March 3, 1883, may be suspended until after public offering of the land. VII–560; IX–203, 635

In changing an entry pending a contest for default one will not be permitted to assert a homestead right initiated while the tract was covered by his timber-culture entry. II–265

The right of a homesteader to change his entry to an adjoining farm homestead is not affected by his failure to comply with the law under his original entry of the tract, in the absence of a valid intervening adverse claim. XXIX–166

Allowed as a homestead for land formerly claimed under the preemption law, notwithstanding certain alleged intervening adverse rights. III–313

By a contestant of a timber-culture claim is confined to land in contest unless less than 160 acres, when contiguous land may be taken; by contestant of a homestead claim may be made on a portion of the land in contest and adjoining land. II–289

In conflict with previously acquired rights is voidable. I–449

If made for any other purpose than the establishment of a home, is in bad faith. VIII–248

A homestead entry in another's interest, and not for a home for the entryman, is in fraud of the law and invalid *ab initio*. II–95

Entry—Continued.

XIII. HOMESTEAD—Continued.

An applicant for the right of, is bound to personally know the character of the land, whether it is suitable for purposes of residence and cultivation, and any mistakes therein that may be avoided by proper diligence are at his own risk. XIII–236

Of a less amount than that covered by settlement operates as an abandonment of the land not entered. XI–557

May remain of record subject to the right of a preëmptor where such preëmptor, as against the homesteader, is accorded the right to file for the land. XIII–593

Made in the presence of a prior adverse settlement right must be canceled on due showing of the settler's claim. XXI–542; XXVI–301

Rights lawfully acquired by homestead, under proceedings in the land office authorized by existing law, may properly be perfected, though the law authorizing such entry is subsequently repealed. XXVI–330

XIV. PREËMPTION. See *Filing*.

Under the regulations of the Department the tracts embraced must be contiguous. VI–621

Tracts cornering on each other are not contiguous. VI–621

When allowed, relates back to final proof, to the exclusion of intervening adverse claims. VIII–224; X–253

The rule that an entry is equivalent to patent, in so far as third parties are concerned, does not apply to an entry void for fraud. II–780

Rights secured by, not defeated by failure of local office to forward the final proof. XIV–349

Of a portion of the land filed for and settled upon is an abandonment and relinquishment of the remainder. VI–356; XVI–251

Allowance of, by the local officers does not preclude the General Land Office or Department from passing on its validity. VIII–269

Allowed will not be canceled except on positive showing of bad faith. VI–292, 418

Found to be fraudulent in character and based on false proof must be canceled. II–779; VIII–524

If made contrary to law, should be canceled. VIII–269

Made without the prerequisite compliance with law is illegal, and the entryman exhausts his right thereby and can not make a second, nor have the first reinstated on subsequent compliance with law. XI–290; XII–418

Preëmptor who has complied with requirements in the matter of settlement and is called away by military service has six months after close of service in which to make entry. XIV–364

Entry—Continued.

XIV. PREEMPTION—Continued.

Where cash entry has been made of record, though inadvertently, it can only be vacated by regular proceedings. II–57

Of double minimum land at single minimum price may be rectified by the required additional payment or relinquishment of half the land. VII–579

Will be made in the name of the heirs generally on death of preemptor. VI–30

Allowed within less than three months from filing of the township plat will not be disturbed when it is apparent that all parties have had full opportunity to assert their claims. VI–633

Acts performed after, only considered for the purpose of determining the claimant's good faith during the period covered by the final proof. XI–290

Made in good faith by a married woman may be referred for equitable action where due compliance with law prior to marriage is shown and the final proof and payment are accepted with full knowledge of the facts. XV–230

Married woman may make, with a view to equitable adjudication where the proof shows that she duly complied with the law in the matter of filing, residence, and improvement prior to marriage. XI–366

May be equitably confirmed when a single woman, after settlement, filing, inhabitancy, and improvement, marries prior to final proof but after published notice of intention to submit the same. I–460; IX–215

Made in good faith by a married woman who, prior to marriage, had fully complied with the law as to settlement, residence, and improvement may be equitably confirmed. VIII–433; X–629

May be confirmed by equitable action, in the absence of an adverse claim, where a single woman, after settlement, filing, due inhabitancy, and improvement, marries prior to final proof but after published notice of intention to submit the same. X–166

Allowed on second filing may be sent to the board of equitable adjudication where the fact of the first filing was disclosed at the time of entry. VIII–445

Entry should be sent to the board of equitable adjudication where made after the expiration of the statutory period. VIII–355

XV. TIMBER CULTURE. See title, *Timber Culture.*

Circular of February 1, 1882, with blank forms. I–638

Can not be allowed on application made since the passage of the act of March 3, 1891. XIII–169

Made on the date of the repealing act, March 3, 1891, by a successful contestant may be allowed to stand. XIV–614

Entry—Continued.

XV. TIMBER CULTURE—Continued.

Made on March 3, 1891 (the date of the repealing statute), are valid so far as said act is concerned, as it was not approved by the President until after the local offices were closed for business on that day. XV–142, 403

Rights under the timber-culture law are initiated by the application to enter. XXIII–1

No rights under the timber-culture law are acquired by settlement, and acts of settlement performed prior to the repeal of said law do not initiate a claim protected by the statute of repeal. XV–513

The preliminary affidavit is statutory, and the Department has no authority to add thereto. III–606; VIII–20

Voidable only where application and preliminary affidavit are executed outside of the district and Territory in which the land is situated. IV–492; VI–762

Allowed on a preliminary affidavit executed outside of the district and State in which the land is situated, is not void but voidable, and may be amended in the absence of an adverse claim. XVII–400

Allowed on preliminary affidavit executed outside of the State where the land is situated is voidable, but may be amended to relate back to the original entry in the absence of adverse right. VIII–478

Based on preliminary affidavit executed outside of the district must be canceled if contested on that ground. XIV–466

Made through an agent and without the preliminary affidavit is illegal, but the defect may be cured by affidavit properly executed, which will be held to relate back to the date of entry. VII–50

Based on preliminary papers falsely purporting to have been properly executed, but in fact not sworn to before any officer, is illegal, and the defects can not be cured by amendment. IX–238

Entry excludes subsequent claim founded upon settlement. III–565

But one quarter may be entered in a section. III–182, 311; V–173

Excess over 160 acres must be paid for in cash or relinquished. XIV–450

Payment for excess over 160 acres is a proper requirement, though the entry may have been made prior to the regulation of March 28, 1880. XV–396

May embrace a technical quarter section without reference to its relation to the entire section. XI–378

One-quarter, approximately, of the number of acres in any section may be entered under the act of June 14, 1878. XIII–53

Under the act of March 13, 1874, a second or additional entry of eighty acres of non-adjacent land may be made where the two entries taken together do not exceed 160 acres and the first entry is for less than forty. XIII–509

Entry—Continued.

XV. Timber Culture—Continued.

Of but 160 acres allowed in a section of 640 acres. VI–804

Allowed in the proportion of 160 acres for every 640 in sections containing an excess. IV–69

Not more than one-quarter of a fractional section can be taken under the timber-culture law. X–681

Timber-culture entry to extent of 160 acres may be made in a section containing 342 acres. II–322

Two, in one section allowed to stand where the amount of land covered thereby was only slightly in excess of one-fourth of the section. VI–339

Is limited in acreage to one-fourth of the land embraced in the section, except where a technical quarter section is entered. XVI–522; XX–337; XXIX–407

Second, in a section can not be allowed to cover a fractional subdivision if the acreage in both entries, taken together, amounts to more than one-fourth of the whole section. XVI–534

Discretion of the Commissioner in allowing a, that embraces an excess in acreage does not extend to a case in which over one-half of the subdivision entered is "excess." XVI–534

In adjusting two, in a section that together embrace an excessive acreage priority of entry determines priority of right. XVI–522

Attacked on account of excessive acreage may stand where, prior to the day fixed for trial, the relinquishment of another timber-culture entry in the same section removes the objection to the entry under attack. XVI–63

Second, in section *prima facie* void. IV–448

Will not be allowed where there is a prior entry in the same section, though contest against it is pending. II–34

The second, allowed to stand, the first being *prima facie* invalid. V–173

May be allowed where there is a prior timber-culture entry which is illegal and can not go to patent. II–256

For less than 160 acres exhausts the right, and such an entry can not be enlarged to include a tract which the entryman, at the time of making the original entry, supposed was not subject to such appropriation. IX–376

Of a fractional subdivision that embraces less than forty acres, under which the area planted to trees is less than two and one-half acres, may be equitably confirmed where the entryman followed the construction of the law in force at the time of planting, and shows on final proof a greater number of growing trees than is required on the statutory acreage. XXII–166

Under the law a person may make but one entry. III–185

Entry—Continued.

XV. TIMBER CULTURE—Continued.

Refused where another entry on the land had been allowed; but in view of the equities a second entry is permitted. II–253

Timber-culture entry for S. ½ of NE. ¼ and two lots (91.14 and 91.21 acres) must be canceled as to either the S. ½ or one 40 and one lot, or one of the lots; any excess to be paid for in cash. II–315

Entry of land in different sections not allowed. (See 17 L. D., 358.) III–361

Embracing land in different sections may be allowed to stand where made prior to the act of June 14, 1878. XV–79

Land covered by, is at the moment the entryman is in default open to the entry of the first legal claimant.

II–266, 283, 297, 318; IV–508

Possession of the entryman who is in default can not defeat the application of a contestant. IV–508

Settlement and filing do not reserve land from, but serve as notice to the timber-culture applicant of the preëmptor's priority of right. IX–262

Made of land occupied and improved by another is at the same risk as though the adverse claim was of record. III–153

Land not reserved from, by unlawful inclosure. VI–608

Should not be allowed upon application made while the land is covered by an uncanceled entry. I–164; III–320; XIV–127

Should not be allowed on lands subject to Indian occupancy. XIII–302

A timber-culture entry must be made on vacant, unimproved land, and not on land covered by the valuable improvements of another and in the possession of another. (See 6 L. D., 608.) II–118, 269

A timber-culture entry may not be made within the incorporated limits of a city or town. II–634

That land has been broken does not exclude it from entry if devoid of timber. VII–733

May be made on land covered by a preëmption filing, and takes the land on failure by the preëmptor to make final proof in the time required. II–593; III–499; V–173

The occupancy of land by one who asserts no claim thereto within the period prescribed by law does not exclude such land from entry. XI–300; XIII–225; XXI–10

Right of, not defeated by the preëmption filing, and possession thereunder, of one who has previously exhausted his rights under the preëmption law. XIII–251

As recorded, allowed to stand, though not for land originally applied for. IV–112

Entry—Continued.

XV. TIMBER CULTURE—Continued.

Held for cancellation on account of conflict with the prior settlement right of another may stand on the subseqent abandonment of the adverse claim. VIII–461

The term "homestead laws" in the third section of the act of June 14, 1878, is used in a generic sense, and will embrace the preëmption law. V–591

May be canceled where the executor and sole devisee files relinquishment and it appears that compliance with law can not be shown within the life of the entry. VII–383

A claim under the acts of 1874 and 1878 is solely for the cultivation of timber; if the land is used as capital or for speculative or other purposes inconsistent with the object of the acts, it is held in violation of law and is subject to forfeiture. II–329

Made for the benefit of a partnership, composed of the entryman and another, is illegal, and must be canceled. XVII–330

An entry that has been made in the interest of another fraudulent. II–50

Not affected by acts of entryman in procuring another to be fraudulently made in the name of his wife. I–136

Right of, accorded to highest bidder in case of simultaneous applications. III–555

Natural growth of timber precludes entry.
I–154; IV–111; VI–217, 772

Land shown by field notes to be timber land not subject to entry.
III–361

A natural growth of trees valuable for domestic or commercial purposes excludes the section from the operation of the timber-culture law. IX–288; XI–500, 525

Is restricted to "sections" devoid of timber, and the restriction does not vary in proportion to the amount of land entered in such section. XIII–300

Not allowed, though the land applied for has but few trees thereon and is the only public land in the section, if the section is not "devoid of timber." VIII–544; IX–182, 520

That the natural growth is small and has been partly destroyed by fire does not affect the question as to whether the land is devoid of timber. III–144

A natural growth of timber excludes land from, though such growth may require protection from fire to render it valuable. X–13

That the natural growth of timber is restricted by annual fires does not render the section containing such growth subject to entry. V–689

Entry—Continued.

XV. TIMBER CULTURE—Continued.

Whether a given section is devoid of timber may be determined by inquiring whether nature has provided timber which in time will become an adequate supply. II–267

The number of trees required at final proof a guide in determining whether land is excluded from entry by reason of the natural growth. III–437

"An adequate supply" exists under the rule in Blenkner *v.* Sloggy to the exclusion of an entry where the natural growth is equivalent to the amount required to be cultivated by the entryman. III–144

Former rulings of the Department on the phrase "devoid of timber" cited and compared. VIII–467

The phrase "devoid of timber" should be construed as meaning land practically so; no arbitrary rule can be formulated to cover every case. VIII–467; IX–161

Character of land at date of, determines whether it is properly subject to such appropriation. IX–623

The departmental construction of the timber-culture act prevailing when the entry is made must be accepted in determining whether the land is "devoid of timber." IX–95; XVI–42.

Should not be allowed on the ground that the rulings of the Department recognized the land as subject thereto when the application was made, when in fact the land was not "devoid of timber." VI–772

Should not be canceled on the ground that the land is not "devoid of timber," if allowed under rulings in force, and the entryman thereafter proceeds to comply with the law.

V–261; VI–225; VII–75; VIII–399, 534; IX–622; X–190; XXV–65

Made in good faith of land not strictly "devoid of timber" will not be disturbed if allowed in accordance with the departmental construction of the statute then in force. XI–426

Rights acquired under former rulings as to the character of land subject to entry not disturbed. V–261, 690

The present construction of the act as to lands subject to entry thereunder should not be enlarged to protect entries not allowed under the former construction. X–190

Should not be allowed if the returns show timber in the section; but a hearing may be had, if the correctness of the return is questioned, to determine whether the land is subject to entry. VIII–467; IX–437

Where applicant proves that the markings on the plats showing timber were erroneous, entry should be allowed as of date of application. II–850

Entry—Continued.

XV. TIMBER CULTURE—Continued.

Land not excluded from, by a scanty growth of brush lining the banks of a small stream that passes through the section. II–274; VIII–534

Where the timber growing in a section is confined to fixed limits, with no prospect of spreading, and is inadequate in quantity (500 trees), entry is allowed. II–268

May be made where the trees, confined to a point of land between two sloughs, were dead, dying, or decaying at the top. II–273

Made on land containing cottonwood trees, when such trees were held not to be timber trees, is legal. I–165

May be made where the trees, confined to the margin of a stream, at maturity become unfit for use as timber. II–272, 274

Not allowed for land made "devoid of timber" by the removal of a natural growth. II–270; V–303

Land naturally devoid of timber subject to, although it may have been broken. VII–373

The act of 1874 did not specify the character of land subject to entry, but left such matter to the regulation of the General Land Office. I–165

Right to commute under the act of March 3, 1891, is limited to persons who have, for a period of four years, in good faith complied with the law. XVI–115; XVIII–233

The right to commute under the act of March 3, 1891, can be exercised at any time within the life of the entry by one who can show that he has complied with the law for the four years preceding the application to commute. XXIX–214, 641

The right to commute under the amendatory act of March 3, 1891, is dependent upon compliance with law up to the time when application is made to commute. XVIII–235; XXI–29

The right to commute under section 1, act of March 3, 1891, can only be exercised by a resident of the State or Territory in which the land is situated. XV–176; XXIII–9

Administrator of the estate of a deceased entryman can not commute for the benefit of an heir who is not a resident of the State in which the land is situated. XVI–322

The heir of a timber-culture entryman can not commute the entry of the decedent under section 1, act of March 3, 1891, if not a resident of the State in which the land is situated. XVIII–1, 71

Commutation of, under the act of March 3, 1891, should not be made without due publication of notice of intention to submit final proof. XVI–482

Entry—Continued.

XV. TIMBER CULTURE—Continued.

Commuted under section 1, act of March 3, 1891, and embracing land in two sections, may be allowed to stand in view of the fact that there is no express provision of law prohibiting such an entry, and that the rights of no other entryman can be affected thereby. XVII–358

The privilege of commuting accorded by section 1, act of March 3, 1891, does not defeat the right of a contestant to proceed with a pending contest. XIX–38

Can not be commuted in the presence of a contest on which there has been no hearing. XXI–3

The right to commute may be recognized on behalf of the heirs where the entryman during his lifetime has substantially complied with the law for the requisite period. XX–236

The Department has no authority to return the money paid on commutation and allow new proof to be made under the amendatory act of March 3, 1893, on a showing that the entry in question was commuted in ignorance of said amendatory act. XXI–287

Under the act of March 3, 1893, the failure of an entryman, who has complied with the law for eight years from date of, to continue such compliance, will not defeat his right to a patent, though he may not have succeeded in securing a growth of trees. XXIV–448

Married woman can not make. I–127; XVI–130

May be made by a deserted wife (with children) as the head of a family. II–311

A married woman is disqualified for making, unless she is the head of a family. XIV–510

Not allowed to a married woman as a "deserted wife" on proof of temporary absences of the husband and non-cohabitation for a year. VI–296

The marriage of a single woman subsequent to application, but prior to action thereon, does not invalidate. I–131

Rights of deceased claimant descend to the heirs and not to the widow. I–121, 127, 136

Is subject to devise by will, and the executor who complies with the law may submit final proof. XV–162

Is subject to devise by will, and on due compliance with law the devisee is entitled to submit final proof and perfect the entry. XXVI–690

The heir of a timber-culture entryman, who in his lifetime had fully complied with the law, may perfect, notwithstanding he may have formed an intention to sell the land as soon as the patent therefor is obtained. XX–214

Entry—Continued.

XV. TIMBER CULTURE—Continued.

The heirs of an entryman whose final proof shows partial compliance with law may relinquish part of the claim and receive final certificate of the amount of land earned by planting and cultivation, or commute the entire entry under section 1, act of March 3, 1891. XV–107

Right of, in the heirs where the applicant dies before the status of the land is determined. V–422

Rights of the widow under Kansas laws amount to a moiety of the husband's estate. I–149

The sole devisee of a deceased entryman considered as a "legal representative." VIII–452

Devisee of the sole heir of a deceased entryman is the only party in interest entitled thereafter to be heard in support of the entry. XXI–8

For the heirs may be made by one of them without power of attorney from the others. V–42

Entryman not required to reside in the State or Territory wherein the land is situated. I–148

An entryman who, through a mistake in measurement, fails to plant and cultivate the requisite acreage, may be permitted to perfect title for the amount of land earned by his compliance with law, and relinquish the remainder. XX–84

Where notice of the expiration of the statutory life of a, is not given in accordance with the address furnished, and the entry is canceled for failure to submit final proof, it should be reinstated; and equitable action thereon will not be defeated by the intervening entry of another if good faith is manifest and the final proof shows due compliance with law except in the matter of submitting proof within the statutory period. XXIV–288

May be equitably confirmed on proof submitted after the expiration of the statutory period, notwithstanding an intervening contest charging failure to make such proof in time, if such failure is satisfactorily explained. XXV–501

Allowed prior to the expiration of the statutory period of cultivation, may be equitably confirmed, in the absence of any adverse claim, where it appears that after the issuance of final certificate the land was conveyed to another for value and without notice of the defect in the final proof, and subsequent compliance with the law in the matter of cultivation duly appears. XXVI–547

See *Contest; Final Proof; Timber Culture.*

Equitable Adjudication. See *Entry; Final Proof; Homestead; Timber and Stone Act.*

I. GENERALLY.
II. DESERT LAND ENTRY.
III. HOMESTEAD ENTRY.
IV. MINERAL ENTRY.
V. PREEMPTION ENTRY.
VI. PRIVATE ENTRY.
VII. FINAL PROOF.

I. GENERALLY.

Board of, how organized. IV–156

The board of, has exclusive jurisdiction within the sphere of the powers conferred upon it by statute. I–411; VIII–87

The board of, has no authority to waive a statutory requirement. XX–361

Decision that an entry should be submitted for, is an administrative act. XXI–549

No appeal lies from the decision of. I–411

The power of the board to confirm may be exercised at any time after the defect if the case is in condition for the issue of patent in due course. I–99

The authority of the board is confined to entries so far complete in themselves that when the defects on which they are submitted have been cured by its favorable action they pass at once to patent. IX–230; XXV–2

An entry should not be submitted before it has been perfected by the payment of the purchase price and issuance of final certificate. IX–230

Patent should be surrendered on application for confirmation of entry which has passed to patent. VI–314; VIII–183

Entries submitted for, should be placed under the rule appropriate thereto or submitted as "special." X–299

In submitting an entry for, under authority of a departmental decision, the authority may be noted, but the appropriate rule should be stated or the entry placed under the special provision. X–299

The board may, on showing of fraud, revoke its confirmation. I–411

Adverse claim bars action of the board. I–78

A contestant's preference right is in the nature of an adverse claim. I–78

Not defeated by an intervening contest filed after the initiation of action by the government. XIV–83

A protestant without interest does not have such an "adverse claim" to the land involved as will serve to defeat equitable adjudication, if it is otherwise subject to such disposition. XIX–442, 467

Equitable Adjudication—Continued.

I. GENERALLY—Continued.

Is not defeated by the right of a contestant who fails to show facts that warrant cancellation. XVI–366; XVIII–96; XXI–211

Entries to be confirmed where the fault is not with the purchaser. IV–156

Jurisdiction of the board does not extend to case of inexcusable failure to comply with the law. IV–347

Invalid entry should not be submitted to the board. VII–236

Additional rules of, 31, 32, and 33. X–502

Entry on railroad land confirmed where company made default at hearing. I–465

Not defeated by an adverse entry made after published notice of the preëmptor's intention to submit final proof. IX–215

One who attempts to preëmpt land included within a supposed defective private entry is not the "rightful claimant" named in Rule 13. IV–156

The plea of entry in good faith and ignorance of the law available before the board of equitable adjudication. III–190

Does not extend to an entry for more than 160 acres unless the quantity entered is as near that amount as existing subdivisions will allow. VII–21

Rule 15 is obsolete. XIV–407

Rule 33 cited and applied. XXV–503; XXVI–549

II. DESERT LAND ENTRY. See *Entry*, sub-title *Desert Land.*

Additional rules. VI–799

Rule 29 provides for confirmation of desert entries where final proof and payment were not made within the statutory period. IX–231, 631

Rule 29 applicable where failure to make desert proof within the statutory period was the result of ignorance, accident, or mistake, and no adverse claim exists. VII–247

Rule 30 applicable where failure to reclaim and make proof under desert entry within the statutory period was the result of ignorance, accident, or mistake, or of obstacles which could not be overcome, and no adverse claim exists. VII–247

Rule 30 covering desert-land entries in which reclamation and proof were not made within the statutory period. VIII–574

The intervention of an adverse claim precludes action under Rule 30. XI–59

Rule 30 of, as applied to desert entries under which reclamation is not effected within the statutory period, not defeated by a contest begun while the entryman is engaged in good faith in curing his default. XXI–211

Equitable Adjudication—Continued.

III. HOMESTEAD ENTRY. See *Entry*, sub-title *Homestead.*

The board of equitable adjudication takes cognizance of entries made by a deserted wife or by minor child as an agent. II–81

A widow allowed to enter land covered by her husband's entry that was canceled on relinquishment, subject to confirmation by the board. III–191

Rule 24 covering cases where the homesteader has failed to establish residence within the period required. VIII–568

Entry of Indian widow may be confirmed under Rule 24, where final proof is not made within the statutory period. XVI–137

Commuted homestead entry should be referred to the board of equitable adjudication if residence was not established within six months from date of original. VII–488; VIII–566; X–88

Equitable action, where residence is not established within the prescribed period of six months, is not necessary, if final proof is made within the statutory life of the entry, and such proof shows continuous residence for five years next preceding the date thereof. XXVI–687

A homestead entry may be referred to the board of equitable adjudication where the claimant, through circumstances beyond control, failed to establish residence within six months from date of the original entry. VII–351

A homestead entry should be submitted to the board of equitable adjudication when final proof is not made within the life of the original entry. VII–384

Where a homestead entryman deeded the land to another after the act of June 15, 1880, and the latter applied to purchase under the act of that date, the claim was sent to the board for confirmation. III–190

IV. MINERAL ENTRY. See *Mining Claim.*

Where the claimant has complied with all the requirements of law, save in the time of payment and entry, a reference of the claim to the board of equitable adjudication is unnecessary. II–725

Board of, may confirm mineral entry under section 2457, R. S. V–513

V. PREËMPTION ENTRY. See *Entry*, sub-title *Preëmption.*

In suspended preëmption entries, where the error arises from ignorance, accident, or mistake, and the land is held by a transferee. VIII–489

Reference to board suggested in case of entry canceled in 1849 for supposed conflict with a private claim. IV–187

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VI. PRIVATE ENTRY. See *Private Entry.*

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VII. FINAL PROOF. See *Final Proof*, sub-title *Equitable Action.*

Case involving irregularity in final proof may be submitted for. I–484

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Equity can not create a right which the law denies, and therefore one without legal rights has no equities. II–80

Is not created by a settlement upon land in controversy. III–302

Not shown as against the pending prior application of another. IV–335, 353

Principles of, will protect one holding under an entry where by mistake the patent failed to describe the land purchased, as against another claiming under a subsequent location of the land made with a knowledge of the facts. XI–123, 389

Estoppel. See *Private Claim; Relinquishment.*

The United States can not be estopped by the frauds, not to say by the crimes, of the public officials. II–797

The government, by repeated official acts, is thereafter estopped from questioning the correctness of such action. III–83

The rule of equitable estoppel upon the theory that loss should be borne by that one of two innocent persons whose conduct, acts, or omissions rendered the injury possible, can not be set up by the purchasers of land acquired under a void patent. II–797

Estoppel—Continued.

One who asserts no claim to land in the possession of another and remains silent, though knowing that the adverse occupant continues to claim and improve the land, is estopped from subsequently denying the good faith of the occupant and asserting a right of priority in himself. XIV–475; XXVII–621

One who agrees to relinquish his claim and thus induces an expenditure of money by an adverse claimant, and thereafter refuses to carry out such agreement, is estopped from setting up his priority of claim as against said adverse claimant. XXVIII–255

The right of a settler to make homestead entry will not be defeated by the prior application of an adverse claimant if, by the conduct of said claimant, he is estopped from asserting his claim as against such settler. XXIV–297

An entryman who discovers that his entry does not correspond with his application, but makes no effort toward correction, and permits another, without objection, to go upon and improve the tract omitted from his entry, will not thereafter be heard to assert any right under his original application as against such adverse claimant. XXVII–611

One who definitely declares the extent of his claim is estopped from subsequently claiming a larger tract to the injury of another who relies upon such declaration. XIII–198

A contestant is estopped from asserting his preference right as against one with whom he has agreed to waive said right and thus induced said party to settle upon the land. XIV–381

A contestant against two entries (homestead and timber culture) who files timber-culture application with the contest against the timber-culture entry is bound thereby as against one who subsequently settles on the homestead tract. XIII–283

Evidence.

I. GENERALLY.
II. DEPOSITION.
III. RECORD.
IV. BURDEN OF PROOF.
V. SUFFICIENCY.
VI. PRESUMPTION.

I. GENERALLY.

Rule 42 modified, in Oklahoma town-site cases, by circular of August 18, 1890. XII–186

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Must be reduced to writing and signed by witness at the time when taken. III–105

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I. GENERALLY—Continued.

The testimony submitted at a hearing can not be considered as, if not signed by the witnesses or accompanied by the officer's jurat. XVIII–577

Testimony taken in shorthand must be written out and signed by the witness before it will be accepted. III–121; XVII–133

Failure of a witness to sign his testimony may be cured where a rehearing is ordered by his signing the same after due examination thereof and making oath thereto. XI–575

Local officer, whose term of office has expired, may attach his signature to a jurat accompanying testimony that was taken before him while holding said office. XVII–96

The fact that the witnesses are not sworn before examination does not vitiate the trial, where after examination they subscribe to their depositions and are sworn thereto. XXVII–519

Where the record recites the fact that the witnesses were duly sworn, and the testimony taken is signed by each of the witnesses, the absence of the officer's signature to the jurats is not ground for a new trial. XXV–438

The examination of witnesses should be conducted as far as possible in accordance with established rules of evidence, and local officers may personally direct it in order to elicit all the facts. II–234

The irregularity of order in which a party may be permitted to introduce his testimony will not be held reversible error where such procedure is not prejudicial to the rights of the adverse party, and is deemed necessary to the ascertainment of the relative rights of both parties. XXV–380

As to character of land, submitted by the State under section 2488, R. S., must be taken before the surveyor-general. VI–684

Neither local officer may, without specific instructions from the land department, take testimony or preside at the taking thereof elsewhere than in the local office. II–205

Testimony prepared by plaintiff's attorney in his office may be submitted at the hearing, with right of cross-examination, if assented to by defendant. II–225

Taken at the instance of an attorney who under section 190, R. S., was not authorized to act as such, will not be considered. XI–25

Action suspended in certain cases where the evidence had been taken before the attorney of record. III–98

Local officers may, after due notice to parties, inspect the land involved in a contest. VI–626; VII–38

Evidence—Continued.

I. GENERALLY—Continued.

Knowledge of the local officers derived from a personal inspection of the premises may not be substituted for, but may be used by them to better understand and apply the testimony. XVI–95; XXIV–277

Submitted on defective notice of contest may be accepted after new notice if the defendant does not respond thereto. VIII–558

Illegally taken not considered. IV–380, 537

Where contest is allowed pending a prior invalid contest the contestant may not avail himself of the record in the prior contest; there must be a new notice and a new trial. II–286

Taken in hearing held prematurely considered. IX–227

Secured on informal proceeding before special agent can not be made the basis of final decision, but can be considered in determining whether further investigation is justified. XXVIII–263

All testimony to be taken under the direct supervision of the district officers when taken in towns where local offices are established. III–128, 132, 160

In all cases where not taken in the presence of the local officers, that fact should be distinctly shown by the record, as the value of their finding of facts is largely dependent upon their opportunity to observe the appearance and demeanor of the witnesses. XVIII–253

Absence of local officers from hearing while witnesses are testifying does not affect, where there is no vacancy in the office of register or receiver, and the witnesses are sworn by one of said officers, and both of them examine the testimony, and render joint decision thereon. XXVII–425

Taken on protest must be forwarded to the General Land Office whether there is an appeal or not. III–122

Submitted to the local office should be forwarded. IV–32

Prior to final action in a case before the local office the case may be reopened for the submission of additional testimony. IX–252; XV–93

Omission of the title of a case from a notice to take additional, is not a fatal defect where no prejudice is shown. XV–93

Additional, by the contestant may be admitted, in the discretion of the local office, after the claimant has submitted his. XII–14

Ten days' notice of the time and place of taking additional, sufficient to give the local office jurisdiction of the matter. XV–93

Testimony available by copy in different cases. III–445

Taken in one case not to be considered in another. IV–274, 414

Evidence—Continued.

I. GENERALLY—Continued.

Taken in a different case and involving a different tract, not sufficient basis for final action. XXII–622

Offered in another case should not affect the rights of one not a party therein. VII–497

The facts and issues in one case can not be considered in another and independent case. IX–497, 503

In ordering a rehearing the Commissioner of the General Land Office may properly direct the submission of the testimony taken at the former hearing. XX–369

Under Rule 41 of practice the local officers are invested with discretionary power to determine whether additional testimony will cause unnecessary expense. XII–109

Vexatious and irrelevant cross-examination of witnesses should be prevented unless the party making it is willing to pay the cost of transcribing it. II–196, 232, 234; IX–130

Local officers may summarily stop obviously irrelevant questioning; or, in their discretion, allow the examination to proceed at the sole cost of the party making the same. XVIII–559

The local officers have no authority to exclude, but may summarily put a stop to obviously irrelevant questioning.
I–106; IX–130; XI–461; XVIII–31; XXI–54

Obviously irrelevant matter excluded from the record. IV–385

Testimony of witness who refuses to submit to proper cross-examination should not be considered. III–452; IV–505; V–599

It is not error that a party is not informed of his right to cross-examine witnesses where due opportunity for cross-examination is allowed. XI–418

Submitted without opportunity of cross-examining the witnesses should not be made the basis of final decision in a contested case. XIV–471

Where the defendant does not exercise the right of cross-examination, but relies upon an appeal from an interlocutory order, he will not be heard to object to the *ex parte* character of the testimony submitted by the contestant. XVII–393

In the trial of a contest the plaintiff is not entitled to have the claimant put on the witness stand that he may be cross-examined on his final proof. XXI–458

The local office has no authority to compel the attendance of witnesses. II–223

The fact that a party litigant pays the expenses of a witness, and for the loss of his time in attending the trial, does not necessarily indicate fraud or moral turpitude. XXV–506

Evidence—Continued.

I. GENERALLY—Continued.

If a decision in accordance with the stipulation of the parties is rendered on testimony taken in another case, but not copied and filed with the case under consideration, a copy of said evidence must be transmitted with the appeal without expense to the appellant. XIII–140

It is within the supervisory authority of the Secretary of the Interior to take cognizance at any time of the action of a court of record convicting a party of perjury committed in the testimony given by him in the case under consideration. XXIII–580

The conviction of a person on a charge of perjury committed in a case where another party is an applicant for land, and the issue is "soonerism," and such person testifies that neither he nor such applicant were in the territory within the prohibited period, is not necessarily conclusive as to such person's qualification, though affecting his credibility as a witness. XXIV–400

Additional evidence, under rule of practice 100, may be filed in *ex parte* cases at any stage of proceedings. XIX–19

II. DEPOSITION.

Taken by deposition on due notice to the opposite party. I–132

The local officers may direct testimony to be taken before an officer designated by them. IX–209

Taken by deposition must be in conformity with the rules of practice. III–584

An application for an order to take depositions should be allowed if made in due compliance with the rules of practice. XVII–321

On the issuance of a commission to take depositions both of the local officers should sign the same, but the absence of the signature of one of said officers from such commission will not defeat the consideration of the testimony taken thereunder, where no objection to its admission is made at the proper time. XXV–438

Local office may properly refuse to issue a commission to take deposition if the applicant does not file the requisite affidavit as the basis for such action. XVI–97

Order for taking, should be made of record. V–212

Depositions can not be admitted if taken without due notice or without furnishing the opposite party a copy of the interrogatories. III–584; IV–377; VII–433

In taking depositions ten days allowed for filing cross-interrogatories. I–106

In taking, the cross-interrogatories to be filed cover all right of cross-examination. IV–377

Evidence—Continued.

II. DEPOSITION—Continued.

Testimony must be taken at the time and place named in the notice, and if taken without notice will not be considered. III–195

After notice of a hearing it is too late to apply for an order to take, under Rule 35 of practice. XVI–360

When taken under Rule 35 thirty days' notice not necessary. IV–540

To be taken near the land in controversy under Rule 35. IV–440

Time may be extended for taking, under Rule 35. IV–540

Under Rule 35 a notary public may be designated to take testimony in contest cases. XVII–4

Rule 35 does not require a commission to issue to the officer who may be designated to take evidence thereunder. XXIII–140

May be taken before a commissioner under Rule 35; but this is only done on the application of one of the parties. XIV–700

The affidavit of contest need not accompany an order designating an officer to take testimony, nor is it necessary that such affidavit should be in his possession. XI–418

An officer designated to take testimony under Rule 35 may authorize any other qualified officer to act in his place. XI–418

Want of authority in an officer designated to take final proof will not affect the validity of testimony taken before him under Rule 35 at the time such proof is submitted. XI–539

Objection to, on the ground that it was not taken before the officer designated in the notice, properly overruled, where on the day set for hearing both parties were present, and the local officers named the officer before whom the evidence should be taken, and that the evidence was taken accordingly. XIX–125

In case of an order for a rehearing under Rule 35 it is not error for the local office to designate an officer before whom the testimony shall be taken different from that one named in the original notice. XX–18

The appointment of a commissioner to take testimony, under Rule 35, is discretionary with the local officers, and their action under said rule will not be disturbed except upon full proof that they have abused their discretion. XXV–466

Failure to appear and submit under Rule 35 can not be excused on the mere allegation that the party in default was apprehensive that his testimony would not be fairly taken. XII–30

Where the defendant in proceedings under Rule 35 submits no testimony but his own, and files a motion to dismiss the contest for want of evidence, he is not thereafter entitled to a further hearing to present additional evidence if his motion is denied by the local office. XVI–88

Evidence—Continued.

II. DEPOSITION—Continued.

Rule 35, as amended, contemplates the taking of testimony before United States commissioner, etc., in contested cases, as well as in hearings ordered by the Commissioner. Local officers must exercise discretion in the former class of cases in allowing it to be taken elsewhere than at the local office. II–231

In proceedings by the government an application of the entryman to have the testimony taken under Rule 35 should not be denied, where it is evident that injustice and great hardship will result from such denial. XVII–321

Under Rule 35, as amended, the contestant is not required to file cross-interrogatories, as in cases of depositions under Rules 23 to 28; the officer taking the testimony is to be governed by Rules 36 to 42, and he may allow cross-examination in the absence of cross-interrogatories. II–235

Having been taken under the officer designated under amended Rule 35, the district officers can not thereafter receive supplementary testimony, but must consider the case on the evidence taken. III–145

Where, in proceedings under Rule 35, one of the parties is in default, and the commissioner declines to receive the testimony on behalf of said party, the local office may, on proper showing, at the final hearing, allow said party an opportunity to submit his testimony. XX–18

Application to take depositions on interrogatories should not be filed with an officer designated to take testimony, but, when so filed and sent up with the record, should be considered on the day of hearing. XI–575

May be secured through depositions taken on commission issued after hearing under Rule 35. X–480

Taken before a commissioner must be sealed up and transmitted by mail or express. V–362

Personal delivery of, by officer taking the same under Rule 35, instead of sealing and mailing the testimony as required by the rules of practice, does not preclude its consideration in the absence of a showing that rights have been prejudiced thereby. XVII–4

An irregularity in the transmission of depositions may be waived by agreement of counsel. XI–183

Failure to indorse the title of the cause on the envelope inclosing depositions does not necessarily exclude them from consideration, in the absence of apparent prejudice to the interest of the parties. XI–183

Evidence—Continued.

II. DEPOSITION—Continued.

Rule 28 requires an officer taking a, to read to the witness the questions and answers, but makes no provision that the fact of such reading should appear either in the body of the deposition or the certificate of the officer. It would be better practice that such officer should certify that he read to the witness the deposition before it was signed or sworn to. XXV–143

When taken before a notary, should be transmitted in the manner required by law. VI–788

After proceeding to trial and submitting testimony it is too late to apply for the taking of further testimony by deposition. VII–291

Objections as to the manner of taken testimony come too late when raised for the first time on appeal. VII–291

Objection to the manner in which taken comes too late when raised for the first time on motion for review. VII–497

An objection to the manner in which depositions are transmitted comes too late where raised for the first time on appeal to the Department. X–339

A technical objection to the regularity of depositions can not be raised on trial by one who participates in the examination of the witnesses and at such times raises no objections to the proceedings. XI–183

Irregularity in the submission of, can not be urged on appeal by one who, after such objection, proceeds with the trial and submits testimony on his own behalf. X–169

Objection to a deposition on the ground that it was taken without due notice should be made at the hearing to be considered on appeal. VII–447

Though irregularly taken, will be considered when no objection was made at the proper time. I–474

Officers selected to take, should not be open to the charge of bias or prejudice. VIII–534; X–436

Objection to the officer appointed to take testimony should be made before the testimony is submitted. VIII–534

Testimony in a contest may be taken before an officer designated by the local office. IX–209

Testimony taken pending an order of continuance and before a notary not properly designated will not be considered. VI–440

Commissioner not authorized to take, of witnesses not specified in the application for his appointment. IX–135

Depositions retained by attorney before filing will not be considered. V–362

Taken before an attorney of one of the parties will not be considered. III–250

Evidence—Continued.

II. DEPOSITION—Continued.

Evidence taken before a stenographer on agreement is not a "deposition" within the meaning of Rule 56. IV–208

Rule 35 to be followed in proceedings arising on the submission of final proof. VII–315

Officers before whom testimony is taken under Rule 35 are governed by the rules applicable to trial before the local office. X–433

Taken under the laws of Minnesota, for the reason that the witness can not be produced at the trial, is not admissible where said witness is present at the hearing, though he may then refuse to testify. XIX–64

May be taken by deposition, as provided in the rules of practice, in the case of hearings ordered on protest against a classification of lands under the act of February 26, 1895. XXVI–197

Depositions taken and transmitted to local office may be used on the trial by either party, whether taken in the interest of such party, or at the instance of his adversary. XXIX–581

III. RECORD.

Records of Executive Departments kept as evidence of transactions, not for purposes of notice. I–20

The judicial records of a State, how established. V–158

The decision of a State court is accepted in the Department as in the courts of the United States. V–158

Certificate as to record facts not accepted in place of transcript. IV–510

Judicial notice may be taken of facts disclosed by the records of the Department. XXII–229

Record facts cannot be pleaded as "newly discovered," for the purposes of a new trial. IV–512

The facts of record are to be considered with other evidence. III–193

A final determination as to the invalidity of a claim in proceedings involving such issue may be properly adopted in a subsequent case where another party sets up a claim to a part of the land involved. XV–415

Furnished in one case may be accepted in a subsequent *ex parte* matter. VIII–233; IX–48

The records in the local office, when offered in evidence, should be accepted as competent evidence of the facts therein stated. XIX–207

Ex parte, not accepted to defeat the records of the local office. X–256

Parol testimony to contradict record date of patent not admissible. X–343

Evidence—Continued.

III. RECORD—Continued.

Parol, may be accepted to show facts which should have appeared of record, and would have so appeared but for the omissions of the local office. XXII–630

An affidavit made to supply alleged omissions of matter from the record; which should appear therein, if it exists in fact, will not be stricken from the files, on motion therefor, if the facts as alleged in said affidavit are not denied. XXV–420

Matter of record not impeached by an unverified statement. VIII–294

Unauthenticated copy of a *procès verbal* not admissible as. V–577

A certificate by an officer that a certain instrument is recorded in his office, unaccompanied by a copy of said instrument, is not admissible as the basis for final action. XIII–489

A certified copy of an indictment, verdict, and sentence are properly admissible as, tending to establish a charge embraced in the issues tried and determined in the prior criminal proceeding. XXII–530

A finding of fact in a judicial proceeding can not be accepted by the Department as an adjudication where such fact does not appear to have been in issue or embraced in the judgment of the court. XXII–592

IV. BURDEN OF PROOF. See *Mineral Land.*

In proceedings against an entry the burden is upon the government. V–1, 22, 171, 371; VI–432; VII–374; VIII–526

Rule as to burden not changed by the circular of July 31, 1885. V–372

In a hearing on a special agent's report the burden is upon the government. IX–340

Burden rests with the party attacking an entry. I–129, 146, 477; IV–62, 80; VI–142, 398, 432, 660; VII–373

Burden rests upon one who attacks an approved Indian allotment, alleging a superior right to the land covered thereby. XXIV–323

Contestee to proceed only after the establishment of a *prima facie* case. V–59

Burden is upon one attacking the official return of surveys. VIII–440, 467, 555

Burden on the party attacking returns of surveyor-general. V–280

Burden is upon one alleging priority of right as against a subsisting entry. VIII–623

In a hearing to determine priority of right as between adverse applicants, where no entry has been allowed, the burden of proof can not be said to rest upon either of the applicants. XXVIII–169

Burden is with an applicant for reinstatement. I–77

On *prima facie* case made the burden shifts to the defense. V–363

Evidence—Continued.

IV. Burden of Proof—Continued.

In case of special defense the burden shifts to the defendant. IV–542

In proceedings involving forfeiture the same strictness of proof is required as under a penal statute. I–146, 153

The burden is upon the contestant to establish his charge by a preponderance of. IX–299. 538

A clear preponderance of, justifies judgment of cancellation. VI–483

Preponderance of, required to justify forfeiture. VI–140, 483

In a contest the matter in dispute must be decided upon a preponderance of the evidence, whether parol or record, or both parol and record. IX–213

When an intervening entryman is called upon to show cause why his entry should not be canceled, and the right of a prior adverse claimant under a homestead declaratory statement recognized, the the burden is upon said entryman. XXII–113

If improperly placed, and accepted without objection, the party so relieved from said burden is not in a position to complain of such action on appeal, in the absence of an attempt in the appellate tribunal to shift the burden, and apply the changed standard to the record made on the hearing in the local office. XXIV–507

Parties protestant, that allege an interest, and at the hearing assume without objection the, will not be heard to say, for the first time when the case comes before the Department for disposition, that the burden was wrongly placed. XXVI–122

Where the Commissioner of the General Land Office expressly places the burden upon one of the parties, that direction is binding upon the local office. XXVII–1

V. Sufficiency.

Should be confined to the charge as laid in the information. I–113, 470; IV–299, 424; VI–368; XI–75; XIII–90

Must follow the charge as laid. V–177, 299, 329

Testimony with respect to a charge not specified in the notice of contest is inadmissible, and on objection thereto should not be considered. XXVII–247

Relevancy of, can only be questioned by the defendant. V–639

Admissibility of, dependent upon the charge under investigation. V–299

An objection to testimony on the ground of variance between the charge in the affidavit of contest and that set forth in the notice of the hearing, comes too late when raised for the first time on appeal. XXV–52

Evidence—Continued.

V. SUFFICIENCY—Continued.

Established rules of, followed where fraud is charged. IV–64

Where fraud is alleged against an entryman proof of other acts of a similar nature, done about the same time, is admissible to show intent. XIX–258

Of offer to sell the land admissible under a charge of fraudulent entry. IV–369; V–313

Best, of which the case is susceptible must be produced. IV–510

Of secondary character not received without proper foundation laid therefor. I–440

Hearsay, when admissible in proof of death. VI–241

On a charge that a deceased entryman in his lifetime had agreed to convey to others the land in dispute, hearsay testimony as to such agreement is incompetent. XVII–321

Mere opinion not received as, where facts can be had. IV–292; VII–441

Ex parte testimony not considered. III–250; IV–89, 168, 201, 229; V–590; XII–67; XV–263

Affidavit filed with an appeal to the Department not received as, in a contested case. XI–553

Papers containing *ex parte* statements relative to contests should not be filed therein if not served on the opposite party. XVIII–167

Ex parte affidavits should not be filed with an appeal, and if so filed will be returned to the party filing the same. XXII–245

Affidavits filed after case is closed in the local office not considered except on motion for rehearing. V–425; XIII–562

Filed after the close of the hearing and appeal from the decision thereon, may be considered in the interest of the government. XXIII–34

Final proof not treated as, on hearing. IV–275; VI–285

Testimony offered on final proof is not admissible in proceedings ordered to test the validity of an entry, but due weight should be given to the legal presumption that the entry is valid. XI–176

Final proof can not be considered as, in a case arising under a protest against the acceptance of such proof. XIII–663

In a contest wherein the truth of final proof is in issue, it is proper and necessary to examine said proof, and compare the statements therein made with the facts established at the hearing. XXII–619

On hearing, the report of a special agent is not. IV–65, 340; V–1, 22, 170; VI–285

Statement of special agent made privately to local officers should not be accepted as. IV–228

Evidence—Continued.

V. SUFFICIENCY—Continued.

The result of proceedings, in which the parties thereto have had full opportunity to present evidence in support of their claims according to the recognized rules of procedure, should not be disturbed or affected by the report of a special agent on the entry involved. XXVI–139

Unsworn statement of special agent should not be admitted as. VI–265

The report of a register based on an inspection of the land, made without notice to the parties and after the case is closed, is not admissible. VI–626; VIII–38

Where the character of the land is in issue, and the evidence submitted is unsatisfactory, and the Secretary, on his own motion, with notice to the parties, directs a mineral expert to examine the land, and testify as to the result, with opportunity given for cross-examination, and no objection is made to such direction of the Secretary until after its full execution, the testimony of such expert, so given, may be properly considered. XXV–167

The fact of compliance with law after affidavit of contest is filed, but before legal notice thereof, goes to the weight, not to the admissibility of the testimony. IX–299

Admissible as to acts performed before service of notice. V–299, 315; VI–300

As to acts performed after the initiation of contest will not be considered as affecting the case made by the contestant. IV–542; V–351

In hearing ordered on special agent's report the entryman may show acts in compliance with law performed after notice of the hearing. VII–486

As to subsequent compliance not material on a hearing ordered to determine priorities and where the party to be affected thereby is not offering final proof. VI–368

As to acts performed by the entryman after the submission of final proof is only considered for the purpose of discovering the claimant's intentions prior to said date, and must be clear and convincing to prevent the consummation of title. XII–647; XIII–211

As to motive of contestant in attacking an entry not material. V–296

Allegations in affidavit for continuance as to the testimony of an absent witness should be considered as, on admission that the witness would so testify if present. IV–377, 394; VI–27

Sufficiency of, on which judgment was rendered can not be questioned collaterally. VII–400; XIX–488

Evidence—Continued.

V. SUFFICIENCY—Continued.

Where claimant's affidavit, asking a hearing on the ground of abandonment, admits non-compliance with law, the claim will be canceled without hearing. II–445

Ignorance of the effect of acts may be considered in determining questions of good faith. VI–169

Admission that the facts stated in a special agent's report are true does not extend to a conclusion of said agent contained therein. XI–462

The admissions of an entryman against the validity of an entry are admissible in a proceeding where such entryman fails to appear and testify. XIV–392

An agreed statement of facts precludes the introduction of evidence to contradict it. II–571

Stipulation of parties that investigation shall be limited to the six months preceding initiation of contest does not deprive the government of the full value of the information elicited at the hearing. II–96

May be considered though the contestant withdraws. V–40, 385; VII–394

Government may take advantage of evidence brought out in a contest whatever may be the rights of the parties as against each other. VI–27; VII–395; IX–391

For the impeachment of a witness admissible. I–105

Of interested party to be taken most strongly against him. V–56

A will executed *in articulo mortis*, though unauthorized by law, will not be presumed fraudulent. VI–30

In an action against the heirs of a deceased entryman admissions of the decedent against his interest may not be proven by the testimony alone of the opposite party. XX–213

As to statements made by deceased affecting the validity of his entry not admitted. VI–30

The statements of a party to his attorney are not admissible in evidence as against the interest of said party. VII–136

Confidential communications of the client to his attorney are not competent, in support of a charge subsequently made by the attorney against the entry of his former client. XVIII–31

Stipulation of attorneys as to matters of, is binding upon the parties in the absence of misconduct on the part of the prevailing party. XI–71; XVI–197

Parol testimony identifying an entryman as the one named in the records of the local office is properly admissible. XIX–207

An objection to the admissibility of, comes too late when raised for the first time on appeal. XXII–530

Evidence—Continued.

VI. PRESUMPTION.

Presumptive as to continuance of life. IV–326

There is no presumption of death until seven years after the homestead entryman's disappearance. II–120

Of bad faith is raised by an attempted sale of a homestead. II–144

Of fraudulent inception of an entry (timber-culture) arises from its early relinquishment for value. II–92

Of forgery may not arise from a mere comparison of signatures, without allegation or other proof. II–240

Allegation under oath, corroborated, that claimant was informed by local officers that he could not make a certain entry, if uncontroverted, presumed to be true. II–37, 246, 247

Refusal of the entryman to testify justifies an adverse conclusion where his good faith is in doubt. IX–175; XI–579

The payment of fees, which is prerequisite to a right, will be presumed where the contrary does not appear. II–323

Where the preëmptor is required to make payment by a certain date and the record does not show the payment, it is presumed that he failed to make it. II–526

In the absence of allegation or showing to the contrary it is presumed that the officers (intrusted with the control of a survey) have properly discharged their duty. II–465

Where mineral entry had lain dormant for seven years, uncanceled, all the antecedent basic proof was presumably regular and sufficient. II–769

Jurisdiction will be presumed where the records of the court do not affirmatively show a want of it. II–364

Where there is no adverse claim or evidence of fraud and the evidence as to proper discovery of mineral is conflicting, such discovery will be presumed in support of an entry already made. II–742

Statements not controverted made as the basis of a motion of which due notice has been given, taken as true. VI–240

As to the fraudulent acts of a third party will not establish a charge of fraud against an entryman, if his connection therewith is not shown. XVIII–467

Fees. See *Accounts; Payment; Practice*, sub-title *Costs; Repayment.*

Circular instructions. I–517, 518, 519, 523, 524; II–660, 662, 665; III–58, 605; V–569, 577; IX–655

Circular of May 14, 1895, with respect to unearned. XXIII–572

Circular of December 26, 1896, with respect to unearned. XXIII–573

Unearned and unofficial moneys; circular of June 5, 1897. XXIV–505

Fees—Continued.

Circular of April 22, 1898, in relation to fees for reducing testimony to writing, etc. XXVI–657

Are intended by law to pay the expenses of the local officers, and are not part of the price of land or proceeds arising from the "sales of public land." II–695

The bill of, to be kept posted in a conspicuous place in the local office. I–518

Of the local officers that would increase their salaries must be turned into the Treasury. V–569, 577

Belonging to the register should be paid to the receiver. I–524

None allowed for correspondence. I–519

No fee is chargeable for the delivery of patent. XIII–498

The local officers are not entitled to collect, from one who purchases at a public sale land sold as an isolated tract. XXI–454

Local officers may not demand a fee for answering a verbal or written inquiry concerning the status of a tract. II–198

No charge for information concerning a tract of land is to be made unless in the form of plats and diagrams. II–660

To surveyors-general for certified copies, etc. V–190

Local officers may charge less, but not more, than the fees fixed by circular of July 20, 1883, for preparing plats and diagrams. II–661

For registered mail matter specified. III–140

Disbursing agents to pay fees on registered mail from the advances for contingent expenses. III–108

May not be charged in offices not consolidated for abstracts from the records, except for plats and diagrams and lists of taxable lands. II–655, 671

For examining testimony, furnishing transcripts, etc. I–517

Or commissions not allowed for additional entries made under the act of March 3, 1879. I–525

Fees allowed for reducing testimony to writing, for plats and diagrams, for transcripts of records, for examining and approving testimony in final homestead cases; receiving and accounting for fees. II–664; V–579

No fees are to be charged for reducing or examining testimony, for the writing contained in the original entry papers, or for certificates and receipts in final proofs. II–662

Registers and receivers are each entitled to a fee of 1 per cent of the amount received for canceled military bounty land warrants. III–145

Rule for computing the fees due for railroad selections. II–662

On filing selections under the act of January 12, 1891, the railroad company must pay the statutory. XXIV–543

Fees—Continued.

The fees provided in section 2238, clause 7, R. S., are to be paid on all the lands located by the railroad company (Burlington and Missouri River), which may fairly be construed to be all the lands ascertained to belong to the company under the grant. II–669

Of $1 each to the register and receiver is chargeable to the State for each school indemity selection of 160 acres. XIII–728

A fee of $1 is not payable by the State in original swamp selections, but is payable in indemnity swamp locations. II–667

For State selections must be paid before approval and posting. I–537

Local officers are not entitled to, collected on approved State selections that become final prior to their incumbency. XXIX–318

In making selections under the act of June 21, 1898, the, required by law to be paid to the register and receiver should be paid by the Territory, and not from the appropriation made in section 11, of said act. XXVII–284, 303

On the location of desert lands by a State under the fourth section of act of August 18, 1894, the register and receiver are each entitled to a fee from the State of $1 for each final location of 160 acres. XXIV–66

The payment of the, specified in section 2238, R. S., should be required in all cases of school indemnity selections made by the Territory of Oklahoma before submitting the lists to the Department for approval. XXVI–536; XXIX–72

Where a list of school indemnity selections has been approved without payment of the statutory, the amount due remains a charge against the Territory, but can not be enforced by vacating the approval. XXIX–72

The second clause of section 2238, R. S., providing a fee to the register and receiver of 1 per cent on moneys received is applicable only to moneys received at cash sales of lands, and does not include money paid on account of timber depredations. XXV–370

The eighth clause of section 2238, R. S., fixing a fee of $5 to the register and receiver for superintending public land sales, does not authorize the collection of such fee on the sale of an isolated tract. XXV–370

On allowance of second homestead entry the claimant is not entitled to credit for fee and commissions paid on first, but should apply for the repayment thereof. II–660; X–469

As to credit for fee and commissions in case of canceled entry where application is made to reënter the same tract. III–498, 605

Of $10 required in case of additional homestead entry under section 5, act of March 2, 1889, if the amount of land embraced therein exceeds eighty acres. XIII–614

Fees—Continued.

No fees may be charged for testimony not reduced to writing by the local officers personally, or by their clerks, or (in final homestead cases) by a judge or clerk; the various statutes regarding such fees cited. II–665

Local officers are allowed the same, for examining proofs made before judges or clerks of courts, whether approved or not, as are allowed by law for taking the same. III–58

Local officers are entitled to, for testimony reduced to writing in final homestead or preëmption proofs whether the entries are allowed or not. III–58

Not to be charged for the examination and approval of testimony given before judge or clerk of court except in final homestead cases. V–580

Local officers not authorized to collect, for reducing to writing the testimony in preëmption final proof unless such service is actually performed by them. IX–60

Where final proof is taken before some other officer than register or receiver, under amended rule 53, such officers are entitled to no, until action on the final proof. XXV–285

Local officers not entitled to, for examining and approving testimony in preëmption cases taken before judge or clerk of court. II–659; III–160

The district officers are entitled to, for testimony actually reduced to writing by them or their clerks, but not for that merely examined by them. III–125

Can not be collected by local officers in contest cases for reducing testimony to writing if such service is not performed by them or by one acting under their employment. XII–531

Duplicates of homestead and preëmption proofs are not required by law, and any charge exacted for them is illegal. II–671

Indian homesteads under act of July 4, 1884, allowed without payment of. III–91

The disposition of Omaha filing fees is not affected by the act of May 15, 1888. XII–371

Paid on Omaha Indian filings under the act of August 7, 1882, must be reported as a part of the maximum amount allowed the local officers on account of salary. XII–371

Allowable to local officers on Indian allotments, under section 4, act of February 8, 1887, are in the form of a commission, and determined in amount by the price and area of the land, and it therefore follows that such fees can not be fixed and allowed until after survey of the allotted tracts; but it is not essential to the allowance of such fees that the allotments should have been finally approved. XXII–35

Fees—Continued.

For writing done in making proof on mineral application. I–517, 518

Allowed for acting on mineral application. I–517

Upon the acceptance of an adverse mining claim by the local officers they become chargeable with the fees required by law to be paid. XXIX–413

None chargeable on the rejection of adverse mining claim. XIII–720

For notice of cancellation to be paid to the receiver. V–569, 579

Registers may not retain the fee of $1 authorized to be collected for notice of cancellation of an entry unless such notice has been actually given. II–660

No time specified in the statute or regulations when the successful contestant shall pay the one dollar fee for notice of cancellation. XVI–516

The fee allowed the register for giving the successful contestant notice of cancellation is a matter personal to said officer, and he alone has standing to complain of its nonpayment. XVIII–75

Of $1 for notice of cancellation will not be deemed unearned, where the entry is canceled on relinquishment and the contestant enters the tract so released. XIX–517

Where lands have been transferred to a new district pending contests against them the officers of said district are entitled to the fees for notices of cancellation. II–222

There is no preliminary fee of $1 to be paid at initiation of contest; the fees allowed are provided for in Rules 54 to 65. II–661

Tender of all, required by the local office at the time of application to enter sufficient to save the rights of the applicant. XVI–514

An actual tender of, not required of an applicant who applies to enter in the presence of a prior adverse entry. XVIII–75

Fees and commissions deposited with application to enter, prior to cancellation of existing entry, give no right to the land. II–49

The land department does not summon witnesses, nor exercise any control over the question of fees to them. II–223

District officers can not employ clerks at the expense of the government for the purpose of reducing testimony to writing. III–105

Local officers not entitled to, when testimony in contest is taken elsewhere. I–519

A per diem fee for hearing cases or taking testimony must not be charged by local officers. III–105

In proceedings by the government against an entry a witness who is summoned by the claimant and testifies in his behalf is not entitled to any fees from the United States. X–385

For reducing testimony to writing and clerical services in contest. V–245, 569, 579

Fees—Continued.

The whole charge for taking down and writing out testimony is limited to one charge of 15 cents for each one hundred words. III–108

There is no authority for allowing the local officers a one per cent commission in excess of the maximum compensation for their services in conducting the sale of town lots under the act of September 1, 1888. XV–432

An unearned cancellation, should not be delivered to any one except the depositor, in the absence of due authority to receive the same and receipt therefor. XXIX–245

Fencing. See *Public Land.*

Filing. See *Application; Coal Land; Entry*, sub-title No. XIV; *Preemption.*

I. GENERALLY.
II. AMENDMENT.
III. SECOND.
IV. OSAGE.

I. GENERALLY.

Can not be made until the land has been surveyed and the plat filed in the local office. V–275; X–195

Name of applicant should be noted on the declaration. V–199

The inadvertent omission of the applicant's signature from a declaratory statement may be supplied by allowing him to sign the same *nunc pro tunc.* XVII–396

Office of, under the preëmption law, is to give notice that the settler intends to purchase the land described therein, and such notice during the statutory period protects the claim as against subsequent settlers. I–406; V–249, 473, 632; IX–41

A preëmption filing, which is a declaration of one's intention to claim a tract of land, confers a mere preferred right against third persons, but none against the United States; land covered by it is public land and is open to settlement or entry, subject only to the preferred right of preëmption. II–581

Of a preëmptor determines the amount of land covered by his claim, and a mere allegation that other land was embraced therein will not be accepted as against the record. IV–491; VI–249; XII–471

And settlement confer no vested right in the land under the preëmption law. XVI–526

Does not constitute an appropriation of the land. I–30, 434, 435; IV–404; VII–280; VIII–224; IX–264

There is no difference in principle between the case of a filing made of record and of one offered but erroneously rejected. II–37

Rejected on appeal no appropriation of the land. IV–403

Filing—Continued.

I. GENERALLY—Continued.

Prima facie valid, raises a presumption as to the fact of the claim and its validity. I–379; IV–402; X–645

Submission of final proof and payment for a portion of the land embraced within a preëmption is an abandonment of the remainder and relieves such tract from the operation of the filing. I–485; VII–206, 261; XVI–251; XXVI–379

Circular regulations with respect to "expired" filings under the preëmption law. III–576

An "expired preëmption filing" is no bar to the disposition of public land. III–317

That has expired without proof and payment gives rise to the presumption that the claim has been abandoned. X–645; XI–138; XII–384

Rights under a preëmption are forfeited by long-continued failure to assert the same in the manner provided by law. XXVI–252

On the expiration of, without proof and payment the presumption arises that all rights thereunder are abandoned, but such presumption is not conclusive. XIII–22, 617

For unoffered land under the act of 1843 protected the settler until the commencement of public sale, and this protection was not modified until the passage of the acts of July 14, 1870, and March 3, 1871. I–379; V–530, 553; VII–13; XI–195

Life of, extended one year in certain States by act of May 9, 1872. XVII–537

Statutory limitation as to life of, on unoffered land. XIV–656

By the express terms of section 14, act of September 4, 1841, failure to make final proof and payment under a preëmption, for unoffered land prior to the day fixed for the sale thereof, operates to extinguish all rights under said. XXVI–680

Life of, extends till six months after close of military service where actually called away from the land by such duty. XIV–364

Time of, after settlement not material in the absence of adverse claim. XIII–576

Failure to file declaratory statement will not defeat right of purchase in the absence of adverse claim. V–632

Failure to file a declaratory statement will not defeat settlement rights as against the government. VII–131

Is not a condition precedent to the right of preëmption, but a protection against subsequent settlers. IV–514; VIII–433

Failure to make, within statutory period defeats the right of purchase in the presence of an intervening adverse claim. II–578; III–455; VI–391; X–485; XII–519; XIII–209

Filing—Continued.

I. GENERALLY—Continued.

Right of preëmption by one who has failed to file in time not defeated by the intervening homestead entry of another who has not complied with the law. v–188

As between two settlers who are both in default as to, the one who first gives notice of his claim is entitled to priority. xv–381

Failure to file in time does not defeat the claim in the absence of another settler who has complied with the law.
i–357, 380, 497; v–188

The words "next settler" in section 2265, R. S., are not necessarily confined to a preëmptor. i–380

Purchaser at private entry held not a "settler" that can take advantage of default in. viii–346

Default in, for unoffered land forfeits the claim only in favor of the "next settler" who has complied with the law. viii–346

Default in, for offered land does not defeat the right of purchase if cured prior to the intervention of an adverse right. x–387

The preferred right of purchase secured by a preëmption, on "offered" land, terminates with the expiration of the statutory period for the submission of final proof and making payment, and, if within that period such filing is not carried to entry, it is not after such time even an apparent record claim to the land.
xxviii–75

Failure to make, does not warrant the presumption that the settlement was not lawful. v–653

Though made after the legal period, is valid, if before the intervention of an adverse claim. i–142

Where the claimants are equally in laches as to filing, the land is awarded to the prior record and settlement. i–438; iii–347

And settlement confer an inchoate right under the preëmption law.
ix–41

To be valid, must be founded upon a prior actual settlement.
i–432, 439; ii–621; v–188, 289

Without settlement voidable. vi–792

Filing before settlement cured by settlement prior to the inception of an adverse right. iii–374, 499;
iv–424, 451; xi–208; xiii–480; xvii–200, 501

One who has failed to file in time can not postdate his settlement in order to defeat the intervening claim of another. xii–519

A preëmptor is not estopped from proving that his settlement was in fact made at a different and earlier date than that alleged in his declaratory statement.
i–444; iii–102, 380; xi–143; xii–299; xiv–431

Filing—Continued.

I. GENERALLY—Continued.

Held to precede settlement where the declaratory statement is made out and mailed prior to performing any act of settlement. VIII–331

A filing based upon settlement made in trespass is a nullity. III–188

Of one who has exhausted his preëmptive right is invalid. IV–560; V–16

But one, allowed a preëmptor for lands open to settlement and entry. V–16; VI–298, 617, 785, 792; VII–395; VIII–258

Though illegal, exhausts the preëmptive right. VI–298

Made through the consent and procurement of the preëmptor exhausts the preëmptive right and renders a subsequent filing illegal. XII–110

The right to file, exhausted by filing made through agent. III–391

Made without the authority or knowledge of the preëmptor does not exhaust the preëmption right. II–620; VII–503; IX–129

A declaratory statement filed with the receiver during the temporary absence of the register and duly made of record serves the purpose intended by law and exhausts the right of filing. IX–41

Made by an alien confers no right under the preëmption law as against an intervening adverse claim. XXIV–60

By one foreign born who has not declared his intention of becoming a citizen becomes valid if such declaration is made prior to the intervention of an adverse right. XI-121

Of one qualified in the matter of citizenship relates back to settlement and legalizes the same, though made when the settler was an alien. VIII–541

Made by one entitled to the rights of citizenship on compliance with section 2168, R. S., will not be canceled if the requirements of said section are subsequently observed. VIII–60

By a minor with full knowledge of his disqualifications, who subsequently sells his relinquishment, exhausts his preëmptive right. XI–562

Made during infancy is invalid, but the attainment of majority prior to the inception of an adverse right cures the invalidity. VI–602; XVII–207

Failure of both the settler and his executor to make, until after the discharge of the latter precludes the assertion of a preëmption claim. VI–671

On land embraced within the existing entry of another confers no right as against the prior entryman. XII–600

Should not be allowed, on allegation of prior-settlement right, for land covered by the entry of another without a hearing to determine priorities. V–526; VI–98, 330; VII–140; VIII–528, 623; XI–452; XII–684

Filing—Continued.

I. GENERALLY—Continued.

May be allowed subject to the preference right of a contestant. (See Allen *v.* Price, 15 L. D., 424.) VII–46

Where the right to make, is accorded as against a prior homestead entry such action does not require cancellation of the entry, as it may stand subject to the right of the preëmptor. XIII–593

For land included within a former indemnity withdrawal and covered by a pending selection should not be allowed without due notice to the railroad company. X–454

For land included within a prior indemnity selection should not be recorded until final disposition of the selection. IX–250

Allowed for land embraced within a railroad indemnity selection, pending on appeal, should be suspended until final disposition of the selection. XII–18; XIV–418

On land withdrawn for railroad purposes confers no right under the preëmption law. XIII–214, 432

Three months after the restoration of land allowed for, in case of settlement on land reserved for railroad purposes. XIV–230

Canceled for conflict with a reservation made for reservoir purposes may be reinstated on revocation of the withdrawal. XIII–92

For land subsequently withdrawn for reservoir purposes under the act of October 2, 1888, may be suspended until it can be determined whether said land will be actually required for the purpose for which it was withdrawn. XII–438

A preëmption, made subject to a withdrawal under the arid-land act of October 2, 1888, that is awaiting action by Congress, may be suspended until such action is taken. XXIII–483

Can not be received for land covered by an order for survey and offering as an isolated tract. XII–397; XIV–458

Under the preëmption law can not be allowed to embrace land within an Indian reservation. XII–563

Will be canceled where claim under is unsuccessfully set up to defeat the final proof of another. V–260

Treated as taking effect on land when open to settlement, though not subject thereto when filed. VI–153

Preëmptor may file for one hundred and sixty acres, though claiming less at settlement, if contiguous tract is vacant. I–405

May be valid as to one part and invalid as to another part of the land covered by it; as where A surrendered possession of the west half of a quarter, and B, who filed for the whole of it, took possession of the west half alone. II–635

Made in the interest of another is illegal and must be canceled. III–488; XI–548; XII–303

Filing—Continued.

I. GENERALLY—Continued.

Failure of the local office to properly note of record will not defeat the rights of the preëmptor. XV–31

Where the settler relinquishes the land in the face of a homestead claim he can not have his filing reinstated on ground that the contract consideration for relinquishment was not paid by the homestead claimant. II–621

For alleged swamp land. Circular of December 13, 1886. V–279

Disposition of papers in the local office. Circular of December 4, 1889. IX–658

II. AMENDMENT.

Amendments of, allowed with great caution. VII–300

Amendment of, must be governed by the original intention of the settler. V–643

Right to amend cut off by the intervening claim of another. II–38, 576; IV–387; XI–477

May not be amended to include land not intended to have been covered by the original application. V–643

May be amended to correspond with the actual settlement of the claimant in case of honest mistake. IX–98

Can not be amended in the presence of an intervening adverse right to include land excluded by former for want of contiguity. VI–621

In case of mistake and in the absence of intervening rights the lands intended to be taken may be substituted for those mistakenly filed upon or entered. VI–785

May not be amended where made for the land intended, though other land would have been included if the preëmptor had known it was subject to entry. VII–298

Amendment denied where through want of diligence the true status of the land was not known. IV–496

Amendment of, not defeated by failure of the local officers to make a proper record of the application therefor. IX–98

Made by an administrator in his official capacity can not be amended so as to be a filing in his own right; but an application to so amend may be accepted as the filing of such party in the absence of any adverse claim. XVII–90

Circular regulations with respect to amendment of. VIII–187

III. SECOND.

Second, allowed only after careful scrutiny. III–161

Second, not allowed in the absence of good faith. IV–387

Second, allowed for the same tract in the absence of adverse claim. (Overruled, 2 L. D., 854.) I–436, 439

Filing—Continued.

III. SECOND—Continued.

Second, for same tract, with settlement alleged after sale of homestead from which the preëmptor had removed, not allowed. VI–767

Second, for same tract not allowed. V–413

Second, not permissible though the first may have been allowed prior to the adoption of the Revised Statutes. IV–189; VII–395; X–188, 336

Second, prohibited though the first was on unoffered land. VI–20

Second, not allowed under section 6, act of March 3, 1853, except where the first was made before the passage of that act. VI–20

Second, allowed where first was on unoffered land, made prior to June 22, 1874, and canceled on relinquishment. (See 4 L. D., 189.) I–442

Section 2261, R. S., is a reproduction of former law with respect to second filings. IV–189

Second, prohibited by section 2261, not only on lands subject to private entry, but on all lands subject to preëmption. VI–617

Right to make second, recognized if through no fault of the preëmptor consummation of title was not practicable under the first. IV–9; IX–41; X–338; XIII–177

Second, may be allowed where, through no fault of the preëmptor, the first fails by reason of conflict with prior adverse claim. V–643; VI–168, 298, 611; VII–323

Second, will only be allowed where the claimant, by reason of a prior or adverse right, is unable to perfect title under the first. XI–121

Second, allowed where the first was illegal. I–439; IV–116

Second, not allowed where the first failed through the fault of the preëmptor. IV–114; VII–30, 289, 316

Second, can not be allowed, in the presence of an adverse claim, to one who abandons the first because made without prior settlement on the tract covered thereby. XII–536

Though the first was voidable, yet as its failure was the fault of the settler a second will be denied. VI–792

Second, permissible where the first was for land not subject thereto and the preëmptor in good faith abandoned the same on discovery of such fact. VIII–528

Second, allowed where first covered worthless land and due care was manifest. I–433

Second, not allowed on account of untillable character of land where there has been no cultivation. III–379

Second, will not be allowed on the ground that the land included in the first is not habitable unless it is clearly shown that the settler in exercise of ordinary diligence was unable to discover the true character of the land. XI–45

Filing—Continued.

III. SECOND—Continued.

A preëmptor may file but one declaratory statement on the same or on another tract; applied to a case where second filing was offered because settler found it impossible to raise good crops on his claim. II–854

The right to make second, may be accorded where failure to perfect title was due to the ill health of the preëmptor. X–17

Second, not allowed to one who after transmutation of the first relinquished the homestead entry. VI–570

A preëmption filing that is subsequently changed to a homestead entry exhausts the preëmptive right. XIX–111

Second, allowed where the first did not correspond with the settlement. III–93

Second, allowed where the first was for land subsequently included within an Indian reservation. I–450

Second, may stand, when made in good faith and allowed in accordance with existing rulings, where the first was made through mistake and subsequently relinquished. X–229

A preëmption entry allowed on a second, may be allowed to stand where it appears to have been made in good faith believing the right to make such filing had been accorded by decision of the General Land Office. XXII–278

Second, allowed where the first was illegal for want of settlement, but good faith appeared in alleging settlement. VI–168

Second, allowed where the first is abandoned on account of threats and actual violence. IX–85; XIV–25

Second, allowed where the first, by mistake, was for land not settled upon and the right of amendment was defeated by an adverse claim. VII–38

Second, not allowed where the first was made upon a tract claimed by another, in the belief that such claim would be relinquished. III–181

Second, not allowed to one who made first before declaring intention to become a citizen, but subsequently cured the defect. VI–15

Made in good faith by a minor, but abandoned when the fact of minority is discovered, is no bar to second. XI–317; XIV–411

Second, not allowed to one who, after attaining his majority, transmuted a preëmption claim based on a filing made during infancy. VI–602

Second, not allowed where the first was illegal because the preëmptor removed from land of his own in the same State to reside on the land embraced within said filing. VII–316

Right to make second, not considered without application for some tract. IV–310; V–251

Filing—Continued.

III. SECOND—Continued.

The validity of a preëmption, that has passed to patent will not be questioned on behalf of one claiming under a second filing made by the same party. XVIII–54

IV. OSAGE. See *Indian Lands.*

Circular regulations. V–581

On Osage land exhausts right under the preëmption law. V–537

Second, not permissible to one who has formerly exercised the right. VII–30

Second Osage, permissible where the first is in good faith abandoned on account of the intervening adverse claim of another. X–150

Osage, must be made within three months after settlement to afford protection. V–581; IX–281

Time under amended Osage, begins to run from the date when the amendment is allowed. X–624

Failure of settler on Osage land to make, within three months after settlement subjects his claim to any other valid intervening right. XI–396

Time within which Osage, is required to be made will not run where the local office is closed and the Commissioner so directs. XI–256

Where two claimants for Osage land are each in default in the matter of, the one who makes the first has the better right, subject only to defeat in case of failure to submit proof within six months. XI–62, 275

Final Proof. See *Alienation; Naturalization; Res Judicata; School Land.*

I. GENERALLY.
II. NOTICE.
III. PLACE OF TAKING; OFFICER.
IV. WITNESSES.
V. TRANSFEREE.
VI. CONTINUANCE.
VII. PROTEST.
VIII. ADVERSE CLAIM.
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On direct examination being full and explicit, may be accepted although the cross-examination is not in compliance with the regulations. VI–787

Under the circular of December 15, 1885, not fatally defective for want of written cross-examination if made before the local office and accepted by it. IX–189

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Absence from the land after the submission of, does not necessarily indicate bad faith. VI–224

Good faith may be shown by acts performed after submission of. IX–436

Final Proof—Continued.

I. GENERALLY—Continued.

Submission of, at a particular time, in order to leave the land, not necessarily inconsistent with good faith. VIII–508

Should receive special scrutiny when made within the shortest possible period. IV–347; V–349

Submission of fraudulent, conclusive of rights under the entry. IX–527

When prematurely submitted, new proof will be required. VI–330

New proof must show compliance up to the time of its submission when the former proof was found insufficient on its merits. VI–155

When defective through no fault of claimant, new, may be made showing compliance up to submission of former, though compliance subsequently can not be shown. VI–28, 155

Taken before business hours on the day advertised is irregular and makes new proof necessary. VII–249

Taken outside of office hours may be considered, where so taken because the witnesses could not attend at any other time, and their testimony was submitted with due opportunity for cross-examination by the adverse claimant. XXII–436

When new, is submitted pending appeal from the Commissioner's rejection of the first, the Department will pass on the merits of the case as shown by whole record. IX–436

If found insufficient and bad faith is not apparent, supplemental evidence may be submitted in the absence of protest or adverse claim. X–183

Allowed on proof submitted after due notice should not be canceled on finding the evidence as to residence insufficient, but suspended and further proof required. VIII–202

Supplemental proof of residence may be submitted where no adverse claims exist. XI–312

Supplemental, should be requird where the testimony is evasive and incomplete. IV–477; V–215; X–1

Supplemental, showing due compliance with law prior to the submission of the original, may be submitted in lieu of new proof where the entry was allowed, payment made, and the new proof not called for until four years thereafter. X–213

When rejected with the privilege of submitting supplemental, the entryman may refuse to furnish such proof and appeal to the Department, but if the final decision on such appeal is adverse the right to submit supplemental proof will not be allowed. XIII–211

Final Proof—Continued.

I. GENERALLY—Continued.

On submission of supplemental proof a special agent may be present and cross-examine the witnesses. X–30

Under act of January 31, 1885, made as other cases. IV–16

A final affidavit returned for correction, and again filed when corrected, takes effect as of the date when first received, where, in the meantime, the fees and purchase money are retained by the local office. XVII–366

If the final certificate bears a date later than the proof, the entryman may show by his own affidavit that he had not transferred the land at the date of the certificate. IX–615

Proof of non-alienation between the date of submitting final proof and issuance of certificate should not be required if such proof was sufficient when made and the claimant had at such time complied with the requirements of law. VIII–475

Having been lost, a duplicate may be substituted without republication. VI–794

In making substituted, to supply testimony lost through no fault of the claimant, the testimony of said claimant may be taken before a clerk of a court of record outside of the land district in which the land is situated, and the testimony of his witnesses taken within said land district, with a view to equitable action on the entry, if the proof so submitted is found satisfactory. XIX–390

A demand on the register may be properly made for the production of lost, and if not secured thereby the contents of the same may be shown or new proof submitted. XXII–133

An incorrect statement as to citizenship, made under a misapprehension of the law, may be excused. VII–471

Evidence as to filing declaration of intention to become a citizen, furnished in homestead proof, may be accepted in subsequent preëmption. VIII–233

New objections to residence shown not raised by the Department after the claimant has fairly met those made by the General Land Office. VI–606

When submitted, may be attacked for improper absence, under the act of June 4, 1880. I–434

Failure to submit, in due time excused where the default was caused by error of the local office. I–459

Failure to submit, within statutory period not treated as default, where the claimant appears on the last day of such period, within business hours, and finds the receiver's office closed contrary to the regulations, and thereafter submits proof on the next business day. XXIV–46

Final Proof—Continued.

I. GENERALLY—Continued.

Regularly submitted, sworn to, and accepted by the local office should not be rejected for want of register's signature to the jurat. VI–147

Action of the General Land Office on, should cover the sufficiency thereof as well as other questions affecting its validity. VIII–612

Should not be accepted while the survey of the township in which the land is situated is suspended for investigation. XII–633

Submitted during the suspension of the township plat may be received and held awaiting the removal of such suspension, and on such removal be accepted, if otherwise satisfactory, on execution of new final affidavit. XIV–705

Offered pending suspension of township plat. V–540

Instructions as to the manner in which payment may be made and final receipt issued on the submission of, under suspended entries made within the formerly recognized limits of the Northern Pacific east of Duluth. XXVI–488

May be submitted on behalf of entryman under the homestead or preëmption law, who has become insane, by any person authorized to act for him during such disability. VI–550

An erroneous description of the land in the final affidavit and the testimony of the witnesses will not make new proof necessary, the land being properly described in the published notice, and the proof intended for the land occupied. VI–782

Rights not prejudiced by delay in the issuance of final certificate. VI–218; VII–292, 455; VIII–268; X–142; XII–42

Submission of, showing full compliance with the law secures the equitable title to the land. XVII–293

II. NOTICE.

Matters essential in notice of, may not be waived by the land department. VI–111

The requirement as to publication of notice is statutory and can not be waived. VI–345; XXII–548

Taken without notice is void. III–362

Notice of intention to make, is an invitation to all parties to appear and show cause why the entry should not be allowed. II–580, 594, 596; III–247; V–407, 587; VI–379

Publication of notice under act of March 3, 1879, similar to the requirements of the mining law. I–108

The notice by publication of intention to make, is in harmony with the notice required of contestants. III–141

On submission of, relates back to notice of intention to make, and protects the claimant in the absence of any prior intervening rights. I–461; XII–220; XIII–288; XVI–520

Final Proof—Continued.

II. NOTICE—Continued.

In the presence of an adverse claim arising prior to notice of intention to submit, the claimant is held to a strict compliance with the statutes in the matter of submitting his proof within the statutory period. III–92; IX–279; XVIII–373

Publication of notice and the due proof thereof should appear. VII–488

Sufficiency of publication must be determined under the regulations in force when the advertisement is made. VI–455

Posting in the register's office an essential. V–399

Publication of notice can not operate to revive a controversy settled by a former decision between the same parties. II–594

The published notice must state definitely before whom and at what place the proof will be made. VI–345; VII–197

A proper description of the land in the published notice is essential. III–460; IV–406; VI–6; VII–467

Misdescription of land in published notice requires republication, when the proof may be accepted as made in the absence of protest. VI–705; VII–485, 539; IX–434; X–468

May be accepted as submitted after republication by the transferee where the land was misdescribed in the published notice. VIII–415

In case of a defective notice of, on a homestead entry, by reason of the erroneous description therein of a part of the land involved, under which notice proof was made and final certificate issued, and the giving thereafter of a new and correct notice, the final certificate will stand as of the date issued, where the final proof is satisfactory and it is not shown that by reason of such erroneous description the right or claim of anyone has been prejudiced; and inquiry as to the character of the tract erroneously described, as well as of the other tracts embraced in the entry, will not be allowed to include evidence of any exploration or discovery of mineral thereon subsequent to the date of said certificate. XXX–216

The Crosthwaite case cited and distinguished. VI–313

Six insertions of notice in weekly paper required. I–656; III–112; VI–455

Under the circular of October 1, 1880, five insertions only were required of notice published in a weekly paper. VI–455

Notices of, must be published in papers nearest the land. III–155; V–503

Notice of, published in paper nearest the land by the usual route of travel. I–108

New publication and proof required where the publication was not made in the paper published nearest the land. VII–314

Final Proof—Continued.

II. NOTICE—Continued.

Notice of, to be published in established *bona fide* papers having an actual and legitimate circulation in the vicinity of the land. III–52

Register to designate paper for publication of notice. III–520

The local officers must designate, for the publication of notices of final proof, reputable papers of general circulation nearest the land applied for, the rates of which do not exceed the rates established by local law for the publication of legal notices. II–205

Publication of notice must be in a *bona fide* newspaper in general circulation published nearest the land, whether such paper is published in the county where the land is situated or otherwise. VII–59

Notice of intention to submit, must be published in a reputable newspaper having a general circulation. XXVI–393

Notices of, must be published in the newspaper proper, and not in the supplement. III–155

Notice must be published in the paper designated and proof made on the day fixed. VII–232

Written interlineation of witness's name in published notice a fatal defect. VI–379

New notice and proof required covering the testimony of a substituted witness. VII–327

Republication of notice required where the name of one of the witnesses was not properly given in the published notice. VIII–204

A slight mistake in the spelling of the applicant's name in the published notice of intention to submit, is immaterial, where no one is misled thereby, and the identity of the applicant is undisputed. XXIX–16

Special notice of intention to submit, should be given adverse claimants of record, and proof submitted without such notice requires republication with special citation to the adverse claimant. XI–172

Special notice of intention to submit, should be given adverse claimants of record. III–196; IX–495

Personally naming an adverse claimant in the published notice of intention to submit, is not a sufficient compliance with the rule requiring such claimant to be specially cited. XV–174; XVIII–525

A second applicant for a tract is not an adverse claimant of record and entitled to special notice of intention to submit, where the prior application is allowed and the entry is commuted for townsite purposes. XXI–434

Special notice of intention to submit, is only required to be given to parties in interest. XII–538

Final Proof—Continued.

II. NOTICE—Continued.

No one but a claimant of record is entitled to special notice of the intention of a homestead entryman to submit. XXIX–16

Usual notice of, sufficient as against the indemnity rights of a railroad. III–226

Notice by publication, without special citation of a railroad company, held sufficient. III–277

Special notice of, should be given a railroad company that is asserting a right under its grant. IV–256; IX–71

Pending railroad selection of record entitles the company to special notice of intention to submit. V–396; VII–149; XI–172; XII–18

Special notice of intention to submit, should be given a railroad company where the land is embraced within a pending indemnity selection. XIV–111; XXII–212

Where a withdrawal of lands for the benefit of a grant is of record, the grantee should be specially cited when proof is tendered under an adverse settlement claim. XX–259

A railroad company is not entitled to special notice of intention to submit, under a homestead entry of an unselected tract included within an existing indemnity withdrawal. XVII–270

A wagon-road company is not entitled to special notice of a settler's intention to submit, if it has no specific claim of record for the land claimed by the settler. XIX–490

Notice of intention to submit, will be held good as against a railroad company, where, in the publication thereof, the "general land agent" of the company is specially cited, and a protest against the proof is subsequently filed by said agent, and no exception is taken therein as to the service of said notice, nor objection made thereto on appeal. XXII–5

Special notice of, not required to be given a wagon-road company that has no specific claim of record for the tract involved. XIII–174

Not taken at the place designated in the notice is in effect taken without notice and void. XIII–612

Must be taken at the time and place designated in the notice. III–484; V–348, 361; VI–110, 156, 232

Made the following day sufficient when by mistake Sunday is designated as the day for submission of. VIII–233

Taken at day later than first named is not open to objection if the change of date appears in subsequent publication duly made. IX–646

When not made on day fixed, may be accepted, in the absence of protest, on republication and new affidavit covering the time up to the date of entry. VII–417

Final Proof—Continued.

II. NOTICE—Continued.

The necessity for republication where not made on the day fixed obviated by subsequent hearing. VII–559

Republication required where not submitted at the time fixed and the proceedings are continued, but not to a day certain. X–418

Preparation of part of the testimony on the day before that fixed for taking does not affect regularity of, where it is completed at the time and place and before the officer designated. X–119

New, after republication will be required where the proof is not taken on the day fixed and a portion thereof not taken before the officer designated. VII–420

May be taken within ten days after the time advertised where accident or unavoidable delay prevents submission on the day fixed. (Act of March 2, 1889, and circular thereunder.) VIII–316, 581

Section 7, act of March 2, 1889, is retroactive, and legalizes proof taken within ten days following the date advertised, in pending cases, where unavoidable delay prevents compliance with the notice. X–301, 597

There is no law or rule of the Department that warrants the local officers in extending the time for taking, beyond ten days from the time set therefor in the advertisement. XX–343

If not submitted within ten days following the time fixed therefor new publication of notice must be made. XXIX–323

Where the evidence of the witnesses is not taken before the officer designated it may be accepted after republication in the absence of objection. VI–622; VII–20

If taken by an officer not named in the notice, it must be at the time and place designated and the officer advertised must certify to the absence of protest. VII–327

When made at the time and place designated in the notice, but not before the officer named therein, may be accepted after republication in the absence of protest. VII–371

In publishing notice of intention to submit, it is the fault of the register if the proper officer before whom it will be taken is not designated therein. VIII–483

Accepted after new publication of notice and corroboratory affidavits where the first notice is insufficient. V–503

Submitted on indefinite notice may be submitted after republication in the absence of protest. IX–439; X–372, 587; XII–213

Accepted in absence of protest, after new advertisement, where submitted through fault of the local office on defective notice and due compliance with law is shown. VI–345

Final Proof—Continued.

II. Notice—Continued.

Having been submitted without protest and after due notice, further advertisement is not required where supplemental proof is called for. VI–313

Order for new publication and proof should not be made before the sufficiency of the proof submitted has been, in all respects, considered and adjudicated. IX–434

Where certificate has issued and the proof is afterwards found defective in the matter of notice, new advertisement and proof will be required showing compliance up to the date when the certificate issued. VI–155, 382

Notice of intention to submit preëmption, does not operate to prevent the allowance of a homestead entry for the land covered by the filing. VIII–226

Published notice of application to make preëmption, so far reserves the land as to prevent its being properly entered by another pending consideration thereof. VIII–406, 414; IX–175, 215; XVII–381

Published notice of intention to make, saves the rights of the preemptor during the period so fixed as against the intervening adverse claim of another. XVI–520

The reservation effected by notice of application to make, is for the benefit of a preëmptor, and does not operate as a segregation of the land, as between third parties whose claims arise independently of the preëmptor. XXII–571

Final preëmption certificate should not issue during the publication of notice, by an adverse claimant, of intention to submit proof under the preëmption law. XVII–171

III. Place of Taking; Officer.

Testimony in final proofs taken by the local officers must be taken at the local office unless they have been otherwise expressly directed by the land department. II–204

Under the acts of March 3, 1877, and June 9, 1880, must be taken where the court is held and the seal kept. III–330

Circular of April 12, 1895, issued under the act of March 2, 1895, authorizing the appointment of commissioners to take. XX–309

The act of May 26, 1890, authorizing proof before "any commissioner of the United States circuit court," does not change existing provisions defining the place for taking such proof. XI–361

The circular of June 25, 1890 (10 L. D., 687), issued under the act of May 26, 1890, must be construed to mean that said act does not authorize the making of the proofs and affidavit mentioned therein before a commissioner outside the county and State or district and territory in which the lands are situated, except where the lands are within an unorganized county. XI–361

Final Proof—Continued.

III. PLACE OF TAKING; OFFICER—Continued.

The act of May 26, 1890, authorizing, to be taken before commissioners of the United States circuit courts, designates a new officer for such purpose, but does not change existing regulations as to the place of taking such proofs. XXVII–577

When made before clerk under act March 3, 1877, he must certify to absence of judge. II–100

May be taken before judges and clerks of court by special provision of law. IV–211

Affidavit required in sections 2262 and 2301, R. S., when made before probate judge, must be certified by him as "clerk *ex officio*." III–154

May be made before the proper officer of any court of record in the judicial district within which the land is situated. VI–138; VIII–509

Where a county embraces territory in two land districts a claimant for land in one district may, under act of March 3, 1877, make proof at the county seat in the other district. (See 1 L. D., 438.) II–90

The clerks of district courts in Dakota are authorized to take final affidavits in homestead and preëmption cases whether or not the court holds sessions in the county. II–200

The affidavit may be made before the judge of a probate court in Dakota at the county seat where the court is holden. II–224

In preëmption and homestead cases may be taken in Dakota before clerks of court where no court is held. V–458

Under the circular of March 30, 1886, a county judge in the State of Nebraska is not authorized to take preëmption or commuted homestead. IX–586

May be made in *ex parte* preëmption and commuted homestead cases before a clerk of the court, though such officer appears as the attorney of the applicant. (See 4 L. D., 299.) III–95

Commutation, made before a notary may be accepted where notice of intention had been given and the order for publication made before the circular of March 30, 1886, reached the local office. VII–345

Desert-land, must be made before the local officers or the judge or clerk of court of the county in which the land is situated, or commissioner of the United States circuit court having jurisdiction over such county. XII–90

Evidence of witnesses in desert entry must be taken before the local office. III–246

Testimony of desert claimant and witnesses may be legally required to be taken at the same time and place and before the same officer. VII–337

Final Proof—Continued.

III. PLACE OF TAKING; OFFICER—Continued.

Evidence of desert claimant may be taken before officers other than district. III–246

The claimant's affidavit and the testimony of the witnesses must be taken at the same time and place under desert entry. X–598

Claimant may be required to appear before the local office and submit to a cross-examination (desert entry). VII–337

Officers authorized to take preëmption. IV–473

Preëmption final proof may be made before the clerk of a court, but not the affidavit required by section 2262, R. S. II–622

Entire preëmption proof to be taken before officer named in notice. IV–473; V–361

Preëmption affidavit should be made within the county in which the land is situated. IV–63

Can not be accepted where preëmption final affidavit is made before a notary public. XII–560

No part of preëmption, may be taken before a notary. III–298

Testimony in preëmption, may be taken before any officer competent to administer oaths. III–429

Required by section 2262, R. S., must be made before a probate judge in Dakota acting as clerk when at the county seat where the court is holden. II–224

Required by section 2262, R. S., must be made before the register or receiver, but if made before a clerk may be cured by a supplemental affidavit. II–622

(See sub-titles No. II, IX, and XIV.)

IV. WITNESSES.

Witnesses must be disinterested and testify from their personal knowledge. I–96

Careful examination of witnesses required. V–220

Knowledge of witnesses should be tested by cross-examination. IV–253, 260

On offer of, special agent may be present and cross-examine the witnesses. VI–255

Local officers may use their personal knowledge as the basis for cross-examining witnesses. IV–260

Can not be considered without the testimony of at least two witnesses as to the settler's qualifications and compliance with law. VII–88

Based on evidence of witnesses not named in the notice is invalid. V–348, 609

In taking, the officer should test the witness's means of knowledge. III–133

Dependence upon attorney for witnesses suggests collusion. I–96

Final Proof—Continued.

IV. WITNESSES—Continued.

Element of weakness in that the witnesses do not live near the land. V–449; VIII–651

Irregularity in, caused by the substitution of a witness may be cured by new publication giving the names of the parties who did testify. IX–266, 646

Defect in, caused by the substitution of a witness may be cured by republication, and the proof accepted as made in the absence of protest. VIII–475

In the submission of final townsite, the testimony of a substituted witness can not be accepted without further advertisement, unless two of the advertised witnesses testify. XXII–247

V. TRANSFEREE.

Right to submit supplemental, accorded to a transferee in the absence of adverse claims. VIII–641

Where irregularly made, supplementary proof may be submitted after republication by a transferee, showing that the entryman complied with the law during the period covered by the final proof, and the facts as to the transfer. VIII–18

Irregularly submitted by the entryman (now deceased) may be accepted in the absence of protest on new publication of the transferee. VII–391

May be accepted in the absence of protest on new publication by the transferee where the first was not sufficient and the whereabouts of the entryman can not be ascertained. VII–197

When not taken before the officer designated and the entryman refuses to respond to further requirements, the transferee may file the certificates of the officer designated and the one officiating that no protest was filed against the entry, or, in the absence of such certificates, readvertise. XI–266

Mortgagee may cure defect in, caused by the substitution of a witness by due advertisement of the names of the witnesses who testified, and such proof may then be accepted in the absence of protest. XI–581

A transferee may be accorded an opportunity to show the qualifications of the entryman. XI–3

Where the entryman fails or refuses to submit new proof, as required, his transferee may be permitted to show that the claimant had in fact complied with the law prior to transfer. VII–367; XII–623

Mortgagee permitted to furnish supplementary proof as to the entryman's compliance with law prior to submission of, where the entryman failed to appeal from the rejection of. VI–776

Final Proof—Continued.

V. TRANSFEREE—Continued.

Transferee may furnish evidence showing that on the day fixed for the submission of proof no protest or objection was made. VII–445

Mortgagee may submit evidence after due notice showing that the proof was intended for land other than that included within the final certificate. VI–834

Further publication of notice by transferee permitted where the land, through no fault of the entryman, was misdescribed and the whereabouts of said entryman can not be ascertained. VI–770

VI. CONTINUANCE.

Submission of, may be adjourned by local officers on account of press of business, to a day certain. VI–512

Continuance of proceedings should be to a day certain. VI–806; VII–539

Continuance of proceedings to a day certain renders such proceedings continuous, and the final certificate issued at the close thereof will relate back to the beginning. VII–418

VII. PROTEST.

A protest serves to call attention to irregularities in, and for such purpose a regular contest is not necessary. IX–495

On protest against, the local officers may order a hearing. I–86, 448; VII–483

On a protest against, it is a matter of discretion with the Commissioner whether a hearing shall be ordered. XI–273

When the record shows a protest the local officers should order a hearing thereon at such time and place as may seem best in their discretion. XIII–203

Informal protest against, may be recognized as the basis of a hearing. XV–41

Protest against, raises an issue that may be tried before the local office, and on appeal the Commissioner is vested with due jurisdiction. XIV–176

Protest against, may be acted upon by the local office though filed after the admission of the proof. XII–202

On the submission of additional, in accordance with the call of the General Land Office, to support an entry allowed by the local office, adverse testimony should not be received on behalf of a protestant in the absence of due order therefor. XII–305

If no protest is found in the record, it will be presumed that none was filed. VIII–202; IX–339

Duty of clerk of court in taking, under protest. III–479

Final Proof—Continued.

VII. PROTEST—Continued.

A protestant against, may appear at the time and place mentioned in the notice and make his objection by cross-examining the applicant and his witnesses or by introducing counterproof, or by both. II–596

Protestant against, not required, in the absence of an order under Rule 35 of Practice, to submit his testimony at time and place set for taking the proof. IX–273; XIII–203

A hearing ordered on protest against final proof does not initiate a contest as contemplated by act of June 3, 1878, nor require publication of notice thereunder. II–580

A protest against the allowance of, secures to the protestant no preference right of entry, in the event that such proceedings result in cancellation of a preëmption declaratory statement. XXII–188

In proceedings under protest against, the Commissioner should pass on the whole case as presented by the record, including the sufficiency of the proof. XI–409

A protestant against, who sets up his own right to enter the land is bound to present at such time all objections against the proposed entry then known to him. XXII–63

Proceedings on, can not be treated as *ex parte* where a protest is filed and evidence furnished thereunder. XIV–176

A protestant against, who waives objection to the action of the local office in allowing new proof to be made, leaves the controversy to be determined on the testimony taken on presentation of the second proof. XVI–320

In the disposition of a case arising on a protest against, where a hearing is ordered to determine priority of right, and evidence submitted, the rights of the parties as well as the regularity of the proof should be considered. XXIII–358

One who has submitted, under his filing is under no obligation to protest against the proof of another who subsequently initiates a claim for the land. XI–449

In proceedings under protest against, a decision of the local office that the claimant is entitled to make new proof is not such an adverse judgment as will, in the absence of appeal, defeat his right to have the judgment of the Commissioner on the sufficiency of the proof already submitted. XI–544

Where a homesteader dies during the pendency of proceedings on his protest against the final proof of an adverse preëmption claimant, his heirs may perfect title on the final disposition of the adverse claim. XVII–389

Final Proof—Continued.

VII. PROTEST—Continued.

In proceedings under protest of a railroad company against, the qualifications of the settler at date of settlement will be presumed on appeal in the absence of any allegation to the contrary in the protest. XI–437

VIII. ADVERSE CLAIM. See sub-titles Nos. II and IX.

During the pendency of contest proceedings proof should not be submitted. IX–279, 299, 322; XI–256, 449, 452; XIII–218, 236, 417

The local office is without authority to accept, for land involved in a case pending on appeal. XI–539

Should not be submitted while questions involving the right to make the same are pending on appeal. IV–265, 394

May be submitted during the pendency of a contest. See amended Rule 53 of Practice. XIV–250

Rule 53, as amended March 15, 1892, makes the submission of, during a contest and after trial has taken place, optional. XIX–194

When submitted under amended Rule 53, it should be held for appropriate action in the event the entry is adjudged valid, and until such time no action can be legally taken thereon by way of proceedings on protest in the local office. XXIII–444

In the case of, taken during the pendency of a contest, under Rule 53, the local office has no jurisdiction except to file said proof for action when the contest is finally closed. XXV–285

The sufficiency of, taken under Rule 53, or the right of the entryman to withdraw the same, should not be considered until final disposition of the pending contest. XXV–285

The pendency of adverse proceedings suspends the running of time allowed a preëmptor, by statute, for the submission of. The amendment of Rule 53 permits the claimant, if he so desires, to submit proof during such proceedings, but no statutory right is lost by failure to take advantage of said amendment. XVII–203

Submitted during the pendency of adverse proceedings on appeal and prior to the amendment of Rule 53 may be considered under said rule where due notice is given and no adverse right exists. XIV–411; XVI–56, 541; XVII–255; XVIII–504; XXII–328

Amended Rule 53 permits the submission of, during the pendency of contest proceedings where the hearing therein has been had, but is not applicable prior thereto. XXI–3

One who submits, under Rule 53, during the pendency of a contest involving an adverse settlement claim, must stand or fall on the showing thus made as to compliance with law during the period covered thereby. XXVI–64

Final Proof—Continued.

VIII. ADVERSE CLAIM—Continued.

Should not be received or considered while the land is covered by a pending indemnity selection. VII–149

Submitted concurrently with evidence taken under contest proceedings, and in part responsive thereto, may be considered under amended Rule 53 where the charge as laid by the contestant is not sustained by his own evidence. XVI–541

When adverse claimant enters protest hearing should be ordered at such time and place as may be fixed by the local office. IX–273

Adverse claimants must appear on notice of. V–210

On submission of, after due notice, the failure of a railroad company to assert its claim is conclusive. I–361, 475

Failure of a railroad company claiming under indemnity withdrawal prior to selection to appear and assert claim is conclusive. V–407, 586, 658

Failure of a railroad company to appear in response to notice under the act of March 3, 1879, and assert its right to land within the granted limits bars the subsequent assertion of such right. VIII–389

Failure of railroad company to respond to notice of intention to submit, waives its right to deny facts set up in the proof; but if the record shows that the title passed under the railroad grant the award should be to the company notwithstanding its default. IX–416, 423, 427; XI–91, 633; XIV–251

Failure of a railroad company to respond to the published notice of, will not defeat its title to lands which on the record are shown to have passed under the grant. XII–351

Failure of wagon-road company to respond to settler's notice of intention to submit, for lands included within executive withdrawal precludes its subsequent objection to the allowance of the entry. XIII–61

Should not be accepted during the pendency of prior proof submitted by an adverse claimant, but may be considered after final disposition of such adverse proceedings on republication and the execution of new final affidavit. XIII–113

Submitted during the pendency of proceedings on appeal is irregular, but may be considered on final disposition of the adverse claim. (See 9 L. D., 279 and 299.) IX–57

An adverse claimant who objects to the submission of, before a clerk of court is not required to submit his testimony before said officer in the absence of an order under Rule 35 of Practice. VII–315

On offer of, an adverse claimant can not set up a claim that has been held invalid in a decision final as between the parties. X–451

Final Proof—Continued.

VIII. Adverse Claim—Continued.

Where final proof is not made within the time prescribed right to make entry is cut off by an adverse claim. II–593

Entry allowed during the pendency of, will not prevent the claimant from submitting further proof to show that he had in fact complied with the law. XIV–165

When submitted for land embraced in a rejected railroad selection pending on appeal, the proof should be suspended and the claimant allowed to intervene in the selection proceedings under the Rules of Practice. XII–18

Additional, showing compliance since submission of, not permissible in the presence of an adverse claim. VI–760

Where there is an uncanceled adverse claim and the record shows that applicant for final proof has priority of inception, he must proceed under act of March 3, 1879; a prior adverse claimant is not bound to take notice of an application to make final proof. (See 11 L. D., 449.) II–595

Where final proof twenty-one months after filing failed to show satisfactory residence, but otherwise showed good faith, further proof (in the nature of an amendment) may be offered within the thirty-three months, notwithstanding an existing homestead entry of record. (Overruled, 6 L. D., 623.) II–623

On the rejection of, offered by two preëmptors for the same tract without according priority to either, both may be allowed, in the absence of bad faith, to submit new proof. VI–424

A preëmptor who gives notice of, and cites an adverse claimant, but fails to offer proof on the day named, is not debarred from subsequently submitting proof on due notice and in the absence of any valid adverse claim. XIII–136

Submission of, may be deferred within the statutory period, though notice of making has been given and an adverse claimant appeared. I–446

A preëmptor who offers, in the presence of a valid adverse claim and fails to show compliance with the law must submit to an order of cancellation.

VI–308, 623, 760; VII–483; IX–55, 501; XIX–478

One who offers, in the presence of an adverse claim must submit to an order of cancellation if he fails to show compliance with law.

XI–338; XII–627; XIV–516; XVI–382

Withdrawal of, not permitted to defeat an intervening contest. XX–342

A preëmptor who submits, in the presence of an adverse claim is not precluded from making supplemental proof if the adverse claim fails for want of good faith. IX–81

Final Proof—Continued.

VIII. ADVERSE CLAIM—Continued.

A homesteader who makes commutation proof in the presence of an adverse claim must submit to an order of cancellation if his proof is found insufficient. XIII–323

In proceedings before the local office, where an adverse claimant who discloses his interest applies to intervene, he should be made a party, though such action may call for a continuance of the case. XII–488

A party who does not appear to protest against, on the submission thereof, but subsequently files a contest against the entry, is not entitled to have the claimant placed on the witness stand for the purpose of cross-examining him on his final-proof testimony. XXI–458

On the submission of, under an order of republication, the proof as originally made should not be accepted in the presence of a protest against such action by an adverse claimant. XXIII–189

IX. EQUITABLE ACTION.

If not made within the statutory period, the final entry (homestead) should be submitted to the board of equitable adjudication. VII–384; VIII–626; IX–291

Equitable action on a homestead entry, under which proof is not submitted within the statutory period, is defeated by an intervening contest on behalf of an adverse applicant for the tract involved. XVII–210

Where a homesteader, under instructions of the General Land Office, submits, after the expiration of the statutory life of his entry, and a protestant appears and objects thereto on the ground of the entryman's failure to submit his proof within the period provided by law, said protestant does not have such an "adverse claim" as will defeat equitable action. XIX–467

Where notice to show cause why an entry should not be canceled for failure to submit, within the statutory period has been issued, an affidavit of contest subsequently filed will not defeat equitable confirmation of the entry, if the showing made in response to the notice is satisfactory. XXIX–710

If submitted after the statutory life of the original entry and found insufficient, new proof may be made in the absence of bad faith, and if found sufficient the entry (homestead) may be sent to the board of equitable adjudication. VIII–614

When submitted by deserted wife, the entry (homestead) may be sent to the board of equitable adjudication. VI–311

Final Proof—Continued.

IX. EQUITABLE ACTION—Continued.

A deserted wife or minor child may make final proof as entryman's agent, the entry (homestead) to go to board of equitable adjudication. II–81

Where made by an administrator and the final affidavit is executed outside of the land district by the heir, who was aged and infirm, the entry (homestead) may be submitted to the board of equitable adjudication. VII–18

Referred to the board where non-mineral and new final affidavit were executed outside the territory in which the land is situated, and the claimant is not chargeable with negligence. VI–710

Made up of testimony taken before an unauthorized officer and supplemental evidence taken outside the State may be accepted with a view to equitable action where the claimant's physical condition prevents the submission of further proof in regular form (preëmption). XIV–687

If not made within statutory period, the entry (preëmption) should be submitted for equitable action. VIII–355

If not submitted within statutory period, entry (desert) may be equitably confirmed where the failure is due to ignorance, accident, or mistake. IX–430, 617, 631

Where desert-land, is not submitted within the statutory period and the delay is satisfactorily explained the entry may be equitably confirmed. XI–27

If not made within the statutory period, the entry (desert) may be equitably confirmed where the failure is due to obstacles that could not be overcome. VI–548, 801; VII–169; VIII–432

May be accepted and entry (desert) sent to the board of equitable adjudication, in the absence of adverse claim, where reclamation is not effected within the statutory period and the delay is satisfactorily explained. VII–79

Where submitted after the statutory period and found insufficient new proof may be made, and if found sufficient the entry (desert) referred to the board of equitable adjudication. VIII–573

Opportunity to submit further by desert entryman may be accorded with a view to equitable action where the entryman, through no fault of his own, fails to secure the requisite water supply within the statutory period. XII–241

New, may be submitted with a view to equitable action where that offered shows a failure to effect reclamation within the statutory period due to difficulties encountered in securing an adequate water supply. XIII–30

Final Proof—Continued.

IX. EQUITABLE ACTION—Continued.

Equitable action is not required on a desert entry, on account of failure to submit, and make payment for the land within the statutory period, where such failure is due to an order of the General Land Office postponing the day fixed for the submission of said proof. XVII–388

Submitted out of time may be sent to the board of equitable adjudication, where the failure is due to the intervention of a contest that is subsequently dismissed. XVII–36

Failure of the claimant to make his own proof on the day fixed may be cured by action of the board of equitable adjudication where his witnesses appeared and testified at the time and place designated. VIII–202

Where no cause is shown for failure to submit on the day fixed therefor, but the local office accepts the same, the entry may be equitably confirmed. XI–3

Where the testimony and final affidavit of the claimant were taken prior to the day fixed in the notice, on filing new final affidavit the entry may go to the board of equitable adjudication. VII–139

Failure to submit, on the day advertised may be cured by action of the board of equitable adjudication. VIII–415

When not submitted on day advertised and the register certifies that no protestant appeared on the day fixed, the entry may be sent to the board of equitable adjudication. VI–745

Where not submitted, through circumstances beyond the claimant's control, on the day advertised, and no adverse claim exists, the entry may be sent to the board of equitable adjudication. VI–460, 782

Where the testimony of the witnesses, through mistake, was submitted on the day previous to that designated, but no protestant appeared, the entry may go to the board of equitable adjudication. VI–695

Failure to submit, on the day designated having been once satisfactorily explained and the proof accepted without protest, the entry may go to the board of equitable adjudication. VI–629

Where the failure to submit, on the day advertised was the fault of the local office and further publication by the claimant is not possible, the entry may be sent to the board of equitable adjudication. VI–806

When submitted after the day fixed and good faith is manifest the entry may be referred to the board of equitable adjudication in the absence of protest or adverse claim. VII–326, 445

Final Proof—Continued.

IX. EQUITABLE ACTION—Continued.

May be referred to the board of equitable adjudication where witnesses' testimony was not taken on the day or before the officer named, but the claimant's evidence was submitted according to the notice. VII–482

May be accepted and the entry referred to the board of equitable adjudication where the proof was not made on the day advertised, but new publication was thereafter made. VII–465

When not made on the day advertised, but was accepted by the local office prior to the regulations of February 19, 1887, the entry may be equitably confirmed. IX–297, 339, 628

Defect in, caused by failure to submit on the day advertised must be cured by equitable action in the absence of evidence showing that the case is within the confirmatory provisions of the act of March 2, 1889. X–596

Section 9 of the final proof rules should be construed so as to not require entries to be sent to the board of equitable adjudication if the proof was made before the promulgation of the circular of February 19, 1887, and falls within the protection of the act of March 2, 1889. IX–284

If made within ten days of the date advertised, the entry need not, under the act of March 2, 1889, be sent to the board of equitable adjudication if the delay was unavoidable. IX–283

Where the testimony of the witnesses was taken on a day and before an officer not named in the notice, but was submitted, with the testimony of the claimant, at the proper time and before the officer designated, the entry may be equitably adjudicated. X–296

Where the publication is made and the proof submitted outside of the county in which the land is situated, but good faith is manifest, the proof submitted may be accepted after republication and proof of no protest and the entry referred for equitable action. XII–553

May be accepted in the absence of protest and the entry equitably confirmed where the proof is regularly taken, except that on account of sickness the claimant's evidence is taken at her residence in accordance with notice given by the officer taking the same. XII–102

An entry allowed on proof taken before an officer not authorized to act in such capacity may be referred to the board of equitable adjudication in the absence of other objection thereto.

VIII–406, 411, 483, 519; X–183; XI–299, 539, 578; XXVII–577

Entry may be referred to the board of equitable adjudication where the claimant's evidence was not submitted before the officer named, but the testimony of the witnesses was taken in accordance with the notice. VII–485

Final Proof—Continued.

IX. EQUITABLE ACTION—Continued.

Entry submitted to the board of equitable adjudication where non-mineral and new final affidavit were executed outside of the territory, and negligence is not attributable to the claimant in making final proof. VI–710

Irregularly submitted by the entryman (now deceased) may be accepted in the absence of protest on new publication by the assignee and the entry referred to the board of equitable adjudication. VII–273

May be accepted and entry referred to the board of equitable adjudication, in the absence of protest, where the day fixed for its submission was a legal holiday and proof was made the day following. VII–288

Where, through mistake, Sunday was designated for the submission of, and it was made the day previous, the entry may be referred to the board of equitable adjudication. VII–531

Where part of the land was misdescribed in the notice and testimony the entry may be referred to the board of equitable adjudication after new publication by the transferee. VII–462

Where notice of a decision holding an entry for cancellation for failure to submit within the statutory period is not given, an opportunity for the submission of such proof may be allowed and the entry equitably confirmed if within the rule. X–548

X. COMMUTATION. See sub-title No. XV.

Sufficiency of, must be determined by the local officers before transmittal to the General Land Office. V–610

Must be such as is required under the preëmption law and affirmatively show due compliance with all requirements.
IV–347; V–676; VIII–651

Sufficient on commutation if it shows settlement and cultivation satisfactory under the preëmption law, though residence was not established within six months after entry. (See VIII–566.) I–39

Though not sufficient in the matter of residence to warrant patent under section 2291, R. S., may be accepted as authorizing commutation. (Overruled, 9 L. D., 150.) VIII–45

If that made under section 2291, R. S., shows failure to comply with law, the claimant will be barred from submitting commutation. IX–150

On acceptance of, by the Department the original entry may, at the option of the claimant, remain intact or be commuted on the evidence submitted. VI–324

The unexplained fact that the claimant could not get the money to make payment does not excuse failure to submit proof on the day advertised, and new proof will be required. VII–367

Final Proof—Continued.

X. COMMUTATION—Continued.

Submitted prior to payment accepted in view of existing practice and other satisfactory reasons shown. VI–107

When rejected because irregularly submitted, with leave to submit new, the new proof, though covering the same period as the first, if taken after due notice, may be accepted *nunc pro tunc.* VII–231

If found insufficient, new proof may be submitted within the life of the original entry if bad faith is not apparent.
IV–557; V–608; VI–8; VII–87; VIII–84, 651

In the absence of fraud or concealment supplemental, may be submitted in case of a commuted entry allowed on insufficient proof. X–492

Additional, as to residence allowed in case of commutation. III–462

Right to submit new, not defeated by the appearance of a protestant who fails to show an adverse right. VI–763

In commutation, must be explicit as to residence. IV–478

Fact of commutation does not in all cases defeat the plea of poverty when offered as an excuse for absences and want of improvements. VI–170

Claim of good faith nullified by willful suppression of facts and commutation within the shortest possible period while alleging poverty. VI–265

Submission of, makes against the good faith of a claimant who pleads poverty as an excuse for absences from the land. VIII–651

Made within the shortest period permissible invites special scrutiny. IV–347; VIII–652

Offering, within shortest possible period not in itself a suspicious circumstance. V–207

Of deceased entryman approved though the residence was not fully satisfactory. V–215

Good faith indicated by the character of improvements. VII–232

The degree and condition in life of the entryman may be taken into consideration in determining whether the improvements show good faith. VI–310; VIII–639

The words "cultivation" and "improvement" used synonymously by the Department in considering cash entries. VI–420

As to cultivation should show the facts. IV–253

In commutation entry cultivation must be proved. II–72

Must show cultivation or some definite act looking thereto. VI–420

Breaking accepted as proof of cultivation. VIII–517, 551, 612

Breaking may be accepted as proof of cultivation under a commuted entry where settlement is made too late in the season for a crop. X–526

Final Proof—Continued.

X. COMMUTATION—Continued.

Evidence showing improvements to secure pasturage accepted in lieu of the usual proof of cultivation where the land appears better adapted to such use than to the cultivation of crops that require tillage. VII–200

XI. DESERT LAND. See *Entry*, sub-title *Desert Land.*

Cirular regulations of June 27, 1887. V–708

The regulations of June 27, 1887, are not retroactive. IX–399

Proceedings begun before the circular of June 27, 1887, was received at the local office may be completed under the previous regulations. IX–399

Publication of notice not insisted upon where the original entry was made prior to August 1, 1887 (circular of December 3, 1889). IX–672

Circular regulations for the submission of, in case of final entry before survey. XII–376

Should be made within three years from date of initial entry, even though the official surveys have not been extended over the land. XI–414

Where made prior to survey, supplemental, without republication should be required after survey showing adjustment to the lines of survey. XI–414

Submitted on a desert entry of unsurveyed land, if found unsatisfactory, and the entryman fails to furnish supplemental proof as required, may be rejected, and the entry canceled. XXIII–410

Sufficient under entries made before the circular regulations of June 27, 1887, if in conformity with the regulations existing at the time the initial entry was made. IX–259

The proprietorship of sufficient water to insure permanent irrigation must be shown. IV–51; V–120, 151; XX–449

Where the laws of a State permit the appropriation of water from navigable streams for purposes of irrigation, no ownership of the water taken from such a stream need be shown, only the appropriation thereof, and the ownership of the proper means for its distribution over the land. XXVII–516

Proof as to the ownership of the requisite amount of water to effect reclamation is sufficient where due compliance with local regulations is shown. XIV–63

To establish the fact of reclamation the evidence must not only show that water has been brought upon the land, but that proper means have been supplied for the distribution of such water to each legal subdivision. XV–130

Final Proof—Continued.

XI. DESERT LAND—Continued.

Must show the character of the water supply and means provided for its distribution, with full information as to the number and length of all ditches on each legal subdivision. IX–137

Actual irrigation of the land is the essential requisite. VIII–573

The actual irrigation of the whole tract must appear. V–120, 151

Not required to show irrigation of rocky and hilly portion of the land. V–481

Must show what proportion of each legal subdivision has been irrigated. VII–253; XI–58, 246

The fact of permanent reclamation warrants the acceptance of periodic flooding effected by means of a dam as a proper mode of irrigation. IX–419

Proof of crops raised as the result of irrigation is not required to establish the fact of reclamation. V–120, 151; XV–535

Satisfactory when sufficient water is shown to have been conveyed upon the land. III–385

Proof of crops raised treated as supplementing proof of irrigation. V–151

Must show that the crop raised is the result of reclamation. IV–51

If crops are not shown, other evidence of a satisfactory character to establish the fact of reclamation must be furnished. VIII–113

The testimony should show that the witnesses have personal knowledge that each subdivision of the land is irrigated. X–598

Must show compliance with the law in form and spirit. IV–51

When the proof submitted shows reclamation as to a part of the land entered, and failure to effect proper irrigation of the remainder, the entry may be approved as to the tracts reclaimed, and canceled as to the remainder. XX–449

Proof showing acts of reclamation after the rejection of the original proof is new, and not supplemental, and should not be submitted without due publication. VII–167

Which does not show reclamation can not be accepted, although good faith may appear. VII–167

Commissioner may require additional proof. VII–337

Of claimant not made by attorney in fact. V–19

Failure to submit, within the statutory period will not defeat the right to perfect the entry where part of the land is involved in a pending suit. XVI–310

Allowed after the expiration of the statutory period. IV–261

The Department can not extend the time in which to submit. III–8; VIII–432; IX–617, 632

In the absence of adverse claim may be received though not made within the statutory period. VI–24

Final Proof—Continued.

XI. DESERT LAND—Continued.

If proof of reclamation is not made within the statutory period, the intervention of an adverse claim defeats the right to perfect the entry. (See 16 L. D., 366; 18 id., 96.) XI–58

On failure to submit, within the statutory period the entryman should be allowed ninety days within which to show cause why his entry should not be canceled. IX–631

Submitted after expiration of the statutory period should be accompanied by an explicit explanation. IX–617

Where the statutory period for the submission of, has expired, and opportunity is given to submit the same within a specified time, it should be rejected if not presented within said time or good reason shown for delay. XIV–40

May be rejected if not made in the manner prescribed by the regulations and before an officer authorized to act in such matter. (See sub-title No. IX.) XIV–40

A protest against the allowance of, on the ground of the failure of the entryman to secure a water supply and effect reclamation, must be dismissed if on the day advertised he does not submit final proof, and further time therefor exists under the statute. XXII–599

The act of July 26, 1894, extending time for, applies to an entry made under the act of 1877, and where the entryman is entitled to the additional time provided for in the act of 1891. XXIV–435

A mortgagee who secures the foreclosure of a mortgage covering land embraced in a desert land entry, prior to the time when, is due on said entry, may be regarded as an assignee thereof, and entitled to submit. XXV–375

XII. HOMESTEAD.

The Department has no authority to extend the statutory period within which to submit. IX–291; X–400

Extension of time for, on account of forest fires, circular of February 2, 1895. XX–98

Failure to make, within the statutory period can only be cured by equitable action in the absence of adverse claims. XVI–524; XVII–210

Entry will be canceled at the expiration of seven years if proof is not made. I–112

The time fixed by the statute for the submission of, will not run as against the entryman during a term of enforced absence from the land under a wrongful decree of ejectment. XVIII–186

Local officers are required to notify claimants in default with their final proof, giving them thirty days in which to show cause why their entries should not be canceled. II–89; III–136; XIX–469

Final Proof—Continued.

XII. HOMESTEAD—Continued.

Entry canceled for failure to submit, within the statutory period, the failure being due to the entryman's arrest and conviction on a criminal charge, can not be reinstated in the presence of an intervening adverse claim. XV–550

Where a homesteader dies prior to the submission of, his entry should not be canceled for failure to submit said proof without notice to the widow; and if so canceled, the intervening entry of another, made with actual notice of the widow's claim, will not defeat her right to be heard. XXVII–572

A charge that a homesteader has failed to submit, within the statutory period will not be entertained where the entryman has given notice of his intention to submit his proof before the contest is filed. XXI–167

The statutory period within which, should be submitted under a homestead entry does not run during the pendency of an order suspending the official survey of the land. XXI–169

Allegation of grasshopper ravages as excuse for a failure to offer final proof within the time required must be founded on prior proper notice and absence from the land. II–622

Can not be perfected under section 2291, R. S., until five years' residence on the entire tract can be shown. XII–645

In case of discrepancy between proof of military service submitted and the records of the War Department, the claimant, if unable to explain the discrepancy, must show sufficient actual residence on the land to complete the requisite period. XI–368

Submitted by one who is the administrator of the estate of a deceased homesteader, and also heir of the decedent, should be regarded as having been made by said party in his capacity as heir, and therefore authorized by law. XXII–404

Where made on behalf of heirs, and it appears that the widow has abandoned her rights, the proof may be accepted, and the patent issue to the heirs generally. XXII–426

The administrator of a deceased homesteader has no authority under the law to submit, for the benefit of devisees. XVII–156

The administrator of the estate of a deceased homesteader has no authority to submit, for the benefit of the heirs. XVI–556

No statutory authority under which an administrator may submit, and perfect claim of deceased homesteader. VI–573; XXII–124

In the event of a homesteader's death, may be submitted by any one of the devisees, and if such proof is found satisfactory, the certificate should issue in the name of the devisees of the said homesteader generally. XVII–156

Final Proof—Continued.

XII. HOMESTEAD—Continued.

In the submission of homestead proof by a devisee the proof must be directed to the entry as an entirety and not confined to that part of the land claimed by the devisee. But proof thus submitted without objection should not be rejected without consideration or the allowance of a further hearing. XVII–156

Not made by guardian if ward has reached majority. IV–331; VII–34

When orphan child of soldier comes to age before time of making, the final affidavit must be made by the beneficiary. II–101

When made by guardian of minor child of deceased soldier, final certificate and receipt and patent should issue to "A. B., orphan child of C. D., deceased." II–99

When made for the heirs the final affidavit should be made by one of the heirs. I–103

New final affidavit required in case of infant children succeeding to the right to make. I–89

A final homestead affidavit submitted by a non-resident heir is entitled to equitable consideration where executed outside of the district and State in which the land is situated, and it appears that the affiant, on account of extreme age and ill health, is physically unable to appear before an officer authorized by statute to act in such cases. XXII–514

A homesteader who is unable, through poverty and sickness, to submit formal, or to execute his final affidavit in the land district where the land is situated, may be permitted to file such affidavit, made before a judge or clerk of a court of record, with a view to the issuance of final certificate and equitable action thereon, it appearing from the evidence in a contest against said entry, and otherwise, that he has in fact earned a patent to the land. XXVI–661

The failure of a homesteader to submit, under an expired entry, within the time fixed therefor by an order of the General Land Office, will not preclude equitable action on said entry where the proof is subsequently submitted and no adverse claim exists. XXV–347

Deserted wife or minor child may submit. II–81; VI–311

Under the acts of March 3 and July 1, 1879, as amended May 6, 1886. V–125

If made on original entry, no further proof is required by the act of March 2, 1889, under an additional entry of contiguous land. X–681

Should be explicit in all details necessary to establish the fact of residence in good faith. X–30

Final Proof—Continued.

XII. HOMESTEAD—Continued.

New, may be made where that submitted is found insufficient, but good faith is apparent. X–400

Proof under section 2291, R. S., may be made where commutation proof has been rejected with right to submit new proof. VIII–547

Can not be submitted on a homestead entry made under the act of August 23, 1894, of lands within an abandoned military reservation, prior to the appraisal of the reservation. XXIV–335

Supplementary proof explanatory of absences permitted. VI–809

(As to proof of non-alienation, see sub-title No. I.)

XIII. OSAGE.

The proof required to establish the fact of an actual settlement under the act of May 28, 1880, is no less in degree than the proof required under the preëmption law. X–36

Failure to submit, within six months after Osage filing renders the right of entry thereunder subject to intervening adverse claims. VI–111; VII–154, 277, 322, 457; XII–194

Failure to submit proof within six months after Osage filing renders the land subject to intervening claims, and such a claim will not be lessened by the fact that the settlement therein was made prior to the expiration of the period accorded the first claimant to make proof. VII–322

Failure to submit, within six months after Osage filing does not render the claim subject to the adverse right of a subsequent settler. Rogers *v.* Lukens overruled. VIII–110

Failure to submit, and make payment within six months after Osage filing renders the claim thereunder subject to any valid intervening right. Epley *v.* Trick overruled. IX–353

Notice of intention to submit, given after the expiration of the period within which it should be submitted, but prior to the intervention of any adverse right, protects the claimant as against one who subsequently initiates an adverse claim. XIII–288

Submission of, relates back to the filing of notice of intention to submit the same where said notice is filed in time and the subsequent failure to make proof within the period fixed therefor is not due to the claimant's negligence. XII–220

In the presence of an adverse claim arising prior to notice, the claimant must submit proof within the period fixed therefor. IX–279

Failure to submit proof and make payment within six months from Osage filing will not defeat the right of purchase in the absence of an intervening adverse claim. VII–277

Must be submitted under amended Osage filing within six months from the allowance of the amendment. X–624

Final Proof—Continued.

XIII. OSAGE—Continued.

Where two claimants for the same tract are both in default in the matter of submitting, the one who first takes steps to cure the default is entitled to the land. XII–195

As between two settlers on Osage land who were both in default in the matter of submitting, the preference must be accorded to the one who was first in settlement and making proof. VII–308

Where two claimants are both in default, either as to filing or final proof, the superior right is in the one who first submits final proof. XI–275

That the receiver's receipt is dated one day beyond six months from date of filing will not defeat the entry where the proof was made within said period and good faith is apparent. XI–116

During the pendency of, the land is not open to the filing of another, and by such filing no rights are acquired as against the prior claimant. XIII–644

It may be presumed that the first payment was properly tendered where the proof is rejected for reasons not involving payment and the record shows full compliance with law in other respects, but is silent as to such tender. XI–396

XIV. PREËMPTION. See sub-titles Nos. II and VIII.

One who swears falsely in the premises forfeits the money paid for the land and also all right and title to the land itself. II–598

Time for proof and payment on unoffered land fixed by the acts of July 14, 1870, and March 3, 1871.

I–379; V–530, 553 VII–13; XI–195

Act of May 9, 1872, extended time for, in Minnesota one year.

I–380; XIV–656

Various acts of Congress cited wherein additional time is given to prove up on unoffered land. XIV–656

Is submitted in time if notice thereof is given within the statutory period. I–461

(When submitted relates back to notice. See sub-title No. II.)

Statutory period for the submission of, can not be extended by the Department. IX–340

As between a preëmptor in default as to, and a homestead claimant for the same land, who is also in default, in the matter of settlement and residence, the superior right is with the one who first takes steps to cure his default. XXV–384

Failure to submit, and make payment for offered land within twelve months from settlement renders the land subject to the entry of any other purchaser. IX–377

Final Proof—Continued.

XIV. PREËMPTION—Continued.

And payment for offered land may be accepted though made more than one year after settlement. v–473

Failure to make proof and payment before public offering defeats the right of preëmption in the presence of an adverse claim. III–265

The statutory period within which it should be made for unoffered land begins to run from the expiration of the three months after settlement. VIII–393, 417

Land once "offered" and subsequently enhanced in price and not afterwards reoffered, is taken out of the category of lands subject to "private entry," and a preëmption claimant therefor is entitled to thirty-three months from date of settlement in which to make final proof. XVII–200

Failure to make proof and payment within the statutory period entails a forfeiture of rights in the presence of an adverse claim. III–93, 370, 379, 499; X–216; XIX–166

No penalty, in the absence of intervening settlement, for failure to make proof and payment for unoffered land within the statutory period. V–440

Failure to submit preëmption, and make payment for the land, within the statutory life of a filing on unoffered land, does not defeat all rights under the filing, but subjects the claim to any legal settlement claim that may intervene. XXV–384

An erroneous statement in the preëmption certificate that the land is "unoffered" when in fact "offered" will not protect the claimant, in the presence of an adverse claim, if he fails to make proof in twelve months. (Overruled, 18 L. D., 373.) III–46

A preëmptor in the submission of, is warranted in relying on the certificate of the register as to the "offered" or "unoffered" character of the land. XVIII–373; XIX–478

Failure to submit and make payment within the statutory period will not defeat the right of entry in the absence of an adverse claim. I–355, 401, 487; VIII–417

Six months after close of military service in which to submit. XIV–364

The provisions of section 2268, R. S., extending the period for the submission of preëmption, in cases where the settler is called away from his settlement by military service, is not applicable to a claim initiated by an enlisted officer while on leave of absence from his company. XIX–82

Time for submission can not be extended on showing failure of crops and applying for leave of absence. XIV–207

Final Proof—Continued.

XIV. PREËMPTION—Continued.

An application for extension of time for payment may be submitted without waiting for expiration of filing. XIV–509

Should not be submitted until after the expiration of three months from the filing of the township plat. VI–633

Satisfactory in all respects, but rejected on account of the suspension of the township plat, may be accepted on the execution of new final affidavit when the order of suspension is revoked. XII–647

In computing the time within which preëmption, should be made the period elapsing between the rejection of the settler's filing and the notice of its final allowance should be deducted. XX–225

A period should be fixed for submitting supplemental proof where the statutory life of the filing has expired. VII–71

Reasonable time for transmission allowed when final affidavit is executed before clerk of court. I–483

Final affidavit not required to bear even date with entry when made before clerk of court. I–482

In making substituted, the preëmptor may execute the necessary affidavits outside of the land district in which the land is situated. VI–794

Delay in the execution of the final affidavit and making payment excused where caused by the advice of the local office. X–421

On behalf of minors, sole heirs of a deceased preëmptor, may be submitted by the guardian if by the laws of the State he is charged with the care of the minor's estate. X–551

May be submitted by an administrator for the benefit of the heirs. XV–177

Right of an heir to submit, is not prevented by the fact that such heir may have sold his interest in the land. XIV–468

Heirs may submit, though the preëmptor died without executing the affidavit required in section 2262, R. S. X–551

On the death of the preëmptor, should be made for the benefit of the heirs of the deceased, and not for one of said heirs claiming as sole legatee. VI–823

Proof and payment must be made at the same time. III–188, 299; V–220, 221

Failure to make payment at time of, will not defeat an entry made under regulations which recognized such a practice. IX–615; XI–66

Tender of payment on submission of, will be presumed to have been made according to the regulations in the absence of any showing to the contrary. XII–492

Proofs accompanied with payment which are not acted upon by both local officers within one week after being received must be reported with reasons for delay. XII–188

Final Proof—Continued.

XIV. PREËMPTION—Continued.

The submission of, without payment of the purchase price of the land as required by law, will not protect the preëmptor as against an intervening adverse claim. XXIV–153

Where not made before the local office and the delay in payment is explained, additional proof of non-alienation is not required if it appears that the law had been complied with up to the date of proof and the entryman had not then sold or agreed to sell the land. XI–66

After due notice of such intention a filing may be transmuted and proof offered thereon the same day. I–400; III–286; VI–379

On offer to make, the preëmptor must be prepared to defend against all charges and claims, with the right to continuance if necessary. III–141

Difference between proof that is fraudulent or merely defective noted. III–411

Rejection of final proof does not always call for cancellation of filing. III–451

In the absence of an adverse claim, and where a showing of good faith is made, a preëmptor may be allowed to submit new, where the first is found irregular and insufficient, and for said reasons is rejected. XX–570

Further proof may be submitted where that accepted by the local office does not clearly show compliance with law and bad faith does not appear. II–789; III–107, 454; VI–122, 549

New, can not be made by one who has made entry without prerequisite compliance with law. XI–290

After, and hearing had thereon further time to comply with the law not allowed. IV–322

That the family of the preëmptor does not live upon the land does not necessarily impeach his good faith. III–213

Submission of, a few days prior to the expiration of the six months' requisite residence does not in itself call for cancellation if good faith is otherwise apparent. X–260

The submission of, a few days prior to the expiration of the requisite six months' residence does not, in the absence of protest, call for new proof where the land is held by a subsequent purchaser without notice. VIII–638

For lands within former indemnity withdrawal may be accepted, though offered within less than six months after revocation of the withdrawal, where the claimant has improved and resided upon the land prior to such revocation. X–454

Submission of, within the shortest period possible not in itself sufficient to impeach the good faith of the preëmptor. X–119

Final Proof—Continued.

XIV. PREEMPTION—Continued.

The degree and condition in life of the entryman may be considered in determining whether he has shown good faith. VIII–645; XVII–200

Inferior character of improvements not evidence of bad faith if commensurate with claimant's means. VIII–353, 639

That the improvements are inconsiderable in value does not warrant rejection of, if otherwise satisfactory. IX–1; X–340, 468; XI–172

That shows breaking and use of the land for grazing purposes is sufficient as to cultivation where the land is suitable only for pasturage. XI–585

Proof of grazing accepted in lieu of cultivation on proper showing. IV–502; VII–455

Where proof of grazing is tendered in lieu of cultivation the extent of such use should be shown. VII–455

If land is fit only for grazing, that fact should be shown in explanation of such use of the land in lieu of cultivation. VII–294

Should not be rejected for failure to show cultivation if the inhabitancy and improvements are sufficient. X–337

In the matter of cultivation the time of year in which residence was established may be considered where no crop was raised. VII–451

Breaking accepted as proof of cultivation where in other respects due compliance with law is shown and the failure to raise a crop is explained. IX–432

Proof as to cultivation does not necessarily require a showing that a crop has been raised. VII–439

Submitted by an entrywoman, and on which entry was allowed, may be held sufficient in the matter of her qualification as the "head of a family" where her response to the only question on such point, in the final-proof blank furnished by the government, is full and without ambiguity. XXI–345

And payment for part of the land covered by a filing is an abandonment of the remainder. I–485; VII–206, 261; XVI–251

(As to proof of non-alienation, see sub-title No. I.)

XV. TIMBER CULTURE. (See circular regulations, I–638; VI–280.)

The general circular of March 1, 1884, continues in force the provisions of the circular of 1882. V–234

Publication of notice not insisted upon where the original entry was made prior to September 15, 1887. (Circular of December 3, 1889.) IX–672; X–501

Circular of March 25, 1896, under the act of March 4, 1896, amending the timber-culture law in the matter of. XXII–350

Final Proof—Continued.

XV. TIMBER CULTURE—Continued.

Under the act of March 4, 1896, the personal evidence of the entryman, on the submission of, may be taken before a United States court commissioner, or a clerk of any court of record, anywhere in the United States, and the provisions of said act are applicable where final action has not been taken on the proof. XXII–526

The act of March 4, 1896, does not modify prior legislation or regulations thereunder with respect to the testimony of the witnesses. XXIV–443

The requirement that a timber-culture entryman on the submission of, shall show compliance with the law by the testimony of two witnesses, is statutory, and can not be waived; nor is the entry susceptible of equitable confirmation in the absence of such testimony. XXVII–476

A timber-culture entry may be equitably confirmed where the entryman fails to submit, within the statutory period and the delay is satisfactorily explained. XXII–59

In the submission of, the personal testimony of the entryman should be taken before some officer authorized to administer oaths in the district in which the land is situated. XXII–74

Commutation under the act of March 3, 1891, should not be made without due publication of notice. XVI–482; XIX–61

Should be adjudicated under the regulations in force when submitted. IX–189

Entry made under act of 1874 may be proved up under act of 1878. I–123

Proof under any of the acts must be specific. V–233

The statutory period within which it must be submitted can not be extended. XIII–339

The act of May 20, 1876, permits an extension of time where the trees are destroyed by grasshoppers or inevitable accident. XXI–315

Submitted after the expiration of the statutory life of the entry, either under the act of 1878 or the commutation clause of section 1, act of March 3, 1891, will receive due consideration. XIII–339

An application to make homestead entry of land covered by a subsisting, under which final proof has not been made within the statutory period, does not confer upon the applicant the status of an adverse claimant entitled to be heard as against subsequent equitable action on the timber-culture entry. XXII–208

Final Proof—Continued.

XV. TIMBER CULTURE—Continued.

Failure to submit, on a timber-culture entry, within the statutory period, is no bar to the equitable confirmation of the entry, if the delay is satisfactorily explained; and such right is not defeated by an intervening contest based only on the default of the entryman in the matter of making final proof. XXV–501

A contest against a timber-culture entry on the ground of failure to submit, within the statutory period, will not defeat the right of the entryman to have said proof equitably considered, where it is submitted prior to notice of such contest and without knowledge thereof. XXIX–174

Final certificate issued on timber-culture proof prematurely made should not be canceled, but suspended pending further compliance with law. VII–231

The period of cultivation should be computed under the rule in force at the time the entry was made. IX–86

The time consumed in preparing the land and planting the trees is computed as part of the required eight years of cultivation and protection. II–309

At the expiration of the eight years from date of entry one-half of the trees (3,875) must have been growing for five years and the remaining half for four years. II–310, 328; III–260, 329

Premature if submitted prior to eight years' cultivation. VII–231

No authority for the submission of, prior to the expiration of eight years from date of entry. XIII–698; XIV–38

No authority to issue final certificate until after the expiration of eight years from date of original entry, even though the proof may show cultivation for the requisite period. XIII–698

Under entries made prior to the circular of June 27, 1887, the time allowed for the preparation of the land and planting the trees may be treated as forming part of the requisite eight years of cultivation. IX–86, 284, 624; X–409, 501

Under entries made since the circular of June 27, 1887, the period of cultivation must be computed from the time when the full acreage is planted. IX–86, 284

Showing the period of cultivation required by existing regulations and accepted by the local office should not be rejected under later regulations that call for a longer period of cultivation. IX–189

Departmental instructions of July 16, 1889, with respect to the rule to be observed in computing the period of cultivation, did not affect cases already adjudicated. X–93

A timber-culture entryman who submits, within the statutory life of his entry is entitled to credit for each year of actual cultivation, if eight years of cultivation are shown. XXIX–214

Final Proof—Continued.

XV. TIMBER CULTURE—Continued.

It is the duty of the land department to see that the trees are of such size as to render their continued growth without further cultivation or protection reasonably certain. II–310

Rejected where it showed the trees averaged but 2½ inches in diameter and 10 feet in height. III–299

No standard as to size of trees at time of proof to be adopted. III–329; VIII–191

When the trees are not of a satisfactory growth at the end of eight years, without fault of the entryman, the law allows him five years' additional time. II–300, 328

Submitted since the act of March 3, 1891, must show, as under the act of 1878, 675 living and thrifty trees to each acre. XVI–434

Submitted by an entryman who complies with the law for the requisite period and at the end of such period replants the entire tract may be accepted under the fourth proviso of section 1, act of March 3, 1891, as amended by the act of March 3, 1893. XVI-293

An application to submit, under section 1, act of March 3, 1891, can not be allowed in the presence of a pending contest in which there has been no hearing. XXI–3

Under the act of March 3, 1893, may be accepted without regard to the age and size of the trees on the land if it be shown that the entryman has in good faith planted and cultivated trees thereon for eight years. XVI–385

May be submitted by an executor under a will. XV–162

Administrator of the estate of deceased entryman may submit, for the benefit of the heirs. XVI–149

Devisee of deceased entryman may submit. XVI–151

Florida. See *Mineral Land; States and Territories; Swamp Land.*

Forest Fires.

Circular of February 2, 1895. XX–98

Public notice concerning, July 28, 1897, under the act of February 24, 1897. XXV–73

Forest Reservation. See *Reservation; Timber Lands.*

Fraud. See *Contest*, sub-title II.

Must be clearly established to warrant the cancellation of an entry. I–439; VI–225; XV–445, 451

A charge of, against an entry can not be established by evidence showing the fraudulent acts of a third party in relation thereto, if the connection of the entryman therewith is not proved. XVIII–467

Fraud—Continued.

Actual fraud shown on trial, though not charged, will justify cancellation. III–462

Charge of, will not be disregarded. III–57; V–180

In the investigation of a case where fraud is alleged against an entryman, proof of other acts of a similar nature, done contemporaneously, or about the same time, is admissible to show such intent. XIX–258

For which judgment will be set aside must be extrinsic to the matter at issue. IV–568

A claimant can not do indirectly that which the law directly forbids. III–57

Charge of, does not change the established rules of evidence. IV–64

The government will not knowingly further a fraudulent design. IV–158, 308

In the procurement of an entry, as against the heirs of a deceased adverse claimant makes the cancellation of such entry necessary. XIII–594

Presumption of, not justified by sale made shortly after entry. IV–135

Effect of, in the procurement of final adjudication renders the judgment void upon discovery before the proper tribunal. V–31

Whilst it is competent for the land department to take cognizance of fraud whenever it appears to affect the title of public land, it is not its province to inquire into it when it merely affects the private rights of the parties. II–616, 621

Graduation Entry. See *Entry*, sub-title No. VII; *Private Entry*.

Invalid on account of failure of the local office to collect the full price of the lands covered thereby, confirmed, if otherwise regular, by act of January 18, 1898. XXVI–187

The pendency of an application to enter lands in a suspended, at the date of the confirmatory act of January 30, 1897, constitutes no bar to the operation of the act. XXIX–352

Guardian. See *Final Proof*, sub-title No. XII.

Validity of appointment and acts thereunder can not be assailed collaterally in proceedings before the Department. XVI–177

Hawaii.

The government lands of, ceded to the United States, are by the terms of the joint resolution of July 7, 1898, a part of the territory thereof, and though not subject to disposition under existing laws, are public lands of the United States. XXIX–32

The President of the United States may, under the joint resolution of July 7, 1898, reserve for military purposes public lands in. XXIX–32

Hawaii—Continued.

Section 73 of the act of April 30, 1900, relative to the leasing of agricultural land in, does not apply to "homestead leases" or "right of purchase leases" for which provision had theretofore been made in the Hawaiian laws. xxx–195

The provisions relating to the preparation, execution, and issuance of patents for lands, found in sections 171, 172, and 200 of the laws of (1897), are not specifically repealed by the act of April 30, 1900, and, as modified by said act, said sections must remain in force until Congress shall otherwise provide. xxx–295

Hearing. See *Practice.*

Homestead. See *Alienation; Application; Entry; Final Proof; Oklahoma Lands; Mineral Lands; Residence; Settlement.*

I. Generally.
II. By whom.
III. Widow; Heirs; Devisee.
IV. Deserted Wife.
V. Indian.
VI. Additional.
VII. Adjoining Farm.
VIII. Soldiers'.
IX. Soldiers' Additional.
X. Commutation.
XI. Cultivation.
XII. Act of May 14, 1880.
XIII. Act of June 15, 1880.
XIV. Act of March 2, 1889.

I. Generally.

Circular of June 5, 1900, under act of May 17, 1900, with respect to free homesteads. xxx–50

The amendment of section 2289, R. S., by the act of March 3, 1891, disqualifies applicants who own more than 160 acres of land, irrespective of the law under which title to such land is acquired. xiii–437; xv–158

The words "subject to preëmption" used in section 2289, R. S., prior to its amendment by section 5, act of March 3, 1891, to define in part lands subject to entry, are omitted from the section as amended; and since said amendment the only limitation placed upon the character of lands subject to entry by said section is that they shall be "unappropriated public lands." xxviii–61

Homestead—Continued.

I. GENERALLY—Continued.

The provision in section 2289, R. S., as amended by section 5, act of March 3, 1891, that no person who is the proprietor of more than 160 acres of land shall acquire any right under the homestead law, is no bar to the allowance of an entry based upon an application made prior to said amendatory act, and strictly in compliance with the laws and regulations then in force. XXIV–343

The disqualification resulting from the ownership of other lands is general, with no exception as to the ownership of arid lands, and operative without respect to the manner in which title to the land is obtained. XXVI–61

A homesteader will not be held to be disqualified by reason of the ownership of more than 160 acres, where it appears that the alleged excess was held under a preëmption entry that has been subsequently canceled. XXV–348

It is not a violation of the acts of May 2, 1890, or March 3, 1891, for the owner of 160 acres or more, to dispose of such part of said land as will enable him to make the oath required of homestead applicants under the law and departmental regulations, provided the sale is final and made in good faith. XXVII–546

The disqualification under the homestead law arising from the ownership of land is determined by the statutory provisions existing at the date of the entry, and not at final proof. XXVII–647

One who is in possession of a quarter section of land under a timber-culture entry is not the "proprietor" of said tract and disqualified thereby as a homestead applicant under section 2289, R. S., as amended by the act of March 3, 1891; nor is the ownership of stock, issued by a corporation whose capital is invested in lands, a disqualification under said statute. XIX–96

A fraudulent deed, purporting to convey a tract from the homesteader to his son, will not relieve the entryman from the disqualification imposed upon persons that own more than 160 acres of land. Such disqualification also extends to one who holds lands under a contract of purchase, though the payments thereunder have not been completed. XVIII–397

In determining whether a homesteader is disqualified by the ownership of land, the grant of a railroad right of way across the same can not be regarded as diminishing the acreage held in fee by the homesteader. XXI–114

(See also title *Oklahoma Lands* for decisions with respect to ownership of land as affecting entryman's qualifications.)

Entry may embrace 160 acres in odd-numbered section within railroad grant if excepted therefrom. XIV–71

Homestead—Continued.

I. GENERALLY—Continued.

Law must be construed as a whole. IV–400, 581

The right exhausted with one entry. II–141; III–57; V–124, 133

A homestead settler who makes entry of a part of the land embraced in his settlement claim thereby abandons said claim as to the remainder. XXVII–134

Under the original act rights were initiated solely by entry. I–31; III–131; VI–134

Under the law it is the entry which reserves the land. III–131

The qualifications requisite to make homestead entry must exist at the date of entry, and any rights acquired by the filing of an application are lost where the applicant subsequently and prior to entry becomes disqualified to enter. XXX–9

The qualifications requisite on the part of a homesteader must exist at the date of entry, and if after settlement and prior to entry the settler for any reason becomes disqualified, the privilege gained by settlement is lost. XXX–8

Equitable title acquired by residence and cultivation. V–107

Land subject to preëmption is subject to. III–230

Right to make entry does not extend to lands reserved by competent authority. X–513

An act of a Territorial legislature establishing the corporate limits of a city, so as to include therein lands embraced at such time within an Indian reservation, is inoperative as to the lands so reserved, and on the removal of the reservation no bar to the allowance of an entry. XXIV–526

Illegal possession of land will not defeat the right of another to enter the same under the homestead law. XVI–202; XXVIII–250

Can not be made of land occupied in good faith by others. III–362

Land in the actual possession and occupancy of one holding the same under claim and color of title is not subject to entry. XXVIII–235; XXIX–610

Entry made with intent to use the land, or a part thereof, for townsite purposes renders the entry invalid in its entirety. XII–654; XIV–452

Entry of land occupied by the entryman at time of entry for purposes of "trade and business" is illegal, and the illegality extends not only to the land covered by the buildings and improvements, but to the entire entry. (See *Soldiers' Additional.*) VI–332; X–649

The law does not contemplate that the right of entry shall be exercised by one who makes settlement primarily and chiefly for trade and business, and not for agricultural purposes. XXIV–24

Homestead—Continued.

I. GENERALLY—Continued.

Land claimed and selected as a town site and with improvements thereon for the purpose of trade and business is not subject to homestead entry. XIII–143, 399, 404, 562

The amendment of sections 2289 and 2290, R. S., by the act of March 3, 1891, does not authorize entry under the homestead law of lands included within the limits of an incorporated town. XXIII–462

Land in the actual occupancy of town-site settlers is not open to settlement and entry under the homestead law. XXVI–393, 444

No State law incorporating a town can, of itself, appropriate any public lands of the United States, and thereby withdraw them from disposition under the homestead law, or other laws of the United States. XXVIII–61

The act of March 3, 1877, reserves from preëmption and homestead entry public lands within the limits of an incorporated town to the extent of the maximum quantity susceptible of entry by such town under the town-site laws. XXVIII–62

Where the limits of an incorporated town embrace less than 2,560 acres, the maximum quantity susceptible of entry under the town-site laws, a part of which has been entered as a town site and the remainder of which is vacant and unoccupied land contiguous to that theretofore entered, all of such public land is reserved from preëmption and homestead entry. XXVIII–62

An entry improperly allowed of land reserved for town site purposes by the act of March 3, 1877, may be permitted to stand, where subsequently the town is disincorporated, and no adverse claim exists. XXVIII–62

If at the date of the original entry the land is not occupied for purposes of "trade and business," the subsequent use of the land by others for such purposes will not defeat the right of the claimant. X–205

A town-site claim set up to defeat a, will not be held to reserve the land from appropriation when, in fact, the land was not occupied for town-site purposes at the inception of the homestead right, and has not been so occupied at any time subsequent thereto. XX–367

The occupancy of a small portion of a subdivision, under the form of a Mexican village settlement, will not except the tract from entry, if the land so occupied is not used for purposes of trade and business, and no claim thereto is asserted under the town-site laws. XX–346

Homestead—Continued.

I. GENERALLY—Continued.

The agreement of a homesteader to protect Mexican village settlers in their occupancy does not render the entry speculative, nor bring it within the intent of the statute which provides that entry shall not be made for the benefit of another, where it is apparent that said occupancy is not at the instance of the entryman. XX–346

The occupancy of land by transient miners does not reserve it from entry where such occupancy is not for the purpose of trade and business, and where such occupants take no legal steps to assert their rights under the town-site laws. XXI–228

Lands "in the possession, occupation and use of Indian inhabitants" are not "unappropriated public lands" within the meaning of section 2289, R. S., and are therefore not subject to entry under said section. XXX–125

An additional town-site claim set up to defeat a, can not be recognized where it appears that there is no necessity for additional town-site territory, that the tract is not embraced within the limits of the town-site, and there is no actual settlement on the land for town-site purposes. XXI–234

The right of town-site settlers to make entries of the respective subdivisions on which they are residing and have improvements, attaches simultaneously on the abandonment of the town site, where it appears that the settlements in question were made at the same time and for the same purpose. XXI–104

Rights acquired by settlement not defeated by subsequent town-site settlement. XI–330

The conditions existing at date of final entry determine whether land should be excluded from entry on account of its alleged mineral character. VII–570; XV–37, 514

After the purchase of a tract of land under a commuted entry, and the issuance of a final certificate therefor, a discovery of coal on such land will not defeat the issuance of patent. XXI–92

Before final certificate issues an entry is open to attack on the ground of the mineral character of the land without regard to the date of mineral discovery. XV–514

The submission of final proof will not preclude a hearing as to the subsequent discovery of mineral on the land involved where final certificate is not issued and the General Land Office requires new final proof. XV–290

Right not vitiated by the fact that the land entered contains a stone quarry and that the entryman was aware of such fact at date of application if good faith is otherwise apparent. XI–140

Homestead—Continued.

I. GENERALLY—Continued.

Entry of land that has no value except for the stone it contains, and made with speculative intent, must be canceled for want of good faith. XV–276

To exclude land from entry on account of the limestone thereon, it must appear that the land is more valuable for the stone than for agriculture. XXIII–353

Land more valuable on account of the sandstone therein than for agriculture is mineral in character, subject to disposition under the mining laws, and a homestead entry thereof is unauthorized by law. XXVI–373

Entry of land more valuable for the stone it contains than for agriculture not of necessity made in bad faith, though made for the purpose of securing the stone, and may be perfected on due compliance with the homestead law. XVI–537

Entry of land subsequently found to contain coal can not be completed. XIV–426

An entry, made with the knowledge that the land embraced therein contains a valuable deposit of phosphates, is illegal, and must be canceled. XVIII–58

Claim for land chiefly valuable for its timber should be carefully scrutinized. VIII–526

An entry made for the purpose of securing the timber on the land covered thereby, and not for the purpose of obtaining a home, must be canceled. XXVI–151

Rights acquired through transmutation relate back to settlement and filing. IX–32

Entryman may bring action for trespass prior to final proof. III–54

Terms of the law must be complied with though the entry may be of land requiring irrigation. V–297

Entry having been allowed should not be canceled on *ex parte* allegation of prior adverse settlement right, but a hearing should be ordered to settle priorities. V–526; VI–766; VIII–528; XV–379

Not allowed where the evident purpose was to wrongfully secure the land and improvements of another. IV–158; V–377; XXII–266

Right of a person who is living on land under the mistaken belief that his title thereto is complete, to enter said tract, on the relinquishment of a record entry thereof, is superior to and will defeat an intervening adverse entry made with knowledge of the settler's claim. XXV–135

To justify the allowance of a homestead entry of land made valuable by the money and labor of a prior adverse settler, who is in default in the matter of filing application, it should clearly appear that the subsequent claimant is acting in entire good faith. XXV–475

Homestead—Continued.

I. GENERALLY—Continued.

Want of good faith on the part of the applicant defeats the right of. XIII–562; XXII–465

Good faith of an entry not impeached by the fact that an acre of the quarter section has been reserved for the location of a land office. XIV–13

Claim of one who fails in residence will not defeat a preëmptor who has not filed. V–188

Total failure to comply with the law not excused by poverty. IV–185

Not allowed where settlement could only be effected by forcible intrusion. V–377

The "family" of the entryman includes his children, whether legitimate or otherwise, that remain with him and under his care. IX–52

May cut and dispose of timber for the permanent improvement of claim. XXIV–454

Entry does not authorize general disposition of timber. IV–289; V–389

Not maintained through the occupancy of a tenant. III–362

Right not lost by failure to contest a *prima facie* valid adverse claim. VII–385

The right of a homesteader to perfect his entry is not defeated by the prior occupancy of a portion of the land by one who is not at such time asserting any claim thereto under the settlement laws. XXII–65

Section 2287, R. S., authorizes the perfection of a pending claim through payment for the land, and not through a constructive residence thereon. XI–18

The right of a homesteader, who after settlement and entry is appointed register, to perfect title to the land "under the preëmption laws," as provided in section 2287, R. S., is not defeated by the repeal of the preëmption statutes, for said phrase as used in such section is not limited in its meaning to the preëmption law as such, but used to indicate a preferred right of purchase similar to that conferred by the preëmption law. XXVII–444

The claim of one who settles upon and improves a tract returned as school land, but ultimately held to be excepted from the school grant and first applies to purchase from the State and then seeks title under the homestead law is not defeated by an intervening timber-culture entry. XV–293

Entry must be canceled on death of entryman without heirs. III–384

If the evidence shows that the entryman died without having earned the land, and that there are no beneficiaries entitled to succeed to his interest the entry should be canceled. XXII–446; XXV–453

Homestead—Continued.

I. GENERALLY—Continued.

Where a homesteader dies prior to the completion of his entry there is no authority for the perfection thereof for the benefit of creditors. XXV–453

Claim secured through concessions made a conflicting settler. V–119

The right to make entry of a tract within an unauthorized indemnity withdrawal is not defeated by a prior application of the entryman to purchase the land from the company. XXI–402

Procedure in case of forest fires, under act of January 19, 1895; circular of February 2, 1895. XX–98

The words, "For the right of way of railroads," as used in section 2288, R. S., are not limited to the width of the railroad track, but include such space as is necessary for side track, stock yards, or other purpose incident to the proper business of a railroad as a common carrier. XXVIII–561

Entries in Black Hills forest reserve; instructions of September 22, 1899, under the act of March 3, 1899. XXIX–190

II. BY WHOM. See sub-titles Nos. III and IV, and *Entry*, sub-title No. XI.

Right to initiate a claim is conferred upon one "who has filed his declaration of intention" to become a citizen. VIII–289

An entry made by one who is not a citizen of the United States, and has not at such time declared his intention of becoming a citizen, is not void, but voidable, and his subsequent declaration of intention, made prior to the intervention of an adverse claim, cures the defect. XXII–124

Applicants alien born must accompany affidavits with record proof that they have declared their intention to become citizens. II–194

An alien honorably discharged from the United States army possesses the requisite qualifications in the matter of citizenship to initiate a claim. XVI–352

To constitute one the head of a family it is not necessary that he or she should be under a legal obligation to support the family; it is sufficient if, acting from a sense of moral duty, one undertakes the care, attention, support and maintenance of a family to which he owes such moral duty. XXX–306

Can not be made by a married woman. II–112

Circular of June 27, 1900, under act of June 6, 1900, relating to homestead entries by married women. XXX–313

A married woman is not a qualified applicant for the right of homestead entry. XXIX–267, 297; XXX–8

Homestead—Continued.

II. By Whom—Continued.

A charge that an entrywoman at the date of her entry was, by reason of marriage, disqualified to make entry, must fail where it appears that the alleged marriage was illegal and void *ab initio*. XXVIII–52

A married woman can assert no right under the homestead law to a tract of land through a former husband who made no formal claim under said law. XVIII–304

Married woman, the head of a family, qualified to make. X–527

A married woman, not the head of a family, is disqualified to make homestead entry. XXIX–381

A married woman, whose husband from disease and infirmity is permanently incapacitated to support the family, is qualified to make entry as the "head of a family." XIX–85

A married woman who is not entitled to acquire a domicile of her own, separate and apart from that of her husband, is not qualified to exercise the homestead right. XXV–129; XXX–9

The entry of a single woman is not affected by her subsequent marriage. V–196; VI–140; VII–470; X–30; XIII–548, 623; XX–185

Entry by single woman not impaired by subsequent marriage if she thereafter complies with the law; but where the husband also has an entry the parties must elect as to which claim shall be perfected. X–266; XI–207; XIII–734; XV–377

A single woman who applies to make entry through an officer authorized to take the preliminary affidavit, and then marries prior to the time when the application is received at the local office, is not qualified to enter. XIII–601

A single woman who has made entry forfeits her rights thereunder if she subsequently marries a man who is at such time also asserting a homestead claim on which he thereafter submits final proof. XXI–430

The act of June 6, 1900, removed the disqualification resulting from marriage, but the right of a woman who had settled upon public land and thereafter married, to complete entry of such land under the homestead laws, is subject to all the requirements of those laws as to residence; and while said act was retroactive in the matter of removing the disqualification, it did not revive a claim initiated prior to its passage, by a single woman, and lost by reason of actual abandonment of the land. XXX–525

Under the act of June 6, 1900, amending section three of the act of May 14, 1880, an unmarried woman who settles upon, improves, and establishes and maintains residence upon a tract of public land, with the intention of obtaining title thereto under the homestead law, and thereafter marries, is not by her marriage disqualified from making entry for said tract. XXX–156

Homestead—Continued.

II. By Whom—Continued.

The rule that separate settlement claims can not be maintained by husband and wife at the same time on different tracts will not defeat equitable action on a homestead entry made by a single woman, who, prior to the completion of her claim, marries a man having an unperfected homestead entry, if, at such time, the period of residence under his claim authorized the submission of final proof thereon. XXII–528

If a man and woman make entry of adjacent tracts and thereafter marry, and maintain residence in a house built across the line dividing their claims, the residence of the wife must be held to have been abandoned from the date of her marriage; but, if the husband subsequently dies, the widow, without forfeiting her right to perfect her husband's claim, may resume residence on her own land, in the absence of any intervening adverse right, and perfect title thereto. XXVI–194

The right to receive patent in case of entry by a single woman is not abridged by her marriage or removal from the land after fulfilling the statutory period of residence. VI–140

Validity of entry made by a divorced woman may turn on the good faith of the divorce proceedings. XIV–570

A husband and wife, while living together in such relation, can not each maintain an entry at the same time. XVIII–116

Where a woman, having an unperfected entry, marries a man having a similar claim, the parties should elect which of the two claims they will maintain, as both entries can not be carried to patent. XVIII–116

By one in his own right who has already made final proof as the minor orphan child of a deceased soldier. II–100

By a widow in her own right whilst continuing to cultivate the homestead of her deceased husband. II–169

The right of a widow to make entry recognized though holding land covered by the entry of her husband on which final proof has not been made. V–184

Right to perfect an entry in case of the entryman's death can only be asserted by the actual successor in interest. XVI–177

It appearing by official certificate that the applicant has by judicial proceedings adopted a child, and so become the head of a family, and thus qualified to make entry, the Department will not question the validity of said proceedings. XX–233

By a minor as head of a family. II–82; XXX–306

Submission to a guardianship created on behalf of one who represents himself as a spendthrift and asks for a guardian of his estate does not operate to disqualify such person as a homesteader. XXVIII–261

Homestead—Continued.

II. By Whom—Continued.

By the wife of an insane person as head of a family, her husband being civilly dead. II–102

Entry of insane claimant may be proved up by person authorized to act for him during his disability. XXIV–495

No rights acquired by the purchase of another's improvements when not followed by settlement and residence. VI–608

Allowed to one who has already made preëmption and entry. IV–441

Right of persons engaged in military service to make entry limited by the requirement of residence. (See 4 L. D., 399.) XIII–634

The provisions of section 2308, R. S., are not intended to include persons serving in the regular army since the close of the rebellion. XIV–472

One in military or naval service may take, on showing due compliance with the law. I–98; IV–399; XIV–475

Right of the entryman not affected by the fact that final certificate had not been issued on his prior preëmption claim when he made his entry, it appearing that he was entitled to such certificate at that time. VII–455; VIII–268; XI–182; XII–42; XIV–32

Right can not be accorded to one who is at the same time maintaining a preëmption claim for another tract. III–226; IV–26, 462; V–403; VI–831; VII–215, 225, 444, 447; VIII–96, 200, 461; IX–63

Claim not initiated while holding as a tenant. IV–259

Where husband and wife settled on and improved a tract, and afterwards the wife made entry of it under a mistake as to the law, said entry is canceled, with privilege to the husband, if qualified, to enter in his own name and to have his right relate back to date of settlement. II–112

III. Widow; Heirs; Devisee.

Entryman can not by will defeat the statutory succession. I–41, 86

Right of widow, heirs, or devisee to make entry. I–64, 86; II–46, 77; VI–134

On the death of a homestead entryman the right to perfect his claim and receive title thereto vests in the widow and not in the heirs. XVIII–421

On the death of a homesteader, the widow takes the homestead right free from any claim on behalf of the heirs; and an agreement to divide the land with the heirs, made by her under mistake as to her rights, can not be held binding, in the absence of any action taken under said agreement by which she would be estopped from the repudiation thereof. XXVIII–6

Homestead—Continued.

III. Widow; Heirs; Devisee—Continued.

Before the rights of heirs are considered it must be shown that there is neither widow nor child surviving. II–98

Upon death the law casts the homestead right on the widow, who must, however, so indicate her intention of claiming the land that third persons shall not be prejudiced by her laches. II–138

In the event of the death of a homesteader leaving a widow and heirs, where proof is made on behalf of the heirs, and it appears that the widow has abandoned her rights, the patent issues to the heirs generally. XXII–426

On the death of a homesteader, who has earned title to the land, the right to submit final proof and obtain patent is in the widow and not in the heirs. XXVII–572

On the death of a homesteader, leaving a widow and heirs, the widow takes the homestead right of her husband free from any claim on behalf of the heirs, and is vested with full power to complete the entry for her own benefit, or relinquish the same if she so elects. XXVI–436

The temporary separation of a homestead entryman and his wife will not defeat the right of the latter, as the widow of the entryman, to submit final proof on his entry. XXVIII–53

A minor orphan daughter, surviving, succeeds to her father's entry, and may also make homestead entry in her own right. II–100

On the death of an entryman leaving adult and minor heirs the title inures to the minors, to the exclusion of the adult heirs. I–41, 86; II–98; X–543

In case of the death of an entryman who leaves no widow, but both adult and minor heirs, patent should issue to all the heirs equally. XVI–463; XXII–403

Where a settler on unsurveyed land dies prior to the survey thereof, and an entry is made for the heirs, it should be made for the benefit of "the heirs or devisee" of the deceased settler. XX–533

Where a homesteader dies leaving a widow, who also dies before compliance with the homestead law, the right to acquire patent passes to the heirs of the entryman, both adults and minors, equally. XVII–212

The widow having submitted proof showing full compliance with the law secures thereby the equitable title to the land, and delay in the issuance of final certificate will not affect her rights. In the event of her subsequent death the equitable title descends to her heirs. XVII–293

Married woman may, as heir of a deceased homesteader, file application, submit proof, and receive patent. VIII–286

Homestead—Continued.

III. WIDOW; HEIRS; DEVISEE—Continued.

If the entryman dies before final proof, and his widow also dies, not having made proof, the right vests in the heir or devisee of the entryman, and not in the heir or devisee of the widow.

X–240; XIII–131

The provision in section 2292, R. S., that in case of the death of both father and mother leaving an infant child or children the right and fee "shall inure to the benefit of such infant child or children," contemplates the immediate investiture of said "right and fee" on the death of the last surviving parent; and that such children are entitled to patent on showing compliance with law on the part of the entryman up to the time of his decease, the death of both parents, and the fact of minority.

XX–109; XXVI–259; XXVII–596

On the death of a homesteader, who leaves minor children, and the death of the wife, the right to the land vests in said minors under section 2292, R. S., and can not be defeated by a subsequent contest on the ground that the entryman failed to comply with the law in the matter of residence. XXIX–275

On the death of an entrywoman leaving minor children, the father of such children having died prior to the allowance of the entry, the fee to the land vests in said minors under section 2292, R. S., irrespective of any question as to their heirship under local statutes. XXIX–325

The widow of a soldier who makes homestead entry under section 2307, R. S., in her own name, and perfects title thereto, exhausts her rights under the law. XV–408; XXIX–163

Right of settler, with pending application, who dies prior to the disposition of an adverse record claim descends to the heirs.

XXII–300

Right acquired by settlement may be perfected by widow, heirs, or devisee of deceased settler the same as though based on formal application to enter. VI–134; VIII–286

The settlement of a homesteader, who dies prior to the expiration of the time given for the assertion of his right, without having made application to enter, inures to the benefit of his widow; and her subsequent remarriage will not defeat her claim as the successor to the right of her deceased husband. XXIV–181

A widow, as the legal representative of her deceased husband, may continue to cultivate his homestead, and at the same time may make entry in her own name. II–169; V–184

Homestead—Continued.

III. Widow; Heirs; Devisee—Continued.

Where a single woman makes an entry, and thereafter marries a man who has a similar claim, and the husband dies, the widow is entitled to submit proof under the claim of her deceased husband, and also maintain her own claim, by compliance with the law in the matter of residence, if no adverse right attached thereto during the time her legal residence was on the land covered by her husband's entry. XXIII–52

A marriage in violation of a State law prohibiting divorced persons from marrying within six months from the decree of divorce, may be presumed valid for the protection of a widow, claiming as such under the homestead law, where the homesteader acknowledged her as his wife after said period of six months, and the decree of divorce remains undisturbed, and the subsequent marriage has not been judicially annulled. XVIII–421

On the submission of proof by a woman, claiming as the widow of a homesteader, the validity of her marriage to the decedent will not be questioned by the Department, at the instance of a protestant, in the absence of proper judicial proceedings to annul the said marriage. XXII–263

On the application of one claiming as the widow of a deceased homesteader to make cash entry, the fact of marriage may be established by evidence of co-habitation and repute, it appearing that the statute invoked as against such marriage contains no words of nullity. XXVII–294

As between two claimants, each asserting the right to perfect an entry as the widow of a deceased homesteader, the Department, in the absence of a judicial determination of the legal status of the parties, will recognize the one who made her home on the land with the entryman, and who was married to him in the belief that his former wife was not then living. XXII–124

The widow of a homesteader can not assert a claim as such where the entry is relinquished by an administrator and she for a term of years acquiesces in such action, and during such period valuable adverse rights intervene. XV–262

Where the entryman in good faith cultivates and improves the land, but dies without having established residence thereon, the widow may show her residence on the land and connection with the claim with the view to equitable action. XI–235

The minor daughter (19 years old), continuing in person or by proxy to cultivate and reside on land entered as a homestead by her father (who had filed his declaration of intention, but who had not obtained a certificate of naturalization), may by herself or guardian make final proof upon filing evidence that she has taken the oaths prescribed in section 2168, R. S. II–100

Homestead—Continued.

III. WIDOW; HEIRS; DEVISEE—Continued.

Where the entryman had declared his intention of becoming a citizen, but had not been admitted to citizenship at the time of submitting final proof, the entry may be equitably confirmed for the benefit of the heirs, and patent issue in their names, where the entryman dies with his entry occupying such status, and a naturalized heir thereafter submits final proof. XXV–1

Possession by an administrator is the possession of the heirs, and the right of possession rests in the administrator as such. VI–672

There is no authority for an executor to consummate the inchoate claim of a deceased homesteader. IX–599

An administrator is not authorized under section 2291, R. S., to consummate the claim of a deceased homesteader. IX–268; XXVIII–53

Where entryman (prior to act June 15, 1880) devised the land to his daughter, who afterwards resided on it as head of a family, his widow, who deserted him prior to the entry, is barred. II–82

Authorized sale under section 2292, R. S., vests full title in purchaser, who, in order to obtain patent, must pay office fees only. II–75

The devisee of a single man who made formal application before his death has the right of entry. II–85

A devisee is entitled to the same privileges that would descend to the heirs. I–47

Devise of, must be of the land and not of the proceeds from the sale thereof. I–64

The right to be heard as the heirs of an entryman will not be recognized in the absence of proof of his death, and a specific statement as to the parties claiming as his heirs. XVIII–322

The heirs of an alleged settler take nothing under a claim based on illegal residence of the decedent. XII–197

The alien heirs of an entryman are incompetent to make proof and secure title under section 2291, R. S. XIII–228

The right of an alien heir to perfect a homestead entry, where the entryman dies without having earned title to the land involved, is not protected under a treaty that makes provision for the protection of alien heirs on the death of a person "holding" real property. XXVI–317

Widow or heirs required to cultivate and improve, but not to reside on claim. I–636; II–74; III–465; IV–433; VII–309; XIII–228

The failure of heirs to reside upon or cultivate the land operates as an abandonment thereof. XVII–212

Failure of the heirs to cultivate the land embraced within the entry of a deceased homesteader excusable when due to armed violence and intimidation. XII–562

Homestead—Continued.

III. WIDOW; HEIRS; DEVISEE—Continued.

Where the death of the homesteader is disclosed by the record the patent should issue in the name of the heirs generally. IX–401

Patent should issue in the name of the heirs generally when final proof is made by the heirs of a deceased entryman. XIII–228

IV. DESERTED WIFE.

A "deserted wife" is qualified, as the "head of a family," to make homestead entry in her own right. I–59; IX–186

A deserted wife can assert no right of entry based upon the canceled entry of her husband, but is allowed to enter in her own right. III–187

The right of a deserted wife to make entry of the land settled upon or entered by her husband, is not a right that she acquires through him, but is by virtue of the claim that she initiates in her own right, and by her own acts after she has become qualified to make settlement and entry. XXVIII–143

The right of a deserted wife to make a homestead entry will not be defeated by her erroneous designation as an "unmarried woman" in the preliminary affidavit. XXVIII–504

In determining the right of a married woman, as a "deserted wife," to make entry, the fact of "desertion" is not necessarily disproved by the offer on the part of the husband of small sums for the nominal support of the family and the refusal of such money by the wife. IX–186

The validity of an entry made by a deserted wife is not impaired by the subsequent return of the husband where such entry is made in good faith and with no intent on the part of the wife of ever resuming marital relations with her husband. XXI–469

The right of a deserted wife to make entry of land on which she is residing at date of desertion will be recognized as against one claiming under a relinquishment executed by the husband in pursuance of a conspiracy to defraud the wife. XII–94

The right of a deserted wife, who is living on the land covered by the entry of her husband, attaches at once on the filing of his relinquishment, and defeats the intervening adverse entry of another. XXIV–535

The right of a deserted wife to make entry of the land embraced within the relinquished entry of her husband, depends upon her settlement on the land when his entry is canceled, and to be effective, as against an adverse claimant, must be asserted within three months from such cancellation. XXVIII–20, 482

Homestead—Continued.

IV. DESERTED WIFE—Continued.

The right of a deserted wife to make entry of the land on which she is residing at date of desertion can not be defeated by one who, with full knowledge of the facts, obtains a relinquishment from the husband while he is intoxicated. XV–555

A married woman who applies for a divorce, on the conviction of her husband of a felony, is not entitled to plead the status of a deserted wife on account of her husband's absence in confinement, as against a prior intervening contestant who attacks the homestead entry of her husband. XX–245

In the case of a wife who is divorced on account of a crime committed by her husband that in effect dissolved the family relation, her status may be regarded as that of a deserted wife, and as such entitled to attack the homestead entry of her former husband. XXII–356

Married woman actually deserted by her husband is entitled to make entry as the head of a family without regard to the period that may have elapsed since desertion. XV–596

Deserted wife, as the "head of a family," may make entry, and the subsequent return of the husband will not defeat the right to perfect the same where the application is made in good faith during the period of desertion and in the belief of the husband's death. XIII–621

The status of a woman as a deserted wife is not affected by an illegal marriage after desertion. XXVIII–482

A deserted wife may make a homestead entry, with credit for previous residence on the land, where her husband's entry thereof is canceled for failure to make final proof within the statutory period. XIX–242

Deserted wife, as the head of a family, entitled to commute. I–59

Additional entry in railroad limits by a deserted wife is illegal. II–777

Where a deserted wife has submitted final proof on her husband's homestead entry, and by departmental decision is required to submit new proof, but does not do so, and the record does not show that she was notified of such requirement, the entry can not thereafter be properly canceled for failure to submit final proof within the statutory period, except after due notice to the wife. XXV–402

In determining the status of a woman, who is claiming the right to submit final homestead proof as the deserted wife of an entryman, a decree of divorce obtained in a probate court of Oklahoma after August 14, 1893 (the date when such courts, under territorial legislation, ceased to have jurisdiction in matters of divorce), will be recognized as validated by the remedial act of February 28, 1895, of the Oklahoma legislature. XXVIII–406

Homestead—Continued.

IV. DESERTED WIFE—Continued.

The rule allowing a child of the entryman who is not twenty-one years of age, but is the head of the family, to submit final proof, with a view to equitable action, where the deserted wife of such entryman is deceased, is equally applicable where the wife has been divorced. XXVIII–406

Rules to be observed in cases of desertion:

1. If wife maintains her residence, no one but her shall be heard to allege desertion, in proof of change of residence or abandonment, for seven years after entry.
2. If she, within said seven years, proves desertion, she may enter the land in her own name if the head of a family, or, if she has the right to acquire real property, as a *feme sole*.
3. If she does not make such entry, she may make final proof in his name, as his agent, with her own affidavit to non-alienation, the entry to be submitted to the board of equitable adjudication.
4. She may, as his agent, commute the entry or purchase under section 2, act of June 15, 1880, and new entry shall be referred to board of equitable adjudication.
5. Where entryman's wife is deceased the foregoing rule shall apply to his child, not twenty-one, who is head of a family. II–81

A deserted wife or minor child may commute the entry of the husband or father only as an agent; entry to be referred to board of equitable adjudication. II–81

A deserted wife or child may not make final homestead proof, or commute, or purchase under act June 15, 1880, or obtain patent, in her or his own right, by virtue of the husband's or father's entry. II–78

V. INDIAN.

Right conferred upon Indians by act of March 3, 1875. I–491

Settlement rights acquired prior to January 1, 1874, recognized by the act of March 3, 1875. I–90

Circular, as to proceedings to be observed in case of Indian applying to make, under act of July 4, 1884. III–91

Rights can not be acquired by an Indian who maintains the tribal relation. XI–57

An Indian who has abandoned the tribal relation is entitled to the right of. XXII–215

Rights of Indians controlled by specific legislation. VIII–57

Right of, shown by agent's certificate. IV–143

Extent of compliance with the general law required. IV–143

Certain suspended Michigan entries to be examined after due notice. IV–143

Homestead—Continued.

V. INDIAN—Continued.

Homestead entry made under the act of June 10, 1872, improperly canceled on a charge of abandonment, should be reinstated and opportunity given to show additional compliance with law. XIV–548

Widow of Indian entitled to perfect entry where she leaves her home on the reservation and lives on the land with her husband prior to his death, and afterwards stays on the land and cultivates the same. XVI–137

The act of January 18, 1881, for the relief of the Winnebago Indians, extended the time within which homesteads taken under the act of March 3, 1875, could be entered and completed for a period long enough at least to enable the claimants to use to advantage the money appropriated in making entries, erecting dwellings, and cultivating and improving the lands so entered and selected; such selections and entries (in Wisconsin) are not at present subject to contest. II–191

Withdrawal of land for the benefit of Indian claimants under the homestead law precludes other disposition of the land. X–144

Prior to the act of March 3, 1875, there was no law authorizing settlement or conferring the right of entry under the public-land laws upon Indians, as such, who had severed their tribal relations. XX–401

The word "located," as used in the act of July 4, 1884, providing for Indian, is employed in the sense of settlement, and refers to a settler who is living on the land. XXIX–277

The act of July 4, 1884, confers the benefits of the homestead law upon "Indians" as distinguished from "citizens of the United States," and an Indian who, by virtue of having been allotted a tract of land, is a citizen of the United States and no longer an Indian within the purview of said act, is not entitled to take a homestead by virtue of its provisions. XXX–375

A member of the Citizen Band of Pottawatomie Indians, in Oklahoma, who has received an allotment of his proportionate share of the land held in common by his tribe, is not thereby disqualified from taking land for a homestead as a citizen of the United States. XXX–375

VI. ADDITIONAL. See sub-title No. XIV.

Additional entry under the acts of 1879, as amended May 6, 1886. Circular of July 26, 1886. V–128

Act of March 3, 1879, construed with the second section of act of May 14, 1880, fixing the status of contestants. I–93

Limitations of right to additional, defined. I–29

Homestead—Continued.

VI. ADDITIONAL—Continued.

The right to make additional, extends to all persons entitled by entry or succession to make final proof. I–24, 50

Widow of original entryman may make additional, under the act of March 3, 1879. I–24

A married woman who previous to marriage had made an entry wherein she was restricted to eighty acres may make an additional entry. I–38

The right to make additional entry exhausted when once used, irrespective of the amount entered. III–509

The entry can only be made by the original entryman, or by one who has succeeded to his right and by virtue thereof holds the original homestead claim. II–777

Persons making new or additional entries under acts of March 3 and July 1, 1879, have seven years wherein to make final proof. II–91

The right to make, under the act of March 3, 1879, is limited to those who had taken eighty acres and remained in possession thereof, residing upon and cultivating the same at the date of the passage of said act. VI–575

Relinquishment of original, accepted and new entry allowed pending contest against the original for abandonment. I–93

Under the act of March 3, 1879, limited to original entries on even sections made before said act and where the entry was restricted to eighty acres. VIII–428; XII–351

The right to make, under the act of March 3, 1879, is limited to persons who by existing laws were restricted to an entry of eighty acres. XVI–187; XX–55

Under the act of March 3, 1879, only where the applicant was legally restricted to eighty acres and the land applied for is subject to entry. IX–402

Right to make additional, not lost by the purchase of original under the act of June 15, 1880. I–29

Additional, can not be made if the original has been canceled. I–92

Land covered by original and additional entries regarded as a compact body. I–62, 69

The law subserved if original and additional, are together used as a home. I–62

Cultivation of land taken as additional, not required. I–62

Subsequent to act of March 3, 1879, entries were not restricted to eighty acres. II–30

Cancellation of original, does not work the forfeiture of an additional based thereon so as to relieve the land from the appropriation of the latter. VI–442

Homestead—Continued.

VI. ADDITIONAL—Continued.

Where application for eighty acres was made in November, 1878, but owing to a prior entry, entry was not made until June, 1879, entry for an additional eighty acres is allowed. II–30

Claimant may take land embraced in his former timber-culture entry as additional, if he is the first legal applicant after relinquishment. I–125

May be embraced within commutation. I–100

The act of March 3, 1879, requires residence and cultivation for at least one year. I–100

Under the act of March 3, 1879, an entry can not be maintained by acts of entryman's tenant in the matter of residence, occupancy, and cultivation. XI–412

An additional homestead entry under the act of March 3, 1879, can only be made of land adjoining that embraced within the original entry. XXIX–647

The land embraced within an entry made under the act of July 1, 1879, must adjoin the land covered by the original entry, and the residence required by said act can not be established nor maintained by a tenant. XII–57

Entry under the act of May 6, 1886, may pass to patent without proof of settlement and cultivation if final proof has been made on the original entry. XII–550

One who is restricted to an entry of eighty acres within railroad limits may make an additional entry within an odd section where by his original settlement such land was excepted from the grant and he has continued to cultivate and improve the tract. XII–395

Not authorized by section 5, act of March 3, 1891, amending section 2289, R. S. XVI–530

VII. ADJOINING FARM.

The right to make, does not relate back to the date of settlement under the original entry. V–172

The right to make, is not enlarged or modified by the act of May 14, 1880. V–172

Entry is a settlement claim that will defeat the right of a preëmptor who has failed to file within the statutory period. X–485

Not allowed to one that has had the benefit of the general law. V–124

Under section 2289, R. S., can not be made by one who derives title to the original farm through the provisions of the homestead law. XV–285; XXII–95

Homestead—Continued.

VII. ADJOINING FARM—Continued.

The right to make an adjoining farm entry under section 2289, R. S., can not be allowed where the homestead right has been once exercised, though for a less amount than 160 acres. XXI–22; XXIX–216

Not authorized by section 2289, R. S., as amended by the act of March 3, 1891, when based upon a pending original homestead entry of an adjacent tract. XV–221

The original as well as the adjoining farm must be held for agricultural purposes, and the entryman must be the owner in his own right of the original farm. XIV–361

Ownership of an adjacent tract is essential to the right of entry. XIV–516

Is invalid, and will not be allowed to stand if the entryman was not in fact the owner of the alleged original farm at the time of entry. XXIV–258

The sale and abandonment of the original farm, prior to submission of final proof under an adjoining farm entry, defeats the right to perfect such entry. XVII–493

Owner of an undivided portion of a tract (less than 160 acres) may make adjoining farm entry. I–38

An undivided interest in the original does not constitute such ownership as will afford a legal basis for. IX–344

Entry can not be made by one owning and residing on 160 acres who has given a bond for a deed of the half of it, conditioned upon payment for the land in three years. II–96

Under section 2289, R. S., may be based upon the equitable ownership of an adjacent tract, and residence upon said tract for the period of five years after such entry warrants the submission of final proof. X–100

Under section 2289, R. S., may be properly based upon the equitable ownership of an adjacent tract. XXII–594

A life tenancy in the original farm is not sufficient to support an adjoining farm entry. XVI–565

A deed executed by a widow, purporting to convey a specific portion of a "probate homestead," does not, under the laws of California, if there are minors, convey such an estate as will sustain an adjoining farm entry. IX–344

Adjoining farm, allowed to purchaser of original farm and before patent therefor. I–61

Right of, under section 2289, R. S., requires residence on the original farm. II–38; X–579

Homestead—Continued.

VII. ADJOINING FARM—Continued.

Residence on the original farm prior to adjoining farm entry can not be computed as forming part of the requisite statutory period. I–68; V–172; X–488; XIII–713; XIV–268; XV–572

Credit for residence prior to entry accorded under the act of May 14, 1880. (Overruled, 13 L. D., 713.) VII–33

Adjoining farm, requires five years' residence except when there may be credit for military service. I–69

Validity of, not affected by the entryman's acquiring title to other adjacent lands prior to final proof. X–100

Original entry treated as adjoining farm, to save the rights of the entryman. I–71

An application to change a homestead entry for 160 acres into an adjoining farm entry, may be allowed on relinquishment of one subdivision embraced in the original entry, and the purchase of a tract adjacent to the remainder, and due showing of residence on the deeded land. XXVI–618

The right of a homesteader to change his entry to an adjoining farm homestead is not affected by his failure to comply with the law under his original entry of the tract, in the absence of a valid intervening adverse claim. XXIX–166

VIII. SOLDIERS'.

Soldiers' declaratory statement, circular of December 15, 1882, with blank forms. I–648

Circular of June 21, 1901, under act of March 1, 1901, relative to homestead rights of soldiers and sailors of the Spanish war and Philippine insurrection. XXX–623

The law authorizing the filing of a soldier's declaratory statement does not warrant the rejection of a filing on the ground that it was received through the mails. XX–459

A soldier's declaratory statement received through the mail should not be allowed. XXII–392

The rule as to settlement, improvement, and entry of soldiers' homestead changed by circular of December 15, 1882. III–301

Circular requirements of December 15, 1882, concerning soldiers' declaratory statement, discussed. V–133

No right is acquired under a declaratory statement if the soldier did not actually serve ninety days in the army of the United States. XVI–372

A record of dishonorable discharge from the military service disqualifies the soldier for the exercise of the soldier's right; but when, by special act of Congress, the record is changed, and an honorable discharge directed, the soldier may then exercise said homestead right. XIX–546

Homestead—Continued.

VIII. SOLDIERS'—Continued.

In determining whether the length of military service rendered by an officer (who resigns from the service) entitles him to file a declaratory statement, the period of service should be computed to the time when he receives notice that his resignation is accepted. XVII–569

Declaratory statement can not be filed for unsurveyed land. XI–88

The oath of an agent (to non-interest and non-agreement for sale) required by circular December 15, 1882, must accompany filing. II–214

The right of the entryman dates from filing declaratory statement. I–48; X–622

While a homestead declaratory statement is no bar to the allowance of an adverse entry, such entry is however made subject to the subsequent assertion of rights under said declaratory statement, and if entry is made thereunder, the intervening adverse entry is excluded by operation of law. XXVII–597

On the allowance of a homestead entry, based on a prior declaratory statement, where there is an intervening adverse entry of record, the local office should at once advise the intervening entryman of such action, and give him opportunity to assert whatever rights he may have in the premises. XXVII–598

The right of a soldier relates back to his filing if the entry is regular and the right to an additional entry goes therewith. I–48

The failure to file a "non-sooner" affidavit, with a soldier's declaratory statement (in Oklahoma) may be subsequently remedied, even though an intervening adverse claim to the land may be asserted. (See 19 L. D., 37.) XXVI–54

The right of a homesteader, who files a soldier's declaratory statement, to make entry dates from such filing, and he can not thereafter, as against an intervening adverse claimant, take advantage of a settlement made prior to said filing. XIX–241

A declaratory statement is no protection to a prior settlement, but is in itself the initiation of a right to make homestead entry. XXII–679; XXVI–639

A homesteader can not claim the privilege of a declaratory statement and a settlement at the same time. XXI–156

A homesteader who files a soldier's declaratory statement thereby waives any prior settlement he may have made on the tract embraced in his filing, and can not thereafter take advantage of such settlement as against an intervening adverse claimant. XXVII–334

Homestead—Continued.

VIII. SOLDIERS'—Continued.

Where one who files a soldier's declaratory statement is also the prior settler, he may, at his election, make such settlement the basis of his right to the land by making application for the right of entry under the act of May 14, 1880, or he may permit the time fixed by said statute to expire and then make entry under his declaratory statement. In the former case his right relates back to the date of settlement, and in the latter to the date of filing declaratory statement. XXVII–532, 598

One who files a soldier's declaratory statement will not be heard to allege settlement prior thereto, if he fails to assert his settlement claim within three months from the date of the alleged settlement. XXVII–598

Declaratory filing is not an appropriation of the land. I–80

Declaratory statement may be filed by an agent, but such agent can not lawfully appoint a sub-agent unless by the prior or subsequent consent of his principal. II–215

Fraudulent acts and inducements of certain agents. I–79

Soldier's declaratory statement filed by an agent and accepted by the local office will protect the homesteader though the agent may not have the power of attorney required by the regulations. VII–202

Declaratory statement filed while the claimant is residing upon and claiming a different tract under the preëmption law, for which proof is afterwards made, is illegal, and will not protect the homesteader as against the intervening settlement of another. VIII–200

A declaratory statement filed by one who is residing upon and claiming another tract under the preëmption law, which he afterwards secures under said law, does not reserve the land covered thereby as against an intervening right during the subsequent period of residence on the preëmption claim. X–642

Conceding that a soldier's declaratory statement is illegal if filed when the claimant was residing on another tract under the preëmption law, such illegality is cured by subsequent entry under the filing, after completion of the preëmption claim, and in the absence of any intervening right. VII–225; XI–288

Right exhausted by the filing and abandonment of a soldier's declaratory statement. IV–562; V–133

A declaratory statement relinquished on account of the alleged worthless character of the land covered thereby will be held to have exhausted the homestead right where it does not appear that due diligence was used to ascertain the character of the land covered by his filing. XII–18

Homestead—Continued.

VIII. SOLDIERS'—Continued.

A soldier's declaratory statement filed by an authorized agent of the soldier, and abandoned, exhausts the homestead right of the soldier. XIX–60, 274

The filing of a homestead declaratory statement does not exhaust the homestead right if a superior claim exists. XXI–156

Right exhausted by filing soldier's declaratory statement and abandonment thereof. There is no distinction in this respect between a filing made by the soldier and one by his widow or the guardian of his minor children. VII–136

Right not exhausted by filing a soldier's declaratory statement and abandoning the tract covered thereby when such filing was rendered inoperative by a prior adverse claim. VII–385

Filing declaratory statement will not be held to exhaust the homestead right in case of entry made prior to the circular of December 15, 1882. VIII–547

Filing a declaratory statement does not, under the act of March 2, 1889, exhaust the homestead right. IX–145, 382; XI–384

The standing of one who files a declaratory statement for a tract covered by the prior settlement right of another that is subsequently asserted in the form of an entry, will not defeat the preferred right of a contestant who successfully attacks said entry. XX–334

To secure the right initiated by a declaratory statement, settlement, improvement, and entry must follow the filing within six months. I–79; III–17, 281; V–353; VIII–200

By failure to enter in time the right to file declaratory statement may be exhausted. III–17

A soldier who has filed a declaratory statement is entitled to six calendar months after such filing within which to make entry, and commence settlement and improvement; and in the computation of such time the day of filing the declaratory statement should be excluded, and the last day of the specified period included. XXIV–38

Failure to make entry and settlement within six months after filing declaratory statement may be excused for climatic reasons, subject to intervening rights. VI–368

Entry not allowed for other land within life of filing. IV–561

None but the widow or minor orphan children can have credit for the deceased soldier's service in making an original entry. II–244

The soldier's children take, not as heirs, but as donees, and are substituted to the soldier's rights where there is no widow or in the event of her marriage or death. II–242

Homestead—Continued.

VIII. SOLDIERS'—Continued.

Application for minor or orphan children must be made on the ordinary forms, name the children, and be signed by the guardian; guardian must make the affidavit at the local office, or, if he or one of the children is residing on the land, before the county clerk. II–244

The entire term of the soldier's enlistment is to be credited to the widow, although he was discharged before its expiration because of the close of the war. II–179

The validity of a, regularly made on behalf of a minor by his curator, is not affected by the unauthorized agreement of said curator to convey the title, when acquired, to another person. XXV–207

A minor orphan child surviving and coming of age before time for making final proof will not be required to establish residence, but must improve and cultivate the land. II–101, 244

Under entry made for minor orphan children residence is not required. X–528

Made for minor heirs requires cultivation and improvement of the land. X–482

The cultivation and improvement of the land procured by the curator of a minor may be deemed a sufficient compliance with the law as construed by the circular regulations then in force. XXV–207

Proof of settlement on the land by the widow will not be required under an entry made at a time when the departmental regulations recognized cultivation of the land as substantial compliance with the law, if proof of cultivation is duly furnished. XXII–351

There is nothing in section 2304, R. S., which authorizes a soldier to make a homestead entry who has perfected an entry under the provisions of the general act. XXIV–561

No rights were taken away by the enactment of sections 2304 and 2305, R. S. IV–399

Entry made through agent by a person in the naval service is within the provisions of section 2308, R. S. III–446

Residence, improvement, and cultivation for a period of one year at least must be shown to authorize patent. VII–362

Made in good faith without the requisite period of residence, and in the hands of a *bona fide* transferee, may be equitably confirmed. XXII–589

Made under soldier's filing may be commuted. IV–399

Patent not authorized unless it appears that entryman is a citizen at date of final proof. VII–362

Homestead—Continued.

IX. SOLDIERS' ADDITIONAL. See sub-title No. XIII; *Alaskan Lands; Indian Lands*, sub-titles VI and XVII.

Entry is not authorized where the original is made subsequent to the adoption of the Revised Statutes. XIII–333

The abandonment of the original entry does not defeat the soldier's right to make an entry under the provisions of section 2306, R. S. XXVIII–216

The right does not exist where the period of military service is less than ninety days. VII–287

Without proof as to military service there is no right of entry. IV–323

Made through an agent in accordance with existing practice will not be disturbed. V–289; VII–165

Soldiers' additional, made through an agent under authorized practice, a valid appropriation. V–289

An entry made by an attorney in fact, and based on a certification of the additional right, and regularly allowed under the regulations then existing, exhausts the additional right of the soldier. XVIII–110, 129

Soldiers' additional, may not embrace non-contiguous tracts. (Overruled.) XIII–519

An applicant for the right to enter non-contiguous tracts as soldiers' additional, may be permitted to elect which of the tracts he will take in full satisfaction of right. (Overruled.) XIII–519

Right of soldier not restricted to contiguous tracts. I–50; III–472

There is no statutory requirement that the tracts located under a soldier's additional homestead right shall be contiguous, or form one compact body of land. XXIX–599, 643

May not be made on a tract withdrawn for purpose of a sale under section 2455, R. S. II–242

The right to locate additional homestead not to be employed as against actual settlers. III–315

Unlawful possession of land no bar to location by another. IV–560

Land occupied for town-site purposes not subject to entry. XIV–368

Right to make entry can not be exercised upon lands occupied for the purposes of trade and business. X–691; XIII–665

Lands which for a long period of time have been with the knowledge and acquiescence of the government included within the limits of a reservoir used as a feeder of a canal, in the maintenance and operation of which the government is interested, are not "unappropriated public lands" and are therefore not subject to soldiers' additional homestead entry. XXX–611

Homestead—Continued.

IX. SOLDIERS' ADDITIONAL—Continued.

A soldiers' additional, can not be allowed for a tract the area of which, when added to the land covered by the original, exceeds 160 acres by a greater amount than the area required to make up the deficiency. XIII–275

The widow of a soldier is not entitled to make a soldier's additional homestead entry, if the soldier, at the time of his death, had the right to make an original entry of and perfect title to the full quantity of 160 acres. XXIX–536

The right to make additional entry exhausted when once used, irrespective of the amount entered. III–509

Extent of additional entry determined by the difference between the original entry and 160 acres. V–10

No statutory authority for certifying additional rights. VI–557

There is no statutory authority for the certification of additional rights, nor is such action necessary to the exercise of the additional right of entry either by the soldier or his transferee. XXIII–152

Circular of February 13, 1883, discontinuing practice of certification. I–654

Status of certificates issued before and after February 13, 1883. IV–323

"Pending cases" excepted from the regulations of February 13, 1883, were those then pending on application for certification. VII–353

A certificate of right will not be issued if it appears that the soldier has parted with his interest therein and that it will inure to the benefit of the assignee. Such cases are not protected by the circular of February 13, 1883. VIII–565

Though the circular of February 13, 1883, which discontinued the practice of certifying additional rights, reserved from the effect of such order pending cases and those filed within a specified period, such exception was not a guaranty that certificates would issue in said cases, but merely an assurance of their adjudication under the circular of May 17, 1877. VI–557

Certifying soldiers' additional rights was discontinued by the order of February 13, 1883, except as to applications filed prior to March 16, 1883, and where an application so pending is subsequently denied, and the soldier exercises his right in person, a certificate of such right thereafter issued by the Commissioner, and recertified for the benefit of an assignee, confers no right. XXVII–565

Based on a certificate of right improvidently reissued after a final judgment that the claimant was not entitled to make such entry, is a nullity and must be canceled. XVI–484

Homestead—Continued.

IX. SOLDIERS' ADDITIONAL—Continued.

A certificate of the right of soldiers' additional entry issued to one who is not entitled is illegal and void, and an entry made under it must be canceled. II–237

On cancellation of entry because the land was not subject thereto the certificate of right, issued in accordance with existing regulations, should be returned without alteration. VI–459

The exercise in person of the right pending application for the certification of such right precludes further action on the application. VII–356; X–354

An entry made under a power of attorney and then canceled, can not be lawfully reinstated, where the soldier after the cancellation of such entry revokes the power of attorney and makes an additional entry in his own right and secures patent thereon. XVII–512

An entry made under a certificate of right and power of attorney after due notice of the illegality of the certificate, and fraudulent character of said power, and subsequent to the exercise of the soldier's right in person, is invalid, and must be canceled. XX–91

Where the owner of a soldier's additional right executes a power of attorney to another to sell any lands he may then own or thereafter acquire under said right, and delivers with it a blank application to enter, signed by himself, having reference to no particular lands, but to be filled in as the holder of the power may elect, he thereby sells and assigns and vests in the grantee all his rights with full ownership thereof. XXX–486

Certificate of right will not be issued where the applicant, by a previous additional entry, exhausted his right under the construction of the law then prevailing. IX–388

Certificate issued to widow may properly require her to show that she has not remarried. V–264

The certificate may properly contain the expressed condition "if shown to be still living at date of application to enter in his name." IV–323

An entry made under a power of attorney on a certificate of additional right is a nullity if at the time of the entry the soldier is not living. XIII–484

If under the existing practice a certificate of right was issued to the soldier in his lifetime, and it is satisfactorily shown that said certificate has been lost or destroyed, a duplicate may issue on the application of the personal representative of the deceased soldier. XXIX–658

Homestead—Continued.

IX. SOLDIERS' ADDITIONAL—Continued.

If a soldier entitled to make an additional entry dies without having exercised said right, leaving no widow or minor orphan children, the right to make entry vests in his personal representative; and a duplicate certificate of said right may issue, in the name of the deceased soldier, on the application of the executor of his estate, it being shown that the original has been lost or destroyed. XXIX–510

The right to make a soldier's additional homestead entry, if not exercised during the lifetime of the soldier, becomes an asset of his estate, if there be no widow or minor orphan children entitled to such right. XXIX–658

The validity of an entry is not affected by the fact that it is made for the benefit of another. XXIII–462

An entry, made in pursuance of a contract to sell the land on the issuance of final certificate, should be canceled as speculative and fraudulent. XIX–163; XX–516

The right to make, is personal and nonassignable. IV–323; VII–565; VIII–608; IX–195; XIII–275; XIV–205; XV–114; XVI–484

Circular of May 8, 1901, relative to assignments of soldiers' additional rights. XXX–604

The right to make entry is a personal right, and can only be exercised in behalf and for the benefit of the soldier entitled thereto. II–235; XIX–547

Right is not assignable, but personal, and can only be exercised by the soldier, or, in case of his death, by his widow if unmarried, or, if she be dead or married, by the guardian of his minor children. X–354

One who admits the "transfer of his right for a valuable consideration" can not be allowed to make an entry in his own person. XIX–223

A certificate of right will not be issued for the benefit of one claiming under an assignment of the soldier's interest. X–354

The circular of February 13, 1883, does not authorize the certification of the additional right for the benefit of an assignee. X–354

A transferee claiming under the certification of the additional right has no other or greater right than the entryman. VII–236, 287

A transferee in good faith under an invalid soldier's additional entry may be given a preferred right to secure title in his own name under the homestead law if he has not exhausted his rights thereunder. IX–195

Homestead—Continued.

IX. SOLDIERS' ADDITIONAL—Continued.

The location of, under a certificate of right obtained through a transfer of the soldier's right, at a time when such action was held invalid by the Department, will not preclude the perfection of an additional entry subsequently made by the soldier and transferred to purchasers in good faith. XIX–465

A soldier's right is assignable, and where transferred by a power of attorney to make entry in the name of the soldier, coupled with the right to receive patent thereunder, the death of the soldier does not revoke the power so conferred, and an entry thereafter made in conformity therewith is valid. XXVIII–209

A soldier's additional homestead right may, in the matter of the acreage the soldier is entitled to thereunder, be divided on the basis of legal sub-divisions, and, as so divided, assigned to different purchasers, each of whom will take the right of location to the extent of his purchase. XXIX–643

The Department will not undertake to determine rights claimed under an alleged assignment of a soldier's additional homestead privilege, in the absence of an application for the exercise of said privilege. XXIX–273; XXX–39

On application by one claiming as an assignee, satisfactory proof must be furnished as to the identity of the alleged soldier with the person who performed the military service. XXVIII–220

On the application of an assignee to make entry, the evidence required to establish the identity of the soldier, and the assignment of his claim, should not be of such character as to unreasonably restrict the exercise of the soldier's right by an assignee. XXVIII–216

The right to make, does not extend to members of the Missouri Home Guard. II–235; VII–236; VIII–235; XVII–79

Where certificate has issued improperly to one (in Missouri Home Guard) without right of additional entry it is void and the entry made under it must be canceled. II–235

The act of May 15, 1886, authorizing the Secretary of War to issue certificates of discharge to the members of the Missouri Home Guard, does not warrant the Department in returning to the practice of certifying additional rights. VI–557

The act of May 15, 1886, did not confer the right to make, upon members of the Missouri Home Guard. VII–236

The circular of May 17, 1877, authorizing the certification of the right to make additional entry, did not contemplate or authorize the issue of such certificates to members of the Missouri Home Guard. VI–557

Homestead—Continued.

IX. SOLDIERS' ADDITIONAL—Continued.

The right accorded to the minor child of the soldier must be exercised during his minority. VII–547; X–424

If the heir of a deceased soldier attain his majority prior to the completion of his entry, he must thereafter act in person or through a duly authorized agent in all matters pertaining to said entry. X–424

That the certificate of right issued during the minority of the child would not operate to extend the time within which entry could be made thereunder. VII–547

Entry for minor heirs allowed to stand though the application did not contain the names of all the minors. V–222

Right to make additional entry accorded to the minor though the soldier's entry had been canceled for abandonment. III–395

Mere suspicion of forgery, from a comparison of signatures on army pay rolls, without allegations or other proof, may not impair the claimant's right. II–240

Allowed when a quantity less than 160 acres was entered before June 22, 1874. I–50

Residence and cultivation must be shown where the original entry is abandoned and the land purchased under section 2, act of June 15, 1880. XIII–694

Residence and cultivation required under location where the original entry was canceled for failure to make final proof. (See 24 L. D., 502.) V–10

The purchaser of the certificate, having made entry, allowed to buy the land under section 2, act of June 15, 1880. II–238

By a purchase under section 2, act of June 15, 1880, of land entered under a soldier's certificate of additional right, the original entry is merged in the perfected title secured under said act, the certificate of right is thereby satisfied, and the certified right of the soldier exhausted. XXVIII–204

The inadvertent use of the same original entry in a certificate subsequently issued does not invalidate a location upon the prior and *prima facie* valid certificate. II–239

The right to make soldiers' additional is not exhausted by a location which, through no fault of the locator, proved invalid. VI–290

Any certificate of right issued by the General Land Office may be located by agent. II–240

Is illegal where the application is nominally by one acting as agent for the soldier, but in fact for himself, and without any intention on the part of the soldier to comply with the law. VIII–608

A subsequent deed of ratification executed by the soldier will not validate an entry made under an attempted transfer of the soldier's right. XV–114

Homestead—Continued.

IX. SOLDIERS' ADDITIONAL—Continued.

Where an attorney through fraud obtained a power to sell the additional homestead right, the certificate and location made thereunder will be canceled and a new certificate issued to the soldier. III–39

Where a power of attorney, coupled with an interest, was executed by the soldier and by his wife, and delivered to A as attorney, and the soldier died before certification of his right; on a new application by the widow, with power of attorney to B as her attorney, it is held that A is entitled to the possession of the certificate. II–30

Where a widow applies and dies before issue of the certificate, leaving children of the soldier, her right is extinguished notwithstanding any power of attorney she may have given, coupled with an interest or otherwise. II–241

Certificates should be delivered to the agent who filed the claim if he has properly discharged his duty, though a later power of attorney may have been filed by another. I–34

The Department will not consider questions between attorney and client arising on application for certification where the claim for the certificate no longer exists. VII–356

An attorney acting under a power may delegate his authority directly to a second person, but not indirectly through another. II–31

A second attorney of record can not utilize the proof filed by the first. II–31

A soldiers' additional homestead entry upon which the final commissions have not been paid and the final receipt has not issued is not within the confirmatory provisions of section 7 of the act of March 3, 1891. XXX–547

A purchaser in good faith of a certificate of right, who locates the same, though invalid for such purpose, may perfect title under the act of March 3, 1893, on payment of the government price. XVI–294, 319

The right to purchase conferred by the act of March 3, 1893, extends only to entries made or initiated upon a certificate of additional right. XVII–512

The act of March 3, 1893, conferring the right of purchase upon transferees, holding under invalid certificates of the additional right, provides for class claims not confirmed by section 7, act of March 3, 1891. XVII–168

The right of purchase under the act of March 3, 1893, can not be exercised in the absence of proof that the additional entry was based on a certificate of right that has been found erroneous or invalid. XVII–60

Homestead—Continued.

IX. SOLDIERS' ADDITIONAL—Continued.

The right to perfect title under the act of March 3, 1893, on payment of the government price of the land, may be accorded a transferee holding under a certified right located after the death of the soldier. XVIII–77

The acts of March 3, 1893, and August 18, 1894, do not contemplate the perfection of an entry, made in person by the soldier and without a certificate of right. XX–516

The act of March 3, 1893, authorizing a purchaser under a soldier's certificate of right to perfect title where said certificate is found invalid, is not applicable to a case wherein the certificate is held under a fraudulent power of attorney, and where an adverse claim thereto is asserted, and exercised, by the soldier in person prior to the location under said certificate. XX–419

The act of March 3, 1893, providing for the perfection of title under entries made on "certificates of right," was for the protection only of persons holding under the certificates issued in accordance with the regulations of May 17, 1877. XXIII–495

Act of August 18, 1894, validating certificates of right; circular of October 16, 1894. XIX–302

The act of August 18, 1894, is limited in its operation to certificates of right issued prior to its passage, and to entries made with certificates so issued. XXVII–565

The act of August 18, 1894, validating certificates of, in the hands of *bona fide* purchasers, can not be invoked to defeat rights which accrued prior to its passage. XIX–160

On application for the recertification of a right, for the benefit of an assignee under the act of August 18, 1894, the applicant should be required to make such a showing as will establish the fact that said applicant is a *bona fide* purchaser for value of said right. XXVI–555

Whether a deed conveying land entered on a certificate of a soldier's right is in fact an absolute conveyance, or a mortgage, it will be treated as giving the grantee the status of an assignee entitled under the act of 1894, to patent in his own name, leaving to the courts the determination of any right that may be asserted by parties claiming that said conveyance was in fact intended as a mortgage. XXVII–527

The sale of a soldier's additional right, and attempted transfer thereof by power of attorney to locate the certificate of said right, is made good in the hands of the purchaser by the act of August 18, 1894, and such purchaser is accordingly entitled to the possession of the certificate. XIX–268

Homestead—Continued.

IX. SOLDIERS' ADDITIONAL—Continued.

A recertification of a right may be allowed in the name of a transferee where the original certificate has been canceled and it appears to have been held at such time by said transferee, who was entitled as a *bona fide* purchaser to the benefit of the remedial provisions of the act of August 18, 1894. XXII–699

Certificates of right, regularly issued, and located by *bona fide* purchasers thereof, but thereafter canceled for illegality, and so remaining unsatisfied at the passage of the act of August 18, 1894, are by said act validated, and may be reissued for the benefit of a *bona fide* purchaser thereof. XXIV–35

Under the act of August 18, 1894, an entry made on a certificate of right is valid, and must be approved, where the land is held by a *bona fide* purchaser, though the issuance of the certificate may have been secured through fraud; and the patent in such case should issue in the name of the assignee. XXIV–291

Under the act of August 18, 1894, validating outstanding certificates in the hands of *bona fide* purchasers, a duplicate certificate may issue to such a purchaser, in the name of the soldier, on due showing of the loss of the original, and the further fact that it has not been located. XXIII–123

Where a certificate of a soldier's right has been located by an assignee, and the location canceled in part, and patent issued for the remainder, the assignee is entitled to a recertification, under the act of August 18, 1894, of the additional right for the number of acres not secured under the original certificate. XXVI–192

The remedial provisions of the act of August 18, 1894, do not extend to an entry secured in fraud of the soldier's right. XX–419

The act of August 18, 1894, validating entries, made under certificates of right, does not defeat the right of a successful contestant under a decision that has become final prior to the passage of said act. XX–2

The act of August 18, 1894, does not protect the purchaser of a soldier's additional certificate of right, where said right of the soldier has been satisfied by the prior issuance of a certificate. XX–272

An application for the certification of a soldier's right, made on behalf of a purchaser of said right, can not be allowed where the additional right of the soldier has been exercised, through an entry made in the name of the soldier's widow, such entry being allowed by the land department without notice of the prior sale of the additional right. XXV–119

Homestead—Continued.

IX. SOLDIERS' ADDITIONAL—Continued.

The right of an alleged assignee of a soldier's right to a certification of said right can not be recognized where the Department, without notice of said assignment, has allowed the soldier to make an additional entry in person. XXV–205; XXVII–565

It was the intention of Congress in the act of August 18, 1894, to validate all outstanding certificates of soldiers' additional homestead rights in the hands of *bona fide* holders. XXI–404

One who buys a certificate of additional right without notice of the illegality of said certificate at its inception, or of its invalidity for any other reason, is a *bona fide* purchaser under said act of 1894. XXI–404

An entry made by the purchaser of a certificate of right, is confirmed by the act of August 18, 1894. XXI–228

There is no authority of law for the insertion of a condition in a soldier's certificate of right, requiring settlement and residence on the part of the soldier, where the original entry was abandoned; and in recertifying the additional right in the name of a transferee, under the act of August 18, 1894, such a condition, contained in the original certificate, should be omitted. XXIV–502

The act of August 18, 1894, providing for the approval of a certain class of entries, does not contemplate the confirmation of entries made on land not subject thereto, and hence can not be invoked for the protection of such an entry made on lands occupied for trade and business. XXIII–502

X. COMMUTATION. See *Indian Lands; Oklahoma Lands.*

Right of, statutory. VI–311

Right to commute, extends to an entry made under section 2304, R. S. IV–399

Commutation of an entry is the consummation of the homestead right and precludes its further exercise. XIII–439

Is a consummation of the homestead entry. IV–347, 441; VIII–566

Is the consummation of the homestead, and not the exercise of the preëmptive right. IV–441; VI–288, 407

Right exhausted where title to a portion of the land is consummated by commutation. VIII–53; XI–364

One who submits proof for part of the land covered by his original entry exhausts his right thereunder, but may apply for additional entry under section 6, act of March 2, 1889. XI–364

Permitted where final proof under section 2291, R. S., fails to show compliance with the law in the matter of residence. (Overruled, 13 L. D., 42.) VIII–45

Homestead—Continued.

X. COMMUTATION—Continued.

By commutation the original is merged into the cash entry, and the cancellation of the latter involves the cancellation of the former. IV–237; VI–8, 107; VIII–651; XII–243

Homestead right lost through failure of commutation entry. V–392

The right of commutation depends upon prior compliance with the homestead law. If the cash entry fails, the original entry fails therewith. IV–237; VII–87; IX–150; XI–235, 312; XXIX–260

If the final proof submitted under section 2291, R. S., shows the entryman's failure to comply with the law in the matter of residence and that he is for that reason not entitled to perfect his entry under said section, he is also debarred from exercising the right of commutation. VIII–566; IX–151; XIII–42

Authorized on payment of the purchase price and due showing of residence, cultivation, and improvement. VII–231

An adjoining farm entry may be commuted on showing due compliance with law. XIII–713

Regulations under the preëmption law govern as to residence. IV–287, 347

Six months' residence properly required as an assurance of good faith. IV–287, 347, 384

Six months' residence after entry not essential. IV–418

Right of, not defeated by absence covering considerable period when followed by a continuous inhabitancy for the time required. VI–324

Right of, not defeated by failure to establish residence within the required period in the absence of an intervening adverse claim. I–39; V–675

In computing the period of compliance with law shown by a homesteader who commutes credit can not be allowed for residence and cultivation when the land was not open to settlement. XXI–106

A commuting homesteader who secured his right by contesting the prior entry of another allowed credit for residence before the contested entry was canceled. IV–287

Under the act of May 14, 1880, residence may be computed from date of settlement. V–94

Under section 2301, R. S., as amended by section 6, act of March 3, 1891, requires fourteen months' residence from the date of original entry, and not from settlement. XVI–285; XVIII–150; XXI–115

An entry made after the passage of the act of March 3, 1891, though based on a soldier's declaratory statement filed prior to said act, can not be commuted without fourteen months' residence and cultivation from date of the entry. XXII–488

Homestead—Continued.

X. COMMUTATION—Continued.

An entry made since the amendment of section 2301, R. S., can not be commuted without fourteen months' residence and cultivation from date of entry, even though settlement was made prior to the passage of the amendatory act. XVIII–437; XXII–194

The board of equitable adjudication can not waive the requirement of the statute that permits the commutation of a, only after fourteen months' residence and cultivation from date of entry, and confirm an entry allowed in contravention of said requirement. XX–361

Allowed after the amendment of section 2301, R. S., on less than fourteen months' residence from the date of the original entry, may be equitably confirmed, where the term of residence, if computed from settlement, is in compliance with said amended section, and, after the allowance of said commuted entry, the land was sold to a purchaser in good faith. XXI–200, 203, 491

The decision in the case of Herbert H. Augusta (on review), 21 L. D., 200, cited and followed, with directions for the disposition of suspended cases involving the same question. XXI–491

Where commutation is allowed on a period of residence less than that required by law, and the entryman thereafter in good faith sells one of the tracts covered by his entry, he may furnish supplemental proof showing subsequent residence on the unsold portion of his claim, and his entry be submitted for equitable action. XXI–484

An entry can not be equitably confirmed for the benefit of transferees where the commutation was made before the expiration of fourteen months from date of settlement. XXII–194

Circular of July 9, 1896, as to commutation of, under act of June 3, 1896. XXVI–544

Under the act of June 3, 1896, an entry, suspended on account of having been made prior to fourteen months' residence after date of the original entry, is confirmed, where it appears that the entryman in good faith actually resided six months on the land prior to commutation, and no adverse claim, originating prior to final proof, exists. XXII–717; XXV–561

An order directing the cancellation of a prematurely commuted homestead entry will not defeat action under the confirmatory provisions of the act of June 3, 1896, if such order has not become final. XXIV–351

Commuted, may be referred to the board of equitable adjudication, in the absence of protest, where residence is not commenced within six months. VII–488; VIII–566; X–88; XXI–342

Homestead—Continued.

X. COMMUTATION—Continued.

Commuted, allowed since the McKay decision where residence was not established within six months from date of original entry, may be submitted to the board of equitable adjudication without calling for explanation from the entryman. VIII–566

Until all the preliminary acts required by law are performed no right is acquired as against the government. VI–255

Of a homestead entry should not be allowed in the presence of an adverse claim pending on appeal and involving the validity of the original entry. XVII–592

Right of, not defeated where the claimant, through misinformation received at the local office, submitted ordinary homestead proof. VI–573

An entryman who has filed his declaration of intention to become a citizen is qualified to commute. VII–368

A widow by commuting her deceased husband's entry secures the equitable title to the land. X–209

After the submission of satisfactory proof and tender of payment the entryman is under no obligation to remain on the land or show further compliance with law. X–555

Entryman permitted to commute, in the absence of bad faith, after the expiration of the statutory life of the original entry and failure to submit satisfactory proof thereunder. VII–476

Instructions of March 21, 1901, under act of January 26, 1901, relative to commutation of. XXX–540

The first proviso to the act of May 17, 1900, does not extend the commutation provisions of section 2301, R. S., to the lands within the purview of said act, it merely declaring that where such provisions already apply they shall remain in full force and effect. XXX–78

XI. CULTIVATION.

The law insists on the cultivation for five years, even during periods when his absence is excusable; an entryman earning $1.50 to $1.75 per day at his trade has no excuse for failure to cultivate. II–73

Cultivation of the land embraced within an entry is an essential to compliance with the law. XXIX–561

Good faith of the entryman in attempting to cultivate the land is entitled to consideration. XII–67

A continued drought excuses the failure to cultivate. II–149

The occupancy and use of land for lumbering purposes does not constitute the improvement contemplated by the homestead law. III–63

Commutation of entry will not be allowed in the absence of *bona fide* cultivation and residence. III–63

Homestead—Continued.

XI. CULTIVATION—Continued.

Both residence and cultivation required except in cases of adjoining farm. III–141

In grazing countries use of the land for that purpose, coupled with residence, held to be in compliance with homestead laws. III–140

The cultivation required by section 2301, R. S., is satisfied by clearing the land for the purpose of planting when it appears that sufficient time has not elapsed for further acts in that direction. III–49

"Boxing" pine trees not cultivation under homestead law. V–389

XII. ACT OF MAY 14, 1880.

Settlement right of entryman protected by the act of May 14, 1880. I–83

Right enlarged by the act of May 14, 1880. VI–134; VIII–286

Section 2291, R. S., and the act of May 14, 1880, should be construed together. VIII–286

Settlement is only protected as against other and later settlers for the period of three months. V–624; VI–306; VII–537

A settler who fails to make application for the right of entry within the period provided in the act of May 14, 1880, is not thereafter protected as against another who has complied with the law. XII–629

Time within which to enter, does not run against a homestead settler under the act of May 14, 1880, during the pendency of an erroneous application theretofore filed by him for the land in question. XII–631

The act of May 14, 1880, does not apply to a settlement upon lands not subject to entry. III–176

The third section of the act of May 14, 1880, is not to be construed as destroying any vested right theretofore acquired. III–130

General requirements of the law not waived by the act of May 14, 1880. V–172

In the absence of an intervening claim the rights of a settler under the act of May 14, 1880, relate back to date of settlement, even though entry is not made within the statutory period. VI–653

Right was enlarged by the act of May 14, 1880, and protection given to settlement before survey, so that if a settler dies before survey the right of entry inures to his devisee. VI–134; VIII–286

The right acquired under the act of May 14, 1880, by a settler who dies prior to survey may be exercised by his devisee. IX–452

A settler under the act of May 14, 1880, who has complied with the law for the requisite period at the date of application to enter has a vested and devisable interest. XXIII–188

Homestead—Continued.

XII. Act of May 14, 1880—Continued.

The period within which the right of entry is protected under the act of May 14, 1880, begins to run from the date when the land is declared to be open to entry in the published notice of the filing of the township plat. VIII–207

XIII. Act of June 15, 1880.

The right to purchase, under said act, is not a personal one, and the words of the law providing that "persons who have heretofore under any of the homestead laws entered lands properly subject to such entry" includes all persons who, in any manner by original application or operation of law, have succeeded to the right to make final proof and payment of fees and take a patent for the land. I–50

Land entered prior to said act may be purchased on payment of government price if free from adverse claims. VIII–75

Purchase should be allowed in the absence of intervening adverse claims if the land was subject to the original entry. VIII–403

No restriction on purchase under, except those applicable to ordinary cash entry. V–535

Purchase is not a consummation of the original entry relating back to the date of such entry, but a private entry operative from the date thereof. VIII–532

Purchase under this act prior to the act of March 2, 1889, defeats the right of the entryman to make second entry under the latter act. XIII–257; XIV–616

Purchase under the act held to be a "compliance" with the homestead laws. IX–604; XXV–327

Section 2 of said act is a part of the homestead laws, and provides a method of consummating title under that class of homestead entries which comes within its provisions. The privilege thus accorded, and the title obtained thereunder, rest upon and have their inception in the original homestead entry, which is merged in the higher and perfected title obtained by compliance with the provisions of said section. XXVIII–204

Only land subject to entry may be purchased. IV–171

The right of purchase under section 2 extends only to entries of land "properly subject to such entry," and does not include an entry of land previously withdrawn in aid of a railroad grant. XIV–103

Right of purchase extends only to entries made prior to the passage of the act. VIII–329; XXV–453

An attempted transfer subsequent to June 15, 1880, can not become effective, the act having relation to past transactions only. I–75; II–176; V–11

Homestead—Continued.

XIII. Act of June 15, 1880—Continued

Right of purchase defined. IV–465

Purchase may be made by any person who through entry or by operation of law has succeeded to the right to make final proof. I–50, 56

Widow of entryman may purchase. II–83; III–490; V–333

The legal successor entitled to purchase. II–82

Widow instead of administrator may purchase. I–35; III–465

Heirs may acquire title in either of the several ways prescribed in the homestead laws, or may purchase under section 2, act of June 15, 1880, though aliens. II–98

The widow of an entryman may purchase though the entry has been canceled for failure to make proof within the statutory period. III–490; V–529; IX–605

Right of widow or heirs defeated by transfer. I–35

The deserted wife or minor child of the entryman may purchase as his agent; entry must be referred to board of equitable adjudication. II–81

As the entryman in this case, if living, might have purchased at date of the application (after contest, but before hearing), this right descended to his heirs. II–99, 523

A devisee has the right of purchase as the transferee by will; applied to case where entryman's widow had deserted him several years before his death and he had devised land to his daughter, who afterwards resided on and improved it as head of a family. II–82

Right of purchase recognized in case of entry made by an alien who subsequently declared his intention to become a citizen. IV–564

Entry of alien may be purchased by widow. I–55

Alien heirs of a homestead entryman may purchase under section 2, act of June 15, 1880. I–98; II–98

An exercise of the right of purchase accorded by said act, as to part of the land covered by a homestead entry, exhausts the privilege of purchase conferred upon the entryman by said act. XXI–483

Right of purchase can not be exercised by one who has voluntarily relinquished the original entry. VIII–606; X–588; XXII–81

The voluntary relinquishment of an adjoining farm homestead is a bar to the subsequent purchase of the land, by the entryman, under said act. XXI–26

Cash entry made by one who had previously executed a relinquishment of the original entry operates as an appropriation of the land, it appearing that said relinquishment was the result of a mistake, and that no rights are claimed thereunder. XVI–558

Alienation of land no bar to purchase. I–74

Homestead—Continued.

XIII. Act of June 15, 1880—Continued.

A cash entry under section 2 of said act, allowed under the rule that "alienation of the land is no bar to the original party purchasing under said act," will not be canceled where it appears that the transfer of the land was prior to the change of said rule. XXI–38

The right of purchase under section 2, on behalf of an entryman, who after the passage of said act and prior to his application for the exercise of said right, had sold the land to another, can not be recognized, nor is the case of John D. Hay, 1 L. D., 74, authority therefor. XXVI–239

An entryman who has sold his interest in the land covered by the original entry is not entitled to the right of purchase. VIII–330; IX–311; XII–393; XIII–545

Where the entryman sold his homestead right and delivered possession of the land, which was occupied and improved by the transferee, his right of purchase is defeated. II–125

An entry fraudulent and void at inception is not subject to purchase by a transferee. VI–457

Purchase may not be made by transferee when he is not the real party in interest. VI–94

Transferee claiming under a purchase made during the pendency of a contest takes nothing thereby. VI–641

Transferee by *bona fide* instrument of the entryman's improvements and possessory right can purchase under said act. I–53

An executed or present transfer, and not an agreement to transfer in future (after entry), is meant by the act. II–53

The right of purchase extends to a *bona fide* transferee claiming under an additional entry, although the original was canceled for failure to submit proof within the statutory period. VII–301

Attempted transfer prior to act carries right of purchase though the deed was not made till after the passage of the act. I–72

Possession of duplicate receipt not such evidence of transfer as to authorize purchase. I–67

"*Bona fide* instrument in writing" not necessarily a deed in legal form. I–53

Transfer of land must be in writing to carry right of purchase. I–67

Purchaser should produce the duplicate receipt or account for its loss, showing that no assignment thereof has been made. VII–283

The entryman can purchase only such part of the homestead as he has not attempted to transfer; if he has attempted to transfer, only the transferee has the right of purchasing, in whole or in part, unless there be a mutual agreement to the contrary. II–176

Homestead—Continued.

XIII. ACT OF JUNE 15, 1880—Continued.

The right of purchase under section 2 extends to one holding under an attempted sale (by double power of attorney) of a soldier's additional homestead right, and also having title by judicial decree and intermediate conveyance. XV–136

Right of purchase can not be set up by one who claims no interest through the original entryman for the sole purpose of defeating a railroad grant. XV–81

The assignee of an erroneously issued and invalid certificate of soldier's additional homestead right allowed to purchase the tract already entered by him. II–238

If a single woman makes entry and then marries, the husband is not entitled to purchase in his own name in the event of her death. Patent in such case must issue to the heirs. I–84

Entryman can not purchase for the protection of transferee. VI–95

Register who was appointed after entry allowed to purchase. I–73

Purchase allowed where final proof failed. I–175

Extends to an entry where the original affidavit was illegally made. V–115

Does not authorize the purchase of land entered by mistake. V–105

May be allowed though the entry is illegal at inception. I–25; V–118

The entryman or transferee can not purchase under an entry depending upon false and fraudulent statements and forged documents, or where the entry was canceled for fraud prior to the passage of said act. VII–94

Does not authorize the entryman or his transferee to purchase under an entry which depends upon false and fraudulent statements or forged documents. VII–301

A soldier's additional entry based upon a certificate of right obtained by false statements does not authorize a purchase under said act. IX–195

A purchaser of the land covered by an entry made under a power of attorney that is in effect a transfer of the soldier's additional right, prior to the exercise thereof, is not entitled to perfect title under said act. (See 16 L. D., 484.) XVII–512

Irregularity or illegality of entry, fraud not appearing, is not a bar to the right. II–94

The right of purchase is not dependent upon compliance with the homestead law. V–535; VII–283, 344

Failure of the homesteader to comply with the law in the matters of settlement and residence does not affect his right of purchase. V–333; XI–462

Purchase under this act not equivalent to residence and cultivation. V–10

Homestead—Continued.

XIII. Act of June 15, 1880—Continued.

Does not authorize a purchase under a homestead entry made by an Indian who is not a citizen. VIII–55

Purchase made under existing rulings and direction of the Commissioner by a transferee holding under certificate of additional right issued to a member of the Missouri Home Guard not disturbed. VIII–235

There is no right of purchase in one to whom the lands have already been patented under the general homestead law, notwithstanding there may be doubt about the validity of the title to them. II–114

Application under, may be entertained for land patented on entry within the terms of the act on surrender of the patent. V–301

Where one made homestead entry under the general law in 1874 and in good faith a soldier's homestead entry in 1878, and pending contest against the latter made application to purchase; held that, notwithstanding the irregularity, he may make purchase. II–124

Cancellation of the original entry no bar to purchase. I–57, 69, 96; IV–23; V–333, 529; VIII–403; XI–416

Purchase authorized even after cancellation of original entry if it does not interfere with the subsequent right of another. VII–281

Expiration of the statutory life of an entry or the entryman's noncompliance with law constitutes no bar to the right of purchase. XV–213

Cancellation of the original entry and subsequent improvident timber-culture entry of the land by the claimant will not defeat his right of purchase. XII–310

An intervening entry canceled on relinquishment, before application to purchase, is no bar thereto. VIII–403

Right of purchase accorded the first applicant where several entries had been canceled. I–96

An intervening entry made after the passage of the act and canceled on relinquishment is no bar to purchase. VIII–75

The fact that after the cancellation of the original entry the land was entered by another will not defeat the right of purchase where such subsequent entry was canceled prior to the application of the purchaser. VIII–281

The right of purchase does not exist where the entry was canceled and an adverse right intervened prior to the passage of the act. VI–409

Right of purchase defeated by intervening claim where the applicant fails to appeal in time from the rejection of his application. XI–570

Homestead—Continued.

XIII. ACT OF JUNE 15, 1880—Continued.

Right of homesteader who has abandoned the land to purchase is defeated by the intervening adverse claim of his wife, who has remained on the land and commenced proceedings in her own right to secure the same. XII–320

The term "homestead laws" as used in the proviso to section 2 is employed in a generic sense. I–69

The term "homestead laws" as used in the proviso to section 2 of said act is employed in a generic sense, and will include and protect an intervening desert-land extry. XX–528

An intervening preëmption claim bars the right of purchase. I–69; III–373; IV–466, 493; VII–325; X–410

Right of purchase defeated by intervening timber-culture entry. I–69

The preference right of a successful contestant superior to the right of purchase. VII–329, 500; XVI–183

The right of a railroad company acquired by definite location is not such an intervening adverse claim as will defeat the right of purchase conferred by said act. XXII–264

The entryman has right of purchase while his appeal from the Commissioner's action is pending before the Secretary prior to the cancellation of his entry. II–51

Right of purchase not defeated by the pendency of proceedings on special agent's report. VII–342

Application should not be carried to entry until right of appeal allowed to adverse parties has expired. IV–21

During the contest the right of purchase exists until final judgment in favor of contestant. IV–21

Purchase hereunder not allowed pending contest concerning the right of entry. IV–436, 463

Initiation of contest against the original entry suspends the right of purchase under section 2 of said act. II–164; IV–580; V–189, 229, 606; VI–641; VIII–463, 579, 595; IX–18; X–111, 410, 678; XI–261; XIII–487

An application to purchase made after the initiation of a contest should be suspended until final disposition of the contest. XIII–487

That the purchase was made during the pendency of a contest is an objection that can only be raised on behalf of the contestant. VII–194; IX–390; X–392; XI–598

Purchase made while the right was suspended in favor of a contestant may be held valid if the contestant waives his right. VII–381

The suspension of the right of purchase during contest is for the benefit of the contestant only. VII–145, 194

Homestead—Continued.

XIII. ACT OF JUNE 15, 1880—Continued.

A purchase should not be allowed pending contest, but if so allowed may stand subject to the right of the contestant. A subsequent preëmption filing by the contestant, who is not qualified to exercise the preferred right, will not effect a cancellation of the cash entry and open the land to other applicants. XIX–182

Purchase pending contest, where the contestant is apparently disqualified to enter, should not be canceled, but suspended and opportunity given the contestant to assert his claim. VII–145

A cash entry made subject to the right of a successful contestant who makes preëmption entry may be suspended or relinquished, with the right to apply for repayment. X–410

Purchase pending contest should not be canceled, but suspended, and held subject to the contestant's preference right. VII–194

The rule as to purchase pending contest laid down in Freise *v.* Hobson governs in all cases not then finally adjudicated.

VI–446; VII–381, 500; X–678

Rights that became vested prior to the decision of Freise *v.* Hobson are not affected by the change of ruling announced therein. IX–75

A purchase allowed by final decision prior to the ruling in Freise *v.* Hobson is not affected thereby, nor can the validity of such purchase be questioned collaterally by another applicant for the land. X–129

An entry under said act is not invalid though the entryman may have contracted to sell the land before making the entry.

II–94; V–535; VII–570; IX–311; X–129, 392

Right of purchase not defeated by the prior execution of a power of attorney authorizing a sale of the land. X–392

A naked power of attorney to sell the land is not evidence of a sale and will not defeat the right of purchase. IX–311

Land returned as valuable for coal prior to the act of March 3, 1883, not subject to purchase though the original entry was made before the passage of said act (Alabama lands). IX–178

Purchase of land (Alabama) returned as valuable for coal before the act of March 3, 1883, not permissible until after public offering.

VII–512; VIII–532

Application to purchase lands not subject thereto for want of public offering should be suspended pending such offering. VIII–532

Cash purchase of land previously reported as valuable for coal may be suspended until after public offering and treated as an application to enter if the land is not sold at such offering (Alabama lands). IX–178

Section 2 of said act is a part of the homestead system to which the term "homestead laws" is generally applied in the joint resolution of May 14, 1888. IX–604

Homestead—Continued.

XIII. Act of June 15, 1880—Continued

Construed with the act of May 14, 1880. IV–580

Section 2 of said act not repealed by the joint resolution of May 14, 1888. IX–604

The allowance of a purchase by direction of the General Land Office will not preclude a departmental determination as to its validity. VII–301

Discovery of coal on land after entry will not affect rights acquired thereunder. VII–570

The proviso in this section was not necessary to protect subsequent entrymen, the intention of Congress, from general considerations, being sufficiently clear without it. II–165

Application to purchase reserves the land. IV–32

Right of purchase, until exercised, does not preclude other disposition of the land by Congress. IX–178

Right of purchase is a subsisting claim to the land. V–529

Hearing ordered after purchase on the charge that the original entry was fraudulent. IV–578

Personal affidavit not required of the original entryman where he applies to purchase and the duplicate receipt is with the record. XI–555

The validity of an entry under said act, made through a power of attorney, is not affected by the fact that the requisite affidavit is made by the attorney. XIII–183

An entry made under power of attorney and canceled for want of a personal affidavit of the entryman must be reinstated and intervening claims excluded. XIII–183

A purchase allowed on the affidavit of the entryman's attorney will not be disturbed where, after transfer of the land, the entryman refuses to make the affidavit required by the regulations. IX–97; XI–587; XXII–469

Cash entry made under said act and canceled for failure to furnish the requisite proof will not be reinstated on the application of one who claims as a transferee, but does not trace his title to the entryman nor occupy the status of an innocent purchaser. XII–469

The required affidavit of an applicant to purchase may be made elsewhere than in the land district, for good cause shown, before any qualified officer having a seal. II–128

XIV. Act of March 2, 1889. See *Entry*, sub-title No. VI.

Homestead right as enlarged by the act of March 2, 1889. Circular of March 8, 1889. VIII–314

Homestead—Continued.

XIV. Act of March 2, 1889—Continued.

The provisions of the Revised Statutes relative to the qualifications of entrymen and the requirements preliminary to entry are not repealed by said act, except as explicitly stated therein. XIII–205

In determining the acreage that may be taken as an additional homestead entry under said act, the rule of approximation is properly applicable. XX–448

Additional, under section 5 calls for a fee of $10 if the land embraced therein exceeds eighty acres. XIII–614

Additional, made prior to the passage of the act of March 2, 1889, may stand though unauthorized when made. IX–543

The right to make an entry under said act can not be exercised in the presence of an intervening adverse claim arising through the negligence of the homesteader to assert his additional right within the statutory period. XIX–371

Entry of contiguous tract authorized by said act if the original was for less than 160 acres and the entryman still owns and occupies the land covered thereby. VIII–428

An entry under section 5 should not be allowed where the applicant is not at such time occupying the land covered by his original entry. XX–55

The provisions of the act do not apply where the original entry is made after said act. XV–548; XXII–95

Entry of contiguous land may be made under section 5 by one who prior to said act had entered less than 160 acres and continues to own and occupy the land so entered. X–681

The right to make, under section 5, of a contiguous tract exists only where the original entry is made prior to the passage of said act. XV–221; XVI–530

The additional right conferred upon homesteaders by section 5 can only be exercised on land contiguous to the original homestead. XXI–22; XXIX–217

Additional, under said act allowed to include a tract of adjacent land intended to be covered by the original entry on which patent had issued. VIII–500

Of contiguous land under section 5 may be based upon a homestead entry made in conformity with legal requirements. X–78

An entry under the act of 1879 is no bar to a subsequent entry under section 5, provided the total area taken under all entries does not exceed 160 acres. XV–218

But one entry may be made under section 5, but where a second entry of such character has been allowed the entryman may be given opportunity to relinquish and reënter under section 6 of said act. XV–365

Homestead—Continued.

XIV. Act of March 2, 1889—Continued.

A widow, who perfects title under the homestead entry of her deceased husband, is not entitled to make an additional entry of contiguous land under section 5. XXIX–185

Right to apply for additional, under said act treated as a preferred right in cases pending at the passage of said act. VIII–474; XII–558

Additional, may be made under said act where the applicant has exhausted his rights under sections 2289 and 2306, R. S., without securing 160 acres of land. IX–388

The right to make, under section 6, is limited to cases where the original entry was made prior to the passage of said act. XV–285; XXIV–23

The right to make entry under section 6 extends to cases where the original entry was made either before or after the passage of said act, if the applicant is otherwise within the terms of said section. XXV–113

A homestead entry for 160 acres, made in good faith by one who has theretofore perfected title under a homestead entry for eighty acres, may stand intact as to eighty acres, where it appears that the entryman is entitled to take that amount as an additional entry under section 6. XXVII–139, 346, 586

The right to make an additional entry under section 6 is limited to persons "entitled, under the provisions of the homestead law, to enter a homestead;" hence a married woman can not be allowed to make such an entry in the absence of evidence showing that she is the head of the family. XXIX–647

The right to make additional, under section 6, is not barred by a previous additional entry of contiguous land made by the applicant under section 5 of said act if the whole amount of land thus taken does not exceed 160 acres. XIV–277

An entry under section 6 is limited in acreage to an amount which added to the quantity previously entered shall not exceed 160 acres. XX–360

Application to make, under section 6, may be presented by one who has commuted for part of the land covered by a former entry. XI–364

A non-contiguous tract may not be held in reservation for entry as additional under section 6. XV–119

A soldier's additional entry, illegal for the want of a proper basis, may not be perfected through a reëntry under section 6, where application for such relief is not made until after the initiation of a contest charging such illegality. XIII–333

Homestead—Continued.

XIV. Act of March 2, 1889—Continued.

The right to make additional entry under section 6, can not be exercised upon land covered by the existing entry of another. XIII–251

Right to make additional, under said act accorded upon a pending application may be treated as a preferred right. X–78

Under the act of 1889, patent may issue on additional, without further proof where final proof has been made under the original entry. X–681

The right to make an additional homestead entry under section 6, can only be exercised by one who has made his final proof, and received the receiver's final receipt for the land embraced in his original entry. XXVI–604; XXVIII–555

A purchase by a homestead entryman under the act of June 15, 1880, of the land covered by his entry (eighty acres), is such a compliance with the conditions of the homestead laws as will entitle him to the exercise of the additional right conferred by section 6. XXV–327

An additional entry, under section 6, can not be maintained without residence on the land covered thereby. XX–246; XXVIII–555; XXIX–217

Idaho. See *States and Territories.*

Illinois. See *Swamp Land.*

Improvements. See *Final Proof*, sub-titles *Commutation* and *Preemption; Reservation; Residence; Settlement.*

Purchase of timber-culture entryman's improvements gives no preferred right on cancellation of entry. II–50

Right of a settler prior to survey to remove such, as can be severed from the realty conceded where the land is sold as an isolated tract. IX–529

As to right of entryman to remove, after cancellation of entry; the Department is vested with due authority to protect the land from trespass. VI–239

The land department has no jurisdiction over disputes between settlers concerning their claims against each other on account of alleged improvements. XX–3

Rights as to the ownership or possession of, placed on public land without authority of law, are not determined by a judgment of the Department sustaining the validity of an entry of said land. XXVIII–250

Indemnity. See *Private Claims; Railroad Grant; School Land; Swamp Land.*

Indians. See *Contest*, sub-title *Homestead; Homestead*, sub-title No. v; *Indian Lands.*

Are not entitled to the benefit of the preëmption laws. I–491
The general statutes of naturalization do not apply to. I–491
Aboriginal occupants of Alaska are not, as said term is used in section 2103, R. S. XIX–323

Indian Lands. See *Entry*, sub-title No. VI; *Fees; Homestead*, sub-title No. V; *Final Proof*, sub-title *Osage; Reservation; Right of Way.*

I. GENERALLY.
II. ALLOTMENT.
III. PATENT.
IV. CONVEYANCE—LEASE.
V. CHIPPEWA.
VI. FLATHEAD.
VII. KANSAS.
VIII. MILLE LAC.
IX. NAVAJO.
X. OKLAHOMA.
XI. OMAHA.
XII. OSAGE.
XIII. OTTAWA AND CHIPPEWA.
XIV. OTOE AND MISSOURIA.
XV. PAWNEE.
XVI. SANTEE SIOUX.
XVII. SENECA.
XVIII. SIOUX.
XIX. SISSETON.
XX. TURTLE MOUNTAIN.
XXI. UMATILLA.
XXII. UTE.

I. GENERALLY.

Circulars of May 31, 1884, and October 27, 1887, with respect to land in the possession of Indian occupants. III–371; VI–341
Actually included within Indian occupancy are not subject to settlement or entry. XVI–14; XXVII–102
Included within the actual possession of an Indian tribe are excluded from the operation of the preëmption laws. XVI–209
Entries and filings not allowed upon lands in the occupancy of Indians. III–371; VI–341
Lands subject to Indian occupancy are not open to other appropriation. XII–516; XIII–269, 302, 578; XV–19

Indian Lands—Continued.

I. GENERALLY—Continued.

Land included within the occupancy of an Indian is not subject to entry, and a contest against an entry of land, so excluded from disposition, will confer no right upon the contestant that will prevent the Department from subsequently holding the land in reservation, with a view to its allotment to the Indian. XXIV–413

The status of the Seminole Indians, as occupants of public lands in the State of Florida, is too indefinite in character to receive recognition in patents issued under the swamp grant. XXVI–117

Prior right of Indian occupancy, so long as undisturbed by the government, defeats the enforcement of the swamp grant. XIX–518

Extinction of title under second section of the grant to the Northern Pacific did not affect lands within technical reservations, but lands within the "Indian country." V–138, 343, 368

Preference right of Indians to lands in Bitter Root Valley recognized. I–368

By the act of March 2, 1889, the government is authorized to appraise and sell patented Indian lands in the Bitter Root Valley, with the consent and for the benefit of the Indians, and in the discharge of this duty it must observe and pursue the requirements and directions contained in the statute, that such lands should not be sold for less than the appraised value of the land and improvements thereon. XXX–292

Extension of time for payment under entries of; instructions of April 16, 1895. XX–432

Extension of time for payment on the lands ceded by the Pottawatomie and Absentee Shawnees; circular of August 13, 1894. XIX–296

Instructions of June 18, 1900, under act of May 31, 1900, with respect to settlement on ceded Indian reservations. XXX–361

Instructions of February 20, 1894, relative to the disposition and sale of lands in the Klamath Indian Reservation. XVIII–166

Instructions of January 4, 1901, relative to survey of lands in the Klamath Indian Reservation and the selection of swamp lands therein by the State. XXX–395

A settler on lands within the Klamath River Reservation prior to the act of June 17, 1892, opening to entry said lands, may be allowed the right of purchase, in the absence of any intervening adverse claim, though his application is not filed within the statutory period. XXV–43

Circular of March 22, 1892, with respect to the opening to settlement and entry of Sisseton and Wahpeton lands. XIV–302

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Indian Lands—Continued.

I. GENERALLY—Continued.

Instructions of May 18, 1895, opening the Kickapoo under the act of March 2, 1895. XX–470

Instructions of May 20, 1895, opening Siletz under the act of August 15, 1894. XX–476

The act of August 15, 1894, opening to settlement and entry certain lands in the Siletz Indian Reservation, constitutes the only authority for the disposal of such lands, and provides for their disposal only under the mineral and townsite laws or to actual settlers under the homestead laws; hence said lands are not subject to the provisions of the law relating to the sale of isolated tracts. XXX–536

Nez Perce lands opened to settlement; instructions of November 4, 1895. XXI–382

The commutation provision contained in section 2301, R. S., is applicable to Nez Perce ceded lands, but "the minimum price" provided for therein must, under the act of May 17, 1900, be determined without reference to that provision of the act of August 15, 1894, which requires each settler to pay $3.75 per acre for said lands, and as though no such provision had ever been made. XXX–196

Rules and regulations of August 11, 1898, under the act of July 1, 1898, authorizing the sale of timber on the portion of the Colville Indian reservation, vacated by the act of July 1, 1892 (27 Stat., 62). XXVII–366

Regulations of April 18, 1899, concerning right of way over, for railway, telegraph, and telephone lines, under the act of March 2, 1899. XXVIII–457

Colville lands opened to settlement; instructions of April 12, 1900. XXIX–661

Disposition of, under treaty not effective prior to the action of Congress. V–138

The President, under treaty and constitutional authority, has full power to protect the Zuñi Indians in their occupancy by directing a reservation for such purpose. XIII–628

The Department has no such jurisdiction over the Indians of the Pueblo of Cochiti, or their lands, as will authorize it to lease said lands, or to "approve or disapprove" the leasing thereof. XIX–326

The price of all lands formerly embraced within the Crow Indian Reservation, to which title was secured by the government under the agreement of December 8, 1890, is fixed at $1.50 per acre. XX–399

Indian Lands—Continued.

I. GENERALLY—Continued.

The last proviso in section 34 of the act of March 3, 1891, respecting the disposition of the Crow Indian, contemplates the confirmation of settlement claims otherwise invalid, but is not intended to excuse such settlers from the payment required of others. XX–399

A reservation of a tract, for the benefit of an individual, provided for in a treaty that extinguishes the Indian title to certain tribal lands, of which said tract is a part, vests a title in such reservee which he may convey; and the transferee in such case is entitled to a patent. XX–171

Under an order reserving a tract of land for the benefit of an Indian, with a view to his subsequent entry thereof, there is no right conferred upon the Indian by which his relinquishment will serve to release the land from reservation. XXV–95

The fourth article of the agreement made with the Spokane Indians March 15, 1887, does not relieve said Indians from any requirement of the act of July 4, 1884, in the matter of final proof except as to residence on the land. XX–508

The word "located," as used in the act of July 4, 1884, in providing for Indian homesteads, is employed in the sense of *settlement*, and refers to a settler who is living on the land. XXIX–277

The right to purchase 160 acres conferred upon D. W. Bushyhead by act of March 3, 1893, can not be exercised to defeat rights of selection provided for in the agreement of December 19, 1891, or the rights of the Chilocco school or any other reservation. XVI–431

The preferred right of homestead entry accorded to actual settlers by the act of June 17, 1892, opening the Klamath River Indian Reservation, does not extend to lands returned as swamp and overflowed, and so represented on the approved township surveys and plats. XXIV–26

Certificates of deposit for survey not received in payment for Sioux. I–522

Drafts not received in payment for Pawnee. I–522

Annuity payments under the act of January 18, 1881, limited to homesteaders. III–580

Sale of agency buildings and public lands under sections 2122 and 2123, R. S., specially confided to the discretion of the Secretary of the Interior. III–425

Where lands and the improvements thereon have been separately appraised under the act of March 2, 1889, and the Indian has accepted such appraisement, and been removed from the land, there is no authority for the sale of said property for less than the whole amount of the appraisement, even though the improvements were subsequently destroyed. XXII–37

Indian Lands—Continued.

I. GENERALLY—Continued.

A religious society that occupied land at the passage of the act of March 2, 1889, can have the land, to the extent of 160 acres, so long as the same shall be used for educational and missionary work; or, such society may purchase 160 acres; but can not have 160 acres under the first provision of section 18 of said act, and purchase a similar amount under the second provision of said section. XVIII–188

A religious society not in the occupancy of land within either of the two reservations named in section 18, act of March 2, 1889, can not be granted the temporary use of these lands, but permission may be given such society, with consent of the Indians, to occupy said lands so long as the Indians and the Secretary of the Interior may deem proper. XVIII–188

The amount of land that may be acquired by a religious society under section 18, act of March 2, 1889, is limited to 160 acres at any one point. XXIX–331

All the lands occupied by a religious society at the date of the passage of the act of March 2, 1889, may be held by such society, to the extent of not more than 160 acres in any one tract, if each separate tract was in actual use for religious or educational work among the Indians at the date of said act. XVIII–209

Under the act of February 8, 1887, the Secretary may confirm the occupancy of, for religious or educational work among the Indians, if such action is for the welfare of the Indians and the lands are of a class subject to allotment. If such occupancy subsequently appears to not be to the interest of the Indians, the Secretary may direct its discontinuance. XX–462

An appraisal of unalloted Pottawatomie lands, as provided for in the treaty of November 15, 1861, is not called for, if it appears that there is a *bona fide* claimant therefor who is within the protective clause of the subsequent treaty of February 27, 1867. XXIV–513

The preferred right to purchase the unallotted Pottawatomie lands, conferred by the treaty of February 27, 1867, upon the Atchison, Topeka and Santa Fe R. R. Co. is not defeated by failure to make payment for a tract of such land within the period specified in said treaty, where said tract was unsurveyed and hence could not be conveyed by the government; and the said company having attempted to convey such a tract, may, for the benefit of the transferee, perfect title thereto by making the proper payment therefor. XXVI–245

Indian Lands—Continued.

I. GENERALLY—Continued.

No part of the Colville Indian reservation restored to the public domain by the act of July 1, 1892, should be opened to settlement and entry prior to the survey of the entire tract, unless the Indians choose to take their allotments prior to the completion of the survey; but if they do so elect, then all the lands so restored to the public domain may be opened to settlement, though a portion of them may be unsurveyed. XXVI–497

The lands lying in the bend of the Washita river south of the recognized northern boundary of the Kiowa and Comanche reservation between two points where said boundary line crosses said river, have not been opened to settlement or entry, either by proclamation of the President or by operation of law. XXVIII–399

Under a grant of a railroad right of way through the Indian Territory, with necessary station grounds, it is a proper exercise of the general authority of the Interior Department over the public lands to require a plat to be filed showing the lands required for station purposes, although the granting act does not provide for the filing of such plat, and the approval thereof fixes the right of the company to occupy the ground included therein. XXVIII–130

II. ALLOTMENT.

Regulations of June 15, 1896, with respect to allotments, and the effect thereof. XXII–709

Regulations of June 15, 1896, modified. XXVIII–564, 569

Regulations of April 10, 1901, under section 4, act of February 8, 1887, concerning Indian allotments. XXX–546

Children born of a white man, a citizen of the United States, and an Indian woman, his wife, are by birth citizens of the United States and not Indians, and therefore not entitled to allotments under the act of March 2, 1889. XIII–683

Children born of a white man, a citizen of the United States, and an Indian woman, his wife, follow the status of the father in the matter of citizenship, and are not entitled to allotments under section 4, act of February 8, 1887, as amended by the act of February 28, 1891. XXIV–311; XXX–606

By the act of June 7, 1897, children of an Indian woman by blood, who at the time of her death was recognized as a member of an Indian tribe, are placed on the same footing as to rights in the property of such tribe as the other members thereof; but the children of one who is thus protected are not entitled to allotments if the parent, prior to their birth, abandons the tribal relations. XXVI–71

Indian Lands—Continued.

II. ALLOTMENT—Continued.

The right to receive an allotment under the act of March 2, 1889, does not extend to the half-breeds whose claims were recognized in the treaty of 1830, and for whom special provision was accordingly made by the act of July 17, 1854. XVII–457

The last proviso to section 8, act of March 2, 1889, does not confer the general right to receive allotments of Sioux, upon half-breeds, but makes a special provision where such mixed bloods may surrender their locations. XVII–457

An Indian may not be a member of two tribes in a sense that will entitle him to secure lands from both tribes under the provisions of the allotment act of February 8, 1887. XIX–329

Membership in an Indian tribe may be shown by the laws and usages thereof. XIX–311

The right to receive an allotment under the act of February 8, 1887, as defined in the departmental regulations authorized by section 3 thereof, requires the applicant to be a recognized member of an Indian tribe, or that the father or mother of the applicant should have been so recognized. XX–167

Allotments of, constitute an appropriation of the land. V–311

A protest against the allowance of an Indian allotment justifies a hearing, where it is shown that said allotment, as applied for, covers land included within the occupation, enclosure, and exclusive possession of one who in good faith has placed valuable improvements thereon, relying on a school indemnity selection that subsequently proved invalid. XXVIII–37

The departmental approval of, is a final determination of the right of the Indian thereto, and a contest against the same will not be entertained. XIX–167

Land included in a suspended Indian allotment is not open to entry; nor will a contest against said allotment, filed subsequent to the order of suspension, be entertained. XXVII–554; XXVIII–519

A hearing will not be ordered to ascertain alleged settlement rights acquired on land embraced within a suspended Indian allotment, where, prior to the alleged settlement, the allotment was allowed and the order of suspension made. XXVIII–196

The action of the Office of Indian Affairs on allotments is conclusive, so far as the General Land Office is concerned, as to whether the Indian was a settler on the land, and whether he was entitled, as an Indian, to receive an allotment. XXIV–424

Indian Lands—Continued.

II. ALLOTMENT—Continued.

The rule announced in the case of Adams *v.* George, 24 L. D., 424, that the action of the Office of Indian Affairs on allotments is conclusive, so far as the General Land Office is concerned, as to the right of the Indian, is an administrative regulation as between the Office of Indian Affairs and the General Land Office, but does not limit the authority of the Department to see that the lands are properly disposed of, and that the allotments are properly allowed. XXVII–455

The Secretary of the Interior has authority to investigate the validity of an Indian allotment at any time prior to the issue of the first patent provided for under the allotment law, and, on sufficient cause shown, to rescind the approval of an allotment and reject it. XXIV–264

An allotment duly made and approved must be regarded as a judicial determination that the allottee is entitled to an allotment in the reservation involved, and such question, so determined, must thereafter be held *res judicata*. XXIV–323

A departmental determination that an applicant for the right of allotment is entitled to recognition, so far as tribal relationship is concerned, removes such question from further consideration in subsequent proceedings involving the assertion of said right. XXIV–323

An adverse claim set up against an approved allotment by another applicant for the right of allotment, and based on alleged prior selection and improvement of the tract in question, can not be recognized, in the absence of an affirmative showing of injustice done, amounting to a fraud upon his equitable rights in the premises. XXIV–323

The allotment act of 1887 to be carried into effect under executive direction. V–520

In the enactment of section 4, act of February 8, 1887, with respect to allotments for non-reservation Indians, Congress contemplated that it should be administered in part by the Commissioner of the General Land Office, and in part by the Commissioner of Indian Affairs, each officer acting in a separate and distinct sphere of duty under the direction of the Secretary. XXVIII–564

Allotments may be made by regular agent in charge or by special agents. V–520

An allotment made and approved on the selection of the allotting agent, and without a formal selection on the part of the allottee, is not for such reason invalid. XXIV–323

Indian Lands—Continued.

II. ALLOTMENT—Continued.

The right of an Indian to the lands actually surveyed for, and allotted to him, but omitted from the trust patent by mistake, is not defeated by the erroneous inclusion of such lands in the schedule of lands opened to settlement by proclamation; and subsequent adverse claimants for said lands are bound to take notice of the occupancy and possession of the allottee. XXIX–251

Allotments provided for prior to the act of 1887 not necessarily confined to the terms of the prior act. XI–107

The allotment act of 1887 recognizes the right of additional allotment to aggregate the amount named in said act. V–520

Allotments are made by legal subdivisions of the sections without respect to the actual area included in such subdivision. VIII–647

Under section 4, act of February 8, 1887, allotments are provided for non-reservation Indians and their minors under the same restrictions as enacted for reservation Indians, with the additional requirement of actual settlement. VIII–647

Allotment to a minor child under section 4, act of 1887, need not be contiguous to that made to the head of the family. VIII–647

Contiguity of the tracts should be required in case of allotments outside of a reservation. VIII–647

Orphan children under 18 years of age not entitled to the benefits of section 4, act of February 8, 1887. VIII–647

A non-reservation Indian who makes application for an allotment under section 4, act of February 8, 1887, has no authority to relinquish except by the consent and under direction of the Department. XII–162

The relinquishment of an Indian allotment is not effective until approved by the Secretary of the Interior; and, pending departmental action on such relinquishment, no intervening claim to the land should be allowed. XXIX–680

Proof of actual settlement not required in allotments under section 4 of the act of 1887 to minors. VIII–647

The act of July 4, 1884, does not bar allotments on the Old Columbia reservation under section 4, act of February 8, 1887. VI–43

The right of non-tribal Indians dependent upon settlement. VI–45

A non-tribal Indian who has received the full benefit of the preëmption and homestead laws is not entitled to an allotment under the act of February 8, 1887. XII–181

Under the provisions of the act of March 3, 1875, and the general allotment act, the right of an Indian to an allotment of tribal lands is not lost by abandonment of the tribal relation. XXVI–71

Members of the citizen band of Pottawatomies may elect whether they will take allotment under the act of May 23, 1872, or February 8, 1887. XI–103

Indian Lands—Continued.

II. ALLOTMENT—Continued.

New selections may be allowed under the act of May 23, 1872, in lieu of allotments pending thereunder and unperfected at the passage of the acts of March 1 and 2, 1889, and certificates therefor may issue on the payment of the sum per acre originally given by the United States. XI–103

Allotments to the citizen band of Pottawatomies on selections under the act of 1872, that were made before the ratification of the agreement of June 25, 1890, and authorized by law, may be perfected notwithstanding the act of March 3, 1891. XII–357

The right of the Sac and Fox Indians to take lands on which they had made valuable improvements prior to the ratification of the agreement of June 12, 1890, extends to lands in sections sixteen and thirty-six. XII–359

The size of allotments to the Flandreau Sioux provided for by section 7, act of March 2, 1889, is governed by the provisions regulating allotments to other Indians on the Great Sioux reservation. XII–292

The act of February 8, 1887, gives the Indians the same right within a reservation created by executive order as if made by treaty or statute, and lands subject to such right can only be relieved therefrom by congressional action. XII–205

Authority to make allotments under the act of March 2, 1889, terminates when the Secretary has approved the lists containing the names of those entitled to allotments. XII–168

The inadvertent omission of a member of the tribe from the approved allotment list may be corrected on due proof of the fact. XII–168

An unapproved schedule of allotments may be amended by adding thereto such allotments as should be properly included therein. XIII–316

The relinquishment of an allotment is inoperative if not approved by the Department. XXIV–323

When an Indian allottee has relinquished his allotment, and his relinquishment has been accepted, applications to enter the land so released may be received and allowed, upon the Indian surrendering possession of the land. XXVII–603

An order of the Department accepting the relinquishment of an Indian allotment takes effect as of the date thereof, and the land becomes subject to entry as of such date, without regard to the time when such order is noted of record in the local office. XXVII–150

A relinquishment of a Crow Indian allotment under the agreement of December 8, 1890, is not effective until approved by the Interior Department; but an entry of the land so relinquished prior to such approval, while irregular, is not invalid, and will not be canceled where the relinquishment is subsequently approved. XXVII–305

Indian Lands—Continued.

II. ALLOTMENT—Continued.

An application to relinquish an allotment and make homestead entry of other land, on the ground that the applicant is not entitled to an allotment, will not be allowed where the application suggests an attempted sale of the tract allotted, and diligence in the matter of correcting the alleged mistake does not appear. XX–19

The Department will allow a change of a selection even after approval, if it be shown to be for the best interest of the allottee, but such change can not be made, even before approval, except with the consent and under the direction of the Department. XVII–142

Indian parents not allowed to select lands within the ceded portion of the Sioux reservation on which, after February 28, 1891, white settlers had established residence prior to such selection. XII–474

When an allottee dies after selection and prior to approval, the allotment will upon approval be confirmed to the heirs of the deceased allottee. XVII–142

When an Indian allottee dies before the issuance of the trust patent, without heirs, all rights under the allotment become extinct, and the allotment should be canceled. XXIX–499

The terms of the agreement of May 20, 1890, with the Iowa tribe of Indians contemplate a personal selection on the part of a person entitled thereto, or a selection in behalf of one living at the time, and there is no provision in said agreement for making a selection on behalf of a deceased person. XXX–532

The heirs of an allottee, under the act of May 23, 1872, if they so elect, may take an allotment of vacant land instead of ousting a subsequent allottee who improperly holds the lands covered by the certificate of the decedent. XIII–314, 318

The heirs of an allottee, under the act of 1872, may perfect the allotment of their ancestor where this can be done; but where the lands have been allotted to others the heirs may select other lands of like quantity in lieu of those lost by the allottee. XIII–318

The decease of an allottee holding a certificate under the act of May 23, 1872, does not warrant the assignment of the land to another, as the interest of the allottee descends to his heirs. XIII–314

The allotment of Puyallup lands, and the investiture of the Indians with the rights of citizenship, do not remove said lands from the control of the President, and it therefore follows that in ascertaining who are the heirs of deceased Puyallup allottees the President may prescribe rules for the descent of said lands, and direct that the order provided by the laws of the State shall be applicable to said lands. XX–157

Indian Lands—Continued.

II. ALLOTMENT—Continued.

In determining the ownership of Puyallup allotted lands the rule of descent, as to the rights of white men who have married Indian women, is unaffected by the provisions of the act of August 9, 1888, as said act does not extend to allotments but is limited in its application to tribal property. XXIX–628

Under the act of March 3, 1885, providing for the allotment of Umatilla lands, the laws of the State of Oregon, from the time of the issuance of the trust patents, determine questions of descent in the event of an allottee's death; and by such laws the husband of a deceased allottee is entitled to an estate by curtesy in the allotted lands. XXVII–312

The allotments made to the Omaha Indians under section 6, act of August 7, 1882, are freehold estates that descend according to the statutes of Nebraska; so that on the death of the allottee his children take subject to the widow's right of dower, and on the death of such children, without issue, the whole estate of the allottee goes to the widow absolutely if she is the mother of such children. XXVII–399

In determining rights of inheritance under an allotment to a citizen Pottawatomie of land in Oklahoma the law of descent in force in said Territory must govern; and under said law, where the widow of an allottee dies, all of her children, or their representatives, have a share in the interest held by the widow. XXVIII–71

Lands within the ceded portion of the Pottawatomie reservation in the Territory of Oklahoma, can not be allotted to non-reservation Indians under section 4, act of February 8, 1887. XIII–310

The right to make selections for allotment either under the act of 1872 or 1887 continues for thirty days after the date of the act ratifying the agreement with the citizen Pottawatomies. XIII–318

Members of the citizen band of Pottawatomies are entitled to but one allotment, to be taken either under the act of May 23, 1872, or the act of February 8, 1887. XIII–312

The right to purchase land as a citizen Pottawatomie under the act of May 23, 1872, can not be exercised by one who is not recognized as a member of the band. XIII–314

Under the agreement with the Absentee Shawnees ratified March 3, 1891, failure to make selection or application therefor prior to said act will not defeat the right to receive an allotment. XIII–316

The acceptance of an allotment under section 4, act of February 8, 1887, of land outside of a reservation, precludes the recognition of a further allotment right within the reservation under the later act of March 3, 1891, and where such right has been recognized the allottee will be required to elect as between the two allotments. XX–46

Indian Lands—Continued.

II. ALLOTMENT—Continued.

The acceptance of a patent under an allotment right asserted in accordance with the terms of the act of March 3, 1891, precludes the recognition of a prior allotment allowed under the general allotment act of February 8, 1887. XXI–271

A Cheyenne Indian who has received an allotment in Oklahoma under section 4, act of February 8, 1887, can not, while said allotment is outstanding, receive a further allotment in the Cheyenne and Arapahoe reservation under the agreement ratified by the act of March 3, 1891. XIII–185

Certificates of allotment issued under the treaty of April 29, 1868, may be surrendered and new allotments taken under the act of 1889. XIII–307

Under section 8, act of March 2, 1889, all "Indians receiving rations" at a reservation, on the date of the President's order directing allotments thereof, are entitled to recognition under said order. XXIV–330

The right of an Indian under section 13, act of March 2, 1889, to take as his allotment the lands upon which he is residing at the time said act becomes effective, if asserted in accordance therewith, cuts off all intervening adverse claims. XX–562

Allotment should be made where selections have been received under section 13, act of March 2, 1889, and there are no prior valid claims thereto; and in case of the allottee's death prior to the approval of the allotment patent should issue in accordance with section 8 of said act. XIV–463

In case of application to select land covered by the prior selection of another under the treaty of April 29, 1868, on the ground that said selection has been abandoned, no action should be taken without notice to the prior claimant. XIII–307

Under the treaty of April 29, 1868, the holder of a certificate of allotment is only entitled to the exclusive possession of the land so long as he cultivates the same; hence selections under said treaty give no rights that descend to the heirs of allottees. XIII–307

Right to allotments under article 7, treaty of March 19, 1867, not dependent upon settlement or residence, but on cultivation; and when the Indian has complied with such requirement his right vests at once, whether the certificate issues then or not. XVI–427

The act of March 2, 1889, validates allotments made under the treaty of April 29, 1868, and directs the issuance of patents in the name of the allottee for the use of such allottee or his heirs. The marriage of a widow therefore does not affect the status of land covered by the certificate of her former husband. XIII–307

Indian Lands—Continued.

II. ALLOTMENT—Continued.

Allotment rights of persons under article 6 of the agreement ratified May 1, 1888, became fixed on the ratification of said agreement, and the subsequent reservation, as a hay reserve, of lands surrounding those settled upon by members of a tribe signing said agreement, will not affect rights so protected. XXVII–455

Within the ceded portion of Oklahoma are not within the provisions of the general allotment act, but an allotment of such land made to protect an Indian's improvements excepts the land covered thereby from entry and settlement. XIV–235

There is no authority for the allowance of allotments in severalty to children of the Sac and Fox tribe of Missouri born after the completion of allotments to said tribe. XV–287

Under paragraph 4, article 2, agreement of December 19, 1891, providing allotments for certain Cherokees residing on ceded lands, the head of the family is required to take his allotment out of his improved lands. Members of his family are not so restricted, but have a preferred right to select such lands if they so elect. If they select improved lands, they are then limited to the lands improved by the husband or father. XVI–431

Allotments to the Cherokees provided for in agreement of December 19, 1891, are to be made by the people entitled to receive the land, subject to the Secretary's approval. XVI–431

Cherokee citizens of Delaware blood are entitled to the same quantity of land in allotment as are those of Cherokee blood, with the proviso that if it be found there is not sufficient land to give each member of the nation as much as 160 acres in allotment, then the registered Delawares shall first be given the full quantity of 160 acres, the remainder of the land to be divided equally among the other members of the nation. XXV–297

Selections made by the owners of improvements who do not reside within the ceded limits (agreement of December 19, 1891) can not embrace tracts less in area than the smallest legal subdivision, and must be so taken as to include their improvements up to the limitation in acreage provided in said agreement. XVI–431

The failure of the Columbia reservation Indians to elect within a year whether they would stay on said reservation will not defeat their right to receive allotments in accordance with the agreement of July 7, 1883. XVI–15

Allotments on the Swinomish reservation may be made prior to the establishment of actual residence, it appearing that the lands selected are partly covered by tidal overflow, and that the portion not so covered is cultivated by said allottees, and further, that when allotment is made the Indians will be enabled to protect their lands from said overflow and thus secure permanent homes. XXIV–509

Indian Lands—Continued.

II. ALLOTMENT—Continued.

Thirteen allotments within Fort Custer military reservation recognized and protected. v–226

The treaty of September 30, 1854, is not repealed, changed, or modified by the allotment act February 8, 1887. IX–392

The act of March 3, 1893, providing for the issuance of patents to the Stockbridge and Munsee Indians, under allotments selected in accordance with the treaty of 1856, did not contemplate the issuance of patents for lands that had prior thereto passed to the State under the swamp grant. XXV–17

The riparian ownership of an allottee whose lands are adjacent to a meandered non-navigable lake includes the lands to the middle of said lake. XIV–156

In the exercise of the right of eminent domain a State may condemn for public purposes, under proper procedure, lands embraced within Indian allotments. XIX–24

The provision in the act of March 3, 1893, that the United States district attorney shall represent "allotted Indians" in all suits at law or in equity, is only applicable where the United States retains control over the allotted lands, or where the individual still maintains his tribal relation. XXV–426

III. PATENT

Patents issued under the act of 1887 should be in the form prescribed thereby. V–520

Patents for allotments under the treaty of September 30, 1854, should in all cases be in accordance with said treaty. IX–392

The authority conferred by the act of October 19, 1888, upon the Secretary to accept the surrender of an Indian patent and issue another in lieu thereof extends to cases arising since said act as well as prior thereto. XII–184

A patent for, under the general allotment act and in accordance with the record passes title, and the Department can not thereafter cancel said patent and issue another to correct an alleged error in the name of the patentee. XV–74

The Department has the authority to correct rolls of Indian allottees when it is shown that a mistake has been made, and to correct a patent issued on an erroneous roll to make it correspond with the correction, at least in cases where the patent has not been delivered to anyone claiming under it, or gone out of the possession of the Department. XVIII–283

The sole heir of an allottee may surrender, under the act of October 19, 1888, a patent theretofore issued and take other land. XV–76

Procedure in case of surrender of patent under the act of October 19, 1888, and issue of new patent. XV–76

Indian Lands—Continued.

III. PATENT—Continued.

Patent should issue in the name of the heirs generally, where the allottee dies prior to the issuance of patent. XVII–142

There is no authority for the surrender of a patent and issuance of another for a larger amount to correct an error where title thereunder is in fee and the lands set apart for allotment have been restored to the public domain. XV–104

To correct a misdescription of lands in a trust patent issued for Indian lands, or under other circumstances where the best interests of the Indian require such action, the patentee may be permitted to surrender the patent, relinquish the lands covered thereby, and make a selection in lieu thereof, on due showing of a meritorious case. XXV–442

The issuance of a trust patent on an Indian allotment terminates the jurisdiction of the Secretary of the Interior over the lands covered thereby as public lands, and he consequently has no authority, in the absence of special statutory provision, to cancel such patents for the purpose of correcting erroneous allotments. XXIV–214

The authority conferred upon the Secretary of the Interior by the act of January 26, 1895, to cancel a trust patent, in order to correct a mistake in the allotment, is limited to cases in which the alleged error is one of those specifically named in said act. XXIV–214

The issuance of a first or trust patent on an Indian allotment does not terminate the jurisdiction of the Secretary of the Interior over the lands covered thereby as public lands, but until the issuance of the second or final patent he has authority, after due notice to all parties in interest, to investigate and determine as to the legality of an Indian allotment and to cancel such first or trust patent based upon an allotment erroneously allowed. XXX–258

The act of January 26, 1895, authorizing the Secretary of the Interior to cancel patents issued on Indian allotments, for the correction of mistakes therein, is limited in its operation to a specified class of trust patents, and is not applicable to a patent that conveys a title in fee simple. XXIV–285

The patents issued on Indian allotments in the Cherokee Outlet were not conditional, but conveyed a fee-simple title, and the Department is consequently without jurisdiction over the lands covered by said patents. XXIV–285

In the issuance of patents on Chippewa Indian allotments the reservation of the right of the United States to reservoir sites, as provided by act of June 7, 1897, should only be inserted in patents which cover lands included in the list of reservoir lands furnished by the Secretary of War. XXVI–116

Indian Lands—Continued.

IV. CONVEYANCE—LEASE.

Purchaser under approved deed in accordance with the treaty of 1867 takes only such title as the grantor may have. VI–251

The approval of a deed under the treaty of 1867 should not be delayed for the settlement of conflicting rights asserted under conveyance from parties who had no interest in the land. VI–251

The approval of a deed required by section 23 of the treaty of February 23, 1867, is not for settlement of matters of inheritance or as a bar to the assertion of claims by the legal heirs, but to satisfy the Secretary of the Interior that the original reservee or his heirs will receive the benefit of the grant. VI–251

Deed executed by the lawful heirs of the reservee should be approved under the treaty of 1867. VI–251

Deed for, will not be approved after the death of the grantor in case the decedent leaves heirs. (See 13 L. D., 511.) X–606

The Department will not withhold approval of a deed on the sole ground of the death of the grantor after execution of the conveyance and prior to its presentation for approval. The decision in the case of Mary Fish (10 L. D., 606) modified. XIII–511

Where an Indian deed, purporting to be executed by the sole heir of a deceased allottee, is submitted for the approval of the Secretary of the Interior, and a protest against such action is made on behalf of one claiming under an alleged will left by the decedent, the Department should take no action until after the validity or invalidity of said will has been determined by the local courts having probate jurisdiction. XXVIII–310

Deed for, executed by Shawnee does not convey title if not approved by the Secretary. X–606

A purchaser from a Shawnee grantor under a deed approved by the Department, without restriction or condition, takes the title clear of all conditions. XXV–252

The act of August 15, 1894, modifying, as to the citizen Pottawatomie and Absentee Shawnee Indians, the inhibition against alienation contained in the general allotment act, does not authorize a sale of allotted lands held by a minor heir. XXIV–511

It is no objection to the approval of an Indian deed that a certified copy thereof is presented for action, if the loss of the original is shown, or the custodian thereof refuses to part with its immediate possession. XXVI–25

The approval of an Indian deed, in the absence of an intervening adverse right, relates back to the date of said deed, and gives effect thereto from the time of its execution. XXVI–25

Indian Lands—Continued.

IV. CONVEYANCE—LEASE—Continued.

Where, prior to the approval of an Indian deed, a conveyance adverse thereto is made, and approval thereof secured on the ground that such action would serve to protect parties holding under the first deed, the Secretary of the Interior may approve said instrument, leaving the parties claiming thereunder to assert their rights in the courts. XXV-25

On application for the approval of deeds executed by alleged Indian heirs, proof of such heirship, and of the possessory right of the parties claiming under said conveyances to the land involved, should be duly furnished before favorable action is warranted. XXVI-563

No conveyance of lands, allotted to Peoria and Miami Indians under act of March 2, 1889, made by allottee, or his heirs, within the period of inhibition named in the statute, has the effect of transferring title until approved by the Secretary. XXIX-239; XXX-457

Under the provision of section 3, act of February 28, 1891, an allottee may lease his allotment, under such regulations as may be prescribed by the Secretary of the Interior, whenever by reason of personal disability he can not occupy said lands with benefit to himself. XVIII-497

Under a patent for, that contains a provision, authorized by treaty, that the lands so conveyed shall not be alienated or leased without the consent of the President, a lease is ineffective until approved by the President. XXVI-44

Under the special provisions made in the act of June 7, 1897, the Sisseton and Wahpeton Indians may lease their allotted lands for farming and grazing purposes without the supervision of the Secretary of the Interior; but leases of land executed by said Indians for mining or business purposes remain under the general rule, and require the approval of the Secretary. XXV-364

The act of February 28, 1891, authorizing Indians to lease lands they "have bought and paid for," includes within its intendment the Indians on the Uintah reservation who surrendered valuable rights to secure a permanent home on said reservation, and may therefore be properly regarded as having "bought and paid for" said lands. XXV-408

If a lessee holding under a farming and grazing lease, executed by an Indian allottee, in pursuance of the act of February 28, 1891, and acts amendatory thereof, fails to comply with the terms and conditions of the lease, the Secretary of the Interior has the right to declare the expiration thereof; but such declaration, in the absence of a stipulation to the contrary in the lease, will not preclude judicial inquiry as to whether there was proper cause therefor. XXX-114

Indian Lands—Continued.

IV. CONVEYANCE—LEASE—Continued.

The provisions of the act of June 7, 1897, relative to leases of Indian lands, are applicable only to allotments made under the act of February 8, 1887, or other acts of Congress, where the title in fee has not passed to the allottee, and do not include a lease executed by the heirs of an Indian patentee to whom title has passed in accordance with treaty provisions. XXVI–45

V. CHIPPEWA.

Sale of ceded Chippewa pine lands; regulations of June 14, 1898. XXVII–188

Logging regulations of August 26, 1898, to govern logging by Indians on the ceded Chippewa reservations, Minnesota, under the provisions of the act of June 7, 1897. XXVII–353,724

Cash entries of Chippewa pine lands, made after due offering under section 5, act of January 14, 1889, and the amendatory act of February 26, 1896, should not be canceled for inadequacy of consideration, where the appraised value of the land was paid, and there is no evidence of collusion between the purchaser and the government appraiser, unless such inadequacy is so great as to amount to a fraud or imposition. XXIV–517

Directions given for withholding Chippewa pine lands from sale until further orders, and the Commissioner instructed to proceed with the survey of said lands, and report with respect thereto. XXIV–517

The lands known as the "White Oak Point reservation" were added to the general Chippewa reservation by Executive order of October 29, 1873, and Indians residing at White Oak Point should therefore be regarded as residing on said general reservation, and entitled to remain thereon and take allotments of agricultural lands anywhere upon said reservation, under the proviso to section 3, act of January 14, 1889. XXIX–408

The provisions of the act of January 14, 1889, with respect to the disposition of the ceded Chippewa lands, do not contemplate the allotment of lands that have been duly classified as "pine lands" in accordance with the terms of said act. XXIX–119

The right to select any particular tract for an allotment under the act of January 14, 1889, or under the provisions of the general allotment act relating to reservation Indians, does not depend upon prior settlement and improvement. XXIX–408

Red Lake agricultural lands subject to homestead entry under the provisions of the act of January 14, 1889, may be taken by persons entitled to make entry under the act of June 3, 1896, but entries so made of such lands cannot be commuted. XXV–258

Indian Lands—Continued.

V. CHIPPEWA—Continued.

There is no provision made in the act of January 14, 1889, whereby an allotment of lands, within the ceded portion of the Red Lake Indian reservation in Minnesota, can be allowed, even though the claimant may have made improvements on said lands prior to the passage of said act. XXVI–275

Settlement on Red Lake opened to entry under the act of January 14, 1889, prior to the time fixed therefor, does not, under the terms of said statute or the regulations thereunder, disqualify the settler. XXVI–665

Prior to the act of January 14, 1889, the lands embraced in the ceded portion of the Red Lake reservation were appropriated to use as an Indian reservation, and were therefore not subject to allotment under section 4, act of February 8, 1887; and the special provisions for the disposal of said lands made by the act of 1889 take them out of the class of lands open to allotment under said section. XXVI–275

The special provisions of the act of January 14, 1889, for the disposition of the ceded Chippewa lands, take them out of the class of lands subject to allotment under section 4, act of February 8, 1887. XXIX–132

The right of entry accorded in Article VI of the treaty of February 22, 1855, in the absence of an application for a specific tract, is no bar to subsequent congressional provision for the disposition of a part of the lands ceded by said treaty, if a sufficient quantity thereof to satisfy all claims under said Article VI yet remains subject thereto. XXIX–284

The right to make a second homestead entry accorded by the third proviso to section 6, act of January 14, 1889, extends only to persons whose first entry was made prior to said act. XXVI–647

The provision in section 6, act of Januury 14, 1889, with respect to the allowance of second homestead entries, was intended to afford protection to persons who had made entries or filings prior to the passage of the act, but who had failed to perfect title to the land so entered or filed upon either before or after the passage of said act. XXVIII–243

VI. FLATHEAD.

The fifteen townships set apart for the benefit of the Flatheads under the act of June 5, 1872, did not include lands lying in part below the Lo Lo Fork of the Bitter Root River. XII–49

The act of June 5, 1872, in providing for the survey and disposition of fifteen townships "above the Lo Lo Fork" contemplated entire townships irrespective of the time when said survey might be made, either in whole or in part. XXV–266

Indian Lands—Continued.

VI. FLATHEAD—Continued.

The second section of the act of February 11, 1874, in extending the benefit of the homestead act to such settlers within said fifteen townships "as may desire to take advantage of the same "does not operate to repeal the general provisions for the disposition of said lands made by act of June 5, 1872. XXV–266

The time allowed to settlers on Bitter Root Valley lands, whose settlement is made after the passage of the act of 1872, to perfect title under said act, and the amendatory act of 1874, begins to run from the date of settlement. XXV–266

Under the provisions of section 10, act of March 3, 1891, with respect to the disposal of Indian lands, the general repeal of the preëmption law, by section 4 of said act, does not affect the disposition of Bitter Root Valley lands under the acts of 1872 and 1874. XXV–266

VII. KANSAS.

Sec. 4, act of March 16, 1880, allowing entry without actual residence on the land, refers only to tracts on the boundaries of the Kansas Indian lands contiguous to other lands (not Kansas Indian lands) on which the entryman was actually residing and to which he held the legal title at date of the passage of the act. II–181

Second entries are not permissible beyond the limit of 160 acres. II–184

The "actual settlers" contemplated by the law are those who have made *bona fide* residence on and improvement of the land, except, under the act of March 16, 1880, land contiguous to claims on which they have made their homes. II–187

Entry of Kansas trust lands subject to contest. IX–329

VIII. MILLE LAC.

Acquired from certain Chippewa bands by treaty of March 20, 1865, withheld from sale by act of July 4, 1884. V–541

The Department has no authority to dispose of lands acquired from the Mille Lac Indians by the treaty of 1864. (March 20, 1865.) V–102, 541

The words "on the White Earth reservation," in the act of July 4, 1884, not consistent with the otherwise clearly expressed intention of said act. V–541

The prohibition against the final disposition of lands included within the act of July 4, 1884, extends to entries made prior to said act. VIII–409

The approved cession by the Chippewa band of the Mille Lac Indians of their right of occupancy is a condition precedent to the right of proceeding, under section 6, act of January 14, 1889, with entries made on lands covered by said right. (See 12 L. D., 52.) X-3

Indian Lands—Continued.

VIII. MILLE LAC—Continued.

The "further legislation" required by the act of 1884 prior to the disposition of Mille Lac lands is provided in the act of January 14, 1889, and said act is now operative, as the Indian's right of occupancy has been ceded and such action received the approval of the President. XII–52

The proviso of section 3, act of January 14, 1889, does not apply to the particular lands on which the Mille Lacs, before their last agreement, were allowed to live under successive departmental regulations. XII–55

Formerly occupied by the Mille Lac Indians are not subject to disposition under the general land laws, but under the special provisions of the act of January 14, 1889. XIV–497

The act of January 14, 1889, did not contemplate the disposition of any of the Indian lands open to settlement thereby except in the manner and for the purposes therein provided, to the end that the money arising from such disposal should inure to the benefit of the Indians (Mille Lac). XXII–388

The Mille Lac, are not subject to disposal under the general homestead law, but under the special provisions of the act of January 14, 1889. XXII–499

An entry of Mille Lac, made under the general land laws, and prior to July 4, 1884, is protected under the proviso to section 6, act of January 14, 1889, with a view to its final disposition under the laws in force at the time of its allowance. XXII–500

A preëmption filing for Mille Lac lands, authorized by the rulings in force at the time of its allowance, is within the spirit and intent of the second proviso to section 6, act of January 14, 1889, and is accordingly protected thereby, if subsisting at the date of said act. XXII–578

The joint resolution of December 19, 1893, confirming *bona fide* filings, and entries, within the Mille Lac Indian reservation, allowed between January 9, 1891, and the receipt of notice at the local office of the departmental decision of April 22, 1892, operates to validate settlement rights covered by filings or entries thus allowed, whether initiated before or after January 9, 1891; hence, as between parties claiming under said legislation, priority of settlement may properly form a material issue. XXIV–489

A homestead entry of Mille Lac lands, made after the receipt at the local office of the departmental ruling of April 22, 1892, and hence not confirmed by the joint resolution of December 19, 1893, may be submitted for equitable action, it appearing that the claim of the entryman was initiated and maintained in good faith at a time when the lands were open to homestead entry. XXVI–619

Indian Lands—Continued.

VIII. MILLE LAC—Continued.

A homestead entry of Mille Lac lands made during the period specified in the joint resolution of December 19, 1893, is by such resolution confirmed, subject only to due compliance with the provisions of the general homestead law, and to such payments as may be required thereunder. XXV–455

In neither the joint resolution of December 19, 1893, nor that of May 27, 1898, is there any absolute confirmation of entries theretofore made, but only a conditional confirmation, dependent upon the requirement that such entries shall be made regularly in accordance with the public land laws. XXX–125

By the joint resolution of May 27, 1898, all public lands formerly within Mille Lac Indian reservation are declared open to entry under the settlement laws. XXVII–526

Under a filing for Mille Lac lands protected by the act of 1889, wherein the right to make final proof is suspended by the provisions of the act of July 4, 1884, it is incumbent upon the preemptor, during such period of suspension, to maintain his possessory right by such acts as will negative an inference of abandonment, where the rights of an intervening adverse claimant are involved. XXII–578; XXVI–19

An application to make entry of, under a power of attorney that is in effect an attempted transfer of a soldier's additional right, and is properly rejected for "reasons sufficient in law," is not within the provisions of the departmental order of March 10, 1877; nor does the subsequent allowance of such an application bring the entry within the protection accorded valid homestead entries by the act of January 14, 1889. XVII–512

IX. NAVAJO.

Land reserved for the Navajo Indians by executive order of April 24, 1886, not subject to preëmption. VII–324

X. OKLAHOMA. See *Oklahoma Lands.*

Act of March 2, 1889, opening to entry Seminole and Muscogee lands and providing for commission to treat with the Cherokee Nation for the purchase of certain lands. VIII–338

Circular of April 1, 1889, opening lands to entry under the act of March 2, 1889. VIII–336

Proclamation of the President opening lands to entry. VIII–341

Certain lands in townships 7 and 8, ranges 14 and 15, Oklahoma, held in reservation for the Kiowas and Comanches. XV–87

Circular of September 1, 1893, with President's proclamation opening to entry lands in the "Cherokee Outlet." XVII–225

Indian Lands—Continued.

X. OKLAHOMA—Continued.

Sale of ceded lands in; circular instructions of July 7, 1893. XVII–51

Demand for first installment of purchase money on entries of Oklahoma ceded lands postponed by circular instructions. XVII–263

XI. OMAHA.

On entry of land within the former Omaha reservation the purchaser is entitled to one year within which to make his first payment. V–708

A claim for Omaha land based on settlement and filing made after the time fixed by the proclamation under the act of August 7, 1882, and before the passage of the act of August 2, 1886, is within the second proviso of the latter act; and the first payment thereon is not due until two years from the passage of said act. VII–189

There is no statutory inhibition against the sale and transfer of the right of purchase accorded by the act of August 7, 1882. XXVIII–183

Declaration of forfeiture and order for public sale under section 3, act of May 15, 1888. IX–326

A purchaser of, whose claim is forfeited for non-payment, may complete his payments, in the absence of adverse rights, where it appears that he had tendered the necessary sum prior to the judgment of forfeiture. XII–111

Although a purchaser of Omaha lands under the act of August 7, 1882, may be in default, he is not divested of his right of purchase until a forfeiture of such right has been declared by the Secretary of the Interior. XXVIII–183

Section 2 of the act of August 7, 1882, which defines the class of persons entitled to purchase the lands opened to settlement by said act in the Omaha Indian reservation, does not refer to settlers under the homestead laws; hence the act of May 17, 1900, which is expressly limited to "settlers under the homestead laws of the United States," has no application to said lands. XXX–82

Purchaser of, who has taken less than 160 acres and has complied with the law, may enter contiguous land at the appraised price. XII–325

Omaha lands sold at public sale and then relinquished can only be resold after new advertisement and reoffering. XIII–529

XII. OSAGE. See *Alienation*, sub-title *Osage Land; Filing*, sub-title *Osage; Final Proof.*

Osage trust lands, circular of April 26, 1887, with respect to entry of. V–581

Indian Lands—Continued.

XII. OSAGE—Continued.

Instructions of February 15, 1892, for offering at public sale Osage lands that have not been paid for in accordance with the terms of the sale. XIV–172

The Secretary of the Interior has full authority to prescribe regulations for the sale of Osage. VI–111; IX–353

Entry of Osage land on first payment and requisite proof operates to segregate the land covered thereby. XIII–524

A claimant for Osage, under the act of May 28, 1880, acquires no right as against the United States until he has made final proof and paid or tendered the purchase money. IX–353

Entry of Osage land not susceptible of confirmation under the proviso to section 7, act of March 3, 1891, till the lapse of two years from final payment. XIII–529

When a claimant for, under the act of May 28, 1880, submits proof of his qualifications, shows compliance with law, and makes his first payment, his right is a vested interest, subject only to the lien of the government for the unpaid purchase money. XVIII–441

The only conditions prerequisite to an entry of Osage land under section 2, act of May 28, 1880, are that the claimant should be an actual settler and have the qualifications of a preëmptor.
V–303, 442, 537; VI–103, 175; VII–251; IX–98; X–23, 36

That the claimant of Osage land is in fact an "actual settler" must be shown by residence following the alleged act of settlement and preceding entry. X–23

A single woman who has the qualifications of a preëmptor and after due compliance with law and submission of final proof marries is not by such marriage deprived of the right to have her entry allowed. XI–396

The purchaser of, must show that he is an actual settler by residence following the alleged act of settlement, and the proof required of such fact is no less in degree than that required under the preemption law. XI–216, 259, 275, 319

Requirement as to six months' residence prior to final proof not applied with the same rigor to settler on Osage land as to a preemptor of other land, but the acts of such settler must show clearly an intention of making the land his home. XI–302

Residence for six months preceding entry not required, but *bona fide* settlement must be shown. V–581; VI–783

One who settles in collusion with and for the benefit of another is not an "actual settler" under the act of May 28, 1880.
VIII–173; X–39

Indian Lands—Continued.

XII. Osage—Continued.

An "actual settler" under the act of May 28, 1880, is one who goes upon the land with *bona fide* intent of making it his home under the settlement laws and does some act indicative of such intent. IV–340; VII–277; VIII–173; XI–268, 319

Where one having the qualifications of a preëmptor makes a legal Osage filing he can not make a second. VII–30

Settlement on, subsequent to the act of May 9, 1872, does not authorize the purchase thereof if prior thereto the settler had perfected an entry of such land. XI–372

The provisions of section 2285, R. S., do not exempt the settlers named therein from the specified restrictions of the preëmption law, except as to lands held by settlement on May 9, 1872, and the purchase of such lands exhausts the preëmptive right either as to Osage or other land. XI–372

Second entries of Osage land to which at the time there were no adverse claims are confirmed by section 23, act of March 3, 1891, if compliance with law is otherwise duly shown. XIII–299, 700

An entry of Osage land under the act of May 28, 1880, is a preëmption entry within the meaning of section 7, act of March 3, 1891, and subject to confirmation thereunder. XII–442; XIII–58

Purchase by filing on Osage land under the act of May 28, 1880, is the exercise of a preëmptive right. V–537; VI–103

In entry of Osage, under the act of May 28, 1880, the oath required of a preëmptor is not applicable. V–303, 537

Purchaser of Osage land not required to make affidavit before entry that he has not made any contract whereby the title he may obtain will inure to the benefit of another. V–310; VII–34; VIII–173

One who quits or abandons residence on his own land to reside on Osage land in the same State is disqualified to purchase said land. XI–164

General preëmption laws not applicable to Osage entry. V–303, 537

Purchaser of Osage, may, after compliance with law and issuance of certificate, sell the same or remove therefrom. IX–98

The Department may withhold from Osage filing lands within an abandoned military reservation on which are situated government buildings pending the sale of said buildings. X–602

Commutation allowed of homestead entry for trust lands lying within the former limits of Fort Dodge military reservation. IV–145

Cash paid on commuted homestead entry for trust lands to be placed to the credit of the Indians. IV–148

The provisions of the act of May 28, 1880, with respect to the qualifications of a purchaser of Osage lands were not repealed by the act of December 15, 1880, authorizing the disposal of a part of Fort Dodge military reservation. VI–539

Indian Lands—Continued.

XII. OSAGE—Continued.

That part of the Fort Dodge military reservation which embraced Osage trust lands and was relinquished by act of December 15, 1880, became subject thereby to disposal to purchasers that are actual settlers and have the qualifications of a preëmptor. VI–175

The establishment of a military reservation on Osage trust lands did not impair the trust imposed by the treaty of 1865, but postponed its execution. VI–175

The sufficiency of residence shown under the act of August 11, 1876, subject to review by the General Land Office. III–366

The delay of a party in perfecting title, and the intervention of an adverse claim, will not defeat the right of such party, where said delay appears to have been caused by the loss in transmission of an appeal affecting another tract included in the same filing, and the intervening claimant fails to show due compliance with law on his own part. XXV–162

At a public sale of, the holder of a tax certificate is entitled, within the business hours of the day of such sale, to make the deferred payments, and this right can not be defeated by an unauthorized regulation of the local office. XVIII–569

Claimants in default with settlement and improvement may purchase the tracts within the sixty days limited in section 1, act of May 28, 1880. II–572

A purchaser of, in default as to final payment, may be permitted to make such payment when no declaration of forfeiture has been made, and no adverse claim exists. XVIII–399

The Department has authority to cancel entries of Osage ceded lands where default exists as to the payment of the purchase price. XXIV–6

Gross amount of proceeds to be paid into the Treasury; no part thereof can be withheld as compensation for the register and receiver or for clerk hire. I–520

XIII. OTTAWA AND CHIPPEWA.

Lands valuable mainly for pine timber can be disposed of only at public offering at the minimum price of $2.50 per acre. II–190

XIV. OTOE AND MISSOURIA.

Instructions of June 1, 1900, under act of April 4, 1900, relating to Otoe and Missouria lands. XXX–41

The settlement required of a purchaser must be in good faith and permanent in character. XI–546

An entry of Otoe and Missouria land is a preëmption entry within the intent of section 7, act of March 3, 1891 XIII–78

Indian Lands—Continued.

XIV. OTOE AND MISSOURIA—Continued.

The refusal of the Indians to consent to the relief contemplated by the act of March 3, 1893, for the benefit of the purchasers of Otoe and Missouria lands, makes it the duty of the Department to enforce prior legislation and cancel entries in default of payment thereunder. XXI–55

The authority conferred upon the Secretary of the Interior by the act of March 3, 1893, to revise and adjust, on principles of equity, and with the consent of the Indians, the sales of Otoe and Missouria lands made under the act of March 3, 1881, is not exhausted by an attempted revision and adjustment of said sales that has failed of consummation. XXVIII–424

The Secretary of the Interior has due authority under the law, and by virtue of his supervisory power, to cancel the entries of such purchasers of Otoe and Missouria, as are in default in the matter of deferred payments. XXIII–143

Directions given for notice to all purchasers of Otoe and Missouria, that opportunity will be given for payment of arrears with a rebate of ten years' interest, and that on failure to settle in such manner their entries will be canceled. XXIII–143

XV. PAWNEE.

Purchasers of, who have not made their payments of principal and interest, as required by the supplemental act of April 22, 1890, but have since the time fixed in said statute tendered payment, may be permitted, in the absence of a declaration of forfeiture, to complete their purchases. XVII–490

Forfeiture declared as to all entries of Pawnee lands remaining in default with directions given for new sale. XVII–490

XVI. SANTEE SIOUX.

Directions given for opening lands to entry formerly embraced in reservation. III–534

The purpose of that part of the executive order which provided that certain Santee Sioux lands should be subject to settlement and entry on May 15, 1885, was to fix a time when claims could be made of record and the rights of claimants determined. IX–89

Within the Santee Sioux reservation remaining unselected or unallotted on April 15, 1885, were that day restored to the public domain by force of the previous executive order. IX–89

XVII. SENECA.

Application by Senecas for sale of a certain section 16 in Ohio denied, as the government has fully performed its trust under the treaty of February 28, 1831. VI–159

Indian Lands—Continued.

XVIII. Sioux.

Circular of March 25, 1890, under the act of March 2, 1889, providing for the disposition of Sioux lands. x–562

Circular of March 28, 1899, with respect to payments required for Sioux lands under the act of March 3, 1899. xxix–598

Circular of April 21, 1900, under section 21, act of March 2, 1889, relating to Great Sioux lands. xxx–354

The price of Sioux lands is fixed by the date of the first entry, and settlers on land once entered and then abandoned are required to pay the same amount per acre as the first entryman. x–328

Under section 21, act of March 2, 1889, settlers on Sioux lands are required to pay for the land when final proof is made. x–328

On the commutation of a homestead entry of Sioux Indian lands, restored to the public domain under the act of March 2, 1889, the entryman must pay the minimum price for the land, in addition to the payments required under said act of 1889. xxvii–72, 395

Section 23 of act of March 2, 1889, gives all persons who in good faith made settlement between the dates specified on the Crow reservation a preference right to reënter upon their claims and secure title under the homestead and preëmption laws. xiii–657

The preference right of entry on Sioux lands conferred by section 23, act of March 2, 1889, is limited to the lands originally claimed by the settler. xiv–352

Agricultural lands formerly within Sioux reservation must be disposed of under the homestead law. xi–231

Lands within the limits of the Great Sioux reservation, restored to the public domain by the act of March 2, 1889, are subject to disposition only under the homestead law for the benefit of the Indians. xxvi–347

Under the provisions of section 21, act of March 2, 1889, opening to settlement and entry the Great Sioux reservation, the lands therein are not subject to disposition under the desert-land laws. xxix–541

Adjustment of certain entries and settlement claims made under the act of March 3, 1863, on incorrect survey. iii–288

XIX. Sisseton.

The act of March 3, 1891, opening to entry the Sisseton lands contains no penalty for entering the reservation prior to the time fixed therefor in the President's proclamation, and, although said proclamation forbids such entrance, the right of entry is not forfeited by failure to observe said injunction. xvii–153; xx–53

Indian Lands—Continued.

XIX. SISSETON—Continued.

In the commutation of homestead entries in the former Sisseton and Yankton reservations the entrymen are not required to pay $1.25 per acre in addition to the price fixed by the acts of March 3, 1891, and August 15, 1894, opening said lands to entry. XXVI–222

XX. TURTLE MOUNTAIN.

Claim of Turtle Mountain Indians too indefinite to justify withholding the lands from survey.

XXI. UMATILLA.

The right to make an additional entry of, under the first proviso of section 2, act of March 3, 1885, is not limited to cases where the original entry was made prior to the passage of said act, but extends to fractional entries existing at the time of the sale provided for in said act, if the entryman is otherwise qualified. XV–340

The right to purchase Umatilla, under section 2, act of March 3, 1885, is limited to two hundred acres; hence, if a person makes an additional entry, under the proviso to said section, the amount that he may afterwards purchase, under the body of said section, is diminished to the extent of the acreage embraced within the additional entry. XIX–577

The right to make an additional entry conferred by section 2, act of March 3, 1885, upon persons whose claims were made fractional by the boundary line of said reservation crossing the same, may be exercised by the widow of a deceased homesteader. XX–428

The use of land for grazing purposes is sufficient compliance with the law as to cultivation, if the land is better suited to such use than to raising crops. XX–362

Under a purchase of untimbered land, where the payments are made in time, but the proof with respect to residence and cultivation is unsatisfactory, the entry is not defeated thereby, but should be suspended until such time as the purchaser may furnish due proof. XX–295

The laws regulating succession under homestead entries are not applicable to Umatilla cash entries. The rights of a deceased entryman, intestate, in the latter case descend to the heirs, and are subject to administration according to the laws of the State in which the land is situated. XXII–315

The administrator of the estate of a deceased purchaser of Umatilla lands may submit final proof in support of the purchase made by the decedent. XXII–315

Indian Lands—Continued.

XXII. UTE.

Ute lands not subject to private cash entry until after public offering. VII–191

Ute lands under the act of June 15, 1880, subject only to disposal for cash. VII–191

The repeal of the preëmption law does not affect the disposition of, under the act of June 15, 1880, which requires said lands to be disposed of by "cash entry only, in accordance with existing law." XVIII–534; XXVIII–382

Lands within former Ute reservation not subject to homestead entry. III–298

The establishment of the White river military reservation on lands subject to disposition under the act providing for the sale of the Ute reservation did not impair the trust created by said act, but had the effect to suspend the execution thereof. VII–191

The status of lands embraced within the former Ute reservation not changed by the establishment of a military cantonment therein. III–297

A soldier's additional homestead entry made within the ten-mile strip described in the act of July 28, 1882, may be perfected on the payment of the cash price. IX–293

The purpose of section 3, act of July 28, 1882, was to confirm the entries, settlements, and locations within the ten-mile strip of those who had entered therein believing it to be public land, subject, however, to the payment of the price fixed by law for the benefit of the Indians. IX–293

Uncompahgre Ute lands; instructions of April 14, 1898, under the act of June 7, 1897. XXVIII–88

In making allotments to the Uncompahgre Utes, as directed by the act of June 7, 1897, the special legislation with respect thereto, as contained in the acts of June 15, 1880, August 15, 1894, and June 7, 1897, must govern, instead of the provisions of the general allotment act, giving controlling effect to the later of said special acts where there is any difference in their provisions. XXV–97

The Uncompahgres are required to pay for their allotments in Utah $1.25 per acre out of the proceeds arising from the sale of their reservation in Colorado. XXV–97

Southern Ute lands opened to settlement; instructions of April 15, 1899. XXVIII–271

Insanity.

Under act of June 8, 1880, the duly appointed guardian of an insane homestead settler can, after five years from date of the entry, make final proof. II–101

Insanity—Continued.

The rights of a preëmption or homestead claimant, who has become insane, may be shown and his claim perfected by any person duly authorized to act for him during his disability. XXIV–495

If the insane person becomes sane before the expiration of the five years, he must resume residence and cultivation. II–102

It is advisable for a guardian or trustee to file his address in the local office, with proof of his authority to act, in order that he may be notified of any attack on the entry. II–102

To be within the provisions of act of June 8, 1880, the claim must have been of record prior to the declaration of insanity. II–103

The wife of an insane person who had settled on and improved a tract, but who had not filed a claim for it, may make entry in her own name as head of a family; her husband being regarded as civilly dead. II–102

Notice may not be served on a contestee who is insane, nor on the superintendent of an asylum where he is confined. II–230

Notice of contest against the entry of an insane person must be served in accordance with the statutory regulations of the State or Territory. X–238

The acts of one who is of unsound mind performed prior to a judicial determination of his legal status are not void, but voidable. XII–690

The Department may determine whether a party executing a relinquishment is of unsound mind. XII–690

The acts of a person previously adjudged insane are void *ab initio.* XIII–541

The mental status of an entryman should be ascertained in accordance with the laws of the State in which he resides. XV–599

A protest against preëmption final proof setting forth that the preemptor is of unsound mind must be dismissed, if the evidence does not overcome the legal presumption of sanity. XVIII–208

Instructions and Circulars. See *Table of.*

Intervener. See *Practice.*

Iowa. See *Swamp Land.*

Island. See *Public Land; Survey.*

Surveyed on the petition of a settler should be offered at public sale as an isolated tract. IX–529; XVII–330

Island surveyed on application may, in the Commissioner's discretion, be sold as an isolated tract or disposed of under the general land laws. XVI–496

Accretions to, formed by washing or recession, become part of the lands they adjoin. I–596

Island—Continued.

Formed in a river after the survey and disposition of the adjoining shore lands does not belong to the United States. XIV–433

Where land has been surveyed, sold, and patented by the government the subsequent gradual erosion of the soil, resulting in the formation of an island in a navigable stream occupying the area formerly surveyed and sold, does not operate to vest title in the government to such formation. XII–681

No law authorizing entry of submerged lands lying in a navigable stream. XIX–505

The jurisdiction of the land department over a tract properly surveyed as an island, is not affected by the fact that subsequently said land, in consequence of a change in the channel of the river in which it was situated, ceases to be an island. XXVII–47

Isolated Tract. See *Application*, sub-title No. v; *Public Sale; Survey.*

Circular of April 11, 1895, under the amendatory act of February 26, 1895. XX–305

The action of the Commissioner of the General Land Office in ordering into market a tract for disposition under section 2455, R. S., is subject to revision by the Department on appeal. XXVI–676

The law with respect to the sale of, does not require that the Commissioner *shall* order such lands to be sold, but clothes him with discretion to place them upon the market, and the refusal of the Commissioner to make such an order will not be disturbed, where no abuse of his discretion appears. XXIX–347

The status of a tract, as public land, is not affected by an application for an order for its sale as an, under section 2455, R. S., prior to favorable action on such application. XXV–146

A tract subject to disposition under section 2455, R. S., is open to settlement until the Commissioner takes action under said law; and an entry of such land, prior to action by the Commissioner, precludes the subsequent exercise of his authority under said section. XIX–48

An order directing the public sale of land as, precludes the allowance of a Palatka scrip location thereof. XX–237

An order directing the sale of an island as an, after the survey thereof, excludes the land from appropriation under the homestead law by the applicant obtaining said order, or any other person. XX–407

The purchaser at the sale of, is not required to furnish an affidavit according to form 4–102 b. XXI–454

The acreage that may be purchased, by any one person, at a public sale of, is not limited in amount by the provisions of the acts of August 30, 1890, and March 3, 1891. XX–255

Isolated Tract—Continued.

If a forty-acre tract of land remains without a claimant and the contiguous tracts are all patented, such a tract may be regarded as "isolated or disconnected," and may, in the discretion of the Commissioner, be sold at public sale. XX–119

An eighty-acre tract will not be ordered into market as an, where one of the forty-acre subdivisions embraced therein is part of a quarter-section the whole of which is vacant public land. XXIII–590

The statutory authority conferred upon the Commissioner in the matter of ordering the sale of, is limited to tracts that amount to less than one quarter-section as described by the public-land surveys, without regard to the fact that such quarter-section may contain less than 160 acres. XXIX–378

If at the public offering of, there are no bids therefor, and it is not then sold, there is no existing law authorizing subsequent private entry thereof. XX–119

The act of February 26, 1895, amending section 2455, R. S., with respect to the sale of, requires "at least thirty days' notice" prior to such sale, and the publication of such notice for five successive weeks in a weekly newspaper is due compliance with said statutory requirement, and the regulations thereunder, where the sale takes place thirty days after the first publication. XXVII–617

Section 2455, R. S., as amended by the act of February 26, 1895, contemplates that no tract shall be regarded as isolated unless at the time of the application to have it sold the land surrounding said tract is included within entries, filings, or sales, made at least three years prior thereto. XXIV–296

If a tract becomes isolated by remaining unappropriated for three years after the surrounding land has been "entered, filed upon, or sold by the government," and entry is then made of said tract, it thereupon loses its status as an isolated tract; and if the entry is thereafter canceled, said tract will not again become isolated until the expiration of three years from the date of cancellation. XXIX–486

The proviso added to section 2455, R. S., by the amendatory act of February 26, 1895, defining the conditions under which a tract of land may be treated as isolated, contemplates that the tract involved must have been subject to the application of any qualified person under the homestead law during the period specified in said act. XXVI–607; XXVIII–214

A tract of land is not "subject to homestead entry" within the meaning of the act of February 26, 1895, defining the period that must elapse prior to treating a tract as isolated, while covered by an unexpired preëmption filing, or embraced within a homestead entry. XXVI–676

Isolated Tract—Continued.

Where the survey of an island is ordered prior to the amendment of section 2455, R. S., and it is directed in such decision that after survey the island shall be sold as an, but no action is taken on such direction until after such amendment, the land so surveyed can not be thus disposed of until the lapse of three years after survey, it being in the meantime subject to homestead entry. XXVII–499

The words "entered, filed upon, or sold," as used in the act of February 26, 1895, amendatory of section 2455, R. S., refer to an entry, filing, or sale, which has been a subsisting entry, filing, or sale, for the period of three years, and are not applicable to a preëmption filing that had expired prior to the time when application was made to have the adjacent subdivision sold as an isolated tract. XXVII–715

An entry allowed by mistake, of land not subject thereto, cannot be regarded as a disposition of such land, within the meaning of the first proviso to section 2455, R. S., as amended by the act of February 26, 1895. XXV–159

Section 2455, R. S., as amended by the act of February 26, 1895, operates to reduce the minimum price of isolated and disconnected tracts in alternate reserved sections within the limits of a railroad grant from $2.50 to $1.25 per acre. XXVI–699; XXVIII–214

The water reserve lands restored to the public domain by the act of June 20, 1890, were, by the express terms of said act, made subject to "homestead entry only," and hence are not open to sale under the statutes providing for the sale of. XXIX–153

Ute Indian land subject to disposal under the restrictions of section 3, act of June 15, 1880, can not be sold as an, under section 2455, R. S., as amended by the act of February 26, 1895. XXVII–45

Lands in the Siletz Indian reservation opened to settlement and entry by the act of August 15, 1894, are not subject to the provisions of the law relating to the sale of isolated tracts. XXX–536

The act of May 11, 1896, provides an exclusive mode for the disposition of public reservations within vacated townsites and additions thereto, where "patents for the public reservations in such vacated townsite, or additions thereto, have not been issued:" first, a preferred right of purchase is accorded the original entryman; second, if such right is not exercised the land then becomes subject to disposition under the laws regulating the disposal of isolated tracts. XXX–352

Judgment. See *Cancellation; Jurisdiction; Res Judicata.*

Is final as to the tribunal wherein rendered when all the issues of law and fact necessary to be determined have been disposed of so far as that tribunal had power and authority to dispose of them. VI–563

An order of cancellation based on the report of a special agent can not be treated as final if the record does not show notice of such action duly served upon the entryman. XI–278

Final decision of the Department must be carried into effect if not stayed by motion for review or the direct action of the Secretary. XII–45

A final decision holding an entry subject to the right of another is an adjudication of all questions of priority as between the parties and leaves only for determination the subsequent compliance with law on the part of the successful party. XIII–218

When a final judgment of cancellation is rendered by the Commissioner the land is thereby opened to appropriation without waiting for the expiration of the time allowed for appeal from such judgment. VI–563, 700; VII–163; X–221

The cancellation of an entry by order of the General Land Office takes effect as of the date the decision is made. VII–163

Of cancellation takes effect as of the date when the decision is made, and failure to note the order of record in the local office will not defeat the effect of the judgment. XII–59, 643; XX–191

Judgment of cancellation takes effect as of the date rendered, and the land released thereby becomes subject to entry as of such date, without regard to the time when such judgment is noted as of record in the local office. XIII–598; XVII–171

An order suspending a previous judgment of cancellation is notice to subsequent applicants that the land embraced therein is not subject to appropriation. XIII–524

On failure to appeal, after due notice of a decision of the General Land Office holding an entry for cancellation, the judgment becomes final, and the land is thereafter open to entry by the first legal applicant. XXIV–209; XXVII–619

Judgment of cancellation opens the land to settlement, and a motion for the review of such judgment does not operate to reserve the land, though the settlement is subject to the final disposition of said motion. XIII–182

Judgment of cancellation will not be set aside where no error is alleged against the same in the petition for reinstatement. XIII–452

Of the Department deprives the General Land Office of further jurisdiction except in the matter of enforcing the decision. X–230

Judgment—Continued.

Generally the judgment should follow the substance of the notice and charge; but if fraud is shown, though not charged, it justifies cancellation. III–462

Can not become final until the decision is promulgated and due notice given thereof. VII–42

Judgment rendered *nunc pro tunc* of the same force and effect as though entered at the proper time. I–210

An *ex parte* case awarding the right to make a second entry on the assumption that no adverse claim exists will not defeat the prior intervening claim of another. XVI–267

The Commissioner may not execute a decision of the Secretary otherwise than as made; when the record, with the decision, is returned, it is in the nature of a remittitur in courts of law. II–523

The informal notation of the words "set aside" opposite the description of a tract of land in an approved list of school indemnity selections will not be treated as a rejection or cancellation of said selection. V–352

Against one claiming as a grantee will not affect rights of the grantor in the absence of notice or proof of the alleged transfer. IX–71

Decision of State officers charged with duty of adjudicating land claims, where no appeal is provided for, is final and binds the parties and their privies. II–13

Of an Assistant Secretary of the Interior is the judgment of the Secretary. IX–588

The decisions of a court may not be attacked in a collateral proceeding. II–365

Extrajudicial opinion, given on *ex parte* statement, will not preclude subsequent action. IX–182, 546

A decision of the General Land Office, though erroneous, is an exposition of the law so long as it remains in force, upon which settlers have the right to rely; but one pleading such a decision in his defense must prove that in fact he was guided by it. II–154

In determining the rights of parties set up against the homestead entry of a divorced woman it is competent for the Department to inquire into the good faith of the divorce proceedings. XIV–570

Of the Department will not be revoked, or otherwise disturbed, on the sole ground that the party in whose favor it is rendered refuses to avail himself of its terms. XX–134

Jurisdiction. See *Contest; Patent; Practice*, sub-title *Notice; Res Judicata.*

Of local office is acquired by "due notice to the settler." II–58, 66; III–209, 251, 310; IV–255, 425, 440; V–658; VI–266, 300; VII–200, 484

Jurisdiction—Continued.

Acquired when the information is accepted, notice issued, and service made thereof. VII–41

Of the local office in case of a hearing is acquired by notice, and is not dependent upon the affidavit of contest. XXIV–383

Not acquired by the local office in the absence of due and legal notice. III–343; VII–49, 198

Issuance of notice on a second contest, during the period allowed for filing a motion for the review of a departmental decision in a prior case, will not defeat the jurisdiction of the local office, where said notice is not served until after the expiration of said period, and no motion for review is filed. XXVI–70

The land department is without, to render a judgment affecting the status of an entry, where the entryman has not been made a party to the proceedings in which such judgment is rendered. XVII–348

In the exercise of administrative authority the Department may assume, though the service of notice in the case is not in accordance with departmental regulations. XIX–106

In the exercise of its proper supervision over the disposition of the public lands the Department may waive questions affecting the regularity of proceedings below, and render such judgment as seems just and proper in the case. XXIII–313

Is not acquired by the appearance of one of the defendants in proceedings against an entry made in the name of minor heirs where legal service is not made upon any of the heirs. XV–1

The appearance of the defendant, on motion to reopen a case, after default therein, is not a waiver of his right to subsequently raise the question of; and, on appeal from the denial of said motion, the appearance of counsel, on behalf of the defendant, will be held a special appearance for the purpose of determining the question of jurisdiction, where said question is the only one at issue. XIX–316

Of the local office is not defeated by failure to note the day of hearing in a notice to take testimony before a commissioner where due notice is given in the first instance and the case is continued to a day certain. XV–47

Of the Commissioner to render a decision on the whole record where he has ordered a rehearing not affected by the action of the local office on the evidence submitted at such rehearing. XI–199

The question of, may be raised at any stage of proceedings, and upon slight suggestion in all tribunals. I–174, 237; VI–409

Objection to, saved by exception. IV–378, 440, 537

The question of, is one that may be raised at any stage of the proceedings, and a judgment on the merits of a case should not be rendered where it is found that jurisdiction of the person of the defendant has not been obtained. XVII–532

Jurisdiction—Continued.

Participation of counsel in trial after objection to, is overruled, does not affect the force of the objection. IV–378, 440, 537; IX–131; XII–620; XIV–689; XVI–120; XXII–222

May be conferred by consent as to parties, but not as to subject-matter. I–474; X–274

Retained over the question where the decision of the Department is suspended. VIII–243

Of the Commissioner, under the direction of the Secretary, extends generally to all matters pertaining to the disposition of the public land. V–573

Of the local office in proceedings directed by the Department not abridged by the allowance of initial desert entry. XII–34

Of the Department extends to the determination, in proceedings of its own, whether a person executing a relinquishment is of sound mind. XII–690

The pendency of a departmental order suspending an entry deprives the local office of, to entertain contest proceedings against the entry involved. X–297; XII–56, 370; XV–234; XVI–450

The issuance of final certificate on the direction of the Commissioner will not preclude his successor from ordering a hearing on the merits of the case. V–174

Will be presumed from the action of the Department. IV–362

Not defeated by death of appellee after notice of appeal. VII–500

Whether the Department acted without, will not be considered in a collateral proceeding. IV–357

Of the Department to test the validity of an entry in a direct proceeding is not defeated by its failure to ascertain the character of said entry in a collateral proceeding. XX–516

Of the local office not restricted in hearings ordered by the General Land Office or the Department. V–1

The Secretary of the Interior, in cases on appeal, has power to correct errors disclosed that prejudice public interests. VI–738

Want of, in the General Land Office will not limit the authority of the Department. V–49; VI–371; VIII–463

Of the Commissioner not affected by failure of the receiver to concur in or dissent from the opinion of the register. VI–779; XX–387

Is conferred upon the General Land Office to control the action of the surveyor-general in issuing certificates of location under the act of June 2, 1858. VIII–463

The Department will not assume, on the relinquishment of a patentee executed under protest in order to protect his rights on appeal. VIII–70

Jurisdiction—Continued.

In the absence of some specific provision to the contrary in legislation respecting the public lands, the administration thereof is wholly within the jurisdiction of the land department. XXX–160

Over public land and the title thereto remains in the land department till the record of completed patent is made.

I–18, 22; V–49, 174

The land department may on its own motion, for the protection of apparent equities, and after due notice to all parties, reopen an adjudicated case for further consideration, where the land involved appears vacant on the records. XXV–499

It is within the power of the Secretary of the Interior, by virtue of his supervisory authority, to correct what appears to have been erroneous in former action, where the subject-matter is yet under the jurisdiction of the Department.

XXI–491; XXII–459; XXIII–216; XXVIII–209

Prior to the issuance of patent, the land department may re-open a case, to correct an error in the decision thereof, and readjudicate the same, after due notice to the parties. XXIV–280

A change in the person holding the office of Secretary of Interior does not prevent or defeat a review or departmental action if the legal title to the land still remains in the government, and the Secretary making the ruling or decision, if still in office, would be in duty bound to review or reverse his own action.

XXVI–34, 177; XXVII–1; XXVIII–390

The supervisory authority of the Secretary may be exercised on behalf of a party whose rights have been denied in a decision that has become final under the rules of practice, but has been overruled in subsequent cases involving the same question.

XXVI–177

The supervisory authority of the Secretary of the Interior may be invoked to prevent a wrong or fraud, but not to relieve parties from the consequences of their own negligence. XX–87

The Secretary of the Interior should not take action, under his supervisory authority, on the application of parties that have had full opportunity to protect their rights under the statutes and regulations. XXV–216

The failure of a party to appeal from a decision of the General Land Office will not defeat the right and authority of the Secretary of the Interior, acting in his supervisory capacity, to consider the matters involved in said case. XX–127

The Secretary of the Interior, in the proper exercise of his supervisory authority, may vacate a decision of the General Land Office and direct a reconsideration of the case by said office, even though no appeal may have been taken from its decision therein.

XXVI–453

Jurisdiction—Continued.

Over patented land restored on surrender of patent.
v–301; xiii–715; xiv–186

The Department will not take action on a question that lies properly within the jurisdiction of the courts. vii–255

Of United States district court in private claims under the act of July 1, 1864. v–320

The courts have no, prior to the issue of patent, to make any decree affecting final proof or the certificate issued thereon. xv–145

A claim before a tribunal without, is not *sub judice*. v–415

Presumption as to correct exercise of, in courts of limited authority when once shown. v–283, 320, 573

Of district courts in Louisiana in the matter of probate and succession. v–158

If the necessary jurisdictional facts appear on the face of succession proceedings a purchaser at a sale thereunder is not bound to inquire into the truth of the allegations on which the court assumed jurisdiction, nor are such proceedings subject to collateral attack. xvii–56

Presumed in courts where it is general. v–161

Being apparent, the judgment is not subject to collateral attack. v–283

In matters of general, courts properly constituted determine their own. i–226

Not granted to United States courts to stay proceedings in State courts. v–481

A term of the district court having been held by United States circuit judge, it will be presumed that the formalities prescribed by the act of March 2, 1855, were duly observed. i–223

Presumption in favor of, when exercised by judicial tribunal. i–175, 223, 422

Where created by special statute for special purpose, may be properly questioned. i–227

Apparent want of authority in an executive officer of the government to set aside the decree of a Federal court where the United States was a party to the suit. i–177

Under a local statute that suspends civil rights during the term of a sentence of imprisonment, a decision of the General Land Office is not ineffective for the reason that the party adversely affected thereby had been convicted and was imprisoned at the time the judgment of the local office was rendered. xxvi–30

Of the land department under the preëmption law not restricted by the allowance of final proof. viii–269

Jurisdiction—Continued.

The action of the local officers in accepting final proof and payment does not preclude the land department from canceling the entry, if obtained through fraud, or allowed in violation of law. VI–265; VIII–269; IX–316; XIX–363, 496; XXVII–716

Where affirmatively shown by the record, conclusive. I–223

Judgment or order without, is no protection to those acting thereunder. I–223

Commissioner has no authority to entertain an appeal from the action of the local office on claims presented under the Vigil and St. Vrain grant, as the statute in such case directs that said claims shall be established to the satisfaction of said office and does not provide for an appeal therefrom. XI–226

The recommendation of the Commissioner that an entry should be submitted for equitable action is an administrative act, and a decision of the Secretary that such submission is not proper is a decision on an administrative question that has the effect of arresting proceedings, but leaves the decision subject to review by his successor in office. XXI–549

When questions once passed upon by the Department are again presented to the General Land Office in reliance upon decisions of the supreme court subsequently rendered, and apparently opposed to the departmental action, the Land Office should make report to the Department with such recommendation as may be deemed advisable. XXVII–481

Kansas. See *States and Territories.*

Lake. See *Public Land; Scrip; Survey; Swamp Land.*

An inland lake two miles long is not navigable in the sense that its waters can be put to a public use for the purpose of commerce. III–201

Under the law of Oregon the title of riparian proprietors on the borders of navigable, and rivers extends only to the water's edge. The right beyond the edge is only an easement that can not be conveyed. XIV–115

If none of the lands contiguous to a former non-navigable meandered, have been disposed of or applied for, the land previously covered by water may be surveyed for disposition as government land if it has become dry and fit for use. XIV–119

Riparian ownership of lands adjacent to a non-navigable meandered, includes the lands to the middle thereof. XIV–156

Lands lying within the meander line of a non-navigable, belong to the adjacent proprietor. XIV–274

Purchaser of meandered land lying on the border of a, takes title to the shore line. XIV–516

Land Decisions. See *Decisions.*

Directions given for citations from the departmental publications of. III–419

Land Department. See *Decisions; Jurisdiction; Officer.*

I. GENERALLY.
II. SECRETARY.
III. COMMISSIONER.
IV. REGISTER AND RECEIVER.
V. LOCAL OFFICE.
VI. SURVEYORS-GENERAL.
VII. SPECIAL AGENT.

I. GENERALLY.

Whenever any action is required to be taken by an officer of the land department, all proceedings tending to defeat such action are impliedly inhibited. II–243, 610

In the absence of allegation or showing to the contrary, it is presumed that the officers of, have properly discharged their duty. II–465

Administration of, ought not to be withheld from regular business because of possible hardship in a few cases. IV–144

The disqualification to enter public lands contained in section 452, R. S., extends to officers, clerks, and employés in any branch of the public service under the control of the Commissioner of the General Land Office. (See 11 L. D., 96 and 348.) X–97

Emp'oyés of, may not enter public lands. Circular of September 15, 1890. XI–348

A blacksmith hired to work at his trade by the Commissioner of Indian Affairs on an Indian school reservation is not, by such employment, disqualified under section 452, R. S., to enter public lands. XXV–334

A surveyor-general, who orders and approves the survey of a mining claim, is disqualified as an applicant therefor under the provisions of section 452, R. S., and the departmental regulations thereunder, while holding such office. XXIV–393

A deputy United States mineral surveyor is within the intendment of section 452, R. S., and consequently disqualified, under the prohibitive provisions thereof, from acquiring title to a mining claim in which he was interested at the time of his official report thereon, and at the date of application for patent. XXVI–122

A deputy mineral surveyor who has no interest, real or contingent, in a mining claim at the date of the survey thereof by him, nor at the date of the application for patent thereto, but who subsequently makes entry thereof, does not come within the spirit of section 452, R. S., prohibiting employés of the General Land Office from "purchasing or becoming interested in the purchase of the public land." XXX–139

Land Department—Continued.

I. GENERALLY—Continued.

Clerks in the office of the surveyor-general are clerks or employés in the General Land Office within the meaning of section 452, R. S., and therefore disqualified to enter public land. XI–96

One who accepts and holds an appointment in, is not prevented thereby from completing title under a homestead entry previously made where the position confers no advantage upon the claimant in the matter of prosecuting his claim. XV–266

Employment in the local office as an agent of others to secure information from the records does not bring such person within the inhibition of section 452, R. S. XVI–546

Regulations of, made in conformity with statutes have all the force and effect of law. II–709; V–169; VI–111; IX–86, 189, 284, 353

Regulations of, will not be permitted to defeat a statutory right. II–283; V–429

Specific statutory authority not necessary for the performance of an act within general power. XIII–17; XIX–380

II. SECRETARY.

In acts of, the assent of the President is presumed. V–520

The decision of the Acting Secretary is in effect the act of the Secretary. V–277

The decision of an assistant, has the same legal effect as the decision of the Secretary. IX–588

Authority of, in all matters pertaining to the disposition of public land or settlement of private claims. V–49, 483, 570

Will correct errors of local office in proper case made. V–439

Official duty of head of Department not merely ministerial. IV–443

May not authorize an unlawful act. IV–67

Supervisory powers, how invoked. V–23

Is charged with general supervisory authority in all matters pertaining to the disposition of public lands. XIII–13, 279, 624

The fact that the execution of a statute is specially laid upon the Secretary does not authorize him to suspend the rules of procedure provided for the orderly disposition of matters before the Department. XIII–279

A statute that provides for action on the part of the Secretary of the Interior "after allowing opportunity for all parties in interest to be heard before him," does not require such officer to personally hear the witnesses testify and listen to oral arguments, if all parties have notice, and are permitted to submit evidence and written arguments that are considered by him. XXVI–280

Land Department—Continued.

III. COMMISSIONER.

General supervisory authority conferred upon. I–445

Is vested with discretionary authority. III–55; IX–627; X–491

Authority of, to formulate regulations. V–27

Action in passing upon decisions of local office is judicial. V–247

General authority of Commissioner in all matters affecting the disposition of the public lands. V–570; VIII–463; XIII–3, 13, 497, 624

The order of the Commissioner is, in contemplation of law, the order of the Secretary, as the acts of the heads of departments, within the scope of their powers, are in law the acts of the President. II–713

The Commissioner has authority to determine questions arising on special sale of lands. IV–25

Right to obtain requisite information before the rendition of judgment. IV–316

A decision rendered by the Acting Commissioner has the same force as the act of the Commissioner. V–504

IV. REGISTER AND RECEIVER.

The duties of the register and receiver are distinct, and neither can discharge the duty of the other in the absence of express authority. I–150, 545

A vacancy in the office of either disqualifies the remaining incumbent for the performance of the duties of his own office during such vacancy. IX–365; XIV–133

A vacancy in the office of receiver does not prevent filing an answer under a rule to show cause why an entry should not be canceled; final action, however, on such matter being held in abeyance until the vacancy is filled. XXVII–547

When a vacancy occurs in the office of the register or receiver, official action can not be taken until the vacancy is filled. XII–297; XX–276

The Commissioner may direct the suspension of all business at a local office that requires the joint action of both officers where the illness of one renders him unable to act. XIV–507, 316

The receiver acting alone has no authority to dismiss a contest. XXIII–548

Authority to act for each other. IX–368

Relative duties of, considered and discussed. IX–45

The interest of a local officer in the subject-matter involved in a contest does not preclude nor excuse such officer from taking part in the determination of the case. XVI–28

Land Department—Continued.

IV. REGISTER AND RECEIVER—Continued.

A local officer, who has a property interest in the subject-matter involved in a contest, is not qualified to try and determine the case. XVII–220

The register of a local land office is not disqualified to act in a case by the fact that he was of counsel in another suit involving the same land. XXVIII–151

Where one officer performs a clerical or ministerial act for the other the law will regard the act as performed by the proper officer. IX–45

An entry is not invalid because allowed by the receiver, in the absence of the register, where both offices are filled at such time, and the register on his return approves the action of the receiver. XXVIII–8

The official acts of the register and receiver are subject to supervision, and may be approved or disapproved by the Commissioner of the General Land Office. VII–86

A clerk *de facto* (with the register's knowledge and sanction) is competent to receive an application (to amend a filing) and to give it legal effect. II–613

Seven hours' service required of district office employés each day, Sundays and holidays excepted. III–333

Must receive applications (for entry) only at the place designated for the transaction of official business. II–320

Acceptance of an application at a place other than the local office is not legal acceptance. II–320

Not required to transact business outside of office hours, but official acts of, outside of office hours are not invalid. VI–1; IX–54; XXIII–546

Are not authorized to do public business privately or in chambers. III–109

No authority to waive a rule of practice. VI–236

Have no authority to change an entry of record by erasure. VII–220

May, with the approval of the Commissioner, adopt regulations as to the order of business in their offices. VII–504

Vested with discretion in matters of final proof. IV–197

Judgment of, conclusive when it comes collaterally in question. IV–93

The duties of the district officers are not merely perfunctory, but to be exercised within the lines of judicial discretion. III 85

In deciding upon preëmption claims, act judicially. IV–93

Act judicially in the trial of a contest case. VI–626

Land Department—Continued.

IV. REGISTER AND RECEIVER—Continued.

Should determine the right of parties to contest and decide accordingly. IV–203

In the disposition of cases, should give the testimony a careful consideration and set forth briefly in their opinion the facts on which their judgment is based. XVI–508

Report of, as to their official acts should be received as correct and true in the absence of any charge or evidence to the contrary. XV–184

Failure of receiver to join in the report of a case tried before the local office, does not affect the jurisdiction of the Commissioner or Secretary. VI–779; XX–387

The fact that neither of the local officers is present while the witnesses are testifying in a hearing had before them, does not affect the regularity of such proceedings, where there is no vacancy at such time in the office of either register or receiver, and the witnesses are sworn by one of said officers and both of them subsequently examine the testimony and render joint decision thereon. XXVII–425

Decisions of local office of no effect until passed in review by the General Land Office. III–567; V–246

Decisions of, entitled to special consideration where the evidence is conflicting. VI–225, 330, 660

Decisions of, as to matters of fact entitled to special consideration. IV–135

May inspect the land involved in contest after due notice to the parties and during the trial. VI–626; VIII–38

May personally inspect land involved in a contest and use the knowledge so acquired to better understand and apply the testimony. XVI–95

Must promptly forward to the new local office decisions received from the General Land Office involving lands transferred to a new district. II–222

Instructions to, of January 6, 1890 (July 16, 1885), in the matter of official correspondence. X–2

The receiver has no authority to accept money in advance of the time when the local office is ready to act upon and allow the application to enter. VI–713

Acceptance of application, fees, and commission prior to cancellation of an entry, with promise to make application of record on cancellation, is unauthorized and gives applicant no rights. II–49

Failure of the receiver to account for money accepted without authority is not a default as to any obligation due the government. VI–713

Land Department—Continued.

IV. Register and Receiver—Continued.

The failure of a receiver to account for the purchase money paid on submission of preëmption proof does not defeat the preëmptor's right to a patent. XIV–200

The receiver has no authority to receive money as the agent of an applicant for public land, and such action creates no obligation against the government. VIII–77

A payment to the receiver in advance of the time when the local office is ready to act upon the application to purchase makes the receiver the agent of the applicant for the purpose of payment, and if the application is rejected the receiver is individually liable for payment. VI–713

Judicial proceedings by the government on the bond of a register for the purpose of requiring him to account for an alleged loss of final proof papers will not be advised, as no injury to the government results from such loss. XXII–133

V. Local Office.

List of. I–664

Term "land office" used for "General Land Office" in the act of May 27, 1880. I–9, 16

Regulations of, in the matters of procedure on the opening of public lands to entry conclusive upon parties taking action thereunder without protest. XIV–370

Access to records accorded for the purpose of making abstracts for the use of county clerks. I–523

The public is entitled to access to the records of the local offices when the conduct of the public business will fairly permit. III–174

Clerk employed under authority of receiver is entitled equitably to his salary for services rendered pending action of the Commissioner on the appointment. VI–810

Persons accepting employment in local office, for the term of such service waive the right of entry there. IV–77

Timber-culture entry made by receiver's clerk, allowed to stand in view of lapse of time and compliance with law. II–314

Right of local officers and their employés to make entry of public land. (See sub-title No. I.) VI–105

Rights of parties not lost through temporary closing of. II–211

While closed for the transaction of business, time does not run against parties cited to appear before such office. XIV–493

During a period in which the local office is closed time does not run against settlers in the matter of asserting their claims. XVIII–543

Land Department—Continued.

V. Local Office—Continued.

Order of June 13, 1896, with respect to applications filed during a vacancy in the local office. XXII–704

While closed, time will not run as against applicants for public land if the Commissioner so directs. XI–256

Removal of local office from Deadwood to Rapid City, Dakota. VII–527

VI. Surveyors-General.

Duties of surveyors-general are performed under the direction of the Commissioner of the General Land Office. III–495

Official communications of a surveyor-general should not be over the signature of his chief clerk. III–263

Employé in the office of the surveyor-general not allowed to enter lands. (See 11 L. D., 96 and 348.) X–97

Deputy United States surveyor not qualified to make entry of public land. XVIII–394

Deputy mineral surveyor not debarred from entering public land. VI–105

A deputy mineral surveyor, while holding such office, is disqualified as a mineral entryman. XXIX–76

Under the prohibitive provisions of section 452, R. S., surveyors-general and deputy mineral surveyors are disqualified as applicants for mineral land. XXIX–333

When the duty of locating certain selections was imposed upon the surveyor-general of New Mexico, such duty devolved upon the surveyor-general of Arizona when the lands affected passed into the new surveying district created for that Territory. III–624; XVI–408

A resident of a State holding a commission as United States deputy mineral surveyor therein can not act thereunder in another State; nor can such surveyor hold commissions simultaneously in two or more States. XVIII–601

It is not essential to the appointment of a deputy mineral surveyor that he should be a resident of the land district for which he is commissioned; nor is there any statutory reason why such officer should not hold at the same time commissions in more than one State or land district. XX–163

The action of a surveyor-general in suspending a deputy mineral surveyor is subject to the supervisory authority of the Commissioner of the General Land Office, with the right of appeal to the Secretary of the Interior. XX–283

The appointment of non-resident deputy mineral surveyors is a matter in which the discretion of the surveyor-general may be properly recognized. XXI–379

Land Department—Continued.

VI. SURVEYORS-GENERAL—Continued.

The discretion of surveyors-general in the matter of appointing deputy mineral surveyors will not be interfered with by the Department, unless good cause for such action is shown. XXVII–582

VII. SPECIAL AGENT. See *Practice*, sub-title No. X.

May administer oaths on the investigation of fraudulent claims, but not where he acts as the agent of the government at hearings. III–113

A special agent should not examine and report upon claims at the request of interested parties. XIV–38

Timber-culture entry made by special agent under express ruling of the Commissioner allowed to stand where subsequent compliance with law appears, and the entryman has left the government service. XVII–85

Timber-culture entry made by, is invalid. XVIII–425

Lieu Selection. See *Railroad Grant; Reservation*, sub-title *Forest Land; School Land; States and Territories; Swamp Land.*

Louisiana. See *School Land; Swamp Land.*

Marriage.

Proof of, accepted where the parties agree to live together as husband and wife and thereafter live in such relation. XVI–137

Evidence showing that a man and woman are living together in the relation of husband and wife, and are generally considered in the neighborhood as married, may be accepted as establishing the fact of marriage, where such fact is not denied. XXI–360

Married Woman. See *Entry; Homestead; Preëmption.*

Michigan. See *School Land; Swamp Land.*

Military Reservation. See *Reservation.*

Mill Site. See *Mining Claim.*

Mineral Land. See *Coal Land; Homestead; Mining Claim; Patent; Preëmption; Railroad Grant; Saline Lands; School Land; Town Site.*

I. GENERALLY.

II. ALABAMA.

I. GENERALLY.

Mining circular of December 15, 1897. XXV–561

Paragraphs 109 and 110 of the General Mining Circular, amended by circular order of July 2, 1894. XIX–5

Mineral Land—Continued.

I. GENERALLY—Continued.

Circular of July 9, 1894, with respect to determining character of lands within railroad grants. XIX–21

Instructions of April 9, 1897, as to railroad and State selections in mineral belts. XXIV–321

Instructions of May 10, 1897, as to non-mineral affidavit in case of railroad and State selections in mineral belts. XXIV–416

Classification of; instructions of April 13, 1895, under the act of February 26, 1895. XX–350

Classification of; instructions of June 6, 1895, with respect to weekly report of service by commissioners. XX–522

Classification of; instructions of June 20, 1895. XX–561

Classification of; instructions of June 25, 1895. XX–571

Classification of, within railroad limits, under the act of February 26, 1895. XXI–65, 68, 108

Under the public land laws of the United States, lands valuable for their mineral deposits can be disposed of only under the mining laws. XXVIII–348

The duty of determining the character of land, whether mineral or non-mineral, and of seeing that the public lands are only disposed of as authorized by law, rests upon the land department, of which the Secretary of the Interior is the head; a decision, therefore, of the Secretary that a tract of land is principally valuable for its mineral deposits, while undisturbed, is binding upon all the officers of the land department, and prevents disposition of the land in any other way than as prescribed by the laws specifically authorizing the sale of mineral lands. XXVIII–348

A final mineral return by the commissioners appointed under the act of February 26, 1895, operates to except the lands so classified from the grant to the Northern Pacific, but does not prevent such disposition of said lands as may be proper, on a subsequent showing as to their character; the classification being treated as of the same effect as a mineral return by the government surveyor. XXV–446

The act of February 26, 1895, does not contemplate the classification of even sections, and the character of said sections is only considered where the mineral or non-mineral character of the odd sections can not be otherwise satisfactorily ascertained. XXVI–684

In classifying unsurveyed lands under the act of February 26, 1895, where the entire area of the tract, as designated by natural or artificial boundaries, is of the same character, the classification should be made without reference to the particular section. XXVI–423

Mineral Land—Continued.

I. GENERALLY—Continued.

The provision in section 5, act of February 26, 1895, that at hearings held under protests filed against the acceptance of classifications of land, as returned by the commission, "the United States shall be represented and defended by the United States district attorney," etc., requires said attorney to assist in procuring a mineral classification of the land wherever the facts show that to be its true character, and to that end such officer should endeavor to sustain the mineral classifications of the commission.

XXVIII–295

In case of a protest filed under the fifth section of the act of February 26, 1895, against the classification of land under said act, the Department will apply substantially the same rules, in determining the character of the land, that the classification commissioners are directed by said act to apply. XXX–442

The rules prescribed by the act of February 26, 1895, differ from those applied by the Department in ordinary contests involving the character of land in that mining locations made in any section of land are declared by said act to be *prima facie* evidence of the mineral character of the forty-acre subdivision embracing the same. XXX–442

To justify a hearing as to the character of land classified under the act of February 26, 1895, where the protest is not filed until after the prescribed time, and after the approval of the classification by the Secretary of the Interior, such a showing of fraud in the classification must be made as would condemn and avoid it, if sustained by proof produced at the hearing. XXIX–102

A protest against the classification of lands justifies a hearing as to the character of the land, where it is shown thereby that the report of the commission, on which the Secretary of the Interior approved the classification, was false, and a clear misrepresentation of the character of the land. XXIX–102, 675

Lands valuable on account of limestone deposits contained therein, and more valuable on account of such deposits than for agricultural purposes, are mineral lands within the meaning of the act of February 26, 1895, providing for the classification of lands within the limits of the Northern Pacific grant. XXX–475

Rule laid down as to what constitutes. I–560

Whatever is recognized as a mineral by the standard authorities, whether of metallic or other substances, when found in the public lands, in quantity and quality sufficient to render the land more valuable on account thereof than for agricultural purposes, must be treated as coming within the purview of the mining laws.

XXV–233, 349, 351

Mineral Land—Continued.

I. GENERALLY—Continued.

Regulations governing entry of lands containing borax and alkaline earths, sulphur, alum, and asphalt. I–561

Borax, soda, alum, oil, etc., are minerals within the meaning of the mining laws. II–708

Fire clay or kaolin subject to mineral entry. I–565

A deposit of "brick clay" will not warrant the classification of land as. VI–761

Gypsum and limestone held to be minerals. I–560

To exclude land from appropriation under the homestead law, on the ground that it contains a valuable bed of limestone, it must affirmatively appear that the land is more valuable on account of the stone than for agriculture. XXIII–353; XXX–475

Lands containing mineral springs not of a saline character are subject to sale under the general laws. I–562

Land chiefly valuable for phosphate deposits is mineral in character. XVIII–58; XXVI–600

Phosphate deposits held not to exclude lands from a railroad grant that excepted from its terms mineral lands. XIX–414

The act of October 1, 1890, with respect to settlement claims on Florida phosphate lands is retrospective in character, applying exclusively to cases arising prior to April 1, 1890. XIX–475

Land containing a deposit of gypsum cement, and more valuable on account of such mineral than for agriculture, is not subject to agricultural entry. XXVII–57

Guano is a mineral, and lands valuable for deposits of guano are mineral lands within the meaning of the mining and other laws of the United States, and hence not subject to selection by the State under section 8, act of July 16, 1894. XXVII–95

Alumina is not such a mineral as will except the land containing the same from settlement and entry as agricultural land, or warrant the allowance of a mineral entry thereof. XX–500

Land chiefly valuable for the marble and slate therein is mineral in character. XXIX–327

Stone that is useful only for general building purposes does not render the land containing the same subject to entry as mineral land. (See *Mining Claim*, Nos. XII and XIII.) XII–1

Land chiefly valuable for deposits of building stone, containing no lodes or veins of quartz or other rock in place, may be entered as a placer claim. III–116

Land that has no value except for the stone it contains can not be taken under a homestead entry made with speculative intent. XV–276

Mineral Land—Continued.

I. GENERALLY—Continued.

Existence of a stone quarry on land does not vitiate a homestead entry made in good faith. XI–146

Land more valuable for the deposit of sandstone therein than for agricultural purposes is mineral in character, and should be so classified under the act of February 26, 1895. XXIX–248

Land more valuable on account of the sandstone therein than for agriculture is mineral in character, subject to disposition under the mining laws, and a homestead entry thereof is unauthorized by law. XXVI–373

Land containing sandstone of superior quality for building and ornamental purposes and valuable only as a stone quarry is classed as. XVI–508

Land chiefly valuable for the building stone it contains is not by such fact excluded from entry under the settlement laws. XVI–122, 537

Land chiefly valuable for the building stone it contains is not excepted from the school grant. XVI–263

Land chiefly valuable for the gypsum and petroleum contained therein can only be disposed of under the laws governing the sale of mineral land, and hence is not subject to school land indemnity selection. XXIX–181

Oil land held as mineral. IV–60, 284; XVI–117; XXV–351

Land containing petroleum does not fall within the contemplation of the mineral laws. XXIII–222

Proof that neighboring land contains oil not sufficient to defeat agricultural entry of land returned as subject thereto. IV–60

Lands chiefly valuable for their deposits of asphaltum must be disposed of under the laws relative to the sale of mineral lands. XXIX–269

Coal is not, within the meaning of the act of June 3, 1878. (See *Coal Land.*) II–827

Land not shown to contain deposits, in paying quantities, of any of the mineral substances usually developed by mining operations, but which appears to be valuable and to be desired by the parties attempting to secure title thereto chiefly because of a cave or cavern the entrance to which is situated thereon, and for the crystalline deposits, and formations of various kinds, such as stalactites, stalagmites, geodes, etc., found therein, which are made the subject of sale by the parties not as minerals but as natural curiosities, is not mineral land within the meaning of the mining laws. XXX–357

Not excepted from the operation of the arid land act of October 2, 1888. XV–418

Mineral Land—Continued.

I. GENERALLY—Continued.

The character of land as a present fact is the question raised on issue joined as to its actual character. IV–478; VII–265

Character as, must appear as a present fact to defeat an agricultural entry upon land returned as subject thereto. VI–218; XI–462

Proximity of land to coal veins will not alone warrant the conclusion that it is mineral in character. XI–462

The fact that a placer claimant has conducted profitable mining operations upon a part of his claim does not, in itself, give him any right as against an adverse homestead claimant for another part of such claim, lying in a different quarter-section, and that had been prior thereto adjudged non-mineral in a departmental decision. XXVI–216

The allowance of an entry on final proof, in which the character of the land is duly shown, determines such matter by a higher quality of evidence than that afforded by a surveyor's return, and thereafter anyone attacking such entry must assume the burden of establishing such illegality in the allowance of the entry as will defeat the issuance of patent thereon. XXVII–1

An agricultural entry of land returned as of the character subject to such entry, and shown to be such by the final proof, is not affected by a subsequent survey in which the land is returned as mineral in character. XXVII–1

The return of the surveyor-general as to the character of land constitutes but a small element of consideration when the question as to the true character of the land is at issue. XXVII–1

The presumption as to the mineral or agricultural character of a tract, created by the return of the surveyor-general, does not preclude the assertion of any right, or the proof of the facts in the case as they really exist. XVII–274

The land being returned as agricultural, the burden of proof is with the mineral claimant to show as a present fact that the land is more valuable for mining than agriculture.
II–714, 721; III–234; XII–612; XIV–59; XVII–103

On issue joined as to the character of a tract the matter to be determined is whether as a present fact the land is more valuable for mineral than for agriculture. XIV–54, 59

Mineral claimant for land returned as agricultural must show, as a present fact, that mineral can be obtained therefrom in such quantities as to make the land more valuable for mining than agriculture. VII–265; VIII–440; XIII–517

Where a mineral entry has been allowed on land returned as agricultural the burden of proof will lie upon one who thereafter alleges the land to be in fact agricultural. XIV–54; XVII–545

Mineral Land—Continued.

I. GENERALLY—Continued.

On proof of the mineral character of a tract and allowance of mineral entry therefor the burden of proof is upon one who asserts the non-mineral character of the tract, even though it was returned as agricultural. XV–196

If the presumptive mineral character of land is based upon the exploration of only one portion thereof, the burden assumed by one who alleges the agricultural character of such land is sustained by evidence of exploration on the same portion, sufficient to demonstrate the fact of its non-mineral character, and thereby overcome the effect of the alleged prior exploration and discovery. XXV–167

The burden of proof is upon an agricultural claimant for land returned as mineral. VII–265, 532

In proceedings under a protest against an agricultural entry, in which the mineral character of the land is alleged, the burden of proof is with the agricultural claimant, if the land is returned as mineral in the surveyor-general's report then in force. XXIII–34

The burden of proof is upon an agricultural claimant for land returned as, to show the fact of its non-mineral character, but he is not required to prove affirmatively its agricultural character. X–311

In case of contest, where the land is returned as, the burden is not shifted to the mineral claimant by the non-mineral affidavit and publication of notice by the agricultural claimant. X–311

The character of land as a present fact is the question for determination on issue joined between a mining and agricultural claimant. X–536

A decision that land returned as mineral is in fact agricultural puts the burden of proof upon one alleging a subsequent discovery of mineral. VII–532

The burden of proof is properly upon one alleging the mineral character of a tract that has, prior thereto, been adjudged agricultural. XXIV–277

In the case of a hearing to determine the mineral or non-mineral character of a tract of land, theretofore held by the Department to be principally valuable for its mineral deposit, the burden of proof is with the agricultural claimants, and it is incumbent upon them to clearly overcome the effect of the former decision. XXVIII–348

Mineral Land—Continued.

I. GENERALLY—Continued.

The burden of proof rests with a protestant who attacks an agricultural entry on the ground of the "known" mineral character of the land at date of entry, irrespective of the fact that the land may have been returned as mineral after the allowance of the agricultural entry. XXIII–34

If the burden of proof as to the character of land is improperly placed, and accepted without objection, the party so relieved from said burden is not in a position to complain of such action on appeal, in the absence of an attempt in the appellate tribunal to shift the burden, and apply the changed standard to the record made on the hearing in the local office. XXIV–507

In a controversy as to the character of Alaskan land between a town-site applicant and a mineral claimant, where the mining claim is of record at the date of the town-site application, a settlement prior to the act of March 3, 1891, confers no right that relieves the town-site applicant from the burden of proof. XXIV–417

The presumption as to the character of land returned as mineral is not forcible where, after long-continued mining operations, the land has been abandoned by the mineral claimant as no longer profitable. VII–265

The absence of active mining operations will not be held to negative an allegation as to the mineral character of the land, where such land is at the time involved in litigation. XXIII–35

Proof of mining upon a tract that has been adjudicated as, and the subsequent abandonment of such operations leaves with the mineral claimant the burden of proof to show the present mineral character of the land. XVI–52

Pending protest proceedings, in which a general charge is made that certain lands claimed under a railroad grant are in fact mineral, will not defeat the right of a mineral claimant, who sets up a specific claim, to be subsequently heard on a similar allegation in the event that the first proceedings fail. XX–26

A hearing had as to the agricultural or mineral character of a number of tracts of land, claimed under a railroad grant, and a judgment thereon that a specific tract included therein is in fact agricultural, will not preclude a subsequent inquiry as to the character of said tract, on the protest of a mineral claimant, prior to the issuance of patent therefor, if the showing made is clear and convincing. XXI–464

The publication and posting of a notice of a hearing ordered on the application of a mineral claimant, to determine the character of a tract of land returned as agricultural, and listed as part of an odd-numbered section within the primary limits of a railroad grant, is not sufficient notice to the company of said hearing. XXIX–27

Mineral Land—Continued.

I. GENERALLY—Continued.

On a hearing to show the alleged agricultural character of a tract held as a mining claim, and that has once been adjudged mineral, the agricultural claimant should be required to prove the abandonment or forfeiture of the mining claim. XX–564; XXIV–258

A final decision in which a tract is held to be, is only conclusive up to the period covered by the inquiry, and will not preclude a subsequent investigation as to the character of said tract on allegation that the mining claims thereon have been abandoned, and that the land as a present fact is agricultural. XX–384

A final decision of the Department holding a tract to be non-mineral is conclusive up to the period covered by the hearing; but such decision will not preclude a further consideration based on subsequent exploration. XIX–12

In a hearing ordered to determine the alleged known mineral character of land embraced in an agricultural entry, made at the conclusion of a prior contest involving the character of the land, the evidence must be confined to discoveries after the date of the first hearing, and prior to the allowance of the entry. XXIV–573

The non-mineral character of a tract of land having been determined, the Department is not justified in ordering another hearing on the same issue, in the absence of a clear showing of development made since the prior hearing that clearly demonstrates that since such hearing mineral has been discovered in such quantities as to overcome the effect of the previous judgment as to the character of the land. XXIV–553

A determination that a tract is mineral in character will not prevent a subsequent hearing, involving the same question, where a change in the character of the land is alleged, but the showing in such a case must be clear and convincing. XXV–505

A departmental determination that a tract is non-mineral in character, based principally upon the ascertainment of the boundaries of the tract, will not preclude the land department in a subsequent suit, resting on alleged discoveries made after the hearing in the former case, from considering anew the question of boundaries. XXV–514

The existence of gold in non-paying quantities will not preclude agricultural entry of the land. XVII–424

The usual non-mineral affidavit filed by an agricultural claimant is not sufficient to overcome a prior decision of the Department that the land involved is mineral in character, or to justify a re-examination of such question of fact theretofore fairly tried and deliberately determined. XXVIII–348

Mineral Land--Continued.

I. GENERALLY --Continued.

The character of land claimed as mineral must be shown by the actual production from mining or by satisfactory evidence that mineral exists on the land in sufficient quantity to make the same more valuable for mining than for agriculture. XII-612

Mineral value of a vein not established by an ordinary assay certificate. XVII-103

A certificate of the location of a mining claim can not be accepted as establishing the mineral character of the tract in the absence of other evidence showing an actual discovery of mineral. XVII-424

The existence of a mineral location raises the presumption that the location has been made in conformity with law, and that the land covered thereby is mineral in character. XXIV-172

The location of a mining claim in conformity with the law, on land returned as agricultural, raises a presumption that the land is mineral in character, and the burden of proof is thereafter with anyone alleging the agricultural character of the land. XVIII-199; XX-394

The presumption arising upon the location of a mining claim that the land included therein, though returned as agricultural, is in fact mineral, exists only in the case of a legal location, wherein a discovery is shown in compliance with law. XXI-502

A certificate of the location of a mining claim is not in itself evidence of the mineral character of the land, and therefore would not be sufficient to overcome an agricultural return by the surveyor general. XXVIII-174; XXIX-181

In determining the existence of mineral in paying quantities the physical difficulties to be overcome in working the mine may be properly considered. But questions as to whether the claimant can obtain the means to prosecute the contemplated mining operations, or secure the right of way for a water supply, are not for the Department to determine. XVIII-199

Land must be held non-mineral where no discoveries of appreciable value have been made, and it does not appear that a further expenditure would develop the presence of mineral in paying quantities. XXVI-100

Character of land shown to be mineral by proof of mineral in paying quantities, and actual mining operations are not necessary to such conclusions. XV-196

In any case where the character of land embraced within a mineral application is placed in issue it must appear as a present fact that mineral can be secured from the land in paying quantities. VII-71, 265; XIII-86

Mineral Land—Continued.

I. GENERALLY—Continued.

Land must be held mineral in character if mineral has been found thereon, and the evidence shows that a person of ordinary prudence would be justified in further expenditures, with a reasonable prospect of success in developing a valuable mine.
XXIII–34, 417; XXIV–172

On issue joined as to the character of land alleged to be more valuble for coal than for agriculture it rests with the plaintiff to show the existence of a coal deposit sufficiently valuable to be worked as a mine. XV–514

Whenever mineral and agricultural or town-site claims conflict the comparative value of the land for mining or agriculture is in question and must be considered. II–717, 720, 721

Where the testimony to agricultural character was speculative and the land never paid the expenses of cultivating it, but the minerals obtained during several years paid for the plant and for mining expenses, it is subject to mineral entry. II–719

The finding of a court of competent jurisdiction, in a suit to recover possession between a mineral claimant and one claiming under a certification to the State, that the land in fact was of known mineral character and appropriated as such at date of selection, though not conclusive upon the United States, may, in the absence of objection, be accepted, if final, as determining the character of the land. XXVII–327

By their designation as "agricultural" in the official plats, lands in a mineral belt were set apart as *prima facie* "clearly agricultural" under section 11, act of July 26, 1866 (section 2342, R. S.).
II–712, 850

Section 2341, R. S., was intended to relieve persons who had settled on lands theretofore designated as mineral when they were afterwards found to be agricultural; section 2342, R. S., gave the right of settlement on said lands when duly set apart as agricultural.
II–715

Agricultural claimants of land mineral in character will not be heard to plead special consideration on the ground that their entries were allowed by order of the General Land Office, and that they have settled upon and improved the land, where with full knowledge of a prior departmental decision holding the land to be mineral, and of rights asserted thereto under the mining laws, they procured the allowance of their entries without notice to the mineral claimants, and thereafter entered into possession against the protest of said claimants. XXVIII–349

Adverse possession and occupancy of a mineral claimant will not defeat an agricultural entry if the land is subsequently shown to be agricultural in character. XVI–62

Mineral Land—Continued.

I. GENERALLY—Continued.

A protestant against a mineral entry who desires a hearing as to the character of the land should show *prima facie* that the land was agricultural at date of application for mineral patent. XV–509

A hearing will not be ordered on an allegation that a tract of land, embraced within a certified list of State selections, was not, on account of its prior known mineral character, intended to be granted to the State, except upon a strong *prima facie* showing in support of such allegation. XXIV–486

A hearing to ascertain the character of the land involved will not be ordered upon a protest by a mineral claimant against the patenting of a homestead claim upon which final proof has been made and certificate issued, in the absence of an allegation or showing by the protestant that the land in question, or a part thereof, was known to be valuable for its deposits of mineral at the date of the issuance of the final certificate. XXX–216

Hearing to determine character of land not ordered in the absence of application to appropriate the same. VIII–30

All evidence as to character of land should receive due consideration. III–234

In determining the character of land claimed as such the Department may adopt such competent method as may seem best. XIII–89

Testimony of mineral expert, who examines the land under direction of the Secretary, may be considered with other evidence, where no objection is made to such direction until after its execution. XXV–167

The government interested in determining the character of land. III–234

The fact that as between a mineral claimant and one claiming under the settlement laws the settler is estopped by his own acts from denying the mineral character of the land, does not relieve the Department from the duty of determining the actual character of the land in dispute. XXVI–100

The fact that no one is claiming a tract of land under the coal-land law, that is shown to be principally valuable on account of coal, will not justify the land department in the allowance of a homestead entry therefor. XXV–514

Failure to appeal from finding of local officers as to character of land renders their decision final. VIII–30; XV–37

Determination after hearing as to character of land alleged to be mineral is final. V–132

The mineral character of a tract not established by a decision rendered in a case where such question was not in issue. VII–54

Mineral Land—Continued.

I. GENERALLY—Continued.

Discovery of mineral after sale or disposal as agricultural land will not affect the title. III–169; V–193; VI–393; VII–570; IX–83, 411; XII–513; XIII–108; XV–37, 514; XXI–92; XXVI–9

May be included within military reservation, and while thus reserved is not subject to other appropriation. I–552

Mineral or non-mineral character of land covered by a scrip location may be determined by the government without the aid of the locator where he fails to furnish the requisite non-mineral proof. XV–256

Prior to the approval of a railroad indemnity selection, the land included therein, if mineral in character, is open to exploration and purchase under the mining laws of the United States. XXIV–172

Locations prior to survey not in conflict with reserved school sections. IV–96

Order of March 24, 1885, suspending action on mineral applications for school lands, revoked. IV–531

Prior to the approval of a school indemnity selection the land embraced therein, if mineral in character, is open to exploration and purchase under the mining laws. XXIX–181

The failure of mineral claimants to comply with a departmental order, and show by survey the extent of an alleged conflict with an agricultural entry, warrants the conclusion, in the disposition of said entry, that no such conflict exists. XIX–287

Segregation survey may be ordered if found necessary to set apart the mineral from the agricultural land in a forty-acre tract. VIII–443

Segregation survey of land covered by homestead entry will not affect the status of said entry so far as the contiguity of the tracts is concerned. IX–143

A segregation survey at the expense of the agricultural claimant may be directed where his claim includes lands of mineral character covered by a previous mineral location. XI–409

May be segregated from land returned as agricultural at the expense of the mineral claimant. VIII–440

Fee of, is indivisible; one can not take title to the surface and another to the mineral underneath. V–256; VII–283, 321

Settlers upon, without protection. V–131

In Missouri, disposed of as agricultural. I–599

Under the provisions of section 2345, R. S., mineral lands in the State of Minnesota may be taken under the preëmption law. XXV–157

Mineral Land—Continued.

I. GENERALLY—Continued.

Coal and mineral lands are not subject to selection by the State of Utah under section 7, act of July 16, 1894; but lands containing building stone may be taken thereunder. XXIX–69

In Alaska, regulations concerning. IV–128

The Department retains jurisdiction to consider and determine the character of land claimed under the mineral laws until the issuance of patent. IV–314; XI–246. 441

II. ALABAMA.

Coal and iron lands in Alabama. Circular of April 9, 1883. I–655

In Alabama, disposed of as agricultural. I–97

The act of March 3, 1883, only operated on lands withdrawn and designated as mineral. III–173

The act of March 3, 1883, conferred no rights save in cases where entries had been made prior to its passage. III–176

Lands covered by entries and valid applications prior to the act of March 3, 1883, were not effected by said act.

III–169, 172; IV–476; IX–635

The act of March 3, 1883, was not intended to change previous constructions of the law. III–177

Homestead entry on, initiated by settlement prior to the act of 1883, though not then of record, may be patented under said act.

VIII–448

The protection given by the act of March 3, 1883, to a *bona fide* entry previously made does not extend beyond the relinquishment of such entry. VII–560; IX–178

Effect of the act of March 3, 1883, on a homestead entry for lands of known mineral character. VIII–532

The general instructions of April 22, 1880, revoking mineral withdrawals and placing the burden of proof upon mineral claimants, are applicable to Alabama lands. III–169

Land reported as valuable for coal prior to the act of March 3, 1883, is not subject to homestead entry until after public offering.

II–35; VII–461, 512; IX–203, 635, 643

Land returned as valuable for coal and offered prior to the act of March 3, 1883, is not subject to entry if not offered since the passage of said act. VIII–74

The act of March 3, 1883, requiring prior to entry public offering of lands theretofore reported as containing coal or iron, under departmental construction is held applicable only to lands reported as "valuable" for coal or iron. XII–550; XIV–292

Land returned as valuable for coal prior to the passage of the act of March 3,1883, not subject to purchase under the act of June 15, 1880, until after public offering. VIII–532

Mineral Land—Continued.

II. ALABAMA—Continued.

Entry of land reported valuable for coal prior to the act of 1883 without the prerequisite offering may be suspended until after offered and then reinstated if not sold. IX–635

Report of a special agent, made prior to the act of March 3, 1883, that land is valuable for coal, excludes such land from subsequent homestead entry until after public offering. XI–547

An entry made in good faith of land reported prior to the act of March 3, 1883, as valuable for coal, and not offered, may be suspended pending such offering, and confirmed thereafter if not sold, or, if the entryman so elects, the entry may be canceled, with the right to repayment and without prejudice to his homestead right elsewhere. IX–203

Settlement on Alabama land prior to the date when it is reported valuable for coal, and the subsequent entry thereof prior to the act of 1883, both made when the settler was disqualified to enter, will not except such land from the reservation provided in said act. XII–635

The right of a successful contestant can not be exercised upon lands reported valuable for coal prior to the act of March 3, 1883, and not thereafter offered at public sale, but his application may be suspended pending such offering and considered as of the date presented if the land is not sold. X–140

An *ex parte* showing not sufficient to overcome the return showing the land "valuable for coal." IX–635

Under the act of March 3, 1883, all lands in Alabama theretofore reported as valuable for coal or iron must be "offered" before agricultural entry thereof. This requirement of the statute must be followed without regard to whether the land is properly or improperly so reported. XV–563; XXIII–251

Land not known as, covered by settlement and filing made before the act of March 3, 1883, need not be "offered" before the allowance of preëmption entry. VIII–297

A tract reported in 1879 as containing valuable coal, but whereon a homestead entry was allowed in 1883, which was afterwards relinquished and canceled, must be offered at public sale. II–36

Land reported valuable for coal prior to the act of 1883, but covered by a homestead entry at date of the act, becomes subject thereto on the cancellation of the entry. XI–547

One who settles on mineral land in 1871 acquires no right to it by virtue of section 3, act of May 14, 1880, and is not protected by the act of March 3, 1883. II–35

Mineral Land—Continued.

II. ALABAMA—Continued.

Additional homestead entry of land reported valuable for coal prior to the act of March 3, 1883, can not be allowed until after public offering. XI–557

There must be compliance with the homestead law to bring land within the exception provided by the act of March 3, 1883. XIV–268

Mining Claim. See *Mineral Land; Patent; Town Site.*

I. GENERALLY.
II. BY WHOM.
III. LOCATION.
IV. RELOCATION.
V. APPLICATION.
VI. SURVEY.
VII. NOTICE.
VIII. ADVERSE CLAIM.
IX. PROTEST; PROTESTANT.
X. DISCOVERY AND EXPENDITURE.
XI. ENTRY.
XII. LODE.
XIII. PLACER.
XIV. MILL SITE.

I. GENERALLY.

Mining circular of December 15, 1897. XXV–561

Revised circular, approved June 24, 1899. XXVIII–577

Mining laws recognized prior local laws, rules, and regulations. I–588

Amended regulations of November 7, 1895, modifying paragraphs 32, 50, and 51 of the regulations of December 10, 1891. XXI–411

Mining regulations for Alaska. IV–128

Circular of February 25, 1897, under the act of February 11, 1897, authorizing placer entry of oil lands. XXIV–183

Paragraph 29, of mining regulations, amended. XXIV–191

Paragraph 53 of mining regulations, amended. XXVI–378

Circular of July 11, 1900, under act of June 6, 1900, relating to mining rights and claims in Alaska. XXX–142

The phrase, "as in the case of mining claims," occurring in section 32 of instructions of June 8, 1898, was not intended to change the existing practice controlling the survey of mining claims. XXX–40

Under the mining laws existing in the United States and the Dominion of Canada, section 13, act of May 14, 1898, according certain privileges in Alaska to citizens of the Dominion, is inoperative. XXVIII–178

Mining Claim—Continued.

I. GENERALLY—Continued.

Mining laws recognized jurisdiction assumed by the courts. I–584

Failure to comply with local regulations matter for protest or adverse suit. V–131

Includes a tunnel location. I–584

Law and regulations contemplate that primary decision in, shall be made by the local office. IV–376

The case coming up on appeal from the local office without a decision on the merits, the papers are returned for its action. IV–376

A judgment favorable to the applicant in judicial proceedings instituted by an adverse claimant is no bar to a subsequent investi gation on behalf of the government to determine whether said applicant has in fact complied with the law.

IV–314; VII–415; X–184

Decree of court in adverse proceeding determines right of possession as between the parties, but does not deprive the land department of jurisdiction to ascertain the true character of the land and whether there has been due compliance with law.

IV–314; XIV–641; XV–310; XXIII–95

A deed in escrow to land embraced within a mineral application, not delivered until after entry, does not defeat the right of the applicant to make entry of such land. XXIX–89

When special agent reports non-compliance with the law, whilst the proofs show such compliance, hearing should be ordered and special agent directed to produce his evidence. II–788

The result of proceedings in which the parties thereto have had full opportunity to present evidence according to the recognized rules of procedure, should not be disturbed by the report of a special agent on the entry involved. XXVI–123

A decision canceling an entry "without prejudice to the claimant's proceeding *de novo* in a regular manner" is in effect only a permit to the claimant to renew his application, subject to adverse rights. XI–120

May be located on land shown by an irregular survey to be school land. VII–459

Where a town settlement is made upon a mineral claim the patent should contain the clause of reservation even if the settlement is unprotected by entry. III–84

Patent for, should not contain a clause reserving the right of a town site. VIII–602

The value of lands for town lots will not preclude its disposition under the mining laws if such land is in fact of the character subject to entry under said laws. XVIII–199

Mining Claim—Continued.

I. GENERALLY—Continued.

In controversies between parties claiming public lands under the townsite and mining laws, respectively, the phrases, "lands known to be valuable for minerals," or "for mineral deposits," and "known mines," or "land containing known mines," are equivalent in meaning. XXIX–426

Assignments of interests in mining possessions are valid even by parol transfer. I–595

Compliance with law on the part of a mineral claimant, who is at such time holding under color of title, will accrue to his benefit on acquirement of the legal title. XXIII–267

Patent issued to applicant after quitclaim, privity of parties being shown. III–340

A mineral claimant of land embraced within a patented placer or town site, to obviate judicial proceedings, may secure a reconveyance of such land to the United States, and so vest the Department with jurisdiction to pass upon the validity of his claim. XIII–715; XIV–186

The ruling in the Juniata Lode case (13 L. D., 715) is not applicable as between two lode claims where the applicant for relief, with due notice, permits the patent to issue without protest. XXII–362

Lands containing gilsonite, asphaltum, elaterite, and like substances, situated in the Uncompahgre Ute reservation, have been, since the date of the Executive order creating said reservation, and still are, excepted from the operation of the mining laws. XXIX–456

The tide lands of Alaska are not public lands belonging to the United States within the meaning of the mining laws; and no rights whatever, with respect to such lands, can be acquired by exploration, occupation, location, or otherwise, under said laws. XXIX–395

Section 8, act of June 10, 1896, authorizing mineral entries of lands formerly in Fort Belknap Indian reservation, contemplates that such entries shall be made in accordance with the procedure set out in sections 2325 and 2326, R. S. XXIX–158

The act of May 10, 1872, prescribes the only method by which a patent can be secured for a mining claim located prior to its passage, and for which an application for patent was not pending at said date, and also the only method by which the owner of such claim can prevent an adverse but junior claimant from obtaining a patent therefor. XXIX–426

Mining Claim– Continued.

I. GENERALLY – Continued.

Section 2332, R. S., is not intended to be an independent provision for the patenting of a, but should be construed with other sections of the Revised Statutes upon the same subject, and when so construed held to mean that evidence of the possession and working of a, for a period equal to the time prescribed by the local statute of limitations shall be considered as establishing the location of the claim and the applicant's right thereunder, "in the absence of any adverse claim," but that whatever else said section was intended to dispense with, it does not dispense with the requirements of section 2325, whereby the existence of an adverse claim is made known to the land department, and protection accorded to adverse claimants. XXIX–401, 426, 470

II. BY WHOM.

The right to purchase mineral land is restricted to citizens of the United States or those who have declared their intention to become such. X–641

To entitle an applicant, who has declared his intention to become a citizen of the United States, to a mineral patent under section 2319, R. S., it must appear that such intention is a *bona fide* existing one at the time of purchase. XXIX–627

A citizen of the United States acting in the interest of a foreign corporation can not make a mineral entry for the benefit of such corporation. XI–425

Can not be entered by a citizen of the United States acting as a trustee for the benefit of an alien corporation. X–641

Under the terms of section 2321, R. S., the citizenship of a corporation that applies for a mineral patent may be shown by a certificate of incorporation. XX–116

Proof of citizenship on the part of a corporation is made by filing a certified copy of its articles of incorporation; such certificate being made under seal of the officer having custody of the records where said articles are recorded. XXVII–351

A properly authenticated certificate of incorporation, filed by a corporation that is applying for a mineral patent, is sufficient proof of citizenship under the statute. It is not within the province of the land department to determine whether such a corporation is authorized under its charter to take patent for mineral lands. XXII–83

Proof of citizenship is required from the beneficiaries where the applicant for entry is a trustee. X–641

Regulations respecting entry by one applying as trustee. II–725

Mining Claim—Continued.

II. By Whom—Continued.

Entry of, by alien is not void, but voidable, and while of record segregates the land covered thereby from the public domain. XII–345

A mining location made by an alien is not void, but voidable; and a subsequent declaration of intention to become a citizen, made by the locator prior to the inception of any adverse right, relates back to the date of the location and validates the same. XXIX–164

Alien, after declaration of intention, may take advantage of his previous acts done under the mining law. IV–565

A mining company, on application for patent, must show that it has complied with local requirements in the matter of filing its articles of incorporation. VIII–195

A patent for a, may issue on the application of a company though the location of said claim be made by an individual in whom the possessory right apparently remains, where it is shown that in fact said location was made for and in behalf of said company. XX–58

Entry may be made by purchaser in good faith of the mineral location made by a register. II–754

Proceedings instituted to secure a mineral patent by one who is without interest in, or control over, the lands applied for, are without statutory authority, and must be vacated. XXIX–602

Entry of deputy surveyor within the district for which he is appointed not illegal. VI–105

A surveyor-general who orders and approves the survey of a, is disqualified as applicant therefor under the provisions of section 452, R. S., and regulations thereunder, while holding such office. XXIV–393

A deputy mineral surveyor is within the intendment of section 452, R. S., and consequently disqualified from acquiring title to a mining claim in which he was interested at the time of his official report thereon, and at the date of application for patent. XXVI–122

A deputy mineral surveyor, while holding such office, is disqualified as a mineral entryman. XXIX–76

Under the provisions of section 452, R. S., surveyors-general and deputy mineral surveyors are disqualified as applicants for mineral land. XXIX–333

A deputy mineral surveyor who has no interest, real or contingent, in a mining claim at the date of the survey thereof by him, nor at the date of the application for patent thereto, but who subsequently makes entry thereof, does not come within the spirit of section 452, R. S. XXX–139

Mining Claim—Continued.

III. LOCATION.

Direction given for the modification of Rules 7 and 8 of the Mining Regulations. XXIX–663

Paragraph 7 of regulations approved June 24, 1899, amended, and paragraph 8 abolished. XXX–43

Must be properly marked on the ground and notice duly recorded. I–581

Is not legally "known to exist" from the location thereof if the boundaries of the claim are not specifically marked on the ground and due notice of the location given. XVIII–259

A lode or vein is not "known to exist" within a, from the recorded notice of the location thereof, in the absence of a prior discovery of a valuable vein or lode therein. XXIII–476

Under which the requirements of the law have been complied with confers a vested right. II–744; IV–476; XV–571

Placer location made in accordance with law excludes the land embraced therein from other appropriation, and a homestead entry irregularly allowed for such land does not impair the right of the mineral claimant. XVI–117

The right conferred by a valid mining location amounts to a property capable of being employed or transferred entirely separate and distinct from the fee of the land. I–615

Location of, excepts the land from subsequent withdrawal under the arid land act of October 2, 1888. XV–418

Miners' rights not divested by subsequent appropriation of the land for a military reservation. I–552

A location duly made excepts the land from the operation of a statutory order of withdrawal for a forest reservation. XXV–48

In the absence of an adverse claim it will be presumed that a lode exists in land legally located as a lode claim. XXI–438

An amended location made by one who has parted with his title to the claim can not be recognized as securing any right to him. XVIII–536

Valid location can not be made on a possessory right acquired wrongfully. III–267

Surface ground is an incident of the lode, and a location of surface ground which does not include any part of the lode claimed to have been discovered is invalid. II–744

The right of the locator to follow the strike of the lode ceases at the point where the lode crosses the line of the location; but the validity of the location is not affected by the fact that the lode crosses the side line thereof. XXIX–662

Mining Claim—Continued.

III. LOCATION—Continued.

A location with discovery shaft on vacant ground may not include said ground and non-contiguous ground on the same vein or lode, the two parts of the junior location being separated by an intervening patented claim. II–735, 736

In the case of a location on a horizontal or blanket vein, the apex of the lode is coextensive with the distance between the side lines of the location, and every part or point of such apex within these limits is as much the middle of the vein, within the intent and meaning of section 2320, R. S., as any other part. XXIX–689

The location of a mining claim, as made upon the surface of the ground by the locator, determines the extent of his rights below the surface, and the end lines of the location, as established by him on the surface place the limits beyond which he may not go in the appropriation of any vein or veins along their course or strike, except in a case where it is developed that the location has been placed, not along, but across the course or strike of the vein, in which event the side lines of the location become the end lines, and the end lines the side lines of the claim. XXIX–668

The location of a mining claim can be made only upon the public lands of the United States; and there is no authority for placing the lines of a location within, upon, or across other claims embracing lands which have been patented or regularly entered under the public land laws and have thereby become the property of private individuals. XXX–191

The location lines of a lode mining claim are used only to describe, define, and limit property rights in the claim, and may be laid within, upon, or across the surface of patented lode mining claims for the purpose of claiming the free and unappropriated ground within such lines and the veins apexing in such ground, and of defining and securing extralateral underground rights upon all such veins, where such lines (*a*) are established openly and peaceably, and (*b*) do not embrace any larger area of surface, claimed and unclaimed, than the law permits. XXX–420

The location lines of a lode mining claim may be laid within, upon, or across the surface of patented agricultural land for the purpose of claiming the free and unappropriated ground within such lines and the veins apexing in such ground, and of defining and securing extralateral underground rights upon all such veins, where such lines (*a*) are established openly and peaceably, and (*b*) do not embrace any larger area of surface, claimed and unclaimed, than the law permits. XXX–481

A junior lode location is not invalidated by the fact that its end lines and corners are laid within or upon the surface of a valid senior location. XXVII–105

Mining Claim—Continued.

III. LOCATION—Continued.

A lode location subsequent to, and in conflict with, a placer location, but made prior to application for placer patent, does not, when based alone on a discovery outside the limits of the placer claim, and at one side thereof only, establish the fact that the lode or vein thus claimed was known to exist within the boundaries of said placer at the date of application for patent thereto. XXVI–622

The discovery and location of a placer establishes the right to the possession of the superficial area within its boundaries for all purposes incident to the use and operation of the same as a placer; such location, however, does not give title or right of possession to lodes within its limits, or preclude the right of discovery and location thereof by others. XXIII–95

In a controversy between conflicting claimants to the same land, arising upon protest by a mineral locator against an application to purchase under the act of June 3, 1878 (amended by act of August 4, 1892), where it appears that the mineral location is based upon the discovery within its limits of a vein or lode of quartz, bearing copper and gold, that the same is in all other respects regular, and that the time intervening between the date of the location and the filing of the application to purchase under said act was so short as not to afford the mineral locator a reasonable opportunity to develop his claim sufficiently to ascertain with certainty the extent or value of the mineral deposit contained therein, such location is a "mining claim" within the meaning of the proviso to said act, and the land embraced therein is not subject to purchase thereunder. XXX–407

Lands included in a valid mining location at the date of the Executive order of May 17, 1884, setting apart certain territory in Arizona as an Indian reservation, come within the excepting clause of said order, and whatever privilege of going upon or across said reservation may be accorded to persons claiming an interest in such excluded lands under a mining location existing at the date of the order, for the purpose of enabling them to maintain and develop their claims under the mining laws, must also be accorded, on equal terms, to all persons claiming an interest therein under a subsequent relocation under those laws. XXX–515

In the absence of an organized mining district, the record of a mineral location should be made in the recorder's office of the county in which the land is situated. XXII–83

Mining Claim—Continued.

III. Location—Continued.

Surveyors-general required to note date of location on approved plats of survey. III–40

Patent will not issue for location within prior patented lines. I–593

Whether a "location" by the local officers is within rule prohibiting "entries" by them: *Quære.* II–754

IV. Relocation.

The failure of a mineral claimant to perform the requisite amount of annual work on his claim renders the same subject to relocation. XXIII–267

A relocation of the land embraced within a subsisting mineral entry, based upon a default in the performance of annual assessment work prior to the allowance of the entry, can not be made. XXIX–491

If work is renewed on a claim after it has been open to relocation, but before such relocation, the rights of the original owners stand as though there had been no default. VIII–388

The validity of a relocation can not be questioned by the original locator in a proceeding instituted to determine whether said locator has complied with the law in the matter of the statutory annual expenditure. VII–506; X–157

The illegality of a relocation should be shown in a proceeding for that purpose. VII–506

A hearing may be ordered on a protest filed by a prior applicant against an entry based upon relocation, alleging that the claim was not subject to relocation, and the countercharge that the right of the protestant had been finally excluded by adverse proceedings prior to said relocation. X–534

Claim is subject to, in the absence of annual expenditure until entry is perfected. XIV–43

Abandonment is admitted if, after relocation application alleging it, the original locators fail to adverse; if adverse claim is filed, the question is a proper one for the courts. II–698

No proof of abandonment is required of relocators alleging it in their application. II–698

The relocation of an erroneous location allowed by the laws of Colorado must be substantially the same as the original location; additional ground may not be included if existing rights (by color of law) are interfered with. II–740

In enlarging a location (placer) the relocation is restricted to twenty acres additional. II–763

Relocation of claims never adjusted to the public survey allowed. IV–225

Mining Claim—Continued.

IV. RELOCATION—Continued.

An adverse relocation, made during the pendency of an order holding the original claim for cancellation, gives the relocator no standing to be heard as against the right of the claimant. XIX–356

The continuity of possession under a, is not disturbed by an attempted relocation made at a time when there was no statutory ground therefor. XXV–447

Rights under the amended location authorized by the Colorado statutes depend upon the locator's ownership of the original location, and if at the time of such amended location the original is owned, wholly or in part, by others, their title will not be divested by the amended location. XXVI–484

The title acquired by original location can not be divested by leaving out of the certificate of amended location the name of an original locator, unless done with the knowledge and consent of said locator. XXIX–208

V. APPLICATION.

Provisions of circular of May 11, 1885, extended to applications prior to December 4, 1887. V–468

Circular of March 24, 1887, as to proof required on application for patent. VIII–505

Applications should be received in the order of time as presented. I–562

Application to make entry, held without action during the absence of the register, reserves the land covered thereby until final action thereon. XI–212

Reserves the land from the subsequent entry of another. II–704,722; XV–571

An application for mineral patent should not be allowed for land embraced within the prior pending application of another. XXVI–81; XXIX–226

An application for patent under the mining laws for land embraced in an existing mineral entry should not be accepted or entertained. XXIX–114

Application for entry not properly followed up confers no exclusive rights. IV–30

An application properly filed and duly followed by notice thereof by publication and posting, is *per se* a segregation of the land, and if it is afterwards sought to relocate said land on the ground of abandonment, the relocator should be first required to establish the fact of abandonment. XXI–219

Mining Claim—Continued.

V. APPLICATION—Continued.

A patent is not essential to the enjoyment of a, held under a valid location; hence the failure of a mineral applicant to prosecute his application for patent is not in itself an abandonment of his claim. XXVIII–348

The mining laws contemplate that proceedings under an application for mineral patent should be prosecuted to completion within a reasonable period after the required publication, or after the termination of proceedings on adverse claims, if any are filed, and failure so to do constitutes a waiver of rights secured under the application. XXIX–62, 308, 401, 689

By the failure to prosecute a mineral application to completion within a reasonable period after publication, the right to the mining claim is not lost, but the right to the assumption declared by section 2325, R. S., that no adverse claim exists and that the applicant is entitled to a patent upon payment for the land. XXIX–359

A mineral applicant by failure to prosecute his application to completion, within a reasonable time after the expiration of the period of publication of the notice thereof, waives all rights secured by the earlier proceedings on his application; and in a case, arising on the protest of one claiming under an alleged adverse right acquired after the expiration of the period of publication, where this rule has been applied by the Department, the subsequent withdrawal of the protest will not operate to relieve the applicant from the consequences of his laches. XXIX–488

The failure of an applicant for patent to a mining claim to prosecute his application to completion, by filing the necessary proofs and making payment for the land, within a reasonable time after the expiration of the period of publication of notice of the application, or after the termination of adverse proceedings in the courts, constitutes a waiver by the applicant of all rights obtained by the earlier proceedings upon the application. XXX–202

The proceedings necessary to the completion of an application for patent to a mining claim, against which an adverse claim or protest has been filed, if taken by the applicant at the first opportunity afforded therefor under the law and departmental practice, will be as effective as if taken at the date when, but for the adverse claim or protest, the proceedings on the application could have been completed. XXX–202

Delay in perfecting a right to a mineral patent under a judgment obtained in opposition to the application of another, as well as delay in perfecting such right under one's own application, may amount to laches such as will entail a loss of the right acquired by the prior proceedings. XXIX–461

Mining Claim—Continued.

V. APPLICATION—Continued.

Abstract to approximate date of application. IV–374, 515

Questions on the applicant's abstract are between the government and the applicant, and can not be raised by a protestant who sets up a specific defect, but has no interest in the alleged adverse right, and did not assert any adverse claim within the statutory period. XXI–30

The decree of a court, relied upon as the basis of a sheriff's deed under which a mineral applicant claims, will be held to cover the property, where said decree, aided by the pleadings and record of proceedings thereon identifies the land in question. XXI–30

An abstract of title filed by a mineral applicant is insufficient, where a sheriff's deed is relied upon, and the decree under which the sheriff's sale is made does not direct the sale of the property in question. XXI–544

Relinquishment of land embraced in application runs to the government. XXVII–369

A relinquishment of an adverse claim should not be denied consideration on the ground that the accompanying abstract is not brought down to the date of said relinquishment; but due opportunity in such case should be given to file an amended abstract. XX–211

Application embracing more than one lode location will not be received. Circular June 8, 1883. II–725, 726

Application for patent or survey may embrace several contiguous locations. V–199

Placer application not limited to single location. IV–221, 284

Application may embrace several locations. II–772; VI–808

An entry may be allowed on a new application embracing contiguous locations (with a view to equitable action) in the place of one made on separate applications and a consolidated survey. XV–532

A single application may embrace, and a single patent issue for placer and lode claims, where the land involved lies in one body or piece, has been claimed or located for valuable deposits, and the several claims have a common ownership. XXIX–7

Application in conflict with prior pending claim not received. I–542

Application for lode patent within limits of patented placer, alleging that the existence of the lode was known at date of placer application, should be received subject to adverse proceedings of placer claimant. I–564

An application for land partly within a prior town-site patent must be restricted to the land not in conflict. IX–83

An application for a lode patent should not embrace land lying within and beyond an intersecting patented millsite. XXVIII–120

Mining Claim—Continued.

V. APPLICATION—Continued.

A mineral application should not be allowed for land embraced within a prior subsisting homestead entry. XXIX–279

An applicant for patent to a valid lode location who excludes from his application a portion of his claim in conflict with a placer location, does not thereby waive or surrender any of his rights with respect to the possession and enjoyment of any part of the surface of his location lying without the conflict, or with respect to any veins, lodes, or ledges, the tops or apexes of which may be found, at any point outside the conflict, to lie within the surface lines of his location extended downward vertically, unless it clearly appears that by such exclusion he intended to waive or surrender such rights. XXX–482

A mineral entry of record dormant for seven years, held to have barred an application. II–769

Application allowed by the receiver instead of the register not disturbed. I–545

Proof of incorporation furnished by a mining company under a patented entry, and of record in the General Land Office, may be accepted in a subsequent application by said company. IX–48

For placer is barred by a homestead entry of record until after a hearing on the character of the land. II–712

That a lode application expressly excludes land in conflict with a prior entry will not operate to except such land from the claim if in fact there is no conflict. XIII–163

An applicant for mineral patent who excludes or omits from his application ground, the right to the possession of which has been regularly and judicially determined in his favor, and for which he can obtain patent without embracing it in such application, does not by such exclusion or omission invalidate or waive any claim or right which he would otherwise have. XXVII–375

Rule that application by an association of persons may not be for more than one location or for more than 160 acres does not extend to lands containining deposits of borax, soda, alum, etc., in California, Nevada, Arizona, Utah, and Wyoming. II–708

It is not incumbent upon the General Land Office, in considering a mineral application that has been rejected by the local office on account of a prior conflicting application, to call upon said office for the record in the case of such conflicting application, where the report of said office with respect thereto is not specifically traversed. XXIX–226

Mining Claim—Continued.

VI. SURVEY.

Survey of, instructions. I–693; III–540, 542

The signature to an application for the survey of a, should be in the handwriting of the claimant, his agent, or attorney. XXIX–718

No deposit is required to accompany an application for survey in the field, the applicant being free to contract as he pleases; for platting or office work a deposit must be made. II–773

It rests within the discretion of the surveyor-general to regulate the amount required as a deposit to cover the expenses of office work on a survey. XVI–105

In case of an order made for an amended survey of a mining claim there is no authority for requiring the deputy mineral surveyor to execute such survey without further compensation. XXVI–575

Money deposited for the cost of office work and remaining unexpended may be applied on new. VIII–102

Section 2334, R. S., was intended to protect applicants from unjust charges for survey and publication. II–773

Cannot be allowed if the location is not properly marked and recorded. I–581

Survey must follow the location notice upon which it is ordered. This rule applies to amended as well as original locations. VII–81

The official survey of a, must be in accordance with the recorded notice of location as of record at the time of the order authorizing the survey. XXII–83

Survey of, should exhibit boundaries and conflicts. V–199

Where the survey did not follow the amended location the entry should not be canceled, but a new survey required. VII–81

Evidence may be submitted in explanation of an apparent discrepancy between the survey and the claim as marked out upon the ground and described in the location. VII–169

If not properly described in the survey, it is incumbent upon the Secretary, if the matter comes before him, to require a new survey. XXIII–395

A deed to the State of a part of the land embraced in a placer entry makes an amended survey of the mining claim necessary prior to the issuance of a patent thereon. XXVII–121

Where in the entry of a placer claim embracing legal subdivisions exclusions have been made on account of conflicting patented lode claims, a survey is necessary in order that the excluded tracts may be accurately described in the placer patent. XXX–227

In the case of an application for patent that embraces more than one location, the survey and plat must so exhibit the boundaries as to clearly define each location. XXIX–585

Mining Claim—Continued.

VI. SURVEY—Continued.

Land below high-water mark of a meandered stream should not be included within the survey of a mining claim. XXIX–585

Error in boundary of claim as shown by survey stakes may be corrected through the surveyor-general's office. IV–117

Survey must be made by actual measurement on the ground. VI–718

If, during the pendency of a mineral application, the monuments marking the corners of the claim are destroyed by accident or design, the applicant need not be required to reëstablish said corners before the issuance of patent. XX–43

Survey must distinguish the several locations and exhibit the boundaries of each if the application embraces more than one location. VI–808

Object of establishing mineral monuments. VII–392

Amended survey will be required where no connection is shown with a mineral monument or a corner of the public survey. VII–475

The field notes of the survey of a, should connect the claim with a corner of the public surveys, and in the absence of such connection an amended survey and new notice of application will be required. XXII–715

An amended survey and republication of notice will be required where it is found that the land embraced within the application, as set forth in the official survey and published notice, is incorrectly described. XVII–565

In the survey of, a connecting line run to a section corner on a township line is sufficient though such township may not be subdivided. X–391

Entry submitted to the board of equitable adjudication in case of erroneous description of connecting line where the error resulted from an erroneous marking of a corner located by public survey. VI–646

Amended survey may be allowed where, through error of the surveyor, the connecting line is incorrectly located, but the claim is sufficiently identified by the description given and good faith is apparent. After such amendment the entry may be equitably confirmed. VI–718; X–173

The survey of a, is not vitiated by the fact that the connecting line with the public survey is more than two miles in length, where each corner of said claim is connected, by the survey in question, with other claims that have been officially surveyed. XXV–262

A new survey under the circular of December 4, 1884, will not be required where one in accordance with existing practice had been approved by the surveyor-general prior to the receipt of said circular. VII–318

Mining Claim—Continued.

VI. SURVEY—Continued.

In the survey of, the end line must terminate at the point where the lode in its onward course or strike intersects a senior location; and the regulations of December 4, 1884, to this effect are not in conflict with statutory provisions. XV–67

In a survey that conflicts with a prior lode claim, where the ground in conflict is excluded, the applicant is limited to a line passing through the point where the lode intersects the exterior line of the senior location. III–540; VIII–361; XI–236, 250

In case of an entry in conflict with a prior preëmption the land that lies beyond the point where the lode intersects the preëmption claim must be excluded from the survey. XV–309

For the purpose of including ground held and claimed under a lode location which was made upon public land, and valid when made, the end line of the survey of said lode claim may be established within the boundaries of a patented placer. XXII–284

To hold land lawfully included in a location the lines of survey may be laid upon the surface of conflicting and excluded claims under subsequent locations. XXIX–156

The end line of a survey of a lode claim may be laid upon the surface of a prior location in order to hold land embraced within the lines of a valid location; but in case the prior location is excluded the end line may not be placed beyond the point where the lode in its onward course or strike intersects the exterior boundary of the excluded ground. XXVIII–322

To include land properly subject to location the survey of a mining claim may be extended entirely across a prior excluded location, and the end line established at a point within a junior excluded location. XXIX–256

Entry should not be allowed for a lode claim that includes land embraced within a senior location or is intersected by an excluded mill site. XV–504

Survey of consolidated claim embracing several contiguous lode locations allowed. IV–362

In requiring an amended survey the applicant should be informed that his entry will be canceled if the requirement is not complied with in a specified period. VII–475; XVI–105

Proceedings based upon a false survey and publication are invalid. I–593

In case of a mineral patent based upon an erroneous survey, a new patent can not issue without a proper application under a corrected survey; and if the patentee refuse to surrender the patent so issued by mistake and reconvey the land embraced therein, suit to recover title should be instituted by the government. XXII–101

Mining Claim—Continued.

VI. SURVEY—Continued.

The land department has no jurisdiction to correct an alleged erroneous survey of a patented placer claim, while the patent is outstanding, so as to include land not applied for or surveyed. XXIV–512

An official survey of a placer, must be furnished, if the description of the lands, for which patent is asked, can not be made to conform to legal subdivisions of the public land surveys. XXIX–368

Where an amended survey of, is required within a specified period, the entry should not be canceled prior to a report from the surveyor-general's office; and an entry so canceled must be reinstated, if it appears that the mineral applicant had, in due time, obtained from the surveyor-general an order for said survey. XXVI–643

If, after the issue of an order for the survey of a, a relocation is made, embracing ground not included in the original order, a new order of survey must be obtained, which should bear its proper number in the current series. XXIX–718

VII. NOTICE.

In giving notice of application the required period of time must be covered by each form of notice. V–510

Notice must give the course and length of a line connecting the claim with a corner of the public surveys or with a mineral monument. V–685; XIV–294

A published notice of application for mineral patent that shows no connection of the claim with a mineral monument, or corner of the public survey, is fatally defective. XXIX–592

In the notice of application for patent the description of the claim should include the course and length of a line connecting said claim with the public survey or a mineral monument. VII–392

Application for patent can not be allowed if the description of the claim in the published notice is not in accordance with the official field notes of survey. XIV–45

The published notice is sufficiently definite in the matter of showing the connecting line where it identifies the claim by connection with a corner of a patented town site which is also the corner of a patented placer, both of which are connected with a mineral monument. XIV–105, 294

Notice of application for patent to a mining claim will be held sufficient, where the locus of the claim is designated therein according to the official survey for patent, which survey ties the claim to what is generally believed to be a corner of the public survey, even if it should be ultimately shown that such is not the true corner. XXX–74

Mining Claim—Continued.

VII. NOTICE—Continued.

Where the notice of an application for patent to a mining claim gives no connecting line between the claim and a corner of the public survey, and does not otherwise designate the situation of the claim upon the ground with substantial accuracy, a new notice will be required. XXX–481

The notice of an application for mineral patent will be held sufficient in the matter of descriptive information therein that complies substantially with the law and regulations in force at the time such notice is given. XXII–675

New notice must be given if a new survey is required, and if during the period of republication an adverse claim is filed it will be entitled to consideration. XXIII–395

New publication of notice and posting thereof must be required where a mineral entry embraces land that was excluded from the claim in the notice on which such entry was allowed. XXII–711

A notice of application that does not connect the claim with the public surveys is insufficient, and the defect can not be cured by equitable action in the presence of adverse claimants who have not had legal notice. X–198

A location on unsurveyed land, connected by course and distance with a mineral monument, requires, on application for patent, such connection to be shown in the published notice. XXII–244

In determining the sufficiency of the published notice of an application for mineral patent the notice must be taken as a whole, and if when so considered the situation of the applicant's claim on the ground is designated with substantial accuracy, the notice must be held sufficient. XXVII–104; XXVIII–240; XXIX–491

The notice of a mineral application, as posted and published, in addition to other details, should state the names of the nearest or adjacent claims, and where the record of the claim may be found. XXII–624

The field notes of survey and application for patent, together with the notice, should correspondingly disclose with mathematical accuracy the amount of land included in a, and the acreage of the entry be determined accordingly. XXII–711

The published notice of application will not be deemed insufficient on account of failure to give the names of adjoining claims, where the numbers of said claims are furnished. XIX–245

It is not necessary to give the names of all adjoining and conflicting claims in the notice of an application for patent under section 2325, R. S., but only such as are shown in the plat of survey. XXIX–250

Mining Claim—Continued.

VII. NOTICE—Continued.

The notice of an application for a mineral patent should, in stating the names of adjacent claims, include unsurveyed as well as surveyed claims. XXIV–191

Failure to include in the posted and published notice of a mineral application the names of the nearest or adjacent claims, in strict accordance with paragraph 29 of mining regulations, will not render new notice necessary, where the notice as given is substantially in conformity with the practice heretofore observed under said paragraph. XXIV–191

The failure of an applicant for mineral patent to mention in his posted and published notices the names of adjoining claims, as shown by the field notes and plat of the official survey of the applicant's claim, is a fatal defect, and requires new notice of application. XXVII–56

Under the rule as announced in the case of Gowdy *v.* Kismet Gold Mining Co., 24 L. D., 191, the failure to include in the published notice of application for mineral patent the names of adjoining claims will not render such notice insufficient, where the publication is made or begun prior to June 1, 1897, and is substantially in accordance with the practice theretofore existing. XXVIII–229, 240

The law does not provide, nor does any regulation of the Department direct, that notice of an application for patent on a, shall contain a citation to adverse claimants, or notice of the time within which adverse claims must be filed. XXVIII–550

The mining regulations do not require that the notice of application for mineral patent, as posted or published, shall contain a description of the lode line, reference being made in these notices to the official plat of survey on which is indicated the general course or direction of the vein. XXIX–662

On application for reinstatement of a canceled mineral entry, where it appears that parties are claiming adversely thereto, the applicant should publish notice of his application for a period of sixty days, in the same manner as notice for an original application for patent is required to be published. XXVIII–451; XXIX–470

The notice of application must be published in the newspaper nearest to the claim. XIV–138

The discretion vested in the register to designate a newspaper within which a notice of application must be published is subject to review and control by the General Land Office and the Department. XV–330

Mining Claim—Continued.

VII. NOTICE—Continued.

The selection of a newspaper rests in the sound discretion of the register; other things being equal, the convenience of the applicant should be consulted. II–758

The register may exercise his official judgment in the selection of a newspaper nearest to the claim for the publication of an application. X–655; XVI–178; XXVI–145

In the selection of a newspaper for the publication of notice of mineral application the register, in the exercise of a proper discretion, may designate a paper that he regards best for the purpose of giving the greatest publicity to the notice, even though it may not be the paper nearest to the land. I–570; XVII–558

The publication of the notice of application is under the direction and supervision of the register; but it is the duty and privilege of the applicant to see that in such publication there is due compliance with respect to all essential requirements. XXVII–105

Each of the three concurrent details in publication of notice must be equally observed. I–573

The notice of application required to be posted on a mining claim is an integral and essential part of the notice of such application, which the statute requires to be contemporaneously posted for sixty days on the claim, and in the local land office, and to be published in a newspaper. If any one of these three notices is insufficient, they are all rendered valueless. XXIX–467

The publication is not sufficient if the notice does not appear in every copy of the paper of each issue for the statutory period. VI–320

Ten insertions required where the notice is published in a weekly paper. II–710; XI–457

Where the publication is made under a former practice that recognized nine insertions in a weekly paper as sufficient, the entry may be equitably confirmed in the absence of an adverse claim. XI–457

The sixty days of publication required by section 2325, R. S., on application for mineral patent, is complete when the notice has been inserted in nine successive issues of a weekly newspaper, and the full statutory period has elapsed; and there is no authority to permit the filing of an adverse claim after the expiration of such period. XXVIII–224

In the publication of notice figures must not be changed to words and charged for as thus extended. III–115

Insufficiency of publication, not the fault of applicant, waived in the absence of adverse rights. I–575

Mining Claim—Continued.

VII. NOTICE—Continued.

Entry sent to the board of equitable adjudication where a misdescription of one of the lines of survey appeared in the published notice, the error not being the fault of the applicant or to the prejudice of the rights of third parties. VI–546

Where the published notice is not sufficiently explicit in the matter of description, but the posted notice is in due form, the defect may be cured by equitable action in the absence of protest or adverse claim. XI–234; XIV–563

Will not be permitted to pass to patent, where in the description thereof, as appearing in the surveyor's certificate and the notice of application, the name of the county, in which the claim is situated, is incorrectly given. XXIX–154, 289

A misstatement in the published notice of an application for a placer patent, as to the mining district in which the land is situated, is not fatal to the notice, where the land is accurately described by legal sub-divisions, and otherwise identified. XXVI–25

If the published notice is not as explicit in description as the notice posted on the claim, the defect is the fault of the register and may be cured by reference to the board of equitable adjudication. VIII–457

An error in description (last course and distance, to inclose the tract, made to run east instead of west) which does not mislead the adverse claimant or defeat any right will not invalidate the publication. II–707

An error occurring in the published notice of application for mineral patent will not be held sufficient to require new notice, where it is of a character not to mislead, and the different forms of notice, as published and posted, when taken together show with accuracy the location and boundaries of the land included within the application. XXIX–558

Clerical errors in posted and published notice of application for patent will not be regarded as materially affecting the validity of the notice, where said errors are not calculated to mislead or deceive, and no prejudice thereby is shown or alleged, and it appears that such notice, taken as a whole, meets the requirement of the law. XXIX–230

Notice of application must be posted in local office during the whole period of publication. I–572

Posting for sixty days sufficient if the same period is covered by publication. V–510

Notice of application must be posted, during the period of publication, in the local office having jurisdiction over the land; and in the absence of such posting, a republication must be made in due accordance with statutory requirements. XVII–282

Mining Claim—Continued.

VII. NOTICE—Continued.

The fact of posting forms in part the basis of the application. IX–503

Copy of plat and notice of application must be posted in a conspicuous place on the claim. VII–554

In the notice posted on a, the book and page of the record should be given of the location on which the official survey is made, and failure to comply with this requirement will necessitate new notice. XXIII–504

An entry can not be allowed where the applicant fails to post the plat and notice of application in a "conspicuous" place on the claim, and failure to comply with the statute in such particular will make new notice of the application necessary. XXI–336

Where due proof of posting is made, an allegation that the posted notice could not be found on the claim does not call for republication of notice, in the absence of any prejudice shown on the part of the protestant. XX–43

The shaft house on a lode claim is a proper place for posting a notice of application for mineral patent. XXII–624

Posting in open shaft house held sufficient. I–548

Failure to post notice on mill-site portion of claim excused under the facts. III–386

Failure to post on contiguous mill-site portion of claim excused and the entry sent to the board of equitable adjudication. V–513

Where the plat and notice were posted in the limits of the claim as located, although on ground excluded from the application, it suffices. II–756

Affidavit of posting may be made by a claimant whose knowledge is derived from personal observation at various times and from reliable information. IX–503

Too late to raise technical objection to the affidavit of posting after action thereon and allowance of the entry. IX–503

Occasional absence of the witness from the mine does not impair the value of his testimony as to the fact of posting. IX–538

Entry may be referred to the board of equitable adjudication where the posting, through inaccessibility of the claim, was made on adjacent claim. VII–477

Due compliance with the law and regulations appearing, except in the matter of furnishing proof of posting, the entry may go to the board of equitable adjudication after new advertisement, posting, and proof thereof. VI–717

Proof of posting in the local office should be furnished by the register, and in the absence thereof evidence of such posting may be submitted by the applicant. VIII–457

Mining Claim—Continued.

VII. NOTICE—Continued.

Compliance with local laws and regulations in the location of mining claims, in the matter of posting notices thereon, will be presumed, in the absence of any showing that such question is of material importance in the case. XXVI–541

Footnote attached to printed notice of application showing period of publication is no part of the notice. XIV–180; XXV–550

Notice of mineral application to one of the owners of a conflicting claim is notice to his coöwner, in the absence of fraud. XVII–558

An application for a mineral patent should not be allowed, where the land embraced therein is covered by a railroad selection of record, without due notice to the company. XX–485

In the matter of a protest against a mineral application in which the General Land Office dismisses the protest, but in the same order requires of the mineral applicant republication, the judgment, if allowed to become final, is equally binding upon both parties, and should be so treated on a subsequent application of the mineral claimant for equitable relief. XXII–318

An applicant for the right of mineral entry, who expressly excludes from notice of his application stated areas, is not entitled thereafter to make entry of such excluded ground without due notice of such intention. XXVI–198

Where the notice of an application for a mineral patent excepts and excludes therefrom all conflict with a specified survey, no portion of the land embraced in said survey, as it existed at the time when the posting and publication of said notice commenced, should be included within the entry allowed under said application. XXVIII–24

Exclusion of conflicting areas must appear in published and posted notices. I–543

An applicant for mineral patent, who has excluded ground embraced within a prior application of his own for another claim, may amend his application and entry so as to include ground covered by the senior application, on the relinquishment of his claim thereto; but he will be required in such case to make new publication and posting, and otherwise comply with the law and regulations. XXVIII–436

In case of a relinquishment of part of the land covered by a mineral application, pending publication, the register should withdraw and correct the notice, and commence anew the publication thereof; but failure so to do can not affect the force and validity of the relinquishment, or impair the notice, for, as to the land relinquished, the notice is mere surplusage, being limited to the application as amended by the relinquishment. XXVII–369

Mining Claim—Continued.

VIII. ADVERSE CLAIM.

Adverse proceedings. Circular of May 9, 1882. I–685

The statutory fee for filing and acting upon an adverse claim can not be required if said claim is rejected by the local office. XIII–718

The adverse claim must be upon oath of the person or persons making it; may not be sworn to by an attorney. II–706

An appeal will lie from the rejection of an adverse claim. XIII–718

It is not a valid reason for refusing to accept an adverse claim that proof of publication has not been received. XIII–718

The failure of an agent who files an adverse claim to furnish therewith proof in corroboration of his sworn statement of authority will not defeat the right of the adverse claimant to have the controversy settled in the courts. XI–150

The failure of an adverse claimant who appears as a transferee to furnish an abstract of title will not defeat his right to be heard when he has complied with the regulations as far as possible. XV–45

The adverse proceedings provided for in section 2325, R. S., contemplate only suits between adverse mineral claimants, and does not have in view adjudications respecting the character of land as between agricultural and mineral claimants. XXIII–173

The statutory provisions relative to adverse proceedings apply only to cases where there are adverse claims to the same unpatented ground, hence a suit instituted by a placer patentee against a lode claimant for land included in the placer patent is not an adverse proceeding within the purview of the statute, and the judgment rendered therein can not be accorded the conclusive effect which attaches to a judgment rendered in an adverse proceeding such as is contemplated by the statute. XXVIII–41

Section 2325, R. S., is a statute of repose only so far as to bar the assertion of adverse claims not filed within the period of publication, and does not relieve the land department from the duty of ascertaining whether the land is mineral in character, subject to disposition under the mining laws. XXIX–12

The statutory assumption declared in section 2325, R. S., that no adverse claim exists, where no such claim is filed in the local office during the period of publication, has relation only to adverse claims which might have been made known at the local office during that time. XXIX–302

Alleged delinquent co-tenants must protect their rights as adverse claimants. I–544

Mining Claim—Continued.

VIII. ADVERSE CLAIM—Continued.

A co-claimant must protect his rights under the form of procedure provided for an adverse claimant. v–93; xviii–358

A protest based on alleged co-ownership is not an adverse claim that requires the institution of judicial proceedings in a court of competent jurisdiction. xxv–495

Tunnel location should be protected by adverse suit as other mining claims. i–584

The patentee of a placer claim is under no legal obligation to institute adverse proceedings against a subsequent conflicting lode claim. xxv–460

An applicant for lode patent has no right to land embraced within the prior location and application of another, and against which said applicant filed no adverse claim. xxviii–321

Protest or adverse claim should be filed as against an application to protect rights under a prior town-site patent. iv–555

An adverse claim must be filed within the sixty days of publication, and in the computation of such period the first day of publication is excluded. xiii–286, 718

An adverse claim will be recognized as filed within time if such filing is in accordance with the regulations then in force. xi–391

Adverse claim must be filed within the sixty days of publication required by the statute. iv–30; xvi–101

The adverse claim must be filed within the sixty days of publication. The rule allowing it to be filed on the day of the tenth publication where the newspaper is issued weekly, is rescinded. ii–709

Time for filing adverse claim not computed to include period during which the local office was closed. i–572

If the last day of publication falls on a legal holiday, the adverse claim may be filed on the next business day. xiii–718

If the last day of publication comes on Sunday, an adverse claim filed on the succeeding Monday is in time. viii–430

The statutory provisions limiting the time within which an adverse claim may be filed are mandatory, and the land department is without authority to extend said period. xxix–467

The local officers may properly refuse to accept and file an adverse claim tendered out of office hours on the sixtieth day of publication; but if such claim, so tendered, is accepted and filed it must be regarded as filed in time. xxiii–546

In determining whether an adverse judicial proceeding has been instituted within the statutory period, the Department will not undertake to review an order of a court of competent jusisdiction recognizing the initiation of such proceedings within said period, while the suit so begun is pending within said court. xxiii–20

Mining Claim—Continued.

VIII. ADVERSE CLAIM—Continued.

How the period for filing adverse claims may be affected by the date of posting. V–510

Failure to adverse within period of publication leaves the plaintiff in the position of a protestant. III–422

In the absence of an adverse claim asserted within the period of publication the Department is warranted in the assumption that no such claim exists. XXI–30

All adverse claims are held as adjudicated in the applicant's favor if not asserted within the statutory period and in the manner provided. IX–563, 572

In the absence of adverse claim it is assumed that the applicant is entitled to patent, and no agreement of parties can affect this statutory provision. I–591

An objection to the issuance of a mineral patent, based on an assertion of prior right to a portion of the land included in the entry, will not be entertained where the protestant fails to file any adverse claim during the applicant's period of publication. XXX–67

A failure to file an adverse claim against an applicant for mineral patent is a waiver of all right to the ground in conflict; and a judgment obtained in adverse proceedings against the subsequent application of another is of no avail as against such waiver, or as against a judgment obtained by one who successfully adversed the first applicant. XXVIII–322

An adverse claim filed out of time and suit based thereon but not begun within the period prescribed do not preclude the allowance of mineral entry; nor does the pendency of such suit bar the issuance of patent on said entry. XIV–180

One who files an adverse claim out of time and brings suit thereon, but not in time, does not occupy the status of an "adverse claimant," but that of a "protestant" without interest. XIV–180

Failure to adverse within required time (because of alleged failure of adverse claimants to obtain mineral in their claim) is an admission that they had no right to the property; they can not be heard subsequently to claim either legal or equitable title to it. II–738

The obligation of an adverse claimant to begin judicial proceedings within the statutory period is not suspended by favorable action taken on a motion to dismiss the adverse claim, and appeal therefrom. XXII–274

A misstatement in the published notice as to the termination of the period of publication will not excuse the adverse claimant from filing his claim within the statutory period. XIII–286

Mining Claim—Continued.

VIII. ADVERSE CLAIM—Continued.

The fact that the expiration of the period of publication is erroneously stated in a footnote appended to the published notice of application for a mineral patent will not excuse an adverse claimant from filing his adverse within the period fixed by the statute. XIV–180; XXV–550

An agricultural claimant who asserts no claim in himself during the period of publication is not thereafter entitled to an order for a hearing. X–572

Failure of prior locator to file adverse claim is a waiver of his right. I–591

Failure of the original locator to adverse an application based on a junior location authorizes the assumption that the claimant under the junior location is entitled to a patent as against the claim of the prior locator. XIX–246

The subject-matter of the controversy having been transferred to a court of competent jurisdiction, all further proceedings in the land office affecting the property in dispute are stayed, with the exception of the publication of notice and making and filing proof thereof. II–704

Where suit was duly commenced, though a subsequent decision dismissing the adverse claim for invalidity has become final, no action looking to the issue of patent will be taken while the suit is pending. II–706

The local office has no authority to allow an entry during the pendency of adverse judicial proceedings. XI–150

Judicial proceedings are not effective as against an application for patent if not based upon an adverse claim as provided by statute. XXIV–18

If the protest filed against a mineral application does not present such a claim as is contemplated by the statute, it should not be treated as an adverse; and the fact that suit thereon has been commenced in the courts will not require the land department to recognize the claim as an adverse within the meaning of the law. XXV–495

A protest against a mineral application, alleging adverse ownership, filed by one who asserts no adverse claim in the manner provided by section 2326, R. S., presents no question for the consideration of the Department, except in so far as the claim of ownership may operate as an inducement to accord the protestant the right to be heard on appeal. XXIX–230

Mining Claim—Continued.

VIII. ADVERSE CLAIM—Continued.

A protest based on alleged co-ownership is not an adverse claim that requires the institution of judicial proceedings in a court of competent jurisdiction; but the land department may await the result of proceedings so begun in such a case before giving further consideration to the protest. XXV–495

The Department may properly direct a stay of action, under an application for patent, during the pendency of judicial proceedings, even though said proceedings are based upon a protest that does not require an adverse suit under the statute, if such stay of action is in aid of a proper disposition of said protest by the Department. XXVI–220

Where it is held in a judicial proceeding, though such proceeding may not be of the adverse character contemplated by the statute, that all of the land embraced in a lode location is excepted from a placer patent, and that such excepted land, not included in the lode entry, is open to exploration, and awards the same to a subsequent lode claimant, as against the placer patentee, and said patentee acquiesces is such judgment, and thereafter, having due notice of proceedings by such lode claimant to secure patent, makes no objection thereto, the patent may go in accordance with the judicial award. XXVIII–41

A judicial award to the junior locator, made in adverse proceedings, of a small part of the ground in conflict, is none the less binding upon the parties and the land department because made in pursuance of a stipulation between the parties. XXVIII–322

A judgment rendered in adverse proceedings, whereby part of the ground in conflict is awarded to the senior locator and the remainder to the junior, is none the less binding upon the parties and the Department because it was made in pursuance of a stipulation between the parties. XXVIII–398

Where a party has two applications pending at the same time, each of which embraces the ground in conflict with other locators, and such ground is awarded to the applicant in judgments secured in adverse proceedings, he may, at his election, take the same under the senior application. XXVIII–322

A suit pending on an adverse claim operates to oust the Department of all jurisdiction over the matters involved therein, even though the judicial proceedings rest on a claim wherein the application for patent has been denied by the Department. XXII–527

Where co-owners of an adverse claim bring separate suits in their individual names, and in different courts, a dismissal of the junior proceeding will not confer jurisdiction upon the Department to proceed with the application and allow the entry. XXII–343

Mining Claim—Continued.

VIII. ADVERSE CLAIM—Continued.

Where a mineral applicant institutes adverse judicial proceedings against a subsequent applicant, whose claim in part involves the same land, there should be a stay of action until final disposition of the suit at law. XXII–629

The departmental decision *in re* Little Giant Lode, 22 L. D., 629, did not hold that the proceedings under consideration therein constituted an adverse suit as contemplated by section 2326, R. S., but that under the facts shown a stay of proceedings was warranted. XXIX–194

Where adverse proceedings involving a common conflict are prosecuted, that fact appears of record, and the parties are charged with notice. It is incumbent upon each adverse claimant to take such action as will determine his right, not only as against the applicant for patent, but also as against the other adverse claimants. Until this is done the stay of proceedings is not relieved. XXVI–198

It is not material to the rights of an applicant under a favorable judgment obtained in adverse proceedings, that an adverse suit is still pending between the losing party in such proceedings and a third party, where a favorable judgment against the third party for the same ground has already been secured by the applicant. XXVIII–322

No action can be taken in the land department on an application for patent during the pendency of adverse judicial proceedings. XI–391

Hearing should not be had before the local office on a protest during the pendency of adverse judicial proceedings. XII–294

A protest against a mineral application will not be entertained during the pendency of adverse judicial proceedings instituted by the protestant and others; and this rule is especially applicable to a case where the matters alleged in the protest may be made the subject of legitimate inquiry in the pending adverse proceedings. XXVI–348

In a controversy between one claiming under a townsite entry and patent, and another under a subsequent application for mineral patent, the question as to whether the land contained, at the date of the townsite entry, known mines, or was embraced in a valid mining claim or possession, must be decided by the Department; a decision of that question by a court would not bind or conclude the Department, or relieve it from the duty of making its own decision in the premises. XXIX–522

Mining Claim—Continued.

VIII. ADVERSE CLAIM—Continued.

Judicial proceedings instituted outside of the authority of section 2326, R. S., can not affect departmental action on an application for patent. XI–8

Where an adverse claim is presented in proper form and the courts have properly acquired jurisdiction, and there has been no settlement or decision of the suit or waiver of the claim, the General Land Office will not consider a question which goes to the merits of the case. II–699

Motion to dismiss an application will not be entertained prior to the disposition of adverse proceedings duly initiated and pending in the courts. VI–533; X–270

Action on an application for the reinstatement of a canceled mineral entry should be suspended, where the applicant has filed an adverse claim against the application of a relocator for the land covered by said entry, and suit on said claim is pending in a court of competent jurisdiction. XXVI–608

The relinquishment by the applicant of the land originally in conflict does not authorize the land department in reassuming jurisdiction during the pendency of judicial proceedings by an adverse claimant who has been permitted in such proceedings to amend so as to embrace a larger quantity of land than was included in the original adverse claim. XI–391

Where a mineral applicant during the period of publication, and prior to the filing of any adverse claim, relinquishes part of the land, such relinquishment runs to the United States, though in terms made for the benefit of another claimant, and operates to withdraw from the pending application the land so relinquished, and no rights can thereafter be secured as to the land so withdrawn by adverse proceedings against said application. XXVII–369

In the case of a common conflict between several, a relinquishment or exclusion by the applicant for patent, in favor of one who did not adverse the application, is of no effect, as against another adverse claimant who, prior thereto, has prosecuted his adverse claim to a favorable judgment. XXVI–198

An entry allowed prior to the final disposition of adverse proceedings must be canceled where such adverse claim remains undetermined. VII–83

Section 2326, R. S., contemplates that controversies between conflicting mining claimants, involved in adverse proceedings in the courts, shall be tried and determined, unless the adverse claim shall be waived, before entry is made by either party in the land office. XXX–298

Mining Claim—Continued.

VIII. ADVERSE CLAIM—Continued.

Where an adverse claimant under the mining laws has been allowed, through inadvertence or mistake, to institute patent proceedings embracing his adverse claim and to make entry thereof during the pendency in court of a suit involving the same, the entry will be canceled. XXX–298

A mineral entry irregularly allowed during the pendency of adverse proceedings will not be canceled for such irregularity, where, subsequently thereto, the adverse is dismissed, leaving the applicant in the same status as though no adverse claim had been filed. XXVII–191

Entry prematurely allowed pending disposition of adverse litigation permitted to stand on the withdrawal of the adverse claims. VII–336

If, after a mineral entry has been allowed, the entryman finds it necessary to maintain an adverse suit against a conflicting claim, it is incumbent upon the government to take notice of the result of such action, and act accordingly. XXV–262

Stay of proceedings warranted on allegation of adverse claim shown on plat filed. I–538

The stay of proceeding resulting from adverse claim removed by waiver. IV–120, 376

A discrepancy between the adverse claim as filed in the local office and that upon which suit is instituted will not warrant the land department in the resumption of proceedings during the pendency of the suit in court. X–194

Adverse claim, though informal, held sufficient where suit had been duly brought thereon. I–603

If the protest shows that an adverse proceeding is pending in the courts, action should be suspended by the local office until final disposition of such proceedings, though it may have been begun before the application for patent. VIII–437

The pendency of proceedings in the nature of an adverse suit, instituted for land excluded by the applicant for patent, does not warrant a stay of action under a subsequent application filed by said adverse claimant for the excluded ground. XXIX–301

Where a claimant makes application for patent under section 2325, R. S., for a part only of his mining claim, and at the same time institutes adverse proceedings under section 2326 as to the remainder, proceedings upon such application for patent can not be delayed in the land department to await the final issue of the adverse proceedings in the court. XXX–488

Mining Claim—Continued.

VIII. ADVERSE CLAIM—Continued.

The pendency of adverse proceedings, based on a tunnel location, operates as a stay of all action under an application for mineral patent that embraces ground included in said adverse claim. XXIX–235

The mining laws do not provide for adverse proceedings, against an applicant for patent to mineral land, by one claiming the same, or any part thereof, under laws providing for the disposal of non-mineral lands; and a suit of such character does not warrant a stay of proceedings on an application for a mineral patent. XXIX–522

In a case arising on a protest, by an alleged co-owner, against an application for patent to a mining claim, where the matters of protest involve disputed questions under a local statute of limitations, and as to the effect of conveyances of interests in the claim applied for alleged to have been made without consideration, the proceedings upon the application for patent will be suspended and the parties given an opportunity to litigate and settle the matter by appropriate judicial proceedings in the courts of the vicinity. XXX–364

A declaration in ejectment filed in a court of competent jurisdiction by an adverse claimant, within the statutory period, and in accordance with local statutes, is such a commencement of "proceedings" as to suspend the jurisdiction of the Department under section 2326, R. S., even though summons on said declaration does not issue within said period. XXII–16

Where suit on the adverse claim has been duly instituted, but a subsequent application by the adverse claimant embracing the same ground has been received and duly adversed by the original applicant and suit thereon commenced, the land department has jurisdiction to dismiss from the record the second application. II–704

Where suit on the adverse claim has been duly instituted, but a subsequent application by the adverse claimant embracing the same ground has been received and duly adversed by the original applicant and suit thereon commenced, the land department will not dismiss the second application from the record while both or one of the suits is pending. II–712

Proceedings in the form of an adverse suit, instituted by one holding under an existing mineral entry, as against a subsequent mineral application erroneously accepted and entertained by the local office, do not constitute a recognition of the validity or regularity of such application, or have the effect of divesting, waiving, or suspending rights acquired under the entry. XXIX–114

Mining Claim—Continued.

VIII. ADVERSE CLAIM—Continued.

Entry should be canceled where the certificate showing non-existence of suit was recalled. I–539

Extent and nature of adverse claim may be shown by means best practicable if survey can not be made. I–582

A protest filed as the basis of adverse proceedings is sufficient, if it clearly and definitely notifies the mineral applicant of the nature, boundaries, and extent of the alleged adverse right. XXIX–460

A protest filed as the basis for adverse proceedings may be properly rejected as insufficient if it fails to "show the nature, boundaries, and extent" of the adverse claim in accordance with the requirements of paragraphs 83 and 84 of the mining regulations. XXVI–530

A protest filed as the basis of adverse proceedings which definitely notifies the mineral applicant of the nature and extent of the alleged adverse right, meets the requirement of the statute as to the showing required in the local office on the part of an adverse claimant, and should be accepted for such purpose, even though it may not meet all the requirements of the mining regulations. XXVII–358

Conflicting rights set up to defeat an application can not be recognized in the absence of an alleged surface conflict. VI–318; XIX–356

Waiver of adverse claim effective when filed in the local office without reference to pending judicial proceedings thereon. IV–117, 376

The withdrawal of an adverse claim is a waiver of whatever right the claimant had under the mining laws to the ground in conflict, and leaves the possessory right thereto in the applicant for patent. XXIX–89

The second applicants not having filed adverse, being misled by the error of the register in receiving their application, allowed thirty days to institute suit. III–40

Where application covers several locations an adverse claimant may show abandonment of any one of such locations. IV–221

The junior application should be treated as an adverse claim when the record shows the existence of the senior application. III–40

An adverse claimant should not, after suit commenced, and while pending, file an application for the ground adversely claimed. II–704

Rights as between adverse claimants must be determined by the courts. I–584

The jurisdiction assumed by the courts as between adverse claimants is recognized and continued by the mining laws. I–584

Mining Claim—Continued.

VIII. ADVERSE CLAIM—Continued.

Courts must determine legal rights between town-site and mineral claimants. I–556

Suit must be commenced within thirty days after filing, and if not so commenced it must be held that no adverse claim exists. II–707, 744

Failure to assert an alleged right in the courts on due opportunity debars its consideration when set up by an assignee who is not an "adverse claimant." IV–271

Failure to prosecute an adverse claim or in other manner assert a right against a known pending application is conclusive as against the existence of such right. XI–8

The failure of an adverse claimant to prosecute his suit in the courts with reasonable diligence amounts to a waiver of the adverse claim and removes the stay of proceedings in the Department. XIV–180

Failure of adverse claimant to institute suit places him in the position of a protestant. I–584

If an adverse proceeding is pending in the courts when application for patent is made, the adverse claimant need not commence new action after filing protest. VIII–437

The judgment of the court does not go beyond the right of possession. IV–314; XXIII–95

A judicial determination that an adverse claimant is not entitled to possession is conclusive upon the Department, irrespective of any reasons the court may have assigned for its judgment. XXIII–395

The adverse proceeding contemplated by the mining law is for the purpose of determining the right of possession as between conflicting claims, and does not include a suit in the courts to settle a question as to the character of the land. XXV–7

The determination of questions with respect to the right of possession as between adverse mineral claimants rests solely with the courts; and the manner in which a court ascertains the facts, whether by stipulation or otherwise, upon which it renders judgment is a matter that in no degree affects the conclusive and binding force of such judgment upon the parties to the suit and the land department. XXIX–388

The right to determine questions of possession in the courts necessarily involves all matters incidental thereto. IV–273

All questions concerning the proper location and the maintenance of a prior location by the performance of labor must be left to the courts. II–749

Mining Claim—Continued.

VIII. ADVERSE CLAIM—Continued.

The question of abandonment of a mine, alleged by the relocators, is a proper one for the courts, if an adverse claim is filed. II–699

The date of location by an adverse claimant and the competency of a corporation under State laws to make such location are properly matters for judicial determination. X–194

The dismissal of judicial procedings instituted on an adverse claim constitutes a waiver of said claim. XIX–246

Dismissal of suit by adverse placer claimant held a waiver of claim to ground in conflict where the lode passed through a prior placer claim. IV–273

Individual rights of an applicant are not waived by his executing, as president of a company, an agreement recognizing interests of said company. XI–8

Proof that suit was not duly commenced must be by certificates of clerks of proper State and United States courts. II–726

Adverse claimants held to reasonable diligence in protecting their interests. I–583

The adverse claimant, after judgment in his favor, must accompany his application with the official plat and field notes and with a certificate to the requisite amount of labor and improvements. II–706

After judgment the successful claimant must file a certified copy thereof, with the other evidence required by section 2326, R. S.; if suit be dismissed, the clerk's certificate or a certified copy of the order of dismissal must be filed; in no case will a relinquishment or other proof filed in the local office be accepted in lieu of the foregoing. II–726

It is not necessary for one who has prosecuted an adverse claim to a favorable judgment to make an original application for patent for the ground included in such judgment, for under section 2326, R. S., said ground can be patented on a copy of the judgment roll. XXVII–375

After A had filed an application, B made application embracing part of the ground, and also duly adversed A and commenced suit; before judgment, which was in his favor, B made mineral entry; in view of the judgment and of A's acquiescence therein, the question is between B and the government, and the irregularity in the application and entry will be waived. II–722

Separate patents may issue for such portions of claims as adverse parties may rightfully possess. I–593

On determination of judicial proceedings patent may issue to the applicant for such part of the claim as he may appear to rightfully possess if a vein or lode has been discovered thereon. VIII–437

Mining Claim—Continued.

VIII. ADVERSE CLAIM—Continued.

On the termination of judicial proceedings the entry should be made in conformity with the decree and not allowed in the absence of the judgment roll. XIV–308

The applicant adversed may litigate the case, or relinquish the ground in conflict and take patent for the remainder, or dismiss his application for patent and rely on his possessory title. II–744

A claimant who temporarily excludes part of his claim that is in conflict with an adverse agricultural claim, does not thereby absolutely waive and renounce all interest in the tract so excluded, but may thereafter assert his right thereto by way of protest against the final proof of the agricultural claimant. XXII–8; XXIII–34

On application for mineral patent the purchaser may exclude land covered by an adverse claim, and take patent for the land not in conflict, without waiving his possessory right to the remainder. XXII–343

One who is entitled to a mineral patent under an entry, made after due compliance with statutory procedure, is not required to file an adverse claim as against the subsequent application of another that embraces part of the land so entered. XXIX–160

Notices of application for patent which exclude stated areas "without waiver of rights," do not require the filing and prosecution of adverse claims to the areas thus excluded; and the fact that no adverse claims are filed in such a case does not warrant the inclusion of said excluded areas in the entry. XXVI–198

An adverse claim filed and prosecuted successfully against a mineral application can have no effect as to the areas expressly excluded from said application, or confer any right thereto in such adverse claimant. XXVI–198

Upon the acceptance of an adverse claim by the local officers they become chargeable with the fees required by law to be paid, but the time of the actual payment thereof to said officers is not necessarily material as affecting the question of the validity of the filing of said claim. XXIX–413

IX. PROTEST—PROTESTANT.

A protest against proceedings on a mineral application does not warrant a hearing, if the allegations therein, and corroboration thereof, rest on information and belief only. XXVII–40

A hearing may be ordered to determine whether there has been due compliance with law, though the charge is not made until after entry. X–157

Mining Claim—Continued.

IX. PROTEST—PROTESTANT—Continued.

On sufficient showing made by protest the Department may order a hearing to ascertain whether there has been due compliance with law, though the adverse location set up by the protestant was not made until after the allowance of the entry in question. XVI–282

Hearing may be ordered on charges made by a protestant, but in such case the protestant can not set up his own claim to the land. XVI–532

A protestant who seeks to defeat an application will not be heard to set up the rights of third parties for his benefit. XXI–30

While the Department has no jurisdiction to determine controversies as between adverse mining claimants where sufficient allegations have been made to indicate, if true, that the applicant for patent has not complied with law, or is not entitled to a patent, an investigation should be held as in agricultural cases. I–584

A protestant against a mineral application, who fails to file his protest within the statutory period, will not be heard to say that he had no notice of said application, where due notice thereof, as required by the statute and regulations thereunder, has been given. XXV–216

A protestant who fails to assert his alleged adverse interest in the manner provided by the statute, can not, after the allowance of the entry, and in the absence of an allegation of want of notice of the application for patent, be heard in support of such claimed adverse rights. XXVII–396

A corroborated protest against a lode claim, alleging non-discovery, warrants a hearing though the report of the deputy mineral surveyor may show the existence of ore in "streaks and kidneys" in various parts of the claim. XVII–112

An uncorroborated protest against a mineral application, involving matters subsequently made the basis of judicial proceedings by the protestant, is not entitled to further consideration by the Department, as to matters in issue before the court, where by stipulation of the parties the judicial proceedings are dismissed. XXIX–83

Questions as to the fact of mineral discovery, or as to compliance with law in the matter of the statutory expenditure required as a prerequisite to the issuance of mineral patent, afford a proper basis for a hearing, on due showing made by way of protest filed after the allowance of the entry. XXVII–396

A protest alleging the absence of a valid discovery on the part of the mineral applicant presents no sufficient ground for action, where prior thereto, by final judicial determination in adverse proceedings, the land embracing the claimed discovery of the applicant was awarded to him. XXVII–105

Mining Claim—Continued.

IX. PROTEST—PROTESTANT—Continued.

An allegation that the location is void, for the reason that it is made on land covered by the prior location of the protestant, presents an issue that must be determined by adverse judicial proceedings; and, on the failure of the protestant to so protect his interest, the Department can afford him no relief, if there has been substantial compliance with the law, in the matter of notice, on the part of the applicant. XXII–624

A charge that the discovery on which a mineral application rests is upon ground covered by a prior valid subsisting location raises an issue that must be settled in the courts, under the proper statutory adverse proceeding, and on failure to so present such charge it can not be entertained by way of protest against the issuance of patent. XXVII–191

A protestant, who fails to adverse an application for a lode patent, will not thereafter be heard on a charge that the claimed discovery of the lode applicant is in fact on land appropriated by the prior location of the protestant, or that the labor and improvements shown by said applicant should be credited to the protestant. XXVI–573, 580

The failure of a claimant under a mineral location to make objection to the allowance of an agricultural entry of the land is conclusive as to the right of such claimant to be heard. XXIV–488

In case of protest against an application the local office is authorized to order a hearing to determine the character of the land and whether there has been due compliance with law. XI–214

The protest of a town site that raises an issue as to the character of the land embraced within a mineral application presents a proper subject of inquiry. VII–319

Protestant not entitled to appeal. I–584; III–422; V–93

A protestant who alleges no claim, present or prospective that is recognized under the law is not entitled to the right of appeal. VIII–439

A protestant, who alleges no surface conflict, is not entitled to be heard on appeal before the Department. XIX–356

An allegation on the part of a protestant that the allowance of a mineral entry as applied for will injuriously affect the extralateral rights of the protestant, does not present, in the absence of any surface conflict, a question of which the Department will take cognizance. XXIX–662

A protestant who claims an adverse interest is entitled to be heard on appeal where he alleges that proper action was not taken to bring him within the statutory limitation as to the period accorded for presenting an adverse claim. VIII–122

Mining Claim—Continued.

IX. PROTEST—PROTESTANT—Continued.

A protest against a mineral application, filed after the period of publication, will not be considered by the Department on appeal, unless it is shown that the protestant has an interest in the ground involved, and that the law has not been complied with by the applicant. XXIII–69

The issue raised is solely between the government and the entryman, in case of a hearing on a protest against a mineral entry, in which no interest in the land involved is alleged or shown on the part of protestant, prior to the application for patent. XXV–24

A location by a protestant on land segregated from the public domain gives the locator no interest as against the prior entry or the government that will entitle him to be heard on appeal. XII–345

A protestant who alleges an adverse interest, non-compliance with law, and whose application for a hearing has been denied is entitled to be heard on appeal. XIV–68; XVI–532

A claimant who asserts an interest as against the final proof of an adverse agricultural claimant, and asks a hearing thereon, is entitled to be heard on appeal from the denial of his petition. XXII–8

In the case of proceedings had on a protest where the protestants are not entitled to be heard as appellants, the Department may by summary order direct the General Land Office to forward the record, without awaiting appeal from the decisions below, where such action seems necessary to the termination of vexatious litigation. XXVI–122

Parties protestant, that allege an interest, and at the hearing assume without objection the burden of proof, will not be heard to say, for the first time when the case comes before the Department for disposition, that the burden of proof was wrongly placed on them. XXVI–122

The withdrawal of a protest will not prevent action on the matter alleged therein if it appears that the applicant has not complied with the law. VI–320

Burden of proof is with, to overcome the legal presumption that the entry is valid and regular. III–267; IX–538

On appeal from the refusal of the local office to entertain a protest against a mineral application, the appellant is not required to serve the applicant with notice thereof. XXIV–349; XXVI–196

X. DISCOVERY AND EXPENDITURE.

Circular of December 14, 1885, modifying the practice under the Good Return placer mine decision. IV–374

Mining Claim—Continued.

X. Discovery and Expenditure—Continued.

Consolidated application filed prior to receipt at local office of circular of June 8, 1883, may be received on proof of improvements of the value of $500 on each lode claim. II–726

A discovery must be treated as an entirety and the basis of but one location. It is not susceptible of subdivision for the purpose of two locations having a common end line that bisects the discovery shaft. XVI–1

The fact that land is returned as mineral does not obviate the necessity of a discovery as the basis of a placer location. XXII–409

But one discovery of mineral is required to support a placer location, whether it be of twenty acres, by one individual, or of 160 acres, or less, by an association of persons. XXV–351

There must be a discovery on each twenty acres in case of a placer location by an association. XVIII–81; XXII–663; XXIII–222

It having been held that a placer location of 160 acres by an association requires a discovery of mineral on each twenty acres, opportunity will be given the locators for a further showing, as, under the rulings in force at the time of location, a single discovery was considered sufficient. XIX–568

A discovery of mineral on each twenty acres of a placer location serves to except the whole location from school indemnity selection. XXIV–507

One discovery of mineral is a sufficient basis for a placer location of 160 acres by an association; but if it is subsequently shown that any area of such claim, amounting to a legal subdivision, does not contain, or is not valuable for mineral, such land must be excluded from the entry. XXVII–129

A single discovery is sufficient to authorize the location of a placer claim, and may, in the absence of any claim or evidence to the contrary, be accepted as establishing the mineral character of the entire claim sufficiently to justify the patenting thereof, but such single discovery does not conclusively establish the mineral character of all the land included in the claim, so as to preclude further inquiry in respect thereto. XXIX–12

A discovery within the limits of a prior existing and valid location will not support a location made since May 10, 1872; where there has been no application for patent by the prior locators, inquiry into the question need not be made. II–744

An entry can not be allowed upon a discovery of a lode within the limits of a prior patented lode claim. XX–458

Mining Claim—Continued.

X. Discovery and Expenditure—Continued.

Where the discovery on which location was based was made within a prior location, a subsequent discovery within the ground claimed, prior to application or adverse right, is sufficient and obviates the necessity of remarking the boundaries. II–752

An entry of two overlapping claims located and held by the same person and resting on separate discoveries of parallel veins, may stand, notwithstanding the fact that the discovery forming the basis of the later location was made within the limits of the earlier, where the overlap is excluded from the official survey of the earlier location; the later location being treated as an abandonment of the earlier to the extent of the overlap. XXIX–384

A charge that the discovery shaft of a, was sunk on ground embraced within a prior valid subsisting location will not be heard, where in judicial proceedings the land including the discovery shaft has been awarded to the applicant. XXVII–40

An objection to a mineral application for the reason that the discovery shaft and improvements are upon ground specifically excluded from the published notice of application is not tenable, where in adverse judicial proceedings the ground so excluded has been awarded to the applicant. XXVIII–321

Where an applicant permits a junior adverse applicant to include in his claim the discovery on which such earlier claim rests, under an agreement that the land in conflict will be deeded to the holder of said claim on securing title thereto, said action will not be held to work such a loss of the discovery on the part of the prior applicant as will defeat his entire location, it appearing that said agreement has been carried into effect, that said applicant has at all times been in possession of the ground, and that said discovery and improvements were not made the basis on which patent was secured under the junior location. XXVII–88

An actual discovery of mineral within the limits of a, is a prerequisite to the location. XVII–111, 424

The discovery of mineral is a prerequisite to the location of a, and the discovery must be made on land open to exploration, not claimed or located by any other person. XXII–362

There must have been a discovery of mineral within the surface boundary of the claim prior to the application; if made within the claim's limits before an adverse right attaches, though not in the discovery shaft, it is sufficient. II–741, 749

It is immaterial whether a mineral discovery is made before or after the location of a claim, if it is made before the rights of others intervene. XXVIII–526

Mining Claim—Continued.

X. Discovery and Expenditure—Continued.

Where it is necessary to support an entry made and there is no adverse claim or showing of fraud, if the evidence is conflicting, the discovery of mineral in the discovery shaft will be presumed. II–742

Whether the legislature of Colorado may, in view of the national statute, lawfully attach to the mineral laws a condition requiring a discovery in the discovery shaft: *Quære.* II–742

The discovery shaft being excluded, the applicant must show the existence of mineral on the remainder of the claim. V–703

A lode intersected by a prior placer can not be allowed to include ground not contiguous to that containing the discovery. XVI–186

A lode location based on a discovery on one side of an intersecting mill site is not good as to the ground on the other side of said mill site, and an entry of such ground is therefore invalid. XXVI–675

Land covered by an application and subject to appropriation thereunder, but excluded therefrom when entry is made, is thereafter public land, and may be included within the subsequent application of another, and a discovery on such tract is sufficient to support the later claim. XVI–233

Positive evidence as to the discovery of the vein or lode must be furnished, showing the place where and the time when such discovery was made and the general direction of the vein or lode. VII–6

A discovery sufficient to warrant the location of a, may be regarded as proven, where mineral is found, and the evidence shows that a person of ordinary prudence would be justified in the further expenditure of his labor and means. XIX–455

There is no difference as to the character of discovery that authorizes a location or an entry. XXI–442

As between mineral claimants wherein it is alleged by one that the lode claim of the other was not based on a valid discovery prior to location, it is no part of the defense to show the existence of a valuable deposit. The value of the deposit is a matter into which the government does not inquire after discovery and location, save in controversies between mineral and agricultural claimants. XXI–440

Not necessary that discovery of mineral should be shown within the land added by amendment where such land is reported as mineral and the good faith of the entry is not questioned. VII–81

Mining Claim—Continued.

X. Discovery and Expenditure—Continued.

An award of the right of possession in adverse proceedings under section 2326, R. S., necessarily involves a finding by the court that due discovery of mineral was made by the party declared to have the right of possession, which may be accepted by the Department, as against a subsequent allegation of non-discovery on the part of another mineral claimant. XXVIII–526

The annual expenditure required by section 2324, R. S., is solely a matter between adverse claimants to the same mineral land, and goes only to the right of possession, the determination of which is committed exclusively to the courts. It is a matter with which the land department has nothing to do, and hence can make no determination with respect to it. XXIX–302, 401; XXX–202

A co-owner, who is entitled under section 2324, R. S., to succeed to the interest of a delinquent co-owner, on his failure after notice to contribute his proportion of the annual expenditures, does not lose such right by the sale of his own interest in the mining claim before the completion of proceedings begun by him under said section. XXIX–611

When the right to a patent to a mining claim has been fully acquired the equitable title in the purchaser is complete and there is no obligation on his part to make further expenditure in labor or improvements on the claim under section 2324, R. S., and no interests can thereafter be acquired by relocation or otherwise as against him. XXX–202

A protest against an application for patent to a mining claim, alleging failure to keep up the annual expenditure under section 2324, R. S., during the pendency of proceedings upon an adverse claim, or upon a former protest, and the relocation of the claim on account thereof, does not present matters which call for investigation by the land department. XXX–202

The proof as to expenditure should so itemize the improvements that it can be ascertained therefrom what proportion of the sum expended is included in each item. XXV–25

Preliminary showing of expenditure necessary to maintain possession required on application. IV–221, 374

Annual expenditure is not required upon a mining claim after entry thereof. XXVI–196

How proof of annual expenditure should be shown. IV–221, 374

Not allowed on an application wherein the land on which are situated the discovery shaft and improvements is expressly excluded and the proof shows no mineral on the claim as entered or the requisite expenditure for the benefit thereof. VIII–602; X–53

Failure to make the statutory annual expenditure renders the claim subject to relocation. VII–506; XXIII–267

Mining Claim—Continued.

X. Discovery and Expenditure—Continued.

A failure to comply with local laws and regulations, or to do the annual assessment work, subjects a mining claim to relocation before entry, but constitutes no ground for the cancellation of the entry, in the absence of an adverse claim legally asserted. XXVII–396

Annual assessment work is not a condition to obtaining patent, but only a condition to the continued right of possession to an unpatented claim as against other and adverse claimants, and a failure to perform such work furnishes no reason for the cancellation of an entry, in the absence of an adverse claim legally asserted. XXIX–164

A hearing should not be ordered on questions involving annual expenditure on a mining claim, and the alleged relocation thereof by reason of failure to perform such expenditure. XXIX–470

An allegation of failure to perform the annual assessment work will not be considered on the protest of one who has no standing as an adverse claimant under the statute. XXIX–230

A failure to do the required annual assessment work on a mining claim can not be taken advantage of by a claimant under the agricultural land laws, but only by a mineral claimant who, after such failure and before resumption of work, relocates the land according to the mining laws. XXIX–359

If part of the land is excluded, the proof must show the discovery of mineral within the new survey and the requisite expenditure on the claim as thus defined. IX–83

Additional proof allowed though the discovery and improvements appeared to be on land excluded from the claim. IV–160

Labor and improvements on land excluded from claim confer no rights. IV–160

A location under which the land containing the improvements has been excluded will not support an entry under section 2325, R. S. IX–571

A judicial decision that the claimant is not entitled to any credit for work done on the claim renders it necessary that the supplementary proof should show the requisite expenditure since the date of said proceedings VII–411

Failure of the proof to show the requisite work or expenditure may be made good by supplemental proof. VIII–516

Application embracing a location assigned to applicant and a relocation of said location enlarging it must show $500 expended on each location; the enlargement must not exceed twenty acres. II–763

Mining Claim—Continued.

X. Discovery and Expenditure—Continued.

Though the application cover several locations, proof of $500 expended on the claim as applied for is sufficient. IV-221, 374

The surveyor-general's certificate should show what expenditure is exclusively credited to the claim for which patent is asked where expenditures are made for the benefit of several claims. X-198

Where several claims are embraced within one application the annual work required by statute may be done on one of such claims for the common benefit of the claims covered by the application. XI-8

Where a claimant owns adjoining claims the annual work may be done on one of said claims, if such work is designed for the improvement or development of the group. In such case, however, the burden of proof is upon the owner to show that the work done tends to the development of the property as a whole, and that such work is a part of a general scheme of improvement. XXIII-267

Where the same person or company owns several contiguous mining claims capable of being advantageously worked together, and adopts one general system for the purpose of developing them all, the value of the work done and improvements made pursuant to such system, whether done on only one of the claims or outside of all of them, is available toward meeting the requirement of section 2325, R. S., relative to expenditure of $500 for each of such claims. XXX-510

It is not necessary in order to have its due share of such work or improvements credited to each claim that such claims should all be embraced in the same proceedings for patent. If the mining laws are complied with in other respects, such claims may be applied for and entered singly or otherwise, and at different times, without in any way impairing the right to have the value of such share credited to them, respectively, under that section. XXX-510

On a showing made of an expenditure for the common benefit of several locations, embraced in one application, the Department will not undertake to determine whether such plan of development will be effective or not, if it appears that the expenditure is made in good faith, and for the purpose alleged. XXVI-540

Mining work done on one claim for the benefit of that and other adjoining claims may be credited to the adjoining claims as well as to the claim on which the work is actually done, but the fact that such work has been done, and its relation to the claim for which patent is asked, must be fully shown. XXVII-351

Mining Claim—Continued.

X. Discovery and Expenditure—Continued.

Under section 2325, R. S., an application for patent is not limited to a single claim, but may embrace "any land claimed and located for valuable deposits," otherwise spoken of as "the claim or claims in common;" but a fair construction of the word "claim," as used in said section in connection with the stated expenditure required as a prerequisite to patent, and as generally used in the mining laws, requires that where more than one claim is included in the application the expenditure must equal $500 for each claim. XXVII–91

In case of an application that embraces several lode claims the proof should show an expenditure of $500 on each claim, except where it is shown that the improvements on one of such claims is for the common benefit of all. XX–394; XXI–336

Where an application for patent embraces several locations held in common, and is made and passed to entry prior to July 1, 1898, proof of an expenditure of $500 on the group of claims is sufficient, under amended rule 53 of the mining regulations. XXVIII–524; XXIX–7, 89

Where an application embraces several locations held in common, and by protests and adverse claims it is prevented from passing to entry prior to July 1, 1898, an expenditure of $500 upon the group is sufficient, under amended rule 53 of mining regulations. XXIX–83, 491

The proviso to rule 53 of the mining regulations, with respect to expenditure in the case of an application for several locations held in common, is not applicable, where the failure of the application to pass to entry before July 1, 1898, is due to the applicant's delay in furnishing the surveyor-general's certificate as to such expenditure. XXIX–495

The proviso to rule 53 of the mining regulations with respect to the showing of expenditure under an application for patent that embraces several claims held in common, and does not pass to entry prior to July 1, 1898, is not applicable, if the record fails to show that such application was prevented from being passed to entry, prior to said date, by protests or adverse claim. XXIX–605

Paragraph 53 of the mining regulations, as amended March 14, 1898, providing that proof of the expenditure of $500 upon a group of several locations held in common is sufficient where protests or adverse claims prevent the application for patent embracing such locations from being passed to entry prior to July 1, 1898, is not applicable where it appears that under the regulations then in force, irrespective of adverse claims or protests, no entry of the claim could have have been allowed until after said date. XXX–200

Mining Claim—Continued.

X. Discovery and Expenditure—Continued.

Annual expenditure for claims held in common. v–200

Several held in common kept alive by work done upon one of them. iv–221

Annual expenditure required on each located placer claim. iv–223, 374

Work done on a claim with a view of developing adjoining claim also is available for both. iii–267

The proof should show that the improvements have been made for the purpose of developing the particular claim applied for. vii–71; xiii–146

The statutory expenditure required as a pre-requisite to mineral patent must be shown to have been made upon, or for the benefit of, the claim as presented for patent. xxix–156, 315

No part of the value of permanent and immovable improvements on a mining claim, made long prior to the location thereof, by claimants under a previous location embracing the same ground, solely to improve and develop the prior claim, can be credited to the later claim toward meeting the requirement of the statute "that five hundred dollars' worth of labor has been expended or improvements made upon the claim by himself [the claimant] or grantors." xxx–289

Improvements upon an abandoned location, made by the prior locator, can not be credited to a later location embracing the same ground. xxx–322

The work done on different portions of a road constructed for the development of several claims can not be apportioned as an expenditure upon the different claims, and applied to a claim on which no portion of such road is located. xxii–252

In determining the question of expenditure improvements made outside the boundaries of the claim may be considered if made to aid in the extraction of ore and not included with the improvements of another claim. vi–220

Work done outside of the boundaries of a claim, for the purpose of facilitating the extraction of mineral therefrom, is as available for holding the claim as though done within the boundaries of the claim itself. xvii–190

No part of a tunnel which lies wholly within ground excluded from an application for patent to a mining claim, which does not tend to the development of any part of the claim, and which if extended along its course according to the original plan would continue in excluded ground until it passed beyond the exterior limits of the claim, can be credited to the claim toward meeting the required statutory expenditure of $500 thereon. xxx–322

Mining Claim—Continued.

X. Discovery and Expenditure—Continued.

Labor and improvements are deemed to have been had upon a mining claim, or upon several claims held in common, when the labor is performed or the improvements are made in order to facilitate the extraction of minerals from the claim, or the claims in common, though such labor and improvements may in fact be outside the limits of the claim, or claims in common, or on only one of the several claims held in common. XXIX–542

In order that labor performed or improvements made upon one of several claims held in common, or upon ground outside the limits of such claims, may be accepted in satisfaction of the statute as to all the claims so held, such claims must be contiguous, so that each claim may be benefited by the work done or improvements made. XXIX–542

Where expenditure in labor or improvements is had on one only of several contiguous claims held in common, it is incumbent upon the applicant to show that such expenditure was intended to aid in the development of all the claims, and that the labor and improvements are of such a character as to redound to the benefit of all. XXIX–542

Where the labor and improvements are not upon the claim, or upon any of several contiguous claims held in common, but outside thereof, it is incumbent upon the applicant to show that the labor and improvements were intended to aid in the development of the claim, or claims in common, and are of a character suitable for the purposes intended. XXIX–543

Labor or improvements intended for the common benefit of several non-contiguous claims can not be apportioned to the different claims in satisfaction of the required expenditure thereon, for the reason that to do so would be to credit each claim with an expenditure made in part for the benefit of other claims not associated therewith as claims held in common within the meaning of the law. XXIX–543

Cost of a survey preliminary to the location of a ditch for the development of a claim will not be credited on the statutory expenditure where such ditch has not been dug. VII–359

Work done on a road leading to a claim, but outside of the exterior lines thereof, and made for the joint benefit of several claims, can not be accepted in proof of the required expenditure. VI–711

That a part of the work required on a placer is performed prior to location and while said claim is held as agricultural land, does not call for cancellation where the full amount of work required is performed prior to entry, and good faith is apparent, and no adverse claim exists. XX–455

Mining Claim—Continued.

X. DISCOVERY AND EXPENDITURE—Continued.

Work done on a ditch outside of a placer claim and prior to the location thereof can not be accepted in proof of the required expenditure where the ditch was not made for the development of the claim. VII–52

The expense of keeping a watchman and custodian in charge of a mine that is not being worked, may be properly charged as an item of annual expenditure. XXVIII–14

A claim as amended is an entirety, and it is not necessary that the improvements should be on a particular part thereof. VII–81

Where part of the claim included within the application was taken by assignment after litigation with a successful adverse claimant, evidence must be furnished showing the necessary expenditure thereon. III–149

The statutory expenditure required to be shown by section 2325, R. S., contemplates that five hundred dollars' worth of labor shall have been expended, or improvements to the same value made, for the development of the mining claim. XXVI–122

Good faith must appear in the matter of expenditure. VI–220

Certificate as to expenditure upon claim should be filed with application or during publication. IV–17

An applicant must at the time of application, or within the period of publication, file a certificate of the surveyor-general showing an expenditure of $500 on the claim, and if the certificate so filed does not show such expenditure, additional time to make further improvements can not be granted, but the entry allowed on such proof must be canceled. XXII–252, 339

The statutory requirement that proof of expenditure shall be filed during the period of publication is directory only, as to the time when such proof shall be made; and proof, therefore, filed after the expiration of said period, showing such expenditure made in due time, may be properly considered. XXV–550; XXVI–122

A certificate of the surveyor-general showing the statutory expenditure of $500 within the period of publication may be accepted, though not filed until after the expiration of such period. XXIX–491

The fact that the requisite expenditure on a mining claim is not shown to have been made prior to the expiration of the period of publication of a notice of application for patent is not material, where a new notice of the application is subsequently published under which the proof of expenditure is regularly furnished. XXIX–635

Mining Claim—Continued.

X. DISCOVERY AND EXPENDITURE—Continued.

The fact that a deputy mineral surveyor is qualified to report upon the expenditures made on a mining claim, by reason of his interest in the claim at such time, does not operate to impeach the certificate of the surveyor-general based on said report, if the facts as to such expenditures are correctly stated in said report. XXVI–123

In the case of a placer claim upon surveyed land, conforming to legal subdivisions, the proof of the requisite expenditure may be made otherwise than by certificate of the United States surveyor-general. XXV–550

The purchaser of a lode claim is entitled to all the veins and lodes in such claim, and to the benefit of all expenditures made by his grantor; and the right to such benefit is not defeated by a subsequent amended location wherein the purchaser makes use of a discovery of his own on a junior location within the boundaries of said purchase. XXI–440

Under section 2332, R. S., possession of a, with work thereon, for a period equal to the time prescribed by the statute of limitations for mining claims in the State wherein such claim is situated, entitles the claimant to a patent thereto in the absence of any adverse claim, even though such claimant may have failed through oversight in making the requisite statutory expenditure. XXI–446

XI. ENTRY. See sub-title No. VI.

Entry will be allowed only when the register is satisfied that all proofs required by the regulations are filed and that they show a *bona fide* compliance with the law and regulations. II–726

Gives the entryman complete equitable title so far as third persons are concerned, which is not subject to forfeiture under section 2324, R. S.; the validity of an entry depends on the facts existing when it is made, and not on the entryman's subsequent acts or omissions. II–770, 771

On the payment of the purchase price of a tract of mineral land and the allowance of entry therefor, the right of the applicant to receive a patent is complete, and precludes the acquisition of any adverse right while said entry remains of record. XXIX–373

Sections 2324 and 2325 should be construed together. I–544

Section 2324, R. S., has reference only to title by right of possession, and does not conflict with titles acquired by purchase. II–771

An entry should not be allowed of land embraced within the prior location and application of another. XV–571

In the absence of clear showing as to possessory right patent must be denied. VI–261

Mining Claim—Continued.

XI. ENTRY—Continued.

The possessory title to a lode claim held and worked for a period equal to the time prescribed in the local statute of limitations for mining claims may, in absence of an adverse claim, be established in the manner now authorized in placer claims. II–726

Continuous possession of a, with due compliance of law, for a period equal to the time prescribed by the statute of limitations for mining claims, in the State wherein such claim is situated, entitles the claimant under the provisions of section 2332, R. S., to a patent, in the absence of any adverse claim. XXI–446; XXIV–18

A judgment rendered on stipulation between parties to an adverse proceeding is conclusive as to the right of possession, and the tract so awarded to an applicant may be properly included in his survey and entry. XXIX–287

Requisite antecedent compliance with law presumed after entry. I–548

Preliminary proof for patent must show the claim valid at application. V–25

Application will not be allowed if the mineral character of the land does not satisfactorily appear. III–536; XI–563

An entry can not be perfected without the requisite payment on application for patent, though the proof may show compliance with the law in other respects, and the claim will be subject to relocation subsequently if the statutory requirment as to annual expenditure is not observed. XIV–43

Where two claims are embraced within one entry, and there is no pending contest, protest, or adverse proceeding of any kind, against one of said claims, patent may issue therefor, on due showing of compliance with law, without waiting for the termination of pending litigation against the other claim. XXVIII–451,562

The affidavit required of an applicant can not be made by agent or attorney if the applicant is a resident of and at date of application is within the land district. VIII–223

When applicant's affidavit may be made by an agent. IV–374

Defect in, caused by non-compliance with local regulations cured by the formal annulment of said regulations prior to the allowance of the entry. X–173

Mineral entry not invalid because at the time made the land was covered by a homestead entry where the latter was subsequently canceled. I–565

The occupancy of land by town-site settlers is no bar to its entry under the mining laws if the land is mineral and belongs to the government. VII–411

Mining Claim—Continued.

XI. ENTRY—Continued.

Entry made during the existence of another entry for the same tract is irregular, but may be allowed to stand on the cancellation of the previous entry. XI–120

An entry should not be allowed at a time when the land covered thereby is embraced within a prior mineral entry of record, and involved in proceedings pending before the land department. XXIX–62

In conflict with a prior grant to a railroad for station purposes may pass to patent, subject to the company's right of occupancy as to the part in conflict. XIV–105

An entry based on a location made after the withdrawal of the land for a reservoir site, under the act of October 2, 1888, confers no right; but such entry may be suspended, and if it subsequently appears that the land is not required for reservoir purposes, the entry may then pass to patent. XXVIII–172

Entry of lode in conflict with prior placer patent need not be canceled, but should be suspended with the view to judicial proceedings for the vacation of said patent as to the land in conflict. XIV–47

A mineral entry canceled without notice to the entryman must be reinstated irrespective of any intervening adverse claim. XXIII–113

An entry canceled for failure to comply with supplemental requirements should not be reinstated on the ground that such action was taken without notice, if the entryman had actual knowledge thereof; nor should an order of reinstatement be made, in the presence of an adverse claim, without opportunity given to show cause why the application for reinstatement should not be allowed. XXVI–262

Where entry is erroneously canceled the land is not subjected to appropriation by a stranger to the record who had located it while the entry was subsisting. II–769

Non-compliance with paragraph 5, circular of December 14, 1885, may be waived if the proof is in conformity with prior regulations. VIII–516

Only an applicant or his assignee may make entry under section 2325, R. S., or have his name inserted in the certificate of entry; this regulation does not apply to proceedings under section 2326, R. S. II–725

The final certificate will not be allowed to embrace the name of one who fails to show that he owned an interest in the claim at the date of application, or that subsequently, and prior to entry, he acquired such interest from a legal applicant. XXIII–112

Mining Claim—Continued.

XI. ENTRY—Continued.

The final certificate should issue in the name of the heirs of the applicant, where it is known at the date of its issuance that the applicant died prior to the submission of final proof and making payment for the land. XXVIII–14

In the absence of an adverse claim the entry may be suspended and new proof made where that submitted was found insufficient. VII–359, 411

Preliminary proofs accepted, though patent must issue for claim as diminished by adverse placer. I–551

Supplemental proof permissible after due notice to the State where the status of the tract under the school grant had not been authoritatively determined prior to the entry. VII–54

Cancellation of mineral entry does not affect possessory rights. I–526

The cancellation of a mineral entry does not in itself render the ground covered thereby subject to relocation. XXIII–113

The receiver's receipt and final certificate should describe a, by the name borne in the certificate of location and official survey. XX–58

Error in the issuance of the final certificate may be corrected. VII–415

The purchaser of a, after entry, but prior to patent, takes the land subject to all the infirmities of title, so far as the government is concerned. XXII–704; XXVI–122

Entry should not be canceled on the report of special agent. II–788; VI–231

An entry should not be canceled for failure to furnish additional proof unless the record shows affirmatively that due notice of such requirement and of the order of cancellation was given; and a transferee holding under such entry is entitled to a reinstatement, with opportunity to show the facts with respect to the entryman's compliance with law. XII–125

An entry allowed on an abstract showing an absolute title in the applicant, and thereafter suspended on account of judicial proceedings apparently affecting said title, may pass to patent on the termination of said proceedings, and the consequent confirmation of the title in the applicant. XXII–677

An entry allowed on insufficient showing of title is properly held for cancellation by the General Land Office; but where the applicant after such decision obtains a complete chain of title, and makes a showing thereof before the Department which is satisfactory, the entry may stand and patent issue thereon. XXVI–484

An entry made on the joint application of several parties, some of which are without interest in part of the land entered, may stand, where such parties subsequently acquire a complete chain of title and make due showing thereof that is satisfactory as between the applicants and the government. XXIX–208

Mining Claim—Continued.

XI. ENTRY—Continued.

A tract included in a mineral application, and in the notice thereof, but not embraced in the entry on account of a defect in the chain of title, may be afterwards included in the entry, by way of amendment, if the defect in the title is cured. XXIX–287

It is no objection to a, that it embraces certain ground specifically excluded from the application and notice, where in adverse judicial proceedings the ground so excluded has been awarded to the applicant. XXIX–71

An applicant for, may eliminate any part of a location, not essential to its validity, without prejudice to his claim for the residue. XXIX–287; 574

XII. LODE.

The form of a lode location need not necessarily be that of a parallelogram; the formation of the mineral deposit must govern. III–11

For the purposes of exploration, discovery, and purchase, the legal apex of a vein that dips out of ground disposed of under the placer or non-mineral laws, is that portion of the vein within the public lands which would constitute its actual apex if the vein had no actual existence in the ground so disposed of. XXVI–198

Claimant for alleged known lode should apply for patent though such lode is included in placer patent issued to another. IV–494

To exclude a lode or vein from a placer claim it must appear that a valuable deposit exists in vein or lode formation and was so known to exist prior to or at the date of the placer application. X–156

Lode within placer claim not known at application passes with patent of placer. I–549

Lode claim within placer restricted to twenty-five feet on each side of the lode on failure to properly protect the full extent of the claim by adverse proceedings. I–551

Lode within a placer claim limited in width only when patent is asked for such lode and the claimant has no application therefor, perfected by another, prior to the date of the placer application. X–200

Lode claim within placer restricted to twenty-five feet on either side thereof. III–388

The twenty-five feet referred to in section 2333, R. S., is to be measured from the center of the lode. III–388

Mining Claim—Continued.

XII. LODE—Continued.

A judicial award of the right of possession to an adverse placer claimant as against a lode applicant does not preclude departmental inquiry on the allegation of the lode claimant that said placer claim, as subsequently applied for, embraces known lodes, if such question was not in issue before the court; but if such allegation of the lode claimant is sustained on such inquiry, he will be limited to the land necessary to the use and enjoyment of the lode. XXIII–95

An outstanding placer patent issued on a record that shows the absence of a known lode within the placer claim is a bar to any subsequent application for a lode claim within said placer. X–200

A townsite patent that in terms provides that "no title shall be hereby acquired to any mine . . . . or to any valid mining claim or possession held under existing laws of Congress," does not divest the Department of jurisdiction to subsequently issue a patent for a lode claim within the limits covered by said townsite patent, if at the date of the townsite entry such lode claim was known to exist. XXV–518; XXVI–144

A patent may issue for a lode claim embraced in a prior placer patent on due showing by the lode claimant that he has acquired title to the conflicting placer ground, and that the lode was known to exist prior to the application for the placer patent. XXII–713

The applicant is entitled to enter for all that part of the ground not affected by the judgment; where the judgment is for but part of the ground adversely claimed, entry may not be made until it becomes final; judgment for all the ground adversely claimed may be treated as final judgment. II–750

Under the provisions of section 2336, R. S., an entry may be allowed of a tract divided by a patented intersecting lode. XV–133

The provisions of section 2336, R. S., as to priority of title where two or more veins intersect, have no application to patented mill sites that intersect lode claims. XIII–146

Intersected by a prior placer can not take ground not contiguous to that containing the discovery. XVI–186

A lode claim that is divided into two parts by an intersecting patented mill site must be confined to that part which contains the discovery shaft and improvements. XIII–146; XV–504; XXVI–675

An entry will not be allowed on a lode claim that appears of record as embracing non-contiguous tracts. XXI–438

Waiver of a portion of lode claim including original discovery shaft does not affect rights of possession and development as to the remainder. I–593

Mining Claim—Continued.

XII. LODE—Continued.

Judgment of a court that placer ground may be taken as a lode or that known lodes may be entered as placer ground, subject only to the right of the lode claimants beneath the surface, is in conflict with the law and will not be followed by the Department. XIV–641

A lode location on a bed or ledge of limestone is not authorized under the provisions of the mining laws. XVII–84; XXIII–353, 395

XIII. PLACER.

Area of placer; expenditure. Circular of December 9, 1882. I–694

Patent for placer. Circular of September 22, 1882. I–685

On surveyed land must conform to the legal subdivisions as nearly as reasonably practicable. II–764; VI–227; XX–485

Within the meaning of section 2331, R. S., all placer claims located after May 10, 1872, must "conform as near as practicable with the United States system of public land surveys, and the rectangular subdivisions of such surveys," whether the locations are upon surveyed or unsurveyed lands. XXX–225

Examination of a placer claim and report thereon by a deputy mineral surveyor at the expense of the claimant should not be required where the claim is upon surveyed land and in conformity with legal subdivisions. VII–390

Plat and field notes of survey may be required in case of a claim on surveyed land when necessary to accurately designate the tract. VI–580; XXVI–650

A discovery of mineral on each twenty acres of a, is not essential to a valid location. XXVIII–526

On surveyed land it is not necessary to mark the boundaries of the claim on the ground. XXII–409

Placer application will not be allowed if the evidence does not show as a present fact the placer character of the land. XI–441

The entire area that may be taken as a placer claim can not be acquired as appurtenant to placer deposits which are shown to exist only in a portion thereof. XXIX–12

Where a part of the area embraced within a placer entry is shown to contain no valuable mineral deposit subject to placer location, such part of the claim will be excluded from the entry. XXIX–12

In case of an alleged conflict between an agricultural entry and a prior placer claim the actual extent of said claim should be shown by survey. XIV–59

Land chiefly valuable for its deposits of fire clay is subject to location and entry under the mining laws of the United States. XXV–349

Mining Claim—Continued.

XIII. PLACER—Continued.

Fire clay or kaolin properly the subject of placer location. I–565

A tract containing "a valuable deposit of mineral paint rock in place" is not subject to entry as a placer claim. VII–66

Placer claim for "brick clay" not permissible. VI–761

Land containing petroleum is not for such reason subject to entry as a placer. XXIII–222

Placer entry of oil lands authorized by act of February 11, 1897. XXIV–183

Lands chiefly valuable on account of the petroleum deposits contained therein are of the character subject to entry under the mining laws. XXV–351

Land chiefly valuable for its salt deposits can not be taken as a placer mine. VII–549

Entry of lands containing borax, soda, alum, etc., in California, Nevada, Arizona, Utah, and Wyoming may be made under regulations of October 31, 1881; whether the same should apply to oil: *Quære.* II–708

Water right can not be obtained under the guise of a placer claim. II–774; III–536

Land containing stone suitable for making lime may be entered as a placer claim. XVII–82

Lands valuable only on account of the marble deposit contained therein are subject to placer entry under the mining laws. XXV–233

Land chiefly valuable for the building stone found therein is subject to location and occupation under the mining laws. XXVII–680

Land containing a deposit of sandstone of superior quality for building and ornamental purposes and valuable only as a stone quarry may be entered as a placer claim under the general mining laws. XVI–508

A placer location of land for building stone that fails because unwarranted under the law when made can not be validated by a subsequent discovery of some other material that is subject to entry under the placer law. XVII–550

Placer location made prior to the act of August 4, 1892, of land valuable for building stone is unauthorized and will not defeat a subsequent settlement claim initiated prior to the passage of said act. XVI–122; XVII–120

Land embraced within a placer entry of a tract chiefly valuable for ordinary building stone, allowed at a time when such entries were recognized under the departmental rulings, is by such sale exempted from the subsequent grant of school lands to the State, and the entry therefor may be carried to patent. XXI–327

Mining Claim—Continued.

XIII. PLACER—Continued.

Land reserved for the benefit of public schools or donated to any State is not subject to placer entry (building stone) under the act of August 4, 1892. XVI–110

Stone useful only for general building purposes does not render the land subject to mineral entry. XII–1

The act of August 4, 1892, authorizes a placer entry of land chiefly valuable for building stone. XV–256, 360

Prior to the passage of the act of August 4, 1892, there was no authority to locate and purchase lands chiefly valuable for building stone under the placer mining laws. XXIII–329, 516; XXIV–403

In the exercise of the right to make placer entry of building stone conferred by section 1, act of August 4, 1892, a discovery preceding the entry is necessary, and no right attaches in favor of the entryman until he makes application to enter. XXIII–322

Under the provisions of section 1, act of August 4, 1892, no rights are secured prior to application, and if at such time the lands are not subject to entry the claim under said act must be rejected. XXIII–329

As between a placer applicant for stone land and a purchaser under the timber and stone act, priority of assertion of a legal claim determines the rights of the parties. XVII–82

Land that contains a valuable deposit of stone that is useful for special purposes may be entered as a placer claim. XV–370

A vein or lode known to exist at date of placer application and not included therein must be excluded from the entry. IX–26

A placer applicant will not be allowed to amend his application so as to embrace therein veins or lodes discovered by others after the location of the placer claim, but prior to the application therefor, and not included in said application as originally submitted. XXIII–95

All known lodes at date of placer application are excepted from patent issued thereon, together with twenty-five feet on each side of said lode. I–557

If the record shows a lode claim within a placer not owned by the placer applicant, said lode in its full extent should be excluded from the placer patent. X–200

After the issuance of a placer patent the Department can not assume that a known lode existed within the limits of said placer at the date of the application therefor merely because a conflicting lode location antedates the location of the placer. XXII–317

Patent for a placer passes title to all lodes or veins contained therein if they are not known to exist at the date application is made. XIV–654

Mining Claim—Continued.

XIII. PLACER—Continued.

A placer patent for land including a known lode not specifically excepted conveys title to all of said land and terminates the jurisdiction of the Department over the same. X–200; XIV–47

When it is duly ascertained that a lode, alleged to have been known to exist within the boundaries of a placer claim at the date of application for patent therefor, was not known to so exist, it must be held that the title of the United States to such lode passed under the patent, and that the jurisdiction of the land department was thereby terminated. XXVII–661

A placer entry based on an application that does not disclose the existence of any known lode within the limits of the placer, or assert a possessory right to any such lode, and allowed without adverse action on the part of lode claimants, should pass to patent so far as the rights of such claimants are concerned; but the patent so issued will not prevent subsequent departmental inquiry to determine whether a known lode existed within said placer at date of application, or the issuance of patent therefor if so found to exist. XXVII–676

In the case of a placer entry allowed on a sufficient showing as to the character of the land, and the development of the claim, the Department should not, after the lapse of many years, permit the sufficiency of such proof to be questioned by one who had no interest in the land at the time when the entry was made. XXVIII–526

A lode or vein within a placer, and known to exist at date of the placer entry, is, by the terms of the law, excepted from the operation of the placer patent, and a lode patent may thereafter issue for the excepted lode or vein, on due proof of compliance with law. XX–204; XXI–125

Where a patented placer is in conflict with a lode claim and judicial proceedings for the vacation of the patent as to the land in conflict are warranted by the facts, the patentee may surrender title of such land to the government and so vest the Department with jurisdiction to again dispose of said land. XIII–715

Where the record shows no known lode within a placer claim and patent issues for the latter, a subsequent application for a lode claim within said placer should not be allowed while the placer patent is outstanding. XII–683; XVII–280

A lode entry irregularly allowed for land included within the prior placer patent of another may be suspended and opportunity given for a hearing on the allegation that said lode was known to exist prior to the placer entry and patent. XII–683

Mining Claim—Continued.

XIII. PLACER—Continued.

The formal location of a lode claim is not necessary to exclude the lode from a placer patent. IX–26

Hearing may be ordered to ascertain whether a vein or lode was known to exist at the date of placer application. IX–29

A lode claimant for land within a patented placer has the burden of proof upon him to show that there was a vein within the placer, known to exist at the time of the placer application, and actual knowledge thereof must be brought home to the placer applicant. XXV–460; XXVI–622

Whether all the land embraced in a lode location within a patented, such location having been after the placer location but before the placer application, is excepted from the placer patent, or only the known lode or vein and twenty-five feet on each side thereof subsequently entered by the lode claimant: *Query?* XXVIII–41

The fact that lode claims have been located on a tract of land, and subsequently abandoned, can not affect the good faith of a placer applicant for the same land. XXV–24

A judgment of a court in adverse proceedings instituted by a placer claimant, as against a lode applicant, wherein the adverse claimant is awarded the possession, forms no basis for a lode entry by such adverse claimant, where, in the adverse proceeding, said claimant rests his right solely on his alleged placer claim, and asserts that there are no known lodes or veins therein. XXIX–137

An adverse placer claim, and the judgment thereon, will not be disregarded on the ground that the land in controversy by previous decision of the Department has been held to contain no placer deposits, where said adverse claim has been recognized by departmental decision, and sustained by the trial court, and the matter is pending on proceedings in error in which a supersedeas has been allowed. XXIX–137

The validity of a placer patent and its extent, as in conflict with an alleged known lode, are questions for judicial determination. X–200

Placer entry made for the purpose of securing title to lodes and veins known to exist is in violation of law and must be canceled. XIV–685

A protest, by a lode claimant, against a placer entry, should not be entertained on questions involving the placer character of the ground and the entryman's compliance with law, where the entry was regularly allowed, has been sustained in the courts, and it is not asserted that the existence of any veins or lodes claimed by the protestants was known at the time of the placer application, and the location under which the protestant claims was not made until many years after the allowance of the entry. XXIX–465

Mining Claim—Continued.

XIV. MILL SITE.

Mill sites provided for and recognized by section 2337, R. S. I–557

Mill-site location made the same as mineral claim. I–557

A mill-site entry, allowed without publication of notice of application, may be properly regarded as a nullity, in the disposition of a protest subsequently filed alleging the mineral character of the land covered by said entry. XXVI–66

On application for a, in connection with a lode claim, the notice and plat should be posted on the mill site for the statutory period. XXV–165; XXVII–373

Non-mineral character of land claimed as a mill site must be shown. VIII–195

It is only non-mineral land that can be appropriated as a mill site; and an application therefor must be rejected where the land is embraced within a prior railroad grant that passes title to lands of such character. XVIII–105

A qualified corporation may obtain title to a mill site. X–194

There is no provision of law by which a mill site can be acquired as additional to or in connection with an existing mill site. XII–75

A mill site may be legally located prior to the application for patent on the mining claim connected therewith. XV–499

Under the first class of mill sites there must be a lode or vein shown in connection therewith. I–557

Under the first clause of section 2337, R. S., the owner of a patented lode may by an independent application secure a mill site, if good faith is manifest, the improvements sufficient, and no adverse claim exists. XXII–496

Quartz mills and reduction works the only improvements on which a mill-site entry may be made under the last clause of section 2337, R. S. IX–460; XII–75

The first clause of section 2337, R. S., contemplates the allowance of a mill site only where the land is used or occupied for mining or milling purposes at the time application is made. XIV–544

The right to a patent for a mill site, under the second clause of section 2337, R. S., depends upon the presence on the land applied for of a quartz mill or reduction works. XXIX–143

Land can not be taken as a mill site if not used or occupied for mining or milling purposes. V–190; VII–415; VIII–195; IX–201

Where a mill site is claimed in connection with a mine the land must be non-mineral, non-contiguous to the lode, and used or occupied by the owner of the lode for mining or milling purposes. XIII–175

A mill site can not be included within an application for a lode unless such site is used for mining or milling purposes in connection with said lode. X–196

Mining Claim—Continued.

XIV. MILL SITE—Continued.

Land not improved or occupied for mining or milling purposes may not be appropriated as a mill site for the purpose of securing the use of the water thereon. VI–706; XII–624

Application for a mill site will not be allowed where the improvements are located on the line between two mill sites without either location possessing the requisite improvements independently of the other. XIV–11

The building of a tram road or the grading of the roadbed therefor is not such a use or improvement of the land as warrants the allowance of a mill site. XIV–11

Section 2337, R. S., does not authorize the entry of a mill site when the land is intended to be used in common with other mill sites taken in connection with corresponding lode claims. XII–624

Land not used or occupied for mining or milling purposes can not be taken under section 2337 for the purpose of securing the timber thereon. VII–557

The appropriation and use of water on land claimed as a mill site is not the use and occupation of the land that justifies a mill-site entry. IX–201

The erection and maintenance in good faith of dwelling houses for the occupancy of workmen employed for purposes in connection with a mill is such an occupancy as will authorize the allowance of a mill site. XIV–173

The use and improvement of land for the maintenance of a water supply necessary to the operation of a mine is such a use as will authorize a mill-site entry where the land is also required for the location of reduction works. XIII–175

The use and occupancy of land for the maintenance of pumping works necessary to the operation of a lode mine is such a use as will authorize entry of the land as a mill site. XI–338

Both a water-right and mill-site claim may be located on the same tract of land. V–190

Survey of a mill site need not be connected with a mineral monument or corner of the public surveys if connection is shown with the lode claimed in conjunction therewith. VIII–195

If the applicant for a mill site is the owner of a lode and the mill site is located in connection therewith, patent can issue without a showing of $500 expenditure on the mill site. VIII–195

Mill-site claim must be protected by adverse proceedings in case of conflicting application. I–555

Location on nonmineral land not contiguous to lode protected from subsequent town-site appropriation. IV–212

Mining Claim—Continued.

XIV. MILL SITE—Continued.

In an application an entry for lode may embrace one or more pieces of ground within the limits of five acres. II–755

Mill-site location not made for the use or occupancy of the applicant, but for the benefit of another, can not be passed to patent. XI–561

The rights and equities growing out of the location of a mill site, and the erection of a mill thereon, exclude the land from appropriation by another, though the claim for the mill site may require amendment. XVI–181

Minnesota. See *States and Territories; Swamp Land.*

Minor. See *Homestead; Naturalization; Preëmption; Relinquishment.*

Misdescription. See *Final Proof; Mining Claim*, sub-title *Notice; Patent; Equity.*

Mission Claim. See *Indian Lands.*

A religious society took, under act of August 14, 1848, only the land then actually occupied as a mission, and which was with reasonable clearness set forth by specific boundaries, together with all the improvements thereon, the amount in no case to exceed 640 acres. II–452

Where a church building was erected without a surrounding inclosure the occupancy was limited to land covered by the building. II–452

Instructions of December 21, 1892, relative to, in Alaska. XV–586

Under the act of March 2, 1853, providing for the confirmation of, the Roman Catholic Church is a proper beneficiary as a religious society. XIX–196

The confirmation made by the act of 1853 on account of, is limited to the land actually used and occupied in the maintenance of the mission at the date of the passage of said act. XIX–196

The confirmation of title to, under the act of March 2, 1853, is determined, as to acreage, by the actual occupancy of lands necessary to the proper maintenance of the mission. XXII–365

The confirmation of title to, under the act of March 2, 1853, is limited to the lands actually used and occupied in the maintenance of the mission at the date of the passage of the act; but in determining the extent of such occupancy the apparent necessities of the mission at said date may be considered, in the absence of positive evidence as to the actual boundaries of the land so used and occupied. XXV–317

Missouri Home Guard. See *Homestead*, sub-title *Soldiers' Additional.*

Montana. See *School Land; States and Territories.*

Mortgage. See *Alienation.*

Mortgagee. See *Practice*, sub-title *Notice.*

Naturalization. See *Alien; Citizenship.*

Rights of citizenship acquired through taking the requisite oath, not through the certificate of admission. IV–111

Of the father during the minority of the son inures to the benefit of the latter and makes him a citizen. IX–297; XI–578; XVI–102

Through the father's act during the son's minority requires the latter's residence at such time to be within the United States. I–66

Of the father inures to the benefit of the minor under section 2172, R. S. X–445

Declaration of deceased husband or father is the declaration of the widow or children; the citizenship of the husband or father is the citizenship of the wife or children. II–611

A married woman, an alien by birth, whose husband has declared his intention to become a citizen, occupies the status of one who has filed his declaration of intention. XVIII–528

Declaration by the father during the minority of the son does not confer citizenship upon the son. IV–116; XII–637

A declaration of intention by the entryman, who dies before being fully naturalized, is equivalent to a declaration by his widow or minor children. II–195

A declaration of intention filed by the father inures, if he dies prior to becoming a citizen, to the benefit of his minor son, who may avail himself thereof by taking the final oaths. VIII–60, 289

The minor child of an alien, who has declared his intention to become a citizen but does not complete his naturalization before the child attains his majority, occupies the status of a person who has filed his declaration of intention to become a citizen. XVII–579; XIX–507; XXVI–301; XXIX–497

A declaration of intention to become a citizen filed before a clerk of a court in 1868 (prior to the revision of the United States Statutes) is valid. XXVI–252

Rights acquired by declaration of intention to become a citizen may be lost by abandonment of such intention. XXIX–627

An honorable discharge from the United States army is equivalent to a declaration of intention. II–195

An alien over twenty-one honorably discharged from the United States army occupies the status of one who has declared his intention to become a citizen. XVI–352

Naturalization—Continued.

May be shown by copies of original papers where final proof is made before an officer of a court of record. IV–210

An alien immigrating during his minority and remaining until after his majority must file a declaration under section 2165, R. S., or comply with the requirements of section 2167, R. S., before being qualified for entry. II–195

The residence of an alien in this country for the last three years of his minority qualifies such person, in the matter of citizenship, as a settler, without previous filing of declaration of intention to become a citizen. XVII–579; XXVI–300

The statement of a settler as to the time when he filed his declaration of intention to become a citizen accepted in the absence of record evidence. VIII–520

A declaration of intention to become a citizen is not invalid because made before a deputy clerk of a court of record, if such deputy was acting for and in the name of the clerk of said court. XXV–420

Certification of, should be received only when made under the hand and seal of the clerk of the court in which the record appears, unless such record is lost or destroyed, when upon proof of that fact secondary evidence may be received. X–625

County courts of Colorado are authorized to admit an alien to citizenship. IV–107, 342

In the matter of, in Ohio the probate court may be presumed to have a clerk. I–83

Record of court without clerk not received as evidence of. [illegible]–61

General statutes of, are not applicable to Indians. I–491

Of a Winnebago Indian under section 10, act of July 15, 1870, does not make his children citizens of the United States. XVI–324

Mexicans residing in California at the time of its cession to the United States, and remaining therein, become citizens of the United States under the eighth article of the treaty of cession, if they did not within one year thereafter declare their intention of retaining Mexican citizenship. XIX–270

Relates back, in the absence of an adverse claim, to the date of settlement. IV–565; VII–229; X–475; XXV–420

If the record relied upon to show, fails to disclose a specific judgment of the court admitting the applicant to citizenship, but does show that the requisite oath was administered, the proof may be accepted as satisfactory. XVI–102

On proof of naturalization the presumption is raised that every prerequisite to the judgment of the court was duly shown, and that the declaration of intention was filed at least two years prior thereto. VI–756

Naturalization—Continued.

Evidence as to filing declaration of intention furnished with homestead proof may be accepted in subsequent preëmption proof. VIII–233

A slight difference in the spelling of the name as shown in the declaration of intention to become a citizen, and the final papers, will not be held sufficient to defeat a claim of, on behalf of a homesteader, where it appears that he is the identical person referred to in each instance. XXVI–191

New Madrid. See *Scrip.*

Notary Public.

Attestation of, when authorized, imports the same verity as the attestation of a clerk of a court of record. V–626

Certificate showing official character of, should be made by the clerk of the court where the appointment is recorded, or the officer in charge of the records containing such appointment. V–626

Notice. See *Practice; Final Proof; Mining Claim.*

Obiter Dicta.

A ruling by the Department on a question not involved in the case under consideration will be treated as *dictum* and not conclusive. VIII–188; X–186

Where the decision was that "no subsequent amendment, except for error or mistake, can operate to defeat a right previously initiated," and the case raised no question of error or mistake, it is *obiter dictum.* II–578

Department not bound by the expression of an opinion in a matter not needful to the determination of the question actually involved. XI–244

Occupancy. See *Possession; Railroad Grant*, sub-title No. VIII.

Occupant. See *Oklahoma Lands; States and Territories.*

Offering. See *Mineral Land*, sub-title *Alabama; Private Entry; Public Sale.*

Circular of June 10, 1898, under the act of May 18, 1898, abolishing the distinction between offered and unoffered lands. XXVII–67

Circular of June 10, 1898, as to lands in Missouri. XXVII–67

Whether the lands have been included within, should appear of record in every case transmitted to the Department on appeal. X–684

"Offered" lands certified to a State under a railroad grant and certified back to the government by the State are taken by the government free of the offered condition that existed at the time of their certification to the State. VI–451

Offering—Continued.

Withdrawal of "offered" lands abrogates the offering and brings them within the category of "unoffered" lands. XXIII–412

Withdrawal of "offered" land in aid of a railroad grant abrogates the original offering, and on the revocation of the withdrawal the lands are restored to the public domain free of their previous offered condition. VI–451; XIX–513

Land once "offered" and subsequently enhanced in price and not afterwards reoffered, is not "offered" land. XVII–200

The status of public land, at any time, as to its being "offered" or "unoffered" is determined by the fact as to whether or not it has been offered at public auction, at the price fixed by existing law. XVII–332

The act of March 2, 1889, withdrawing all public lands (except those in Missouri) from private entry did not repeal the distinction between offered and unoffered lands made in the preëmption law. XIX–478

A proclamation that the "public lands" in a specified township will be offered for public sale does not include lands that were at such time embraced within an uncanceled donation notification. XXVIII–345

Officers. See *Land Department.*

Are presumed to discharge their duties properly. I–223; V–514

Ministerial powers must be exercised within the limitation of the statute. IV–155

Where an individual in the prosecution of a right does everything which the law requires him to do and fails to attain his right by the misconduct or neglect of a public officer, the law will protect him. II–166

Rights of parties not impaired, through negligence of. II–849; III–42; IV–466, 515; V–233, 646; VI–147; IX–18, 32, 78, 102; X–210, 415, 421, 673; XI–191; XX–535

No rights in a valid contest will be lost through the neglect of the local officers to perform their duties correctly. III–42, 190, 281, 569

Failure or refusal of the local officers to promptly discharge a duty will not defeat a right. XI–218, 356

Failure of local, to make due record will not jeopardize the claimant's right. I–81

Failure of, to properly note of record an action will not defeat rights based thereon. XV–21, 31, 367

Failure of, to properly report an entry does not defeat rights thereunder. XIV–349

Failure of local, to properly note of record an entry can not defeat the right of the claimant. XVI–183

Officers—Continued.

Failure of local officers to enter of record an order directing the location of a warrant on a specific tract will not defeat the location. XVI–296

Failure of the local officers to properly note an entry on the record and issue certificate will not affect the rights of the entryman. III–172

To cure a defect in official proceedings may, after term of office has expired, attach signature to papers executed while holding office. XVII–96

Action taken under the advice of, should be without prejudice unless required by the absolute demands of the law. I–151, 459

No loss should be sustained by the claimant through misinformation furnished by the officers of the government or its records. III–68

Failure of contestant (timber-culture) to file motion for reconsideration for five months after the limitation, by reason of the neglect of the local officers to complete the record, does not prejudice his rights though an adverse claim has intervened. II–246

Where one intended to include a contiguous lot in his application (homestead) and did not because informed by the local officers that a preëmption contest barred it, his rights are not prejudiced; amendment allowed in absence of adverse right. II–36

Where contest was brought and tried and contestant went on the land and improved it, but no decision was made for five years because of loss of the papers, his rights are not prejudiced; on parol evidence of the facts originally proved, in the absence of a record of them, a subsequent contest is dismissed and his entry is allowed. II–299

Failure of local officers to give notice of a preferred right of entry does not prejudice the contestant. II–323

Failure to make final proof occasioned by the misleading advice of district officers not allowed to defeat the claim. III–257

The practice of the officers of the Land Office does not impair the real and just rights of claimants. II–849

Erroneous advice of local, will not operate to confer a right denied by the law. XIII–734

A statutory right can not be enlarged through erroneous action of the local officers. III–46, 254; IV–188, 424; V–351, 403; VI–237

The acts of an officer *de facto* are valid in so far as they affect the rights of the public or of third persons; if one is a mere intruder or usurper, third persons can acquire no rights by his acts. I–150, 545; II–615; III–549

Official acts of a deputy clerk appointed for the sole purpose of taking land proofs are void. (See 3 L. D., 549.) III–220

Officers—Continued.

The United States can not be estopped by the frauds, not to say the crimes, of public officials. II–797

Integrity of, not guaranteed by the government. II–46; IV–424

Acts of, not always conclusive as against the government. IV–424; VII–220

Oklahoma Lands. See *Indian Lands; School Land; Town Site; Town Lot.*

Circular regulations with respect to opening the public lands to entry and President's proclamation. VIII–336

Circular regulations in the matter of locating town sites in. X–604,666

Town-site circular of July 10, 1890. XI–24

Town-site circular of July 18, 1890, commuted homestead. XI–68

Public lands in. General circular of July 21, 1890. XI–79

Circular of September 1, 1893, with proclamation of the President opening to entry lands of the Cherokee Outlet. XVII–225

Sale of ceded lands under section 16, act of March 3, 1891. Circular instructions of June 8, 1893. XVII–52

Demand for first installment of purchase money on entries of lands ceded by the Pottawatomies and Shawnees postponed by circular instructions. XVII–263

Act of October 20, 1893, extends the time for the first payment required of settlers on certain ceded lands. Circular of February 14, 1894. XVIII–50

Homestead settlers on certain ceded lands allowed to commute after twelve months from the date of location. Circular of February 14, 1894. XVIII–50

Circular of January 9, 1895, under section 19, act of August 15, 1894, providing for the commutation of entries and the submission of final proof. XX–1

Circular of April 13, 1892, opening Cheyenne and Arapahoe lands. XX–7

Circular of February 25, 1897, under the act of January 18, 1897, opening to entry land in Greer County. XXIV–184

Greer County lands; instructions of April 13, 1899, under act of March 1, 1899. XXVIII–274

Commutation of homesteads under act of April 11, 1898; circular. XXVI–567

The homestead entry of one who enters the Territory prior to the time fixed therefor is not void, but voidable, and while of record segregates the land covered thereby. XX–147

On a charge that an entryman entered the Territory in advance of the hour fixed therefor it is incumbent upon the contestant to show such fact by a clear preponderance of the testimony. XXII–47

Oklahoma Lands—Continued.

In a contest between applicants for land in Oklahoma, involving priority of settlement, the question of "soonerism" is necessarily raised as to each party thereto, whether formally charged or not. XXIV–61

The act of March 2, 1889, opening to settlement and entry the Territory, as limited by the third proviso of section 13 of said act, prohibits any one from entering said Territory prior to the hour fixed by proclamation with the intention of settlement on any part thereof. XI–330; XIII–66

Settlement right on, can not be acquired through occupation of land prior to the time fixed therefor by the President's proclamation. XVI–132

By the terms of the act of March 2, 1889, the provisions of that act with respect to excluding claimants from the Territory until the hour of opening were made a general prohibition applicable alike to the lands acquired from the Creek and Seminole Indians. XXI–176

The prohibition in section 14, act of March 2, 1889, against entering the Territory prior to the time fixed therefor, is general in its character and applicable to the Sac and Fox lands, becoming effective from the date of the act opening said lands to settlement. XXI–274; XXIV–301

The prohibitory provisions of section 14, act of March 2, 1889, with respect to settlement rights in the Territory of Oklahoma, were intended to be general in character as to lands in said Territory and extend to lands formerly embraced in the Cheyenne and Arapahoe reservation, and became effective from March 3, 1891, the date of the act announcing the acquisition of the Indian title to said lands. XXI–267

The inhibition as to entering upon or occupying lands within the Cherokee Outlet runs from the date of the President's proclamation, August 19, 1893, opening said lands to settlement. XXI–496; XXII–310; XXV–55, 279

In determining the qualifications of entrymen, in so far as the same may be affected by their entering said Territory within the prohibited period, it is not practicable to lay down any general rule. XXI–40

The prohibitory provisions in the acts opening to settlement were intended to include persons who entered the Territory prior to their respective dates, and there remained in violation of said provisions, as well as those who entered said Territory subsequently. XVIII–591

Oklahoma Lands—Continued.

Information of a general character as to desirable lands, communicated by another prior to the opening of said Territory, does not disqualify the entryman under the statute opening said lands to entry. XVIII–31

Where the evidence shows that the claimant was within the Territory during the inhibited period, it is incumbent upon him to show that his purpose was not to acquire an advantage over others, and in fact did not. XXI–153

Where there is doubt as to the actual boundary of lands about to be opened to settlement, and a government official, for the purpose of securing equal opportunities to all, designates a line from which the run shall be made, it is incumbent upon one who disregards such designation to show that by such action he gained no advantage over others. XXIV–32

A settler who on the day of opening enters the Territory prematurely, with many others, through a misapprehension as to the signal given for entrance, must show, as against one who enters at the proper time, that no advantage was gained by such premature entry. XXV–341

One who in the ordinary prosecution of his business enters said Territory during the prohibited period, but does not thereby add to his prior knowledge of the country nor secure an advantage over others, and is outside of the Territory at the hour of its opening, is not disqualified as a settler. XXI–40, 176; XXII–121; XXVIII–303

Entrance within the Territory during the prohibited period for the sole purpose of procuring water for domestic use does not operate as a disqualification of the settler. XXII–613

Presence within the Territory during the inhibited period does not operate as a disqualification if no advantage is sought or gained thereby. XXV–273

Presence within the Territory during the prohibited period, by which an advantage over others is gained, operates to disqualify a claimant for land in said Territory. XXVI–393

Presence within the Territory (on railroad track adjacent to the land claimed) at the hour of opening disqualifies a settler who goes upon the land at such time. XXV–489; XXVII–438

One who voluntarily and unnecessarily enters the Territory during the prohibited period, and is within said Territory at the hour of opening, is disqualified as a settler therein. XXI–160

No permission to be within the Territory by virtue of special employment therein can be granted as against the express terms of the act of 1889. XI–330

Oklahoma Lands—Continued.

The disqualification imposed upon persons who enter the Territory, prior to the time fixed therefor, can not be ignored on the ground that the settler was misinformed as to the law. XIX–520

The provision in the act opening to entry, to the effect that rights of honorably discharged soldiers shall not be abridged, does not except such soldiers from the terms of the clause in said act prohibiting all persons from entering said Territory prior to the time fixed therefor. XIX–31, 521; XXI–535

One who enters the Territory during the prohibited period can not avoid the resulting disqualification by the plea that he "merely entered the Territory on a pleasure trip." XVIII–520

One who is permissibly within the Territory prior to the opening thereof and seeks to take advantage of his presence therein has "entered and occupied" the same in violation of the statute, and is disqualified to enter any of said lands or acquire any right thereto. XI–330; XII–653; XIII–409; XV–266, 451

The disqualification imposed by the act of March 2, 1889, extends to an applicant who remains outside the Territory until noon of April 22, 1889, but seeks to evade the prohibitory operation of the statute through the assistance of another whom he has theretofore employed to enter said Territory for such purpose. XIII–66

An entry of, made through the assistance of another, who enters the Territory in violation of law and holds the land until such time as the claimant makes entry thereof, is illegal and must be canceled. XVIII–560

A settler can not evade the prohibitory effect of the statute with respect to entering the Territory through the assistance of one who enters the same prior to the time fixed therefor. XIII–562

One who employs another to enter the Territory prior to the hour of opening, with the view to securing an advantage over others, is thereby disqualified as an entryman, though it may not appear that he settled on the tract occupied by the person so employed. XXVII–696

A soldier's declaratory statement filed on April 22, 1889, through an agent who was in the Territory prior to 12 o'clock noon of said day is illegal. XII–653; XX–334; XXI–496

The fact that a soldier's declaratory statement is filed by an agent after the lands are duly opened will not make such claim valid if the principal was in said Territory at the hour of opening. XXI–535

Oklahoma Lands—Continued.

One who after March 2, 1889, and prior to noon of April 22, 1889, enters the Territory for the purpose alone of removing his cattle therefrom, in obedience to an order of the military authorities, is not disqualified thereby as a homesteader. XVIII–128

Presence within the Territory during the greater part of the period from March 2, 1889, to the hour fixed for opening, disqualifies the person so present as a homesteader, unless it appears that he was lawfully within the Territory. XVIII–112

The acceptance of employment within the Territory in advance of the opening, and in anticipation thereof, disqualifies the applicant, though outside of the Territory during the prohibited period, where by the nature of the applicant's employment he obtains special information. XVIII–520

One who is lawfully within at the passage of the act of March 2, 1889, and so remains until the lands are opened to settlement and entry, but does not take advantage of his presence as against others, is not disqualified by such presence from acquiring title in said Territory. XIV–593

One who is within the Territory at noon on April 22, 1889, is by his presence in said Territory disqualified to thereafter enter lands therein. XVII–414; XVIII–495

A person who at the hour of opening is rightfully on reserved land within said Territory (the "government acre") is by reason of such presence disqualified from making the run on the day of opening, but is not necessarily disqualified from thereafter making entry of lands in said Territory if by his presence therein he secured no advantage over others. XXIII–522

One who knowingly enters the Territory prior to the hour fixed for opening the lands therein to settlement and entry becomes thereby disqualified as a homesteader. XVIII–112

One who is rightfully in said Territory prior to the opening thereof can not take advantage of his presence therein to secure a settlement claim in advance of others. XVI–132

Residence within the Territory (under permit from the War Department) and presence therein during the prohibited period does not disqualify a settler where no advantage is gained over others and the claimant is outside the boundary line at the hour of opening. XXI–151

One who at the hour of opening is within the Territory, engaged by authority in the survey of a town site, is disqualified by such presence from making the run on the day of opening, but not necessarily disqualified from thereafter entering lands in said Territory, if by such presence therein he secured no advantage over others. XXVII–277

Oklahoma Lands—Continued.

One who is within the Territory prior to the act of March 2, 1889, and within a few days thereafter leaves, and remains outside during the rest of the prohibited period, is not by such presence disqualified as an entryman where the facts do not raise any question as to advantage gained by the claimant. XXI–147

Knowledge of lands within the Territory acquired by presence therein prior to the prohibited period can not disqualify a settler who subsequently complies with the prohibitive terms of said act. XXI–284; XXIV–92, 420; XXVIII–169

One who is lawfully within prior to the opening thereof and afterwards goes outside the boundaries and takes no advantage of his former presence in said Territory is not disqualified as a settler therein. XVI–253; XXI–148

One who enters the Territory prior to the opening, in order to secure a starting point near the tract desired, is disqualified thereby as an entryman, though outside of the Territorial boundary at the hour fixed for opening the lands. XVIII–218

Presence within the Territory, after the act authorizing the President to open the same to settlement, but prior to the proclamation issued thereunder, will not disqualify the settler if he was not then within said Territory for the purpose of selecting lands, and by his presence therein secured no advantage. XXIII–63

One who by misadventure is within the Territory prior to its opening, but subsequently goes outside and there remains until the time fixed for the opening and secures no advantage by his previous presence in the Territory, is not disqualified thereby. XVI–375

One who by mistake enters within the Territory prior to the time fixed for settlement therein, but takes no advantage of his presence and leaves on discovery of his mistake, is not thereafter disqualified to enter lands in said Territory. XV–580

One who is unlawfully within the Territory prior to the time fixed for opening the lands therein to settlement, and takes advantage of such presence to select land in advance of others, is disqualified thereby to make entry of land in said Territory, though he subsequently goes outside of the boundaries thereof and there remains until the time fixed for opening. XVII–526

The disqualification imposed upon persons entering the Territory prior to the time fixed therefor extends to one who thus enters said Territory for the purpose of securing information that would give him an advantage over other applicants, though he subsequently returns to the "line" and there awaits the signal for entrance, and ultimately does not settle on the tract first selected. XVII–175

Oklahoma Lands—Continued.

One who is within the Territory after the passage of the act of March 2, 1889, opening the same to settlement, and subsequently goes outside of the boundaries thereof, and there remains until the time fixed for entering the same, but takes advantage of his former presence therein, either through his own knowledge of the lands subject to settlement, or by collusion with another, to secure a tract in advance of others is thereby disqualified as a settler under said act. XVII–402

Crossing the Territorial line (to obtain water) prior to the hour fixed for entering does not disqualify the settler, it appearing that he returned to the boundary line and there awaited the hour for entering, that the watering place visited was used by the people camping in that vicinity, and was not in the neighborhood of the land settled upon. XVIII–598

Advantage gained by repeatedly passing through the Territory on a railroad train during the prohibited period, such trips being for the purpose of locating a desirable tract, operates to disqualify the entryman. XXVII–74

Entry within the Territory during the prohibited period by passing through the country over a public highway does not operate to disqualify an applicant for land within the Sac and Fox country. XXIII–186

The provisions of section 13, act of March 2, 1889, prohibit the examination and selection of a tract after the date of said act and prior to the opening of the lands embraced therein. XV–389

The prohibitive provisions in the act of March 3, 1893, with respect to the Cherokee strip, were enacted at a time when the similar provisions in the act of March 2, 1889, were liberally construed by the Department, and when the question of "advantage gained" by presence in the Territory during the prohibited period was regarded as a proper one for consideration in determinating the qualifications of a settler. XXV–504

One who is within the Outlet at the date of the President's proclamation, occupying a tract of leased land by the consent of the Indian agent, but goes outside thereafter, and there remains until after the opening, is not disqualified as a settler if, by his former presence within the prohibited territory, he secured no advantage over others. XXV–380

Where a party of intending settlers select as their starting point in the race a stream that constitutes a boundary of the territory, and, finding the bed of said stream affords a doubtful crossing place, procure its improvement prior to the hour of opening, such act will not be held to disqualify a member of said party as a settler. XXVIII–169

Oklahoma Lands—Continued.

The action of the Department in forbidding persons from making the run into the Cherokee Outlet on the day of the opening from any of the Indian reservations on the eastern boundary of said lands is not inconsistent with the statute, and one who violates said order is disqualified thereby as a settler. XX–446

By the proclamation of the President declaring the Cherokee Outlet open to settlement, and providing regulations for the acquisition of settlement rights therein, a strip of land one hundred feet in width immediately within the outer boundary of the entire tract then opened to settlement was set apart for the occupancy of intending settlers; and, if it be conceded that the Secretary of the Interior could thereafter modify said regulation, such action could only be taken after the notice required by the statute. XXIII–533

The regulations with respect to opening the Cherokee Outlet, made under direction of the President and incorporated in his proclamation, provided for an entering strip one hundred feet in width around and immediately within the outer boundaries of the entire tract of country to be opened, and can not be abrogated or modified by the act of the Secretary of the Interior alone. XXV–55

In determining the location of the hundred-foot strip opened to occupancy "immediately within the outer boundaries" of the Cherokee Outlet, where a meandered river forms a boundary thereof, the strip should be measured from the meander line of said stream. XXVIII–167

Persons making the run from the hundred-foot strip of land set apart for their occupancy are not disqualified as settlers by the fact that in entering thereon they passed over an adjacent Indian reservation. XXIII–533; XXV–55

The prohibitory provisions of the statute opening to settlement the lands known as the "Cherokee Outlet," and the President's proclamation thereunder, did not apply to the whole of said Outlet, but only to such portion thereof as should be declared open to settlement under said proclamation, and hence are not applicable to Indian reservations within said Outlet excluded from settlement but adjacent to the lands opened under said proclamation. XXV–55

A settler on Oklahoma lands is not disqualified by starting into the race from the one-hundred-foot strip on the Chilocco Indian school reservation. XXV–285, 334

A settler on lands opened to disposition by the act of March 3, 1891, is not disqualified by making the "run" on the day of opening from an adjacent Indian reservation. XXIV–92; XXV–373

Oklahoma Lands—Continued.

The departmental inhibition against making the race for, from Indian reservations is applicable to lands which the Indians have the right to use and occupy, and not to lands in which the Indians have no such right. XXI–369

The prohibitive provisions in the act opening, to settlement were directed against persons otherwise qualified to make entry, and not against persons who for other reasons were then disqualified and by their presence in said Territory took no advantage over others. XXI–370

The prohibition in the proclamation of the President and departmental regulations against using the mails for the purpose of filing soldiers' homestead declaratory statements for, is authorized by the law opening the lands in said Territory to settlement. XXI–551

The failure to file a "non-sooner" affidavit, with a soldier's declaratory statement, may be subsequently remedied, even though an intervening adverse claim to the land may be asserted. XXVI–54

A refusal to issue a booth certificate on account of a statement by the applicant that he has been "in the Cherokee Outlet every other day to procure water for his own use" is not justified where the application is otherwise in due form. XXII–613

No question with respect to the regularity of departmental action in the establishment of a booth, as affecting the qualifications of one holding a certificate issued therefrom, will be entertained, in the absence of a showing of advantage gained thereby. XXVIII–267

Occupancy of, by an Indian located under authority of the government is not affected by the act prohibiting the acquisition of settlement rights prior to the time fixed therein. XV–584

The occupancy of, through mistake, but under authority of the government, by a white man having an Indian wife, may be protected, under the supervisory power of the Secretary, through the allowance of a homestead entry on the part of such occupant, though he was occupying the land during the inhibited period. XX–101

A homestead entry of land within said Territory made for the purpose of selling the land to town-site occupants is illegal, and priority of settlement in such case confers no right upon the entryman. XII–654; XXI–496

In commuting an entry under section 21, act of May 2, 1890, military bounty land warrants can not be used. The land must be paid for in cash at $1.25 per acre. XVI–160

The commutation of an entry under section 21, act of May 2, 1890, can not be allowed when it is apparent that the land is intended for town-site purposes and not for agricultural use. XIII–99

Oklahoma Lands—Continued.

A homestead made with intent to use a part of the land as a town site is invalid in its entirety, and the invalidity can not be limited to particular tracts either by relinquishment or purchase of a portion of the land under section 21, act of June 2, 1890. XIV–452

The commutation of a homestead entry under section 21, act of May 2, 1890, can not be allowed where it is apparent that the land is intended for town-site purposes. XIV–13

The non-town-site affidavit required in the case of a homestead commuted under section 21, act of May 2, 1890, is a proper regulation in the execution thereof; and the affidavit thus required should be executed within the county or district where the land is situated. XXII–533

Under section 22, act of May 2, 1890, the entryman may purchase for town-site purposes such subdivisions as may be required therefor and perfect title to the remainder under the homestead law. XIII–99; XIV–13

An entryman who desires to purchase for town-site purposes under section 22, act of May 2, 1890, must show that he is entitled to perfect title under the homestead law without reference to the fact that the land is occupied and required for town-site purposes. XIV–146

In the commutation of a homestead entry for town-site purposes under section 22, act of May 2, 1890, the entryman is required to pay for the acreage embraced in the streets and alleys of the proposed town site. XXI–426

A homesteader who has voluntarily parted with the control of the greater part of his land and agreed to convey title thereto when his claim is perfected is disqualified as a homesteader, and hence can not purchase under section 22, act of May 2, 1890. XIV–146

Lands acquired from the Sac and Fox nation under the agreement approved February 13, 1891, and included within a homestead entry, may be purchased for town-site purposes under section 22, act of May 2, 1890. XIV–419

Payment for land purchased under section 22, act of May 2, 1890, should be made in currency or by draft on New York, exchange paid. XIV–419

The right to make a second homestead entry under section 7, act of February 13, 1891, may be exercised by one whose first entry was made prior to the passage of said act, and relinquished subsequently thereto in the settlement of a contest. XVIII–288

The right to make homestead entry of land within the former Cheyenne and Arapahoe reservation (but not included in the Creek cession of January 19, 1889), can not be exercised by one who has previously commuted a homestead entry. XVIII–406

Oklahoma Lands—Continued.

The right to make a second homestead entry is not conferred by the act of March 3, 1891, opening to entry the Cheyenne and Arapahoe lands. XV–296

The right to make second homestead entry conferred by section 13, act of March 2, 1889, upon persons who had commuted a former entry is extended by section 18, act of May 2, 1890, to Pottawatomie lands that were part of the original Seminole purchase. XV–356

A homestead declaratory statement filed and relinquished after the act of March 2, 1889 (25 Stat. L., 980), defeats the right of second entry under section 13 of said act XVIII–520

The right to make homestead entry of, conferred by the thirteenth section of the act of March 2, 1889, upon persons who had previously made homestead entry and commuted the same, is extended by section 18, act of May 2, 1890, to lands acquired by cession from Muscogee Indians. XVII–118

The right to make entry of lands obtained from the Muscogee or Creek Indians, as provided in the first proviso to section 13, act of March 2, 1889, does not extend to one who has failed to secure title to a particular tract under the homestead law, if such person has secured title to other land under said law; but the right to make entry under said section does include one who has made an entry under the commutation provisions of the homestead law. XXVII–300

The commutation of a homestead entry under section 2301, R. S., does not disqualify the entryman as a subsequent homestead claimant for, lying within the Cheyenne and Arapahoe reservation, and acquired by cession from the Creek or Muscogee Indians. XVII–543

The right to make second entry under section 13, act of March 2, 1889, can not be exercised where the original entry is made after the passage of said act. XV–374

In determining the qualifications of an applicant for lands obtained from the Seminole and Creek Indians, as provided for in the first proviso to section 13, act of March 2, 1889, the status of the applicant at the date of his application must control; and if he has at such time attempted, but for any cause failed, to secure title to a homestead, or shall have made entry under the commutation provision of the homestead law, he is qualified to make entry under the provisions of said section. XXVI–448

Oklahoma Lands—Continued.

The right of second entry, as provided for by section 13, act of March 2, 1889, is determined by the status of the applicant at the time of his application; and if, at such time, he has attempted to secure title under law existing at the passage of said act, but failed, he is qualified as an entryman thereunder, so far as his previous entry is concerned. XXIX–246

The right of one who has abandoned all claim under a prior entry to make a second entry under section 13, act of March 2, 1889, is not affected by the fact that at the date of his settlement the prior entry had not been canceled of record. XXVIII–449; XXIX–108

The right to make a second homestead entry conferred by section 13, act of March 2, 1889, does not extend to one who purchased the land covered by his first entry under the provisions of section 2, act of June 15, 1880. XXII–484

Section 7, act of February 13, 1891, allowing an entry of lands, ceded by the Sac and Fox Nation and Iowas, to be made by persons who had previously commuted a homestead, applies only to entries made under section 2301, R. S., and not to entries commuted under the special provisions of section 21, act of May 2, 1890. XVII–46

Under the last proviso to section 3, act of March 3, 1893, opening the Kickapoo lands to settlement and entry, a person who has, at the date of his application under said act, attempted to but for any cause failed to acquire title to a homestead under existing law, or shall have made entry under the commuted provision of the homestead law, is entitled to make a homestead entry of said lands. XXVIII–303

Section 10, act of March 3, 1893, makes the provisions of section 13, act of March 2, 1889, applicable to the lands in the Cherokee Outlet, not only as to the manner of opening said lands, but also as to the qualifications of claimants therefor. XXIX–108, 246

The right to make a second homestead entry conferred by the act of March 2, 1889, upon persons "who having attempted to but for any cause failed to secure a title in fee to a homestead under existing law," is applicable to entries in the Cherokee Outlet, and is determined by the status of the applicant at the date of his application. XXIX–372

Certain lands in townships 7 and 8, ranges 14 and 15, held in reservation for the Kiowa and Comanche Indians. XV–87

Settlers on the "Public Land Strip" are not entitled to receive credit for more than two years' residence prior to the act of May 2, 1890. XV–363

Oklahoma Lands—Continued.

The preferred right of entry of lands in the Public Land Strip accorded all *bona fide* settlers upon said lands by section 18, act of May 2, 1890, extends only to persons occupying such status at the date of the passage of said act, and who thereafter make entry within a reasonable time and show due compliance with law. XXVII–243

The fact that a person has commuted a homestead entry does not disqualify him from making a homestead entry within the Public Land Strip. XIX–540

Prior to the enactment of May 2, 1890, the ownership of other land was not a limitation upon the right of homestead entry in Oklahoma. XXVII–438

The special provision in section 20, act of May 2, 1890, limiting the right of homestead entry to persons not "seized in fee simple of one hundred and sixty acres," etc., is not repealed by the general provisions in section 5, act of March 3, 1891, amending section 2289, R. S. XXIII–547

The provision in section 20, act of May 2, 1890, that "no person who shall at the time be seized in fee simple of a hundred and sixty acres of land in any State or Territory shall hereafter be entitled to enter land in said Territory," extends to one who holds such an amount of land under a deed of absolute conveyance, subject only to defeasance on breach of condition subsequent on the part of the grantee. XXI–503

One who has by a valid contract sold and agreed to convey lands, the legal title to which remains in him only as security for the unpaid purchase money, is not, within the meaning of the act of May 2, 1890, seized in fee simple of such lands. XXX–370

The disqualification of a homestead claimant in Oklahoma, arising from the ownership of other land, is limited to ownership in fee simple, and does not extend to a legal title held in trust for the benefit of another. XXVII–705

To establish the allegation that an entryman is disqualified by the ownership in fee simple of 160 acres, the proof must show that the entryman owned in full said quantity or more. XXVIII–187

A deed executed prior to the making of a homestead entry, apparently made for the purpose of conveying the title in trust for the benefit of the entryman, will not defeat the inhibitory provision of the statute limiting the right of homestead entry to persons not owning 160 acres of land. XX–557

A final certificate for 160 acres invests the holder with a fee simple title thereto, and, under the provisions of section 20, act of May 2, 1890, operates to disqualify him as a homestead claimant. XXVII–702

Oklahoma Lands —Continued.

Under the statutes of Kansas the ownership of land is not divested by the execution of a mortgage thereon, hence a mortgagor in that State can not plead that by reason of such mortgage he is not "seized in fee" of the said land, and therefore is not disqualified as a homesteader under section 20, act of May 2, 1890. XXIII–251

A tax sale in the State of Kansas does not operate to divest the original owner of title until a deed is made thereunder, and, prior to such time, would therefore not relieve an entryman from the disqualification imposed by section 20, act of May 2, 1890, upon persons who are "seized in fee simple of one hundred and sixty-acres of land." XXIII–547

A quitclaim deed of a small tract of land to township authorities for "road purposes," executed by one who previously owned 160 acres, effectually divests the grantor of title to the land so conveyed, and he is consequently thereafter not the owner of 160 acres within the meaning of section 20, act of May 2, 1890. XXIII–251

A transfer of land owned by an intending homesteader will not operate to relieve him of the disqualification imposed by section 20, act of May 2, 1890, if it appears to have not been made in good faith, but for the purpose of evading the statutory inhibition. XXIV–248

The fact that a settler is not disqualified as a entryman by the ownership of land at the date of his settlement will not relieve him from the effect of the statutory inhibition, if he subsequently becomes the owner in fee simple of 160 acres while his rights, as against an adverse claimant, are dependent upon the maintenance of his status as a qualified settler. XXVIII–198

The limitation in section 20, act of May 2, 1890, of the right to make homestead entry in Oklahoma, to persons who are not "seized in fee simple of one hundred and sixty acres of land," disqualifies one who owns a "quarter section," entered as such, though the area of the tract thus owned may fall short of 160 acres by a small fraction, as shown by the field notes of survey. XXIV–248

The limitation by section 20, act of May 2, 1890, of the right of homestead entry in Oklahoma to persons who are not "seized in fee simple of one hundred and sixty acres of land in any State or Territory" does not operate to disqualify an applicant for such right who may at such time own a less amount, though the land thus held may have been taken as a technical "quarter section." XXVI–369

Oklahoma Lands—Continned.

The provisions in section 16, act of March 3, 1891 (26 Stat., 989), that the lands specified therein shall be opened to settlement "under the provisions of the homestead and townsite laws," should be construed to mean that said lands are to be opened to settlement under the homestead and townsite laws governing the disposition of lands in Oklahoma, and not operating to repeal the provision contained in section 20, act of May 2, 1890, disqualifying as homesteaders all persons owning 160 acres in any State or Territory, and applicable to all lands in Oklahoma. XXIV–242

The privilege of making a homestead entry, without regard to the ownership of other land, was not one of the rights of soldiers and sailors defined and described in sections 2304 and 2305, R. S.; hence the subsequent legislation making the ownership of other lands a general disqualification does not abridge any right conferred by said sections. XXVI–61

The right to make additional homestead entry under the act of February 10, 1894, can not be exercised by one whose claim to the land embraced in his original entry was initiated after the passage of said act. XXVI–190

The special right to enter additional lands conferred by the act of February 10, 1894, when such additional lands become subject to entry, is defeated by prior selection of the land as school indemnity under the provisions of the act of March 2, 1895. XXIV–91

The privilege of making an additional homestead entry under the act of February 10, 1894, of lands on the south side of the Deep Fork river, as against adverse claimants, rests upon the priority of the initiation of the claim to such lands, and not upon the priority of settlement on the land north of said stream. XXVIII–165

An "occupant" of land, as the word is ordinarily used, is one who has the "use and possession" thereof, whether he resides upon it or not, and Congress so used the word in the act of January 18, 1897; it therefore follows that any qualified claimant who, on March 16, 1896, was in the actual use and possession of the land claimed by him, is entitled to the benefits of the first section of said act, whether he was actually residing upon the land at that date or not. (Greer county.) XXVIII–537

Where a *bona fide* occupant of lands in Greer county, as the head of a family, has taken the full amount of land to which he is entitled under the act of January 18, 1897, a member of his family, over the age of twenty-one, other than husband or wife, may take, under said act additional or "excess" lands, not to exceed 160 acres. XXIX–340

Oklahoma Lands Continued.

If the head of the family fails to exercise his rights within the time accorded him by the act of January 18, 1897, any duly qualified member of his family, other than husband or wife, may succeed to his rights for three months longer, with the limitation that such member can take only 160 acres. (Greer county.) XXIX–340

The right conferred by section 1, act of January 18, 1897, to purchase lands additional to those entered under the homestead law, is not limited by any requirement that the tract so purchased shall be contiguous. (Greer county.) XXIX–532

One who exhausts his homestead privilege and also his right to purchase additional land under section 1 of the act of January 18, 1897, surrenders thereby any right or claim he may have acquired under said section as a *bona fide* occupant of other lands. XXX–83

Where a claimant makes entry under the act of January 18, 1897, as an occupant, and it afterwards appears that he was not an occupant on March 16, 1896, of one of the tracts included in his entry, the entry may nevertheless be allowed to stand for such tract, under section 2 of said act, where it is shown that he was an "actual settler" and residing upon a portion of the land included in his entry at the date of entry and no valid prior right had attached. XXX–83

An "occupant" within the meaning of the act of January 18, 1897, must have not only the possession, but the actual use and enjoyment of the land; hence, one who had parted with the actual use and enjoyment of his land, and had not, on March 16, 1896, renewed such use and enjoyment, was not on that date a *bona fide* occupant, and is therefore not entitled to the preference right of entry accorded by section 1 of said act. XXX–435

Section 4 of the act of January 18, 1897, reserving sections 13 and 33 in Greer county, for "such purpose as the future State of Oklahoma may prescribe," makes provision for indemnity only for lands in said sections which are found to have been "occupied by actual settlers or for town-site purposes or homesteads" prior to March 16, 1896, and as the right to indemnity under sections 2275 and 2276, R. S., as amended, is limited to sections reserved for school purposes, there is no law authorizing indemnity for losses in sections 13 and 33, in said county, occasioned by such sections being fractional. XXX–87

Osage Land. See *Confirmation; Filing; Final Proof; Indian Lands.*

Otoe and Missouria Indian Land. See *Indian Lands; Settlement.*

Parks and Cemeteries.

Circular of May 23, 1892, issued under the act of September 30, 1890, authorizing incorporated towns to make entry of public lands for park and cemetery purposes. XIV–560

Partnership. See *Entry*, sub-title *Timber-Culture.*

Patent. See *Indian Lands: Mining Claim*, sub-titles *Lode* and *Placer; Private Claims; Railroad Grant; Town Site.*

I. GENERALLY.
II. EFFECT OF.
III. REISSUE.
IV. CERTIFICATION.
V. VACATION.

I. GENERALLY.

Delivery of. Instructions of October 25, 1882. I–638

Should be delivered without fee from the purchaser. Circular of September 14, 1891. XIII 98

Should not issue for land under a technical subdivisional description not shown by the public surveys. XVI–24

For all of a fractional section conveys only such land as may be then included within the approved township plat of survey. XVII–355

May issue to a purchaser of railroad lands under section 5, act of March 3, 1887, for less than a legal subdivision, but should contain a recital that it is issued under said act. XVI–273

Failure to describe therein the lands actually purchased will not leave the lands so omitted subject to the entry of another. XV–69

An application for a, based on an alleged purchase of a tract will not be granted, where, owing to the war of 1861, there is no official record of the alleged transaction. XX–330

Issued in contravention of the record is void and will not be delivered. IV–498

Matters pertaining to execution and delivery of, to be determined in the General Land Office. IV–375

The Secretary of the Interior has no authority to direct the delivery of an incomplete. I–22

When signed, sealed, countersigned, and recorded, the entryman is entitled to have it delivered to him, and the Department has neither the power to cancel it nor the right to withhold it from him. XXI–199

A protest against the delivery of a, filed by one who alleges no adverse interest in the land, presents no question within the jurisdiction of the Department, if no equities are shown by the protestant that warrant the Department in advising suit to vacate the patent. XXVII–127

Patent—Continued.

I. GENERALLY—Continued.

Will not be delivered while the right of possession is in dispute; though if essential in pending litigation it may be delivered in trust for the party legally entitled thereto. I–287

Delivery of, issued on military bounty land warrant to be governed by the rule in United States *v.* Schurz. I–1

To a fictitious person, procured by fraud, carries no title and vests no interest in any one; it is null and void. II–794; V–477

Should issue to all the heirs equally where a homesteader dies leaving no widow but both adult and minor heirs. XVI–463

To issue in the name of minor orphan children of the deceased entryman under the homestead law. V–222

Requirements in case of issue to minor heirs. I–99

Section 2448, R. S., is applicable only where the right to, exists in the entryman at the time of his death. XXIII–457; XXVI–242

Under the provisions of section 2448, R. S., may issue in the name of an entryman, though his death may be disclosed by the record. XXI–377

May issue in the name of heirs where the entryman, at time of final proof, was not admitted to citizenship and a naturalized heir thereafter submits final proof. The case of Joseph Ellis, 21 L. D., 377, cited and distinguished. XXV–1

If a homesteader dies, before he is entitled to a final certificate, his widow may submit final proof and receive, in her own name; and a, issued in the name of the homesteader, on proof so made, is in violation of law, and no bar to the issuance of, in the name of the widow. XXVI–242; XXVII–671

Should issue in the name of the heirs or devisees generally where the death of the homesteader is disclosed by the record. IX–401; XIII–228; XVII–158

Under an entry confirmed by said section, patent should issue in the name of the entryman, though his death may be disclosed by the record. XXIV–139

Where issued under a grant made by a treaty in which no provision appears for the issuance of a, the fact of the grantee's death prior to such issuance is immaterial, for if title under said grant did not pass without patent, then the issuance thereof was in pursuance of law in the meaning of section 2448, R. S., and the title, under the provisions of said section, vested in the heirs, devisees, or assignees of the deceased patentee as if the patent had issued in his lifetime. XXVI–562

In the name of a deceased person conveys no title. IX–402

Where homestead entry was made by a guardian for the benefit of the orphan child of a deceased soldier, patent must issue to the beneficiary, whether of age or not. II–114

Patent—Continued.

I. GENERALLY—Continued.

Under a desert entry should issue in the name of the heirs generally where the record shows the death of the entryman. XIII–49

Must issue to the entryman (preëmptor) and not to his grantee. II–779, 783

For confirmed private claim in Florida issues to the assignee of the confirmee on production of regular chain of title. V–677

Should issue in the name of the "heirs of" the entryman where final timber-culture proof is made by an administrator for the benefit of heirs. XVI–149

Where the death of a purchaser under the act of June 3, 1878, is disclosed by the record, should issue in the name of the heirs generally. XVIII–542

Upon application by the administrator of a deceased owner (mine), should issue to the heirs of such deceased owner. II–762

The right to patent (mineral) is not traced beyond the entryman (deceased), and issuing in his name inures to the benefit of him whose right may afterward appear. II–772

Where alien donation claimant died after declaring his intention and before naturalization, patent properly issues to his heirs. II–439

The provisions of the act of June 8, 1880, with respect to the issuance of, in cases where a homesteader has become insane, do not authorize patent if the proof submitted fails to show the citizenship of the entryman. XXIX–710

Authorized by section 2447, R. S., in claims confirmed by statute and where the act made no provision for patent. VI–149

Section 2447, R. S., authorizes the issue of, to the assignee of a confirmed claim, where the confirmatory statutes make no provision for the issue of patent. XVII–25

Title not passed by an instrument purporting to be a, where such instrument is neither sealed nor delivered. IX–407

Date of, must be taken as the date of the record, and parol testimony to contradict such record is not admissible. X–343

Boundary description in, not always conclusive as to identity of tract. V–96

Certificate and official survey form a part of. V–96

On entry should contain reservation of acquired railroad right of way and station grounds. IV–523

Hearing ordered in case of undelivered, there being a variance between the application and certificate. IV–422

The land department is prohibited from issuing to a preëmptor on a void entry. II–779

Is not necessary to pass title in cases of present grant. II–492

Is not necessary to pass title when patent is not required by the granting act and certification has been made. II–457, 492

Patent—Continued.

I. GENERALLY—Continued.

Was not necessary to pass title when the lands had been selected under a present grant (to Missouri) and entered at the local office. II–488, 496

In town site and mineral, mutual clauses of reservation may be inserted. I–556

Mineral, should only contain terms of conveyance and recitals showing compliance with the law. V–195, 256

For mineral land should not contain a clause reserving the rights of a town site. V–195, 256; VII–283, 319; VIII–602

Not accepted by a mineral claimant because containing a clause reserving the rights of a town site may be recalled with the view of instituting proceedings to determine the relative rights of the parties. VII–319

Discovery and location antedating town settlement, the reserving clause will not be inserted in a mineral patent. IV–273

If there has been failure to comply with the essential provisions of the law (mining), patent must not issue. II–741, 743

Issue of, for mining claim conclusive as to all facts upon the existence of which such issue depends. V–28

In private claim should follow the terms of the grant or judgment. I–287; V–61

For private claim may not issue under section 2447, R. S. I–223

For a town site is inoperative as to all lands known at the time of the entry to be valuable for mineral or discovered to be of such character prior to the occupation or improvement of land under the town-site laws. VII–283

For lands in the Virginia military district, Ohio, may only issue where the entry is made prior to January 1, 1852, and such lands had not been surveyed prior to the passage of said act. I–4, 11, 17

Where it appears that a tract of land has been duly bought and paid for, and patent therefor has been withheld, through error of the government, it is the duty of the Department on the discovery of such error to issue patent irrespective of the manner in which such matter is brought to its attention. XXVII–341

The right to have a mineral, so amended as to describe the land actually applied for and purchased, is not defeated by a subsequent adverse location, nor by an entry, based on said location, allowed during pendency of proceedings instituted to secure such amendment. XXIX–160

Patent—Continued.

II. Effect of.

The title of the United States passes with the patent, and with the title passes all authority or control of the land department over the land and over the title which the patent conveys. II–114; I–592, 657; IV–173, 253, 344, 396; V–483; VI–314; VIII–70, 471; IX–83, 597; X–694

Title by patent is title by record; the delivery of the instrument is not necessary to pass title. I–18, 22, 90; II–386; IV–345, 500; VIII–70

The case of the United States *v.* Schurz cited and distinguished. IV–499

The record of a perfect, duly enrolled, divests the Department of all jurisdiction over the land covered thereby. XXII–92

Issuance of, duly signed, sealed, countersigned, and recorded deprives the Department of further jurisdiction over the land or the title thereto. X–343

Issuance of, deprives the Department of jurisdiction over the land included therein, even though such patent by its terms amounts only to a quitclaim deed. X–155

The Department has no jurisdiction over patented lands, not even to direct that a filing therefor be received and held to await the result of proceedings already instituted to vacate the patent. XXV–54

Can be invalidated only by judicial proceedings. IX–83

The issuance of, *prima facie* passes title, whether valid or a void instrument without authority, and precludes the exercise of further departmental jurisdiction over the land until vacated by judicial action. IX–114

After patent or certification, where patent is not expressly required the Department can not annul such action or dispose of the land. IX–597, 636

The issuance of, for lands that were prior thereto part of the public domain is within the general scope of the authority of the officers of the land department, though in particular instances their action may be unwarranted. IX–114

Issuance of, for land that was part of the public domain or the fee to which was in the United States passes the title *prima facie* and, whether void or voidable, such patent while outstanding precludes the further exercise of departmental jurisdiction over the land. XVI–204

Isssued within the jurisdiction of the land department may be voidable, but is not absolutely void. III–90

Patent—Continued.

II. Effect of—Continued.

Is void on its face not only when fatally defective by its own terms, but also, whenever its invalidity appears by reference to any matter of which judicial notice may be taken, such as public statutes or treaties; and such a patent is entirely null, conveys no title, and has no operative effect requiring resort to a court of equity for its avoidance. XXVII–482

Which by its terms discloses the fact of its issue on a Chippewa half-breed scrip location outside of ceded territory is void on its face, an absolute nullity, and does not operate to pass the title to the land covered thereby out of the United States, or deprive the land department of its jurisdiction over said land. XXVII–482

Misdescription in final certificate and, will not defeat the right of the purchaser to the land actually covered by the sale and purchase or render such land subject to the entry of another. XI–123, 389

Issue of, though inadvertent, deprives the Department of jurisdiction over the title. I–457

Inadvertently issued and neither delivered nor accepted does not pass legal title to the land or take it out of the category of public lands. IX–322

Recording through mistake a purported, will not deprive the Department of jurisdiction, where the original instrument is incomplete, not delivered, and based upon an unauthorized entry. XX–247

Though fraudulently obtained, segregates the land. II–116; V–477

Relates back to the initiatory act of the claimant who has duly followed up his rights and cuts off all intervening claims. 1–492; II–167, 497, 770; IV–117; V–39

Under a railroad grant which provides that "all mineral lands be and the same are hereby reserved and excluded from the operation of this act, issued for lands, "excepting and excluding all mineral lands should any such be found to exist," does not reserve to the Department the power and authority to subsequently inquire into the character of the lands. XIX–410

The allowance of an entry under general laws providing for the disposal of the public lands, the final approval thereof for patenting, and the issue of, thereon, is an adjudication by the land department that the lands entered are of the character and class subject to such entry, and necessarily determines that they had not been previously granted or otherwise appropriated. XXX–626

For private claim exhausts the jurisdiction of the land department. I–229

On private claim in California does not affect the rights of third parties. V–503

Patent—Continued.

II. Effect of—Continued.

Issued to purchaser from California (section 1, act of July 23, 1866) prevents the State's claim under the swamp grant. II–643

Precludes departmental action under the first section of the act of April 21, 1876. V–344; V–145, 205

Erroneously issued for land in excess of the amount actually purchased is no bar to the issuance of second to another for such excess. V–96

In which the land is described in accordance with the sub-divisions shown on the official plat conveys all the land within the limits so specified, whether the quantity of said land is correctly stated or not. XX–230

The inadvertent substitution of an adjacent tract in the final certificate and, requires no action for the protection of the government except the cancellation of that part of the original entry not covered by the. XXII–483

The land department has no jurisdiction to correct an alleged erroneous survey of a patented placer claim, while the, is outstanding, so as to include land not applied for or surveyed. XXIV–512

The inadvertent issuance of a, on an entry that is in partial conflict with a prior entry deprives the Department of further jurisdiction over the tract in controversy; and a final certificate therefor, subsequently issued on the earlier entry, must be canceled, though the original entry on which such certificate rests may be permitted to remain of record. XXIII–165

The Department may properly direct the cancellation of the record of an incomplete, that was in fact never issued, but was entered of record through mistake. XXIII–588

Issued upon allotment to an Indian deprives the Department of jurisdiction to inquire into the rightful ownership of the land. XIII–421

III. Reissue.

Issued to correct mistake on surrender of the former where it fails to properly describe the land. V–105; XI–123

When issued by fraud, accident, or mistake, a reconveyance of the land so patented may be made, and a new patent issue to the proper owner. XVII–25

Where a, includes land not embraced in the entry, a new patent may issue with the correct description of the land, on the surrender of the former, accompanied by evidence that the patentee has not sold or incumbered the land erroneously included. XX–376

Should be surrendered for reissue to cover larger amount. V–336

Patent—Continued.

III. Reissue—Continued.

May be surrendered and other land taken in satisfaction thereof to correct an error of the land department and avoid litigation. XIII–715; XIV–50, 186.

The Commissioner may, on the request of the patentee, withhold and cancel a, that does not describe the land entered, even though a relinquishment of the erroneous patent is not filed. XIV–389

Portion of land included may be relinquished, and in the place of such land a tract may be taken which through mistake was not included in the original entry nor in the patent issued thereon. XIV–475

When issued in conformity with the entire record the Department is without authority to accept a surrender thereof for the amendment of the record and reissue in accordance with the amended record. XIV–534

To an Indian under the general allotment act and in accordance with the record passes title, and the Department is thereafter without authority to cancel said patent and issue another to correct an alleged error in the name of the patentee. (Overruled, 18 L. D., 283.) XV–74

May be recalled by the Department, with the consent of the grantee, when not issued in conformity with the judgment and not accepted by the grantee, and another issued in accordance with said judgment. VII–283

Where second was accepted all objections not then asserted were held to be waived and delivery of the first refused. III–146

On a reconveyance by the State of lands erroneously certified thereto new title may be made under the proper law. X–165

An amended patent may issue without recall of that outstanding where part of the claim is by a clerical error omitted from former certificate and patent. II–428

Where a patentee mistakenly made and placed on record a deed to the United States he may be relieved by indorsement thereon of the Commissioner's refusal to accept it, or by reissue with recitals of facts, etc. II–674

The Department has not authority to issue new or amended, for the benefit of a transferee to include additional lands shown by a resurvey. XIII–392

IV. Certification. See *School Land.*

If patent is not expressly required by law, legal title passes fully by certification. IV–206, 301; VI–543; VIII–24, 471; IX–636

Certification under the railroad grant of June 3, 1856, equivalent to. XXIII–310

Patent—Continued.

IV. CERTIFICATION—Continued.

All jurisdiction of the Department over lands terminates on certification. VI–543; XXX–543

Though erroneously made, deprives the Department of further jurisdiction over the land. IV–137

Of an "information list" under a railroad grant does not convey title. XIV–333

Certification equivalent to, where patent is not required by statute and the validity thereof can only be questioned in the courts. XI–475; XIX–591

Certification under the act of August 3, 1854, is of no effect if the land was in fact excepted from the grant. XXIII–343, 460

The inadvertent certification of State selections at a time when the lands covered thereby are included within an existing entry, and involved in proceedings then pending before the Department, is inoperative, and constitutes no obstacle to the issuance of, in accordance with the final judgment in said proceedings. XXIV–228

By the provisions of section 2449, R. S., the certification of a State selection made under the act of June 16, 1880, of land embraced within the *bona fide* settlement claim of a qualified homesteader at the date of such selection, is wholly inoperative, and does not divest the Department of its jurisdiction over the land. XXVI–629

The inadvertent certification of a State selection at a time when the land covered thereby is included within an existing entry, made prior to the selection, is inoperative, and constitutes no bar to the issuance of patent on said entry. XXVI–239

The certification of lands as school indemnity, where said lands are subject to disposal only under the act of March 2, 1889, is wholly inoperative. XXVI–347

The certification of lands as school indemnity where said lands were previously set apart by statute for the creation of an Indian fund, is wholly inoperative. XXVIII–358

A certification under the act of August 3, 1854, of lands on account of a railroad grant that were, at the date of the grant, embraced within a pending *prima facie* valid school indemnity selection, is no bar to the subsequent approval of such selection. XXIV–364.

Under the act of August 3, 1854, a certification of lands to a State, on account of a railroad grant, is no bar to the subsequent disposition of said lands, if they in fact lie wholly outside of said grant, and hence are not of the character granted. XXIV–396

Patent—Continued.

IV. CERTIFICATION—Continued.

The certification to the State of Nevada of a tract of land selected under the grant of June 16, 1880, but of known mineral character and appropriated as such at date of selection, is null and void and consequently no bar to the subsequent recognition of rights asserted under the mining laws. XXVII–326

The erroneous certification to a railroad company of lands not of the character granted, is no bar to the issuance of patent upon subsisting entries of record therefor at the date of such certification. XXX–410

V. VACATION.

Where a petition is addressed to the General Land Office asking for a suit to set aside a, the matter should be reported to the Department with an expression of opinion as to the advisability of ordering a preliminary hearing. XXI–125

Application for proceedings to vacate should not be considered without due notice to the patentee or his attorney. XVI–104

Proceedings to vacate will not be advised except on due showing. IX–83; XI–32

The United States should not attack its own, duly and regularly issued, without a clear and convincing showing that fraud was committed in procuring its issuance. XXI–125

To determine whether suit to vacate should be advised, a hearing may be ordered. IX–83; XI–590

Where one attacks a patent for fraud with the purpose of entering the land on vacation thereof he should make a full *prima facie* showing at the hearing, if ordered, at his own expense; if the other party desires to rebut, he may do it at his own expense. II–761

Conceding that one who furnishes evidence on which a, is set aside is equitably entitled to a preferred right of entry, there is no authority for recognizing such equity as the subject of transfer. XXIX–178

Suit to vacate will not be advised on the report of a special agent when not based on his personal knowledge unless corroborated by the evidence of at least two witnesses. VI–454

Suit to vacate will not be advised in the absence of an equitable adverse right. VI–322

Suit to vacate not advised if the applicant therefor has adequate remedy of his own. IV–366; V–141

Suit to set aside not advised, the government having no interest in the land. IV–366, 373, 557

Not attacked by the government at the request of one who desires to enter the land. IV–396

Patent—Continued.

V. VACATION—Continued.

Suit to vacate not advised on the request of one who has himself not complied with the law. IV–320

Suit to vacate a void, advised to prevent a public wrong. IV–416

Suit to vacate advised if it appears the final proof was false and fraudulent. VI–393

Suit to vacate on the ground that it was procured through fraud will not be advised where the evidence is not convincing and the land is in the hands of a purchaser without notice. X–449

Suit to vacate obtained by fraudulent proof will not be advised if the land is held by a transferee in the absence of evidence that such transferee had knowledge of the character of the proof. VI–395

The right to bring a suit in the name of the United States to set aside, exists only when the government has an interest, or where title has been secured by fraud, or where the government is under obligation to make the title good. XIII–559

Suit to vacate a patent will not be advised on the request of a party, where it does not appear that the government is under any obligation to him to take such action, or that any rights, legal or equitable, of the applicant have been prejudiced in the disposition of the land. XXVI–330

The right of the government to begin proceedings for the vacation of a, depends upon the same general principles which would authorize a private citizen to apply for relief against an instrument obtained by fraud, or deceit, or any of those practices which are accepted to justify a court in granting relief. XXI–179

In a case where the United States could successfully maintain a suit for the vacation of a, wrongfully obtained, a voluntary reconveyance of the land so patented may be accepted. XXIX–397

For the purpose of enabling the United States, without resort to judicial proceedings, to convey ground by mineral patent, which by mistake has been included in a homestead patent, a voluntary reconveyance of the land may be accepted by the Department. XXIX–475

Where patent is issued on false and fraudulent evidence so introduced as necessarily to affect the judgment of land department officials, suit to vacate should be instituted if innocent purchasers have not acquired possession of the property. II–760

The cancellation of a, procured on scrip secured through fraudulent power of attorney and relinquishment, is a matter that must be determined as between the United States and the person procuring such patent and those holding thereunder. XXII–42

Patent—Continued.

V. VACATION—Continued.

Suit to set aside not advised where the land had been sold by the patentee, though under later rulings the patent would not have issued. I–377

Questions involving the rights of alleged innocent purchasers left to the Department of Justice in advising suit to set aside patent. IV–573

Proceedings to vacate will not be advised where title passed under a full knowledge of all the facts and has remained undisturbed for a long term of years, and is now held by purchasers in good faith. VIII–165

A patent will not be set aside by the courts on the ground of fraud in its issuance, if by such fraud the entry is only voidable, not void, and the land so patented has been sold to innocent purchasers without notice of any defect in the title of the patentee. XXVI–330

Suit to vacate advised for the protection of third parties who are otherwise without remedy. V–28

Issued through mistake for lands reserved may be canceled on suit of the United States. IV–321

Suit for the recovery of title will be advised where a, through inadvertence and mistake, is issued in contravention of departmental directions. XXIV–200

Suit to vacate will not be recommended upon allegations already considered and where the Secretary decided the questions involved after full opportunity for adverse interests to be heard, unless upon specific showing of fraud. II–729

An application for suit to set aside a patent, based on a charge of fraud in securing the entry, will not be entertained, where said charge was fully considered by the Department prior to the issuance of patent, and the alleged facts on which said charge was made were found not to exist. XXVI–330

The finding of facts on which it issues not to be assailed collaterally. V–194

Or certification where patent is not expressly required, can not be vacated or limited in collateral proceedings. IX–597

Judicial proceedings may be properly instituted for the vacation of, issued by inadvertence or mistake during the pendency, on appeal, of a contest involving the land in question. XVII–291

Proceedings to vacate a, should be instituted on behalf of the government, where said patent is wrongfully issued through inadvertence during the pendency of a controversy before the land department involving the land covered thereby. XXIX–58

Patent—Continued.

V. VACATION—Continued.

Issued for private claim will not be attacked by the government on the ground that the grant was fraudulent and confirmed through fraud. IV–566

Suit to vacate, issued to the Central Pacific, advised where the land was covered by preëmption claim at date of withdrawal on general route and definite location. X–466

For mining claim will not be assailed by the government on the allegation that local regulations were disregarded. V–131

Suit to vacate will not be advised on the application of a claimant under the "armed occupation" act who does not submit proof within the statutory period, nor until after other disposition of the land. XV–422

May be canceled for the same causes that would authorize the cancellation of a certificate. III–28

The rule that the injured party, on discovering the fraud, must give prompt notice of his intention to rescind the deed (patent) is not applicable to the government, to which laches are not imputable. II–795

Application to enter patented land confers no right upon the applicant to question the validity of the patent by which title passed. VIII–24

Applicant for land covered by, should initiate his claim by proceedings against the patent. IX–114

Resting on conclusive adjudication not disturbed. V–185

Payment. See *Accounts; Costs; Fees.*

Public land sold is to be paid for in cash; checks, postal orders, and drafts are not receivable in payment; foreign gold coins as legally valued and national bank notes are receivable; scrip of various kinds, as provided by law, is receivable in lieu of cash II–658

A check is not a legal payment of fees (timber culture). II–320

An application to enter, accompanied by a worthless check for the fees required by law, confers no right upon the applicant; nor are the local officers bound to take notice of such an application. XXI–137

Receiver's duplicate receipt is merely *prima facie* proof of payment. II–48

Can not be made by military bounty land warrant if not authorized under the law at date of application. XXI–47

By military bounty land warrant; act of December 13, 1894, and regulations thereunder. XX–95

Military bounty land warrants may not be received in payment of preëmptions. II–673

Payment—Continued.

For the purpose of making payment for preëmption and commuted homestead entries, supreme court scrip is money. II–599

Failure of local offices to report proof and, does not defeat rights secured by an entry. XIV–349

Being made in full for land, the failure of the receiver to account for the money does not defeat the right to a patent. XIV–200

The failure of a receiver to account to the government for the purchase price of land paid at the time of final proof will not defeat the right of the entryman to receive patent without further. XXVI–596

Or tender of the purchase money is an essential part of the transaction in cash entries. XIII–545

On the purchase of public land, must be made when the final proof is submitted. III–188, 298; V–220,221; VI–107

Failure to make, at time of submitting final proof will not defeat an entry allowed under regulations which recognize such practice. VI–107; IX–615

An actual tender of fees not required of an applicant who applies to enter in the presence of a prior adverse entry. XVIII–75

Tender of, so far as the rights of the claimant are concerned, is equivalent to actual payment. V–38

The government should not be heard to say that the payment for a tract of land was prematurely made, and not accepted by the receiver in his official capacity, where a suit is afterwards brought by the government against said receiver for the recovery of public moneys, and the price of said land is included in the sum sued for, and said suit is compromised on the payment of a stipulated sum. XXV–185

To the receiver before the local office is ready to act on the application makes the receiver the applicant's agent, and if the application is rejected the applicant must look to the receiver for the return of the money. VI–713; XXII–322

Of the purchase price of land to the receiver before the acceptance of final proof is at the risk of the purchaser. XXIII–282

Under the departmental regulations governing the submission of final proof, and making, the entryman is required to make, at the time of submitting proof, and it is the duty of the receiver to accept the money at such time; and the subsequent failure of said officer to account to the government for the purchase price of the land so paid will not defeat the right of the entryman to receive patent without further payment. XXV–188

When money was left on deposit with a former receiver on account of a mining claim, but was not accounted for or covered into the Treasury, his successor in office is not chargeable, nor may it be credited on the entry on account of which it was deposited. II–673

Payment—Continued.

To the register of the purchase price of a tract of land is unauthorized by law, and on the failure of such officer to turn over such money to the receiver or account for the same the government is not chargeable therewith. XXII–133

A deposit of money in a government depository may be accepted as, where a large sum is involved. XIV–461

Certificates of deposit for the survey of a private land claim can not be used in payment of lands, homesteads, or preëmpted. II–463

Of land office fees, which is prerequisite to a preferred right of entry will be presumed (on appeal) where the contrary does not appear. II–323

Of the purchase price of a commuted homestead entry to the clerk of a court, to be forwarded with the final proof, is not authorized by statute and is at the risk of the claimant. XV–64

Of the purchase price of a tract of land to a United States commissioner by one who executes his final proof before such officer, is not authorized by law, and is at the risk of the entryman. XXI–88

Purchase money paid the receiver on declaratory statement for Osage Indian lands is a mere deposit; if proof had been accepted, it would have been received as a first payment on the land; as the filing was canceled and the money has not been accounted for (or) covered into the Treasury, the case is between the depositor and the receiver. II–672

Deposits for the purchase of public lands should be made with the receiver or the assistant treasurer with whom the receiver deposits, in the purchaser's name, to the credit of the Treasurer of the United States, "on account of sales of public lands." II–659

Where deceased entryman paid the commutation price of the land and the receiver never accounted for it the heirs must again pay said price. (Overruled.) II–46

Where the excess payment in homestead entry would be less than one dollar none is required. II–200

A showing held sufficient to justify the allowance of an application to change a desert-land entry to a different tract is also sufficient to warrant the transfer of the initial payment theretofore made. XXI–5

Withdrawal of, made under timber entry leaves the applicant without protection as against the intervening claim of another. XVI–173

For an excess in acreage under a timber-culture entry can not be credited upon a subsequent relinquishment and homsetead entry of the land by the same party. XIV–569

For excess under a timber-culture entry must be made. XIV–450; XV–396

Payment—Continued.

Money deposited with the receiver, in accordance with official instructions, to pay for the publication of final proof notice, is a, to such receiver as a public officer; and if the register thereafter causes said publication to be made, his action constitutes an undertaking on the part of the government to pay for such service to the extent of the deposit made therefor. XXVII–304

For Oklahoma land entered for town-site purposes under section 22, act of May 2, 1890, should be made either in currency or by New York draft, exchange paid. XIV–419

The joint resolution of September 30, 1890, authorizing an extension of time for, is remedial, and its provisions are applicable on due showing in accordance with the regulations. XV–339

Extension of time for, under joint resolution of September 30, 1890, may be allowed a settler who is unable by reason of drought to plant a crop. XVI–390

A homestead entryman who has complied with the requirements of the law for a period of five years from date of settlement is entitled to submit final proof, and to an extension of time within which to make, under the act of September 30, 1890, if otherwise within the terms of said act. XXIX–313

A showing made for the purpose of obtaining an extension of time for, may not warrant an allowance of the request, but may be accepted, in connection with the final proof as justifying equitable action in the event of subsequent payment, and the requisite proof of non-alienation. XVII–141

Time extended for, in case of failure of crops. Circular of October 27, 1890. XI–417

Extension of time. Circular of October 18, 1894, under the act of July 26, 1894. XIX–305

For special circulars extending time for. See also *Indian Lands.*

Preëmptor not required to wait until near the expiration of filing to apply for extension of time for. XIV–509

A loss of crops through failure to secure a threshing machine, authorizes an extension of time for, provided there is no want of diligence on the part of the claimant. XVIII–52

One who applies for an extension of time under the joint resolution of September 30, 1890, must show that the failure of crops is due to reasons for which he is not responsible. XVIII–525

An extension of time for, may be properly granted under the remedial acts of September 30, 1890, and July 26, 1894, where good faith, and compliance with law, are apparent, and failure of crops is shown. XX–11

Payment—Continued.

The limit of time, under the joint resolution of September 30, 1890, to which an extension of time for, may be granted, is one year from the expiration of the statutory life of the filing in question. XX–85

A preëmptor who fails to make, within the period granted by an order of extension can not thereafter be permitted to perfect his claim in the presence of an intervening adverse right. XX–85

No provisions of law exist for extending the time within which payment may be made in the case of commuted timber-culture proof. XXII–210

The joint resolution of September 30, 1890, with respect to the extension of time for, is not applicable to a commuted homestead entry. XXIII–304

An extension of time in which to make, on a commuted homestead entry is not authorized by the joint resolution of September 30, 1890, nor by the act of July 26, 1894. XXIII–467

In all applications for extension of time for, under the joint resolution of September 30, 1890, the cases should be treated as special. XX–323; XXI–116

Cases involving the question of the right to an extension of time for, should be treated as special. XXIX–313

An extension of time for, may be granted on a showing of failure of crops for which the entryman is not responsible. XX–378

On a showing to procure extension of time for, the good faith of the applicant is not impugned by the fact of his having cultivated land other than his own in order to secure means for the purchase of his claim. XX–378

Under the joint resolution of September 30, 1890, the right to an extension of time for, should be accorded, where the claimant is unable to pay for the land on account of any failure of crops for which he is in nowise responsible. XXI–116

An extension of time for, may be granted under the remedial provisions of the act of July 26, 1894, to a purchaser under the second clause of section 3, act of September 29, 1890. XXII–518

The act of July 26, 1894, extended the time on desert entries for making proof and, for one year beyond the time at which the same were due, or would thereafter become due under the law as then existing. Said act is not limited to entries alone which were alive at that date, but is also applicable to entries which remained of record at the date of its passage. XXIII–293

The tender of proof and, is an act that may be invoked by the claimant for his protection, but can not be used by a contestant to defeat the operation of the act of July 26, 1894, extending the time for proof and payment; nor will an intervening contest, resting alone on the charge of failure to make proof and payment within the statutory period, have such effect. XXIII–248

Phosphate Lands. See *Mineral Lands.*

Pine Lands. See *Indian Lands.*

Plat. See *Survey.*

Possession. See *Railroad Grant*, sub-title No. VIII; *Settlement.*

And occupancy of public land for the purpose of working a stone quarry thereon confers no right as against the United States or others having a valid claim under its laws. XI–140

Illegal, will not defeat the right of another to make homestead entry of the land. XVI–202

In the administration of the public land laws the land department should recognize and protect equitable rights acquired through a long-continued occupancy of public land with the knowledge and consent of the government. XXX–611

Practice. See *Contest; Evidence; Judgment; Jurisdiction; Res Judicata.*

I. GENERALLY.
II. RULES OF.
III. AMENDMENT.
IV. APPEAL.
V. CONTINUANCE.
VI. COSTS.
VII. HEARING.
VIII. INTERVENER.
IX. NOTICE.
X. PROCEEDINGS BY THE GOVERNMENT.
XI. PROTESTANT.
XII. REHEARING.
XIII. REVIEW.

I. GENERALLY.

In matters of procedure decisions of the Department impart judicial notice equally with the rules of practice. XIII–635

The General Land Office should follow the rulings of the Department in the disposition of cases that fall within such rulings. XI–174

Before local offices not affected by State procedure. IV–346

Procedure on special agent's report; instructions of August 18, 1899. XXIX–141

The Secretary will not advise as to the disposition of a case pending before the Commissioner. IV–309

Hypothetical questions not considered by the Department. IV–310, 389, 393, 451; V–258; IX–194; XI–511

Practice—Continued.

I. GENERALLY—Continued.

The Secretary of the Interior will not pass on the correctness of a decision prepared for the signature of the Commissioner of the General Land Office in a case under consideration in said office. XVI–461

Record entry of order should not be obliterated on the vacation of the order. IV–385, 554

Oral arguments in *ex parte* proceedings before the Department not encouraged. III–561; VI–265

Oral hearing not allowed without notice to all parties. IV–320

Ex parte statements in contest cases should not be filed without service on opposite party. XVIII–167

To hear a case orally is within the discretion of the Department. III–595

The granting of an oral argument at any time is entirely in the discretion of the Secretary of the Interior, and after final judgment has been rendered in a case, it will not be granted except upon grounds which warrant a motion for review. XX–122

If a case is ready for consideration under the rules of, it may be advanced on the docket without notice to either party. V–675; XXVII–632

A case should not be advanced for consideration unless a denial of such action would result in a public injury or injustice. XVII–23

Contest cases in which the entry is confirmed by the act of March 3, 1891, may be advanced on written motion and after notice to the adverse party. XII–308

Cases involving the question of the right to an extension of time for payment should be treated as special. XXIX–313

Irregularities in proceedings before the General Land Office not indicative of favor or partiality, affecting merely a suspension of action and subsequent resumption of the consideration of a case, or refusal to afford an opportunity to be heard orally, are not deemed material, where it appears that all parties had ample opportunity to be heard upon the merits, through written or printed briefs, before the suspension, and have been fully heard by printed briefs and in oral arguments before the Secretary of the Interior upon appeal. XXX–161

The Secretary of the Interior in the exercise of his supervisory power as head of the land department may, even in the absence of an appeal, transfer the consideration of any matter pending before the General Land Office to the Department, and after due opportunity to the parties in interest to be heard, may render decision therein correcting and obviating any errors or irregularities in the proceedings or decision of that office. XXX–161

Practice—Continued.

I. GENERALLY—Continued.

A motion under the rule of April 8, 1891, for the disposition of a case arising under section 7, act of March 3, 1891, should state facts sufficient to bring the case within the operation of said section. XIII–111

The rule of April 8, 1891, does not contemplate the advancement of cases in which the question of confirmation had been decided in the General Land Office and appeal taken therefrom. XV–362

The rule of April 8, 1891, had reference only to cases then pending before the Department. XV–595

The advancement of cases in the General Land Office is discretionary with the Commissioner. IX–530; XXIV–202

A case involving the reinstatement of an entry can not be advanced for consideration on motion to confirm under section 7, act of March 3, 1891. XVI–358

The rule of April 8, 1891, providing for the disposition of cases under section 7, act of March 3, 1891, is not applicable to cases ready for disposal in their regular order. XVI–336

The act of the Commissioner in advancing a case or refusing so to do is discretionary, and will not be disturbed in the absence of a clear showing that such discretion has been abused and that a party in interest has been injured thereby. XII–694

Briefs containing scurrilous and impertinent matter will be stricken from the files. IX–130; XVI–130

Brief containing charges of corruption against officers of the land department will be stricken from the files. XIV–445

A brief, with due service of copies, may be properly filed by an attorney, appearing as *amicus curiæ*, for the purpose of presenting views on questions to be decided in a case that will affect the interests of his clients in matters pending before the land department. XVII–369

Papers are not filed when received at the local office during a vacancy in the office of either register or receiver. XIV–133

Papers presented for filing, but refused by the local office on account of press of business, should be held as filed of the date when presented. X–139

Local officers may, with the approval of the Commissioner, designate certain hours of each day in which papers may be filed in their office. VII–504

Regulations of local office in the matter of procedure on opening public lands to entry conclusive upon parties taking action thereunder without protest. XIV–370

Practice—Continued.

I. GENERALLY—Continued.

A rule of procedure in the local office, adopted to avoid confusion, is conclusive upon parties that take action thereunder without objection. XVIII–14

Objections to the alleged want of regularity in the proceedings before the local office come too late for consideration when raised for the first time on appeal to the Department. XXV–438

Under a rule to show cause why an entry should not be canceled, time should not run against the entryman while the local office is closed. XIV–493

A vacancy in the office of receiver does not prevent filing an answer under a rule to show cause why an entry should not be canceled; final action, however, on such matter being held in abeyance until the vacancy is filled. XXVII–547

Failure to file a motion in time not cured by notice thereof served within the proper period. V–262

An order of the local office dismissing a contest is not *sua sponte* where such action is not taken until after a motion asking therefor has been filed. XIV–91

Motion to dismiss a contest before the local office not required to be in writing. IV–207

A motion to dismiss filed after the day set for hearing should not be acted upon without notice to the opposite party. XIV–91

A motion to dismiss should not be entertained when made without notice and not on the day of hearing.

II–220; V–657; VI–268; XII–453

Failure to serve the opposite party with notice of a motion to dismiss an appeal does not deprive the Department of authority to dismiss for want of jurisdiction. XVI–39

Motion to dismiss should not be filed with an officer designated to take testimony, but when so filed and sent up with the record should be considered on the day of hearing. XI–575

A motion to dismiss a contest for want of a sufficient charge, in a case where the evidence is taken before a commissioner, is in due time if made before the local office on the day set for the hearing. XXIX–351

Right of defendant to rely on order of dismissal. V–212

Where a motion to dismiss has been sustained the entry should not thereafter be canceled on the evidence already submitted without affording the entryman further opportunity to furnish testimony.

VI–682; VIII–395; XVIII–78; XX–197; XXII–197, 419; XXVII–62

Practice—Continued.

I. GENERALLY—Continued.

If, on the conclusion of the contestant's testimony, the contestee moves a dismissal, on the ground that the evidence submitted does not warrant a judgment of cancellation, and said motion is overruled, the contestee should be given an opportunity to submit evidence in support of the entry. XXV–74

Motion to dismiss for the want of sufficient evidence is in the nature of a motion for a nonsuit and does not deprive the defendant of his right to thereafter submit testimony in the event said motion is denied. XIII–40

Dismissal of suit on defendant's motion obviates the submission of testimony on his part while such judgment stands. IV–275, 355, 412; VI–364, 682, 758

The receiver, acting alone, has no authority to dismiss a contest, and such action can not be validated by a subsequent joint notice thereof from the register and receiver. XXIII–548

See sub-title *Rehearing*.

The local office, in the exercise of a sound discretion, may dismiss a contest for want of diligence in prosecution, but the refusal to make such order on the motion of a stranger to the record is not an abuse of such discretion. X–91

Order of January 17, 1891, fixing the first Monday in each month for the presentation of motions to dismiss on jurisdictional grounds. XII–64

A motion to dismiss under the order of January 17, 1891, must be sustained where it appears that the Department is without jurisdiction, patent having issued for the land. XIV–380

A motion to dismiss filed under the rule of January 17, 1891, will not be entertained if it raises a question that calls for an examination of the whole record. XIII–173, 507, 733

Motion to dismiss will not be entertained by the Department where it involves the examination of the record and testimony in a case not reached for action in its regular order. XIII–732

If a party making a motion to dismiss an appeal desires to have it acted upon independently of the record, he must move for such action under the rule of January 17, 1891, otherwise the Department will act on the presumption that such party is satisfied to submit his case on the record as it stands. XXII–19

Stipulation indefinitely postponing a contest, followed by a delay for years to prosecute the same, must be treated as an abandonment thereof. VI–823

Default in appearance after due notice conclusive. I–465, 475

Failure of the contestant to appear on the day to which the case was continued justifies the dismissal thereof. VIII–395

Practice—Continued.

I. GENERALLY—Continued.

It is the duty of the local office, on its own motion, to dismiss a contest where the contestant is in default at the day of hearing; but where such a course is not taken, and the contest is subsequently dismissed at the request of the defendant, and then reinstated on due showing and a general appearance filed by the defendant, the irregularity is not material. XVII–393

Rights of adverse claimant lost through failure to assert the same at the proper time. III–588

Disposition of the record in cases dismissed by the local office for want of prosecution. Circular of January 3, 1890. X–2

Mutual concessions to obviate litigation encouraged. V–119

In case of decision rendered without jurisdiction the irregularity may be corrected by summary proceeding. V–613

Though motion for substitution of parties is denied, the applicant may be allowed the right to be heard in the event of further action taken on the case. III–111

Irregularity in proceedings not considered in the absence of objection. I–474; V–454

All questions as to preference rights of settlers must be raised in and decided by the local office. V–659

In the disposition of cases before the local office the register and receiver should give the testimony a careful consideration and set forth briefly in their opinion the facts on which their judgment is based. XVI–508

After decision the local office should transmit the record, and thereafter take no action affecting the disposition of the land until further advised. VI–234; VIII–121, 559

After decision in a case the local officers are without jurisdiction to enter an order of dismissal on their own motion. X–678

A decision of the Commissioner sustaining a motion to dismiss an appeal is interlocutory and does not affirm the decision of the local office or obviate the necessity of a final decision on the merits. IX–633

Ex parte case returned to Commissioner where additional evidence was filed pending appeal from his decision. IV–446

Decisions should not be rendered piecemeal. VIII–612

When an application to file and one to contest are pending on appeal of the same person, both questions should be disposed of by the Commissioner's decision. III–69

In the disposition of a case it is competent for the Department to consider and determine all questions presented by the record. XII–157

Practice—Continued.

I. GENERALLY—Continued.

Where the rights of several parties are involved in a case the claims of each should be disposed of in the decision of the General Land Office. VIII–279

To avoid delay the Department may determine a case on its merits, if the record is complete and the parties in court, though the questions presented were not passed upon below. VII–25; VIII–595; IX–436; X–142; XXI–26

The validity of all rights claimed and set up by adverse parties may be properly determined on the final disposition of the case. XII–138

The consideration at the same time of several cases that embrace similar questions and the promulgation of one decision covering the several cases does not abridge the right of each party to have his case separately considered. XII–503

One who agrees by stipulation to be impleaded in a pending action with "the same force and effect" as if he had originally been made a party thereto can not be heard to subsequently object to the authority of the Department to pass on the validity of his claim. XII–138

In a case before the Secretary, where there are pending before the Commissioner several other appeals involving the right to the same tract, the entire controversy may be disposed of in order to avoid the evils of a multiplicity of suits. II–59

In the trial of a contest case the local officers may, after due notice, personally inspect the land involved. VI–626; VIII–38

Local officers not authorized to view the land involved after the case is closed and base their judgment on such inspection. VI–626

An inspection of the land made by the register without notice and after the case was closed is not the proper basis for a final decision, but may warrant an order for rehearing. VIII–38

The local officers may personally inspect the land involved in a contest and use their knowledge so acquired to better understand and apply the testimony. XVI–95; XXIV–277

There is no statutory provision or departmental regulation authorizing a change of venue in proceedings before a local office. XVI–28

When witnesses are examined by the local officers their finding of facts where the testimony is conflicting is entitled to special consideration. IV–135; VI–225, 330, 660; XI–409, 442, 490; XVI–95

On questions of fact the Department will not generally disturb concurring decisions of the local and General Land Office where the evidence is conflicting. VIII–440; IX–299, 302, 491; XI–321, 344 409, 426, 443, 490; XV–300, 499

Practice—Continued.

I. GENERALLY—Continued.

The rule as to the effect of concurring decisions below is not followed by the Department in questions of law. XI–426

Attorney in good standing, prior to filing appearance, but as preliminary thereto, is entitled to inspect the record and all papers on which action has been taken. V–400

A stranger to the record may not inspect the papers in a case except as attorney. II–222

Record of proceedings in the local office should show with exactness the dates when papers are filed or action taken. XI–117

Publication of a departmental decision in the "Land Decisions" is not equivalent to an official promulgation of such decision. XII–252

Cases not referred to the Attorney-General except where the Secretary is in doubt as to the correct conclusion. V–277

Instructions as to the disposition of pending cases on the removal of local office. VII–527

II. RULES OF. See Table of Rules cited and construed.

Rules adopted August 13, 1885. IV–35

Rule 42, modified in Oklahoma town-site cases. XII–186

Rule 42 amended. XXVIII–301

Rule 43 amended. XX–487

Rule 53 amended. XIV–250

Rule 56 amended. X–680

Rule 70 amended. IV–234; XVII–325

Rule 70 as amended revoked, and the rule as originally approved restored and adopted. XVII–325

Rule 81 amended. IV–285

Rule 108 amended. IV–336

Rule 114 amended. IV–495; VI–796

Rule 114 construed. IV–314

Rules of, intended to be in harmony with general regulations and circular instructions. V–671

Revised rules of. XXIII–592

Revised rules of, approved January 27, 1899. XXIX–725

Rules 11, 14, and 17 amended. XXVI–710

Rules 17, 44, and 91, amended, and Rule 8½ established. XXX–622

Are made to aid in the just and equitable disposition of the public lands and may not hinder and delay such disposition. II–258

Departmental regulations in conformity with statutory authority have all the force and effect of law. II–709; IV–84; VI–111; IX–89, 189, 284, 353

Practice—Continued.

II. RULES OF—Continued.

Until a rule is changed it has all the force of law, and acts done under it while it is in force must be regarded as legal.
I–165, 416; III–214; V–112, 169, 292, 624

Rules of, should be followed, and exceptions to such course only permitted to prevent grievous wrong or correct a palpable error.
V–23, 111, 236; IX–360

Rules and regulations do not abridge statutory rights.
II–58, 232, 282; V–429

It is in the power of a court to suspend its own rules or to except a particular case from their operation whenever the purposes of justice require it. II–720

To avoid an act of injustice the Department may suspend its regulations. XV–45

Rules of, should not be suspended to the detriment of parties who are entitled to be heard in accordance with the ordinary rules of procedure. XIII–280

The Department may waive questions affecting the regularity of proceedings below. XIV–47

The waiver of a rule of practice by the Commissioner is within his discretion, subject to revision by the Department. III–321

Local officers no authority to suspend rules of. VI–238

Rules of, govern contest between town-lot claimants. I–502

The rules of, do not provide for or recognize technical dilatory pleas.
XIII–221

The supervisory authority of the Secretary will not be exercised in disregard of the rules of practice where they provide an adequate course of action and are not in conflict with the law.
V–111, 236; VIII–396

On excuse offered for failure to comply with the rules of, a definite statement of the facts relied upon should be made under oath.
XII–198

None of the rules of practice deprive the Department of its supervisory powers. III–44; VIII–2, 423

III. AMENDMENT. See *Application; Contest*, sub-title *Charge; Entry; Filing.*

The liberal policy of the several States in respect to amendments in judicial proceedings will be recognized and adopted by the land department in so far as the amendment does not affect rights.
II–39

Of a charge in a contest permitted on the general rule observed in the courts, where a substantial remedy is sought and the rights of parties not prejudiced. XVIII–583

Practice—Continued.

III. AMENDMENT—Continued.

Granted where the record furnishes matter to amend by. IV

Allowed where the rights of parties are not prejudiced thereby. IV–53

May be allowed where the charge is defective. X–181, 4

Where affidavit (against timber-culture entry) is executed pren turely, but filed at the proper time, it may be amended. II–2

Motion for review may be amended if no party in interest is injur thereby. VIII–248

Allowed on the day set for hearing if the charge is found defective. V–211; VI 2[illegible]

Complaint may be amended after due notice and evi lence ub- mitted thereunder. VI 491

May be allowed on suggestion of defendant's death. X 261

The right to amend defective pleadings is lost by failure to a, peal and can not be set up in a new contest after the interest of ano her has intervened. [illegible]

Refusal of local office to allow, is not an abuse of discretion w the amended charge is much more comprehensive than the ori; and the facts set forth were known to the contestant prior t commencement of the action. XV

That essentially changes the character of the charge not allow as the basis of a rehearing. [illegible]

The right to amend an affidavit of contest should be recognize wl no new ground of attack is introduced thereby. XVIII-

In proceedings against a final entry the local officers have no a tl ity to allow, where the new matter is not related to the ori charge. X

Of an affidavit of contest relates back to the original if r charge is made. [illegible]

Right of, when allowable, not defeated by intervening contest. XXIII–55

When required by decision of the local office, the right to proceed dates from compliance with said decision. XIX–453

The recognition of the right of, in a contestant, as against the right of a third party to proceed against the entry under attack, is a matter that the contestee is not entitled to call in question, whe he has due opportunity to prepare for trial. XXII-

When containing new matter and filed after case has closed, m be treated as new contest and held for disposition of pending su VI–2

Affidavit of contest may be amended subject to intervening right II–210; VII–4

ctice—Continued.

MENDMENT—Continued.

contest affidavit can not be permitted in the presence of an intervening adverse right. VIII–446; IX–18; X–105

In the place of, after judgment, a new contest is allowed. IV–299

A motion to dismiss for informalities in the affidavit may be granted or amendment allowed. II–217, 220

That it was not filed within the time allowed is an objection that can not be raised after trial. X–405

If an application for certiorari, denied for want of formality, can not be allowed. XI–346

Allowance of, in contest does not require new service of notice; but the case may be continued in the discretion of the local office. XV–223

IV- APPEAL.

1. Generally.
2. From Local Office.
3. From General Land Office.
4. By Whom.
5. When Allowed.
6. Time.
7. Specification of Errors.
8. Notice of.
9. Defective.
10. Waiver.

Generally.

Rule 43, amended. XX–487

Is relative to, analogous to practice in the courts. I–472

The proper method of invoking the supervisory authority of the Secretary. V–613

An appealable case is a waiver of pending motions. V–438; VI–218; XIII–245

Rules of practice with respect to, must be followed in case of hearing ordered under mineral circular of October 31, 1881. V–671

When a case is returned to the General Land Office, on the request of the appellant, for further consideration of new facts, the appellate jurisdiction of the Department terminates and can not again attach except through a subsequent appeal from the final action of the General Land Office. XIII–221

Withdrawal of, will not prevent the Department from considering the record and rendering such judgment as the law and facts require. XII–495

Withdrawal of an appeal leaves the decision final. II–395

Practice—Continued.

IV. APPEAL—Continued.

1. Generally—Continued.

Withdrawal of, from an order holding an entry for cancellation on the report of a special agent, with opportunity to apply for a hearing, permits said order to become final. XVI–259

Estops the appellant from denying the full jurisdiction of the appellate tribunal to pass upon the whole record, even though the adverse parties are themselves chargeable with laches. II–29; III–562, 608

A case on, that involves the rights of several parties appellant, will be treated as properly before the Department on the whole record, though it may be alleged that one of the appellants filed his appeal out of time. XXIV–565

From a decision of the General Land Office brings all questions involved in the record within the jurisdiction of the Department. XXV–377

Right of, should not be denied before it is sought to be exercised. IV–53; XV–187

Having been sustained as to order of procedure, the case should be remanded. V–370

Not allowed on the unverified statement of attorney that notice of decision was not received as shown by the record. VI–775

Right of, not lost through failure of local officers to give notice of adverse decision. V–233

Not defeated by a mistake in the appellant's name if the subject-matter is otherwise clearly identified. IX–545; XVIII–490

Local office may not dismiss, on the ground of its defective character. V–368

Regularly taken should not be dismissed. XI–235

Motion to dismiss, should be passed upon when the case is reached in order. V–479

Motion to dismiss on the ground of want of authority on the part of appellant's attorney must fail if in response thereto said attorney shows due authority. IX–525

Will not be dismissed on the ground that appellant's attorney has been disbarred where there is no official record of such action. IX–520

Taken by an attorney not authorized to practice in the land department will not be entertained. XXII–272, 434

In which it is alleged that certain important papers are missing from the record should not be dismissed on motion without allowing the appellant an opportunity to respond to said motion and take action with respect to the missing papers. XII–694

Practice—Continued.

IV. APPEAL—Continued.

1. Generally—Continued.

Will not be dismissed on the motion of a former attorney of the appellant who at the date of the motion had ceased to represent the appellant. VIII–192

A motion to dismiss, will not be entertained on behalf of a stranger to the record, nor in the absence of due notice thereof to the appellant. XVIII–245

Filed by attorney who has not furnished authority, as required in circular of July 31, 1885, should not be dismissed without notice under Rule 82. IV–569

Objection to the sufficiency of, will not be considered if raised for the first time on review. VII–470

Validity of affidavit accompanying application to enter not to be raised for the first time on appeal or upon the motion of a stranger to the record. III–547

Objections resting on appellant's allegation and not of record in the proceedings before the local office, but raised for the first time on appeal to the Department, will not be considered. VI–654

In the absence of, from dismissal of contest before the submission of evidence the entry should not be canceled without further hearing. IV–354

Matters pending before the Commissioner for his decision will not be considered on appeal to the Department. IV–284

In appeal to the Secretary questions properly requiring primary action by the Commissioner will not be considered. II–650

On appeal or review the Department can only consider rights put in issue by the contest and founded upon a live application. III–104

Unperfected, is no bar to a hearing on the subsequent application of the appellant. VIII–544

Of contestant taken prior to the death of the entryman confers jurisdiction upon the Commissioner. VI–779

After notice of, the death of the appellee will not defeat the jurisdiction of the Department to proceed with the case. VII–500

A party to an appeal is a party to the case until it is closed by execution of the decree and may call attention to the manner in which it is executed. II–523, 595

Want of, excused in the absence of written notice of decision. IV–73

Failure of party in interest to, from an adverse decision is conclusive as to his rights therein.

III–180; V–263; IX–569; XI–416, 570; XXI–8

Rights lost through failure to, can not be set up after the intervention of an adverse claim. III–105, 473; IV–187, 414, 532

Practice—Continued.

IV. APPEAL—Continued.

1. Generally—Continued.

If not taken from the rejection of an application to contest an entry, all rights are lost thereunder. XI–179

The failure of an applicant for public land to file a formal, from the rejection of his application to enter will not defeat his rights in the premises, where by his subsequent diligence he secures an examination of the record by the General Land Office. XX–550

Failure to take, in case of a rejected application to enter, defeats all rights of the applicant. XIII–250, 365

Failure to, from the rejection of a declaratory statement defeats all rights that might have been secured thereunder by proper diligence. XVII–494

Failure to take, from an order of dismissal made without jurisdiction will not affect the rights of a contestant. X–678

Failure to, not excused on the plea of want of notice when the record shows notice to the attorney. V–248

Is a waiver of a pending motion to set aside the decision and remand the case to the local office. XIII–245

An order for a hearing issued by the General Land Office, on the, of an applicant from the rejection of his application to enter, operates as a disposition of the, and its want of regularity is thereafter not material. XXIV–274

The fact that an, is accompanied by a petition for a rehearing, as an alternative remedy, or that such a petition is subsequently filed, is no ground for holding that the appellant has thereby waived any right under his, in the absence of an express waiver. XXVII–654

2. From Local Office.

Rule 46, requiring notice of, is mandatory and has all the force and effect of law. XII–199

Amended Rule 70 revoked and original rule adopted. XVII–325

Rules regulating, from the General Land Office not applicable to cases before local office. I–472

Papers to be retained in local office for thirty days after notice of decision and report then made whether appeal has been taken. II–205; III–38; IV–203

From the local office not requisite to the jurisdiction of the Commissioner. I–455

During the pendency of, no action should be taken in the local office affecting the disposal of the land until instructed by the Commissioner. IV–215, 242, 395; V–227; VII–140; IX–59, 281, 299, 326, 578

During the pendency of, from action of the local office it has no jurisdiction over the case or land involved therein. VIII–559

Practice—Continued.

IV. APPEAL—Continued.

2. From Local Office—Continued.

During the pendency of, the local office has no authority to allow contest proceedings against the lands involved. XXIII–448

From a decision of the local office operates to divest said office of its jurisdiction in the case; and the withdrawal of appeal on the part of one of the appellants therein will not reinvest said office with jurisdiction. XXV–76

Rule 53 amended so as to permit the submission of final proof during the pendency of a contest. XIV–250

Disposition of land released by relinquishment during the pendency of, must be governed by the act of May 14, 1880, and not by Rule 53. XIII–590

No action should be taken by the local office pending appeal from its decision rejecting the testimony of one of the parties. VI–440

Pendency of, precludes the allowance of an entry for the land involved. II–270; X–15

Dismissal of contest by the local officers while the case is pending on appeal is error. II–245

The publication of notices of right of appeal in contested cases before local officers discontinued. III–59

Notice as to right of, must be given under Rule 66 when an application to file or enter is rejected. V–377

Failure to, from rejection of application to enter does not defeat the right of the applicant if he is not given the requisite notice in writing of the adverse action. XVI–111

Failure to appeal from the rejection of an application does not impair the claim of the applicant if he is not informed of the right of appeal. XI–191

Applicant for land should be informed as to the right of, if his application is rejected. XII–235, 684

In the absence of, the decision of the local office is final as to the facts and will not be disturbed by the Commissioner except under Rule 48.

I–467; V–585; VIII–30; XI–300; XIII–686; XIV–230; XVIII–409

In the absence of, the decision of the local office is final as to the facts unless the case is one within one of the exceptions to Rule 48, though a different conclusion might have been reached had appeal been taken. VII–98

Failure to appeal from the local officers' decision renders their action final as to the facts so far as the parties are concerned, subject to certain exceptions, but the General Land Office is not thereby precluded from passing on the evidence when the interests of the government require such action.

VII–20; XI–396, 407; XV–37

Practice—Continued.

IV. APPEAL—Continued.

2. From Local Office—Continued.

In the absence of, the Commissioner should correct errors in the decision of the local office where said decision is not consistent with the findings of fact by said office. XIII–486

In the absence of, the Commissioner may decide a case on its merits where there were disagreeing decisions of the local officers. IX–438

Failure to, from a decision of the local office will not preclude the General Land Office from an examination of a case, where fraud or gross irregularity is suggested on the face of the papers. XX–516

A decision of the local office that the proof offered does not sustain the charge is a finding that becomes final as to the contestant in the absence of. VI–359

Absence of, from the adverse decision of the local office leaves the case to be determined as between the government and the party successful below. XXI–294

In the absence of, from the decision of the local office dismissing a contest the case should be considered as between the claimant and the government. VI–359, 427

The second exception to Rule 48 is only applicable as to rights between the claimant and the government. V–624

Where a decision of the local officers is contrary to existing laws or regulations the Commissioner may consider the case on its merits and reverse the ruling of said officers, though the appeal does not ask for such action. XVIII–431

In the absence of, the Commissioner should, under the second exception to Rule 48, reverse a decision of the local office rendered contrary to law. VI–391

Failure to, under Rule 48 may be conclusive as against parties, but does not preclude examination of the case by the General Land Office. V–245, 603, 624

In the absence of due service on the opposite party of the notice of, from the local office the Commissioner is without authority to reverse the decision below except under the provisions of Rule 48. XVIII–594

The decision of the local office becomes final as to the facts if notice of, is not served on the opposite party as required by Rule 46, and in such case no appeal will lie from the decision of the Commissioner affirming the action below. XVIII–153

To justify the finality as to the facts, provided for under Rule 48, the findings of the local officers must be positive and unequivocal, not argumentative or presumptive. XXII–6

Practice—Continued.

IV. APPEAL—Continued.

2. From Local Office—Continued.

The finding of facts by the local office should not be held final under Rule 48 if based on matters not properly at issue under the law. XXII–67

Whether taken or not from the decision of the local office, the Commissioner should determine matters of law involved. V–625

In the absence of, the Commissioner of the General Land Office should examine into the merits of the case where the decision of the local office is against the government. VI–98, 250

Withdrawal of, from the action of the local office leaves its decision final as to the facts the same as though no appeal had been taken. XV–290

Where an appeal from the local office is dismissed as insufficient the decision below should not be disturbed except under Rule 48. XV–400; XX–41

The right of, from the General Land Office is properly denied where the appeal from the local office is dismissed for the want of specification of error. XVIII–91

In a case decided by the local office where one of the parties affected adversely fails to, but another party thereto does, the whole case comes before the General Land Office for disposition on its merits, and not under Rule 48. XXIII–562

On the withdrawal of, from the local office the General Land Office may properly take jurisdiction of the case, under Rule 48, if the irregularities therein call for such action. XVIII–306

Unless case falls within Rule 47 (rules of 1880), the Commissioner should not, in the absence of appeal, disturb the decision of the local office. III–184

Case confirmed under Rule 47 (rules of 1880) not considered on appeal, except for jurisdictional cause. IV–571

In the absence of, the refusal of the contestee to answer proper questions on cross-examination is such an irregularity as to warrant the General Land Office in a reëxamination of the case under Rule 48. V–599

Though not filed in time, the case under Rules 48 and 49 may be reviewed. V–212

Failure to appeal from decision of local office defeats the right of appeal from the Commissioner's decision affirming the action below. V–624; VI–804; VII–358; XX–396

In the absence of, taken in time from a decision of the local office, or valid excuse for such default, there is no right of, to the Department if said decision is affirmed by the Commissioner of the General Land Office. XX–375

Practice—Continued.

IV. APPEAL—Continued.

2. From Local Office—Continued.

Where, from the local office is properly dismissed for want of compliance with the rules of practice the case must be regarded as though no appeal had been filed, and therefore none can be considered from the action of the General Land Office affirming the decision below. XXI–553

Rule 48 should be construed with Rule 81 as amended. V–624

Failure to appeal from decision of local office held to be a waiver of claim. III–184

Right of, from Commissioner lost through failure to appeal below when the case was properly disposed of under Rule 47 (rules of 1880). IV–277

Failure of the contestant to take, from a decision of the local office dismissing his contest will not preclude a subsequent assertion of his right thereunder if the record does not affirmatively show due notice of such action. VIII–595

Failure to, from the decision of the local office on question of fact precludes right of appeal to the Department where the action below is approved; but if said action is disapproved the right of appeal exists in case of subsequent adverse action in the General Land Office. XV–187

Failure of a State to appeal from a decision of the local office on a question under the swamp grant will not defeat its right to appeal from the Commissioner's decision therein. VIII–64; XIII–341

Validity of, from the local office will not be considered by the Department where the case is submitted on its merits to the General Land Office and without objection to its jurisdiction. XI–630; XIII–598

Right of, from the final decision of the local office should not be abridged on the plea that such action is necessary for the protection of selections that must be located within a limited period where such selections are made with full knowledge of prior adverse claims. XIII–277

3. From the General Land Office.

Orders of January 29, 1896, and June 11, 1896, for the transmission of certain, as "current business." XXII–120, 675

Allowed from orders of the General Land Office granting or rejecting applications to contest, or applications for hearings, shall be promptly forwarded to the Department as current business. XXI–540

Estops the appellant from denying the jurisdiction of the Department. II–29; III–562, 608

Practice—Continued.

IV. APPEAL—Continued.

3. From the General Land Office—Continued.

The jurisdiction of the Commissioner over a case ceases on appeal from his final decision III–111; V–205, 224, 438, 504; VI–108, 315; IX–165; XI–140, 409; XII–80

The General Land Office, after an appeal from its decision in a case, is without authority therein to grant an extension of time for filing argument, or otherwise modify the Rules of Practice with respect to the proceedings on appeal. XXIX–140

The filing of, does not operate to remove a case from the Commissioner's jurisdiction in cases where he holds that the right of appeal does not exist. X–572

Is not received as such in cases where the Commissioner holds that the right of appeal does not exist. X–572

Right of, from the General Land Office should not be denied until an attempt is made to exercise the same. IV–53; XV–187

From the Commissioner's decision removes the case from the jurisdiction of the General Land Office, and no authority exists thereafter in said office to consider a motion to dismiss said appeal. XII–390, 422

After the allowance of, the Commissioner has no jurisdiction to entertain a motion to dismiss the same. V–205; XIII–507

The Commissioner of the General Land Office has no jurisdiction to consider a motion to dismiss an appeal from his office. XII–647

The General Land Office has no jurisdiction to dismiss an appeal from its action when received and noted of record. XVI–125

Accepted by the General Land Office terminates its jurisdiction over the case, and it does not subsequently acquire jurisdiction on the withdrawal of such appeal in the absence of departmental action thereon. XII–495

When withdrawn by the appellant prior to the transmission of the record to the Department, the Commissioner may dismiss said appeal, and close the case as though no appeal had been taken. XVIII–434

Sufficiency of, from the General Land Office to be determined by the Department. V–251

In all cases where held defective by the General Land Office the case should be transmitted to the Department and the letter of transmittal should specifically designate wherein the appeal is defective. XI–48

On appeal to the Secretary cases involving the same principle, but concerning different parties and tracts, should be transmitted separately. II–29, 215; III–166, 349, 445; X–472; XIV–271

Practice—Continued.

IV. APPEAL—Continued.

3. From the General Land Office—Continued.

Cases arising between different parties and involving different tracts of land should not be considered together, and so transmitted to the Department on. XXV–420

In the transmission of, to the Department the record should show whether the land is "offered" or "unoffered." X–684

Papers were properly not transmitted on, where the case had been considered by the Department on review. IV–227

From the Commissioner's action in rejecting an application to contest an entry must be perfected under Rule 86. VII–423

Applications for extending the time for perfecting an appeal from the General Land Office should be addressed to that office within the time for appeal, with the reasons assigned duly verified by oath. III–59

Neither the local officers nor surveyors-general may fix the time for an appeal from the decision of the General Land Office, nor extend the time fixed by the rules. III–59

One who does not, but files a motion for review out of time, can not be heard to complain if the Department holds the decision below final. XVI–60

The Rules of Practice, in fixing the time within which an appeal may be filed from a decision of the General Land Office, make no provision for excluding the time during which a motion for the re-review of such decision is pending. XXIX–646

In the absence of, and no reason shown therefor, the Department will not undertake to review a decision of the General Land Office. XI–101

In the absence of, the Commissioner's decision becomes final, and he is thereafter without jurisdiction to modify his action therein. XIV–574

Rule 48 is not applicable to decisions rendered by the General Land Office. XII–421

An appellant from decision of the General Land Office is entitled to have all the record on which action was taken transmitted to the Department. XIII–140

In forwarding a case to the Department all papers in connection with the entry should be transmitted therewith. XVII–545

When taken, the General Land Office is not required to notify the parties that the record has been sent to the Department. XVI–60

(*Infra*—"*Defective.*")

4. By Whom. See *Mining Claim*, sub-title *Protestant.*

Party recognized by notice of decision entitled to be heard on appeal. IV–53

Practice—Continued.

IV. APPEAL—Continued.

4. By Whom—Continued.

A stranger to the record is not entitled to complain of a decision, or to be heard on, before the Department. XXI–95

By one not a party to the record will not be entertained in the absence of due showing as to the nature of the interest claimed by the intervening appellant. XI–499

The right to intervene and be heard on, may be properly accorded a protestant who shows an interest in the subject-matter of a contest. XXIII–12

Right of, can not be exercised by one who is not a party in interest. II–362; XII–538; XIII–673; XVI–397

Protestant without interest is not entitled to right of. XII–345

Right of, must be accorded to one who prefers charges against an entry, furnishes evidence, and pays the cost of his own testimony, even though he formally waives the preference right of a successful contestant. XIII–722

Right of, may be accorded to a protestant against preëmption proof who desires to clear the record so that he may enter the land. XIII–507

Right allowed to parties shown to be in interest and affected by the decision. I–579

Mortgagee or purchaser after entry entitled to be heard on disclosure of interest. IV–544, 570; VI–771

Of intervener requires a disclosure of interest. X–111

The right of, is properly denied where it is sought to be exercised by one who is not a party to the pending controversy, and discloses no right to be heard as an intervener. XVII–298

Of a stranger to the record should be disposed of under Rule 82 if the appellant fails to show his right to be heard as an intervener. VII–454; IX–482

The unsworn statement of a stranger to the record is not sufficient to show right of. VII–480

Taken in the name of the heirs of the entryman is defective in the absence of proof showing the death of the entryman, the names of the heirs, and the parties taking said appeal. IX–249; XVIII–322

Right of, should be accorded to the heirs of a deceased preëmptor from a decision awarding the land to an adverse claimant. VIII–405

Taken on behalf of a deceased timber-culture entryman confers no jurisdiction if not authorized by the heirs or legal representatives of the decedent. XIII–60

Can not be taken by attorney of claimant after such party has filed a relinquishment of his claim. XXI–95

Practice—Continued.

IV. APPEAL—Continued.

4. By Whom—Continued.

By attorney on behalf of deceased client without effect. XI–604

Where two parties are adversely affected by a decision the appeal of one will not preclude motion for a review by the other, nor will the denial of the motion affect the appeal. V–410

Where a decision of the General Land Office is adverse to both parties and one appeals, and the other moves for review, and both actions are regularly taken, the Commissioner may properly consider the motion for review. XVIII–575

An attorney who advances money for the prosecution of a contest is not entitled to the right of, if the suit is dismissed. XI–65

Is not required for the protection of a contestant where the local office held the contest speculative, but the Commissioner cancels the entry without passing on contestant's status. XV–445

The government does not take, in case of adverse action of local office in proceedings directed by the land department. XIII–603

Not necessary for the protection of the government in proceedings directed before the local office and where there is no adverse claimant. XIII–603

From adverse action on homestead entry must be taken by or on behalf of the actual successor in interest in case of the entryman's death. XVI–177

Taken in the name of a deceased entryman without authority from the administrator may be considered on behalf of a transferee. XVI–484

Where in a contest a judgment of the General Land Office awards to one of the parties the right to elect as between two tracts, an adverse party who is asserting a claim to one of such tracts is entitled to be heard on, from such judgment. XXI–234

5. When allowed.

Will lie from action that involves the Commissioner's jurisdiction in the disposition of public lands. XIII–259

Right of, exists where the decision of the Land Office amounts to a final determination on the merits of the case. IV–570; VI–124

Will lie from decision of the General Land Office upon the merits of a case, though irregularly considered. IV–430

A decision finally disposing of a question, though not of a case in which it is raised, is not interlocutory, and is therefore subject to appeal. II–374

Not allowed from discretionary action of the Commissioner. IV–162, 269; XIII–706

Practice—Continued.

IV. APPEAL—Continued.

5. When allowed—Continued.

A motion to dismiss an, taken from an action lying within the discretion of the Commissioner will not be considered where the appeal has been duly allowed. and the case presents a new question for departmental adjudication. XXIII–293

Will not lie from a refusal of the Commissioner to extend the public surveys over a tract of land. XXI–454

Will not lie from an interlocutory order of the Commissioner. II–40, 580; IV–94; VII–404; IX–360, 633; XII–63, 495; XIV–496

Will not lie from a decision of the Commissioner holding that an affidavit of contest is sufficient and ordering a hearing thereon, as such ruling is interlocutory in character. XIII–347

Orders of the General Land Office made on the submission of annual desert land proof are interlocutory in character, and no, will lie therefrom. XV–111; XXIV–306

A decision of the Commissioner denying a motion to confirm an entry under section 7, act of March 3, 1891, is not final, nor will an appeal lie therefrom. XIII–462

Will lie from action of the Commissioner on a case returned for disposition under section 7, act of March 3, 1891, in accordance with the instructions of May 8, 1891. XV–598

Will not lie from an interlocutory order of the local office. IX–252; XI–84; XXIV–88

Will not lie from an order of the Commissioner directing a hearing on an informal protest against final proof. XV–41

Will not lie from an order of the Commissioner directing a hearing. II–40; III–325, 530; VI–124; VIII–372, 444; IX–217

Will not lie from an order of the local office directing a rehearing in a case on which final action has not been taken by said officer; nor from the Commissioner's decision denying the right of appeal from the local office. XXI–122

Will lie from the Commissioner's refusal to order a hearing. XV–290

Will lie from refusal to order a hearing on new facts set up in support of a motion for review. XXI–130

Will lie from a refusal to order a hearing, and the right of appeal is not dependent upon an express declaration in the decision that such right will be recognized. XIII–478

Will not lie from a decision of the Commissioner refusing to order a hearing unless such refusal amounts to the denial of a right. III–516, 562; V–23; VI–124; IX–377; X–572

Will lie from decision holding the evidence insufficient to warrant cancellation and directing new hearing. V–58

Practice—Continued.

IV. APPEAL—Continued.

5. When allowed—Continued.

Will lie from an order of the local office dismissing a contest for want of prosecution and refusing to reinstate the same on due showing. XII–525

Will properly lie from a decision dismissing a petition for the reinstatement of an entry and a rehearing thereon. XIII–520

A decision that amounts to the determination of a substantial right is not interlocutory and appeal will lie therefrom. X–111

Will lie from the absolute denial of an application to contest an entry. XV–243, 352

The rejection of an affidavit of contest by the local office is a final action on its part from which, will properly lie; and the failure of the applicant to appeal in time should not operate to defeat his right to a hearing, if he is not duly notified of his right of appeal. XXVIII–315

Will lie from a decision of the General Land Office holding a notice of contest insufficient and directing further proceedings or, in default thereof, dismissal. XV–83

Will lie from a decision canceling an entry when there has been no order holding said entry for cancellation and where notice of a prior rule to show cause, etc., does not affirmatively appear of record. XV–367

From a decision holding an entry for cancellation on the report of a special agent, subject to the right of the entryman to apply for a hearing will be taken as an admission of the facts as found below, on which final judgment may be properly rendered by the Department. XXII–433

May be allowed where an entry is held for cancellation on the report of a special agent, subject to the right of the entryman to apply for a hearing to show cause why his entry should be sustained and the entryman declines to apply for a hearing. VIII–306; XX–468

Will not lie from the Commissioner's requirements of an additional affidavit in support of an entry; only from final action on the case on the failure of the entryman to comply with said requirement. V–429; VII–67, 480; VIII–73; X–110

Lies from a decision which in effect is a rejection of final proof. V–421; VI–605

Will not lie from the refusal of the Commissioner to review a decision. V–99, 410; X–159

Should be from the original decision and not from the refusal to reconsider such decision. IX–388; XI–260

Practice—Continued.

IV. APPEAL—Continued.

5. When allowed—Continued.

Will properly lie from the denial of an application to have an entry referred to the board of equitable adjudication. XX–144

Should be allowed from a decision canceling an entry on a special agent's report when the facts as shown therein are not denied. VIII–306

Under a decision of the Commissioner holding an entry for cancellation, with the right to submit supplemental proof, the entryman may refuse to furnish such proof, and, standing on his case as made, appeal to the Department. XIII–211

Under a rule to show cause why an entry should not be canceled the entryman may either comply with the order or stand on the record and appeal to the Department. XXVI–54

Will lie from a judgment rendered on refusal to plead when demurrer to the charge is overruled. XIII–348

Reinstatement of contest, having been denied by the local office, the right thereto may be tested on appeal. IV–513

Will not lie from the response of the Commissioner to a letter of inquiry. VI–772

Allowed in lieu of certiorari where the appeal was wrongfully denied. IV–52, 333

Will not lie from a letter of the Commissioner promulgating a departmental decision. IX–93; XV–190

Will not lie from the action of the Commissioner in canceling an entry under directions issued in a departmental decision that has become final. XXIII–478

Will not lie from the refusal of the Commissioner to take up a case before reached in the regular order of business. IX–530

Will lie from the rejection of adverse mineral claim. XIII–718

Will lie from a requirement of new publication of mineral application. XIV–697

Will lie from a decision requiring a mineral entryman to make new publication of notice. XIV–697

The acceptance of a mineral application filed upon a homestead entry against rules impairs the entry and justifies appeal. II–713

A return of an application with explanation that the deposit for fees and commissions is insufficient, which is not denied, is not a decision justifying an appeal. II–279

Appeal will lie from the decision of the local office on the sufficiency of residence under the act of August 11, 1876. III–367

Where the law directs the surveyor-general to report in relation to private claims to Congress, appeal to the land department will not lie II–413

Practice—Continued.

IV. APPEAL—Continued.

5. When allowed—Continued.

Does not lie from action of board of equitable adjudication. I–411

Will lie from action of Oklahoma town-site trustees though not provided for by statute. XIII–9

Will not lie from Commissioner's refusal to allow an application for the survey of a specific tract. XVI–513

Not the proper means of presenting new questions. VIII–294

A decision of the General Land Office that a railroad company has no claim to certain land does not preclude the right of appeal from such action. IV–52

6. Time.

Right of, runs from date of notice of decision. IV–244, 279

In computing the time within which, must be filed, the day of service of notice of decision must be excluded. XXV–488

Time allowed for, from the rejection of an application is limited by notice of such action, and not by the action itself. XIII–598

The time within which to file, does not begin to run until notice of the decision is duly served. XIII–225; XV–249

Seventy days allowed for filing, when notice of the Commissioner's decision is given through the mails by the local office. I–110; V–475, 479

Ten additional days allowed for, when notice of the decision is given through the mails by the local office. II–714; VIII–46; IX–438

Ten days additional are allowed for filing, when notice of a decision is given through the mail by the local office, irrespective of the time actually required for the transmission of the notice. XIII–136, 501

When notice of a decision is given through the mails by the local office, ten days additional are allowed within which to file, without regard to the date when the appellant actually receives said notice. XIX–478

Ten days additional allowed for, when notice of the decision is given by the local office through the mail, may be accorded the appellant whether he uses the mail for transmitting his appeal to the local office or appears there and files it in person. XVIII–212

Ten days additional allowed for, when notice of local officer's decision is sent through the mail. I–117, 118; VII–387; XII–62; XIV–352

From the General Land Office will not be entertained if not filed within the time required. IV–331; IX–291, 360

In computing the time allowed for, the period between the filing of a motion for review and the notice of decision thereon is excluded. III–539; VIII–421

Practice—Continued.

IV. APPEAL—Continued.

6. Time—Continued.

Rules 79 and 87 are applicable to proceedings before the local office as well as in cases before the General Land Office and the Department. XII–62

In computing the time allowed for, the period covered by an intervening motion for review should be excluded. XII–62, 647

Rule 79 is not applicable except where the motion for review is filed within the time allowed for appeal. XIV–154

The provisions of Rule 79 can only be invoked on behalf of a litigant who has himself filed a motion for review. XIX–294

A motion for review of a Commissioner's decision that adversely affects both parties to the litigation, filed in time by one of said parties, operates to suspend all action under said decision until the disposition of said motion, and during such period of suspension neither of the parties is required to appeal. XXVI–639

The time for taking, not suspended by a motion for rehearing filed out of time. XIV–67

Time allowed for, is not suspended by a motion for review filed out of time. XVII–68

In computing the time allowed for, the period covered by an intervening motion for review should be excluded, and this rule is not affected by a withdrawal of said motion before decision thereon. XIII–192

In computing the time allowed for, where a motion for review has intervened, the appellant is entitled to the additional ten days allowed, independently of the same period given for filing the review, where notices of the Commissioner's action in each case are sent through the mails by the local office. XX–535

Withdrawal of, after the expiration of the time allowed for taking the same, and filing a motion for review, does not revive the right of appeal if the review should be denied. XII–105

In the absence of, within time allowed the Commissioner's decision becomes final. VI–6

Must be dismissed on motion of appellee if not filed in time. VI–240

Rule limiting the time allowed for, will in contest cases be strictly enforced. IX–668

Failure to file, within the prescribed period warrants an order of dismissal. XIII–697; XXV–323

If not taken in time, the Department is without jurisdiction to entertain the same. XII–419; XXV–34

Where taken after the time allowed acknowledgment of service by opposing counsel does not cure the defect or waive right to have the appeal dismissed. VI–800

Practice—Continued.

IV. APPEAL—Continued.

6. Time—Continued.

The acceptance of service of notice of, without objection thereto, does not waive the right of the appellee to be subsequently heard on a motion to dismiss said appeal on the ground that it was not taken in time. XVIII–151

Failure to file, in time not excused on the ground of want of notice if in fact the attorney of appellant had such notice. IX–170

The General Land Office may reject if not filed in time. V–205

Failure of the Commissioner to return under Rule 82 an appeal defective for want of notice does not relieve the Department from the necessity of dismissing the same on account of said defect if the time allowed for appeal and notice has expired. XI–375

It is no excuse for failure to file in time to show that appellant's attorney was misled as to the time by a notation on the record in the local office where said attorney accepts service of notice and gives his receipt therefor. XIII–697

Failure to, in time can not be excused on the ground that in the notice of the decision the period accorded for appeal was erroneously stated as thirty instead of sixty days, where the appellant has had the benefit of the full period, and the adverse party takes no advantage through said error. XXIII–106

Failure to appeal in time from the action of the local office does not cut off right to appeal from the Commissioner's decision. III–606

Will not be held out of time where the delay therein is due to the negligence of the local office. XX–535; XXI–542

Will not be dismissed on the ground that it was not taken in time if the record fails to show when notice of the decision was received. III–73; IX–455

Will not be dismissed because filed out of time if the notice of the decision did not contain a copy of the same and the appeal was taken within the required time from the receipt of such copy. XVI–187; XVIII–192

An appeal not filed in time may be considered where the interests of the government are involved or where justice is facilitated and promoted. II–714, 720

The acceptance of, filed out of time, and consideration thereof with other appeals involving the same land, by ordering a hearing to determine the rights of all parties, cures any defect therein, in the absence of objection thereto prior to the hearing so ordered. XXII–297

Allowed where date of notice is in doubt and the default in filing, if any, but one day. I–110

Practice—Continued.

IV. APPEAL—Continued.

6. Time—Continued.

Failure to appeal in time because of temporary closing of local office is excusable. II–211

Time waived on account of diligence shown by the appellant. I–103

Served on the opposite party and mailed within the time allowed for taking an appeal from the General Land Office does not bring it within the rule as to time, if not received at the General Land Office within the period fixed therefor. XVIII–137

Mailing an, to the local officers within the time allowed for taking, from their action, does not bring the, within the rule as to time, if not received at the local office within the time fixed therefor. XXVIII–8

Time for filing, from decision of Commissioner begins to run from the date that service is first made, whether it be upon the party himself or upon his attorney, either local or resident in Washington. XI–439

Where notice of Commissioner's decision is served on attorneys in Washington and by the local officers on the party or his local attorney (in Colorado), time will begin to run from date of the latter service. I–464; II–374

Time for taking, begins to run from the date when service of the notice of the decision is first made where said notice is served both on the attorney of record and the party he represents. XIV–428

In computing the time for filing, where notice of the decision is served on the resident attorney, the day of mailing the decision and one day additional should be excluded. XVII–139

Where the last day allowed for filing, falls on a legal holiday the appellant has until the next business day within which to file his appeal. XX–183

If laches is not imputable to decedent for failure to appeal in time, it is not imputable to his privy in estate (assignee) not notified. II–769

Where an appeal is tardily asserted, if it involves rights which seem to demand consideration, the case will be considered. II–598

Must be taken within the prescribed time by a transferee who has notice of a decision adverse to the entryman. VIII–485; X–111

Filed by transferee before notice of decision was served on entryman is in time. V–598

One who consents to delay in taking, can not be heard to raise the question of time if the Department takes action on the merits of the case. XIV–423

Practice—Continued.

IV. APPEAL—Continued.

6. Time—Continued.

The local office has no authority to extend the time within which an appeal may be taken from its action. XIII–250; XIV–423

Application for the extension of the time allowed for, should be presented to the General Land Office and before said period has expired. XIV–423

A stipulation of the parties extending the time allowed for, from a decision of the General Land Office is ineffective in the absence of departmental consent thereto. XIII–44

Time for, can not be extended by stipulation of attorneys. XIV–423

Rules affecting the time for, modified in Oklahoma town-site cases. XII–187

From the Commissioner's decision on claims arising before town-site trustees in Oklahoma must be taken within ten days from notice of the decision. XIII–268

The departmental instructions with respect to the time allowed for, in Oklohoma town-site cases were intended to be applicable to all cases in which town sites are parties. XVIII–139

Failure to comply with the instructions respecting, in Oklahoma town-site cases, will not defeat the right of the applicant to be heard, where it appears that his action was based on the construction of said requirement adopted by the local office. XVIII–139

Failure to, within the proper time, in proceedings arising before a town-site board, will not defeat the right of the appellant to be heard where it appears that the appeal was filed within the time accorded therefor in the notice given of such right. XXII–54

7. Specification of Errors.

From Commissioner's decision must contain specification of errors. I–109

Specifications of error, to receive consideration, should set out the particular objections raised to the decision from which the appeal is taken. XIV–700

Will not be entertained in the absence of a specification of errors that clearly designates the errors of which the appellant complains. XX–329; XXIV–489

Should set forth briefly and clearly specific exceptions to the decision complained of. IV–343; IX–370; XI–214; XIII–249

An allegation that the decision is "contrary to the evidence" is not such a specification as will entitle the appellant to be heard on appeal. IV–343

Practice—Continued.

IV. APPEAL—Continued.

7. Specification of Errors—Continued.

An assignment of error to the effect that the decision is contrary to the law and evidence is not sufficient to sustain an appeal on objection thereto. XV–566

A specification of error that sets forth that the decision is "contrary to law and the facts, and is unjust, unreasonable, illogical, and biased," is not sufficient. XII–29

An allegation that the decision is "contrary to law and the practice of the land department" is not a sufficient specification. V–158

An allegation that "the Commissioner erred in dismissing the contest" and that "the Commissioner erred in sustaining the decision of the local office" is not sufficient. IX–560

Will be dismissed in the absence of specifications of error. IV–551; V–158; VI–315; X–111; XII–98; XIII–574; XXI–553

Rules 88 and 90 with respect to, are mandatory and must be construed together. V–111

Right of, defeated by failure to file specification of error within the proper time. V–111, 251

Will be dismissed if notice thereof and copy of specifications of error are not duly served upon the opposite party. IX–264, 276; X–546

Not defeated by failure to file specifications of error within the required time where such failure was caused by the appellant's inability to secure a copy of the decision. VIII–192; XII–74

Amended specifications of error filed out of time can not be accepted on the ground that the delay was caused by the necessity of employing new counsel. XIV–217

Specification of error sufficient where made by reference to the specifications filed on appeal from the local office and the grounds of the appeal are explicitly set forth therein. XII–476

Will not be dismissed for the want of sufficient specifications of error if the errors alleged can be fairly ascertained therefrom. IX–11

Assignment of error on refusal of the Secretary to reverse the Commissioner in certiorari proceedings is meaningless, no issue having been made before the Department. II–743

Specifications of error on appeal to the Department are not limited to the points raised by the appeal from the local office. XII–67

Rule 82 does not contemplate notice to the appellant with opportunity for amendment where proper specifications of error are not filed. XIV–217

Right of, from Commissioner's decision is lost where the appeal from the local office does not contain a specification of errors and is dismissed for that reason. XIV–176

Practice—Continued.

IV. APPEAL—Continued.

8. Notice Of. See sub-title herein, No. IX.

Without notice of to the opposite party in interest will not be entertained by the Department. I–109; V–169; IX–188; X–408, 595; XI–249, 385; XII–93; XIV–452; XVI–384; XVIII–421

To the Department will not be considered in the absence of notice to the opposite party, although the appeal of such party was dismissed for failure to file the same in time. XVII–145

Will not be entertained if a copy thereof is not served upon the opposite party within the prescribed period. XI–385

Will not be considered by the Department in the absence of notice to the opposite party and due proof thereof. XI–48; XIII–4

Will be dismissed if there is no proof that a copy of the appeal and specifications of error was served on the opposite party. XI–48

Rule 46, requiring notice of, from local office, is mandatory and has all the force and effect of law. XII–199

In the case of, from the local office the rules of practice make no specific provision as to the manner in which notice of appeal shall be served, and, in the absence of such provision, notice given in the manner required by the local courts will be held good. XXVII–142

Notice and grounds of appeal must be filed within the time required in the rules of practice. III–134

Mailing a notice of, prior to the expiration of the time allowed for, is not the service of notice required, if in due course of the mail the notice could not be received by the opposite party until after the expiration of said period. (Overruled.) XVII–480

Mailing copy of, within the time allowed for appeal is sufficient service of. V–475; XVIII–543; XXI–35

Notice of, must be served on the opposite party within the time allowed by the rules of practice for taking an appeal, and if not duly served within said period the appeal may be properly dismissed. XVII–480; XXIV–322

Copy of notice of appeal need not be served on the appellee when the appeal is from a decision of the local office (rules of 1880). II–612

Notice to opposite party of, not required in case before the local office (rules of 1880). I–472

Departmental ruling in force at time of appeal should be recognized in matter of rejected application. XIV–662

Notice of appeal from rejected application to enter to other applicants not required where the question is solely between each applicant and the government. XIII–392

Practice—Continued.

IV. APPEAL—Continued.

8. Notice Of—Continued.

Rule 70, as amended, does not apply to an appeal from a decision holding an entry for cancellation. XII–93

Taken from a decision holding an entry for cancellation on account of the adverse claim of another will not be entertained in the absence of due notice to such adverse claimant. XI–375

From the rejection of an application to enter will not be entertained in the absence of notice to an adverse claimant of record. (See 17 L. D., 325.) XI–621; XIX–482

Notice of, from the local office should be duly served upon the appellee. IX–252

Appellant from a decision of the Commissioner affirming an order of the local office rejecting an application to enter is not required to give notice to a subsequent applicant for the same tract whose application is suspended during the pendency of the proceedings on appeal. XVI–285

On appeal from the denial of an application to contest an entry the appellant is not required to serve the entryman with notice thereof XXIII–412

From the refusal of the local office to entertain a protest against a mineral application, does not require the appellant to serve the applicant with notice thereof. XXIV–349; XXVI–196

Notice of, and specifications of errors may be filed at different dates. V–251

There is no prescribed form of words to be used in giving notice of, and to serve the appellee with a true copy thereof is sufficient notice. XI–406

The words "I desire to appeal," with assignment of grounds and promise to file argument, is a sufficient notice of appeal. II–391

The notice of, is sufficient where a copy of the specifications of error, which is entitled "appeal to the Secretary," and in the body thereof "prays an appeal," is duly transmitted by registered mail to the appellee, and receipt thereof is not denied. XXI–234

A mistake in the name of appellant or appellee's attorney in notice of appeal is not fatal thereto where received in due time by the attorney of appellee and no prejudice to appellee is claimed. XII–67

That names the parties, describes the judgment complained of, and states the grounds of complaint, is sufficiently specific without giving the number of the entry or the legal subdivisions of land involved. XVI–300

Practice—Continued.

IV. APPEAL—Continued.

8. Notice Of—Continued.

Will not be dismissed on the ground that notice thereof was not given appellee or his attorney where the service was upon one who prior thereto had represented appellee as attorney and where no prejudice to appellee is shown. XII–113

Where a notice of, is served on the attorney of the adverse party, as shown of record, the right of such appellant to be heard should not be affected by the fact that said attorney was not at such time authorized to represent the appellee. XXV–[illegible]

Service of a notice of, on the appellee's attorney of record will not be held insufficient on the ground that at the time of such service said attorney had become register of the local office wherein the case originated, where it does not appear that the appellee had any other attorney at the time of such service, and no prejudice is claimed. XXVIII–485

A motion to dismiss, for want of notice thereof, will not be sustained on behalf of a protestant that is represented by an attorney who appears for other protestants, equally interested in the same matter, who do not deny due notice. XVIII–176

Where an acceptance of service by appellee is coupled with an objection to the consideration of the appeal on the ground of insufficient notice thereof, such objection should be presented in due form and supported with proof. XII–220

Notice of, may be served either upon the adverse party or his attorney. XXIV–489

The acceptance of service by the authorized attorney of appellee on a brief filed in support of an appeal is sufficient to confer jurisdiction on the Department. XII–22[illegible]

The words "service accepted" indorsed on the, by the attorney of appellee imply service of notice accepted, and the acknowledgment of the receipt of "copy" thus indorsed implies that such copy is of the paper so indorsed. XI–40[illegible]

A notice of, from a decision of the local office, left in the office and upon the desk of the appellee's attorney, may be regarded as sufficient, if the fact that such notice was actually received by said attorney is apparent from the record. XXII–67

Rule 105, providing for the service of notices upon attorneys, is one of convenience, and not of exclusive right; hence an, is not defective in the matter of notice, if the service is made upon the appellee, and not upon his attorney. XXIV–277

Will not be dismissed on the ground that a copy thereof was not served in time on the opposite party if the record does not show when notice of the decision was served on the appellant. [illegible]

Practice—Continued.

IV. APPEAL—Continued.

8. Notice Of—Continued.

A copy of the appeal and argument thereon mailed to the register of the local office is not notice of such appeal to the adverse party if not served on him by said officer. XIX–95

Served by registered letter on the "land commissioner" of a railroad company is proper service on said company. XXII–688

Served on a general land agent of a railroad company is sufficient service on said company. XXII–184; XXIII–331; XXIV–339

Failure to serve notice of, upon the opposite party can not be excused on the plea of ignorance of the law and rules of practice. XXII–88

Should not be dismissed on account of insufficient proof of service of notice thereof, without opportunity given to show that service was in fact duly made, where the adverse party appears and does not object to the service. XXIII–529

Where two or more cases, involving the same tract of land, have been consolidated and considered together, notice of, must be served upon all parties in interest. XXIV–402; XXV–416

9. Defective.

Appellant entitled to notice of defective. V–251

Rule 82 is only to prevent the transmittal of an appeal the Commissioner considers defective. V–99

Rule 82 applies only to appeals from the decision of the Commissioner of the General Land Office to the Secretary of the Interior. XX–130

Whether defective under Rule 82 or incomplete under Rules 88 and 90, it must be sent to the Department for its action. VI–315

Rule 82 not applicable in cases where the Commissioner holds that the right of appeal does not exist. X–572

The Department is not concluded by the failure of the Commissioner to act under Rule 82. V–99

That the appellant is not notified under Rule 82 of his default in omitting the proof of service until too late to make the service can not affect his status or the rights of appellee. X–595

From Commissioner, if defective, will be dismissed by the Department. IV–343

10. Waiver.

Waiver of appeal bars right to begin a new contest on same grounds. III–397

Waived by the initiation of another contest. IV–382; V–350

Practice—Continued.

IV. APPEAL—Continued.

10. Waiver—Continued.

Pending, not waived by the initiation of second contest on new ground. v–451

Right of appeal not lost by motion for review. III–539

Waived by a subsequent application for repayment. v–409; IX–643

From a decision holding an entry for cancellation waived by a subsequent application for repayment of the purchase money. XI–624

Abandoned by an application to purchase the land. VII–342

Waived by new application to enter the land. IX–29

Not lost through fraudulent waiver by attorney. IV–332

Withdrawal of, by authorized attorney conclusive. IV–267

Election of the State to rely on a protest against an adverse claim and not appeal from the rejection of a school selection leaves it bound by the action on the protest. XV–316

V. CONTINUANCE.

Instructions of December 27, 1882, concerning. V–142

Can not be effected by the mere agreement of the parties. IV–234

Motion for, is addressed to the sound discretion of the local office. v–647; VI–165, 345, 440; VII–61

Abuse of discretion on application for, will be reviewed on appeal. v–647

The discretion of the local officers in acting upon a motion for, will not be interfered with if abuse of such discretion does not appear. XXII–382; XXVII–99

Affidavit for can be made before the day of hearing. I–106

Affidavit for, held good though made prior to the day of hearing and before an officer other than the register or receiver. V–142

Regularity of, can not be questioned by the party who procured it. IX–255

Of a case from day to day with the knowledge and consent of the parties precludes subsequent objection to such action. XI–346

Order for, should be properly noted of record. III–588

Not granted without proper showing of diligence. III–581; V–273

Affidavit for, based on the ground of absent witnesses should show that such absence is not the fault of the applicant and what efforts have been made to procure the attendance of said witnesses. VII–63

Affidavit filed as basis for, on the ground of absent witnesses should show that diligence had been exercised to secure their attendance and that their absence was without the consent or procurement of the applicant. XVI–106

Practice—Continued.

V. CONTINUANCE—Continued.

Where a case is once continued on account of an absent witness and on the day so fixed for trial an application is made for an order to take the deposition of said witness, a further continuance should also be duly asked for. XVI–295

To secure additional testimony, should not be granted in the absence of due diligence shown. XVI–362

On the ground of absent counsel or witness, should be denied if diligence is not shown. VII–497

Where, on application for, on the ground of absent witnesses, the adverse party admits that said witnesses, if present, would "testify to the statement set out," the applicant is not prejudiced by a denial of his application. XX–342

Order of, should be granted on application of contestant where it appears that he has not received due notice of the day fixed for hearing, that he is unable to appear on said day, and that witnesses as to material facts are absent. XVII–132

Where granted on the motion of the defendant with an order to take testimony before a commissioner it is error to permit the contestant to submit testimony on the day first set for hearing, even though the notice of the continuance and order served on the contestant is defective. XXI–35

A motion for a, in order that evidence may be secured to show that the appearance of the attorney for the opposite party is not authorized, is addressed to the sound discretion of the local officers, and their action thereon should not be disturbed unless it clearly appears that there has been an abuse of this discretion. XX–223

Can not be demanded as matter of right on the ground that the applicant's attorney is engaged in a trial in another court. IX–523

Application for, that depositions of witnesses who refuse to attend may be procured, is in time if made on the day of trial. VIII–197

May be granted to take depositions though a hearing has been held under Rule 35. X–480

Not granted after admission as to the evidence of absent witnesses under Rule 22. IV–385

May be granted to adverse claimant in case of protest against final proof. V–211

May be allowed in case of surprise on due showing. I–105

Where a continuance is granted by a notary public it should not extend beyond the time set for the examination of testimony at the local office. II–233

Failure to appear on the day to which a case is continued is sufficient ground for dismissing the contest. XIII–390

Practice—Continued.

V. CONTINUANCE—Continued.

Agreement of counsel to an indefinite postponement of the hearing works a discontinuance of the case. x–459

A hearing ordered on the report of a special agent may be properly continued in the interest of the government, and the allowance of two or more continuances for such reason is not an abuse of discretion provided due notice is given in advance of such action. xvii–508

To be ordered in pending cases on removal of local office. vii–527

VI. COSTS. See *Fees*.

To be paid by contestant who seeks a preference right under the act of May 14, 1880. iii–51; vi–763; xx–153; xxii–419, 462

In a contest under section 2 of the act of May 14, 1880, the contestant must pay the costs, including the cost of testimony to be taken by deposition on behalf of the contestee. xxx–11

Of a desert-land contest, under act of May 14, 1880, must be paid by contestant. xix–383

A contestant who attacks a timber-culture entry for the purpose of securing a preferred right of entry must pay the. xxii–312

Of a contest must be paid by a timber-culture contestant who attacks an entry for the purpose of securing the land under act of June 14, 1878. xiii–289

To be paid by contestant though the evidence is taken before a stenographer on agreement. iv–207

The plaintiff, having rested his case on the admitted testimony of his absent witnesses and paid the costs to that point of the case, is not excused from paying the costs of taking the testimony of defendant's witnesses. iii–51

If at any stage of the proceedings in a hearing prior to closing the same the contestant waives his preference right of entry, or declines to pay the costs, as required under Rule 54, the case should proceed as though begun under Rule 55. xx–197

Of a rehearing must be borne by the contestant. xvi–481

A party who files a protest alleging grounds sufficient to warrant the cancellation of the entry, if proven, and offers to pay "the expenses of the contest," is properly taxable with all the costs as a contestant, under Rule 54; and if, after a successful termination of such suit and the exercise of the preferred right by the contestant, a rehearing is ordered on the original issue, the obligation to pay the costs thereof rests with the contestant. xxvi–384

Equally apportioned in case of hearing ordered to ascertain in whom the right of entry exists. iii–449

Practice—Continued.

VI. Costs—Continued.

Where hearing is ordered on allegations of fraud against an existing patent by one who purposes entering the land, each of the parties should pay the expenses of introducing his own testimony. II–761

Under Rule 57 (rules of 1880) the contestee is not required to pay the expense of cross-examining the contestant's witnesses. VI–660

Should be apportioned in accordance with Rule 55 in a contest where no preference right is claimed under the act of May 14, 1880. XIV–13

In contests under Rule 55 each party must pay for taking the testimony of his own witnesses both on direct and cross-examination. X–625; XI–388; XVIII–559

In a hearing ordered to determine whether a contest is speculative, as charged by an intervening entryman, each party must pay his own costs, as provided in Rule 55. XIX–426

A contestant who seeks to secure the right of entry solely on the ground of priority of settlement is not required to pay the, incurred by other parties to the suit. XXIII–251; XXV–12

In a hearing ordered between a railroad company and one alleging the land in question to have been excepted from the grant, are properly taxable under Rule 55. XXVI–57

The rule observed in apportioning costs of taking testimony in contests arising under Rule 55 should be followed in hearings ordered on special agents' reports. XXVI–519

Under a contest in which the contestant asserts no right to the land, but charges non-compliance with law, and offers to pay the costs of the proceedings, the costs should be assessed under Rule 54. XXII–248; XXVI–210

Should be taxed in accordance with Rule 55 in proceedings under rule to show cause why an entry should not be canceled. XXII–113

On cross-examination, taxed to the party making the same in contest and protest cases. III–333

Costs of transcribing cross-examination charged to the party making the same. III–194

Of cross-examination of contestant's witnesses are to be paid by the defendant. II–85

Of frivolous or vexatious cross-examination of witnesses are to be paid by the party introducing it. II–196, 232

Protracted hearings and vexatious accumulation of costs are within the control of the local office. III–194

Each party to pay his own, in contest upon final proof. III–247

Extraordinary expenses are to be paid by the party in whose interest they are incurred. II–196

Practice—Continued.

VI. Costs—Continued.

Contestants required to deposit for a reasonable estimate of preliminary costs, and additional deposits may be required if found necessary. III–194

The local officers may require a deposit to cover the cost of taking testimony in a contest. VI–599; VIII–493; XIII–659; XX–275

Requiring the claimant to make a deposit to pay for the cross-examination of the government witnesses is presumptively a proper exercise of discretionary authority. IX–131

Contestants should only be required to deposit a reasonable sum as security for the cost of transcribing testimony. II–196

Money deposited for costs is to be retained until contest is finally disposed of, when the unexpended balance is to be returned. II–218

On the defendant's failure to cross-examine witnesses at the proper time the recall of said witnesses should be at his expense. V–647

The "land office fees" referred to in section 2 of the act of May 14, 1880, are the costs of contest. IV–19

A motion to retax, is not an original or independent proceeding, but incidental to the trial; and after the case has passed beyond the jurisdiction of the local officers they have no authority to entertain said motion, nor will the Department pass on the same until the trial case comes up for consideration. XIII–73

On a motion to retax, the official report of the local officers, as to an oral agreement between the parties, made in open court, must control as against the statement of counsel. XXVIII–382

A motion to dismiss on the ground that the contestant has not paid the requisite fees should not be sustained where prior to action thereon said fees have been paid. XIV–91

Of reducing testimony to writing in contest cases is taxable at 15 cents per one hundred words, except in States where a higher rate is fixed; that the actual expense of the clerical service amounts to less than the authorized rate does not warrant the taxation of such costs at a rate based on the actual expense. XII–478

A proposition to pay the, of a rehearing, if one should be ordered, can not be considered in aid of a motion for a new trial. XXV–487

VII. Hearing. See *Attorney*, and sub-title herein, No. X.

Rule 2, amended July 14, 1895. XIX–45

Ordered on special agent's report; regulations of July 16, 1898. XXVII–239

The matter of ordering, discretionary with the Commissioner. VIII–444; IX–288, 379

Practice—Continued.

VII. HEARING—Continued,

Discretion of Commissioner in ordering, not controlled except a clear abuse thereof is shown.
VIII–444; IX–217, 584; X–250; XIII–706; XXVI–66

Refusal of the Commissioner to order will not be disturbed if such action does not amount to the denial of a right.
XI–307; XX–359; XXV–506

The ordering of hearings is within the Commissioner's discretion and may not be the subject of an appeal. II–40, 581

An order of the General Land Office directing a hearing, though generally not appealable, will be reviewed by the Department, when brought to its attention by appeal or otherwise, if it appears that said order involves matters which the land department can not inquire into, or is contrary to law, or the settled rulings of the Department, or is otherwise palpably erroneous. XXIX–302

Authority of the Commissioner to order, may be reviewed on certiorari. XIII–259

Discretionary with the Commissioner whether he will order a, on protest filed against final proof. XI–273

Discretionary authority rests with the Commissioner to refuse an order for, where the allegations on protest are deemed by him insufficient and the corroborating witnesses testify from information and belief. XII–49

Authority of the Commissioner to order a new, not affected by an erroneous ruling of the local office. VII–433

Commissioner may, in the exercise of a sound discretion, order second, on proceedings by the government. VI–39

May be ordered by Commissioner at any time prior to patent where information is required for the proper disposition of the case.
VI–174

Application for, addressed to the Secretary calls for the exercise of his discretionary authority, and he should therefore be fully informed as to all facts connected with the subject-matter. XI–349

Authority of local office to order, fixed by Rule 5. I–481

Rule 5 applies to hearings between homestead claimants and between preëmption and homestead claimants. II–224

The Department will not interfere with the action of the local officers in directing a, in any case unless it be shown that by such action they have exceeded their authority. XXVIII–50

Should not be ordered on a protest that involves charges already under investigation by the government. XIX–442

Will not be ordered on an adjudicated issue. XVIII–299

Under contest proceedings against a final entry can only be ordered under the direction of the General Land Office. X–694; XVI–152

Practice—Continued.

VII. HEARING—Continued.

May be ordered on the affidavit of the attorney. I–480

Local offices may order, on protest against final proof. I–86, 448; VII–483

Should not be accorded one who fails to appear and protest against final proof. V–210

The local office may order a hearing to test the validity of an entry. III–310

An application for a, on a protest should not be granted if the allegations therein contained do not make out a *prima facie* case calling for the cancellation of the entry. XXV–125

May be ordered by the local office to determine the right of a homestead applicant as against a railroad grant. X–281

Ordered on charge of fraud and doubt as to the correctness of the record. IV–265

Should not be ordered on a general charge of fraud. IX–545

Should not be had pending disposition of an appeal arising under a previous contest. V–227

To ascertain facts where the case came up on *ex parte* evidence. IV–168

Will not be ordered on an unverified statement to determine a question of priority alleged in the face of an adverse record. VIII–294

Application to reopen a case for a, should not be granted in the absence of specific showing of facts relied upon to warrant such action. XVI–259

Will not be directed on the application of an intervening entryman who alleges no specific right as against a successful contestant. XV–358

Will not be allowed on the application of a transferee who purchases after judgment of cancellation. XIII–305

Not accorded mortgagee of entry except it be shown that the former proceedings were irregular. V–385

Should be ordered to settle alleged priorities as between adverse claimants. VI–509, 643, 766

Should be ordered when filing is offered for land covered by the entry of another and prior settlement right alleged. V–526; VI–330; VIII–528; XII–684

Should be ordered when a homestead applicant alleges a prior settlement right as against the entry of another. XV–379; XVI–310; XVIII–23

Will not be ordered as between an agricultural and mineral claimant where the former asserts no right in himself during the period of publication, and the refusal of such an order is not the denial of a right. X–572

Practice—Continued.

VII. HEARING—Continued.

Further hearing should be ordered in case of new issues arising on the trial that were not included in the original charge. I–113

Failure to apply for, under an order holding an entry for cancellation on the report of a special agent admits the truth of the charge on which said order is made. XVI–259

Failure to apply for a hearing within the specified time after notice of a rule to show cause why an entry should not be canceled is a confession of the charge and a waiver of all claim to the land. XII–189

On a general order to an entryman to show cause why his entry should not be canceled and the application of another allowed he may set up any charge affecting the invalidity of the adverse claim. X–250

If neither party appears at day set for, the case should be dismissed. I–112

Default at a, ordered by the Commissioner will not be excused on the ground that the defaulting party had filed a motion for the review of the decision ordering the hearing. XVIII–527

Failure to submit testimony on due opportunity offered in the regular course of proceeding cuts off right to be further heard. V–446

Under swamp land circular of December 13, 1886. V–279

Order dismissing hearing not interlocutory. IV–473

When ordered on charge made by a protestant he can not set up his own claim to the land. XVI–532

Hearings before the local officers must be held at the local office, and no testimony may legally be taken by either of them elsewhere without specific instructions from the land department. II–204

Notice of the time as well as of the place of both original and adjourned hearings should be given. II–227

Contestant is entitled to notice of, when allowed by Commissioner on application to contest a final entry. XVII–133

Where the hour of the day to which a hearing is adjourned has not been fixed the parties have the whole of the day in which to appear. II–226

Hearings must be fixed at the earliest date practicable and before officers who will attend to them promptly. III–121

When the hour for hearing on final proof is not named in the notice appearance on the day is sufficient. III–334

Local office may not cite contestants before other offices. I–474

Practice—Continued.

VII. HEARING—Continued.

Ordered by the department is not affected by the circular instructions of May 15, 1889, issued to special agents by the General Land Office, directing the suspension of proceedings wherein it is believed that the government will not be able to sustain the charge against the entry. XI–369

A motion to dismiss a contest for the want of a sufficient charge, in a case where the evidence is taken before a commissioner, is in due time, if made before the local office on the day set for the hearing. XXIX–351

The fact that neither of the local officers is present while the witnesses are testifying in a, had before them, does not affect the regularity of such proceedings, where there is no vacancy at such time in the office of either register or receiver, and the witnesses are sworn by one of said officers and both of them subsequently examine the testimony and render joint decision thereon. XXVII–425

A statute that provides for action on the part of the Secretary of the Interior "after allowing opportunity for all parties in interest to be heard before him," does not require such officer to personally hear the witnesses testify and listen to oral arguments, if all parties have notice and are permitted to submit evidence and written arguments that are considered by him. XXVI–280

VIII. INTERVENER.

A stranger to the record not entitled to be heard as an intervener without first disclosing his interest under oath. III–134, 278; V–603; VII–454, 480; VIII–578; XIII–392

General statement of the attorney, under oath, that the intervener is the present owner of the land not accepted under Rule 102. IX–628

Sworn statement of attorney, disclosing the interests of an intervener, must contain a full showing of his means of knowledge, and such facts as will affirmatively show that the party seeking to intervene has a present interest in the matter involved. XI–365

A motion made by a stranger to the record to dismiss the pending proceeding will not be entertained, except by way of intervention, when the case comes up for final action. IX–613

A stranger to the record can not plead "former practice." III–301

A stranger to the record will not be allowed to intervene for the purpose of reopening a case finally adjudicated without notice of his interest; nor is the applicant in such case entitled to be heard on appeal from the denial of his application. XX–116

Practice—Continued.

IX. NOTICE.

1. Generally.
2. By Publication.
3. Heirs, Minors, and Insane.
4. To Transferee.
5. Effect of Appearance.
6. Of Decision.
7. Of Cancellation.
8. Of Appeal and Review.

1. Generally.

Circular with respect to the registration of letters containing notice of hearings and decisions. III–140; V–204; VI–12

Rules of 1878, regulating service, same as those of 1881. I–108

Rules with respect to proof of, must be strictly followed. I–106

Rule 8 contemplates a notice issued under a contest initiated to secure the preferred right of entry accorded by the act of May 14, 1880. XII–462

Rule 9, amended, July 14, 1894. XIX–45

Rules 11, 14, and 17, amended. XXVI–710

Rules 17, 44, and 91, amended, and Rule 8½ established. XXX–622

By the circular of July 31, 1885, directing the manner in which notice of proceedings on a special agent's report shall be served, personal service, if the claimant can be reached, together with notice by registered mail, is requisite to confer jurisdiction. XXVIII–45

There is no statute requiring special notice to any person in proceedings before the land department to establish a claim for public land; but in the practice followed special notice of such proceedings is given to all adverse claimants as shown by the records of the local office. But where it appears that knowledge of the proceeding has been brought to the attention of an adverse claimant, or where notice of his claim was not filed in the local land office, such claimant will not be heard to plead want of notice on the ground of not having been specially notified. XXX–160

Of hearing can only be issued by the local officers. The authority can not be delegated to another. XIII–429

Of contest must be issued by the local office, but the service thereof rests with the contestant. II–230; X–268

It is incumbent upon one who files an affidavit of contest to look after the, issued thereon, and secure due service thereof. XXII–377

Practice—Continued.

IX. NOTICE—Continued.

1. Generally—Continued.

Rule 60 requires contestants to serve their own notices, and one who fails to comply with this requirement will not be heard to complain if his application for a hearing is dismissed. XXVI–286

May not be signed by a clerk; must be signed by one or both of the local officers. II–228

Of contest may be signed by one or both of the local officers. XI–418

Of contest not invalidated by the omission of the register to affix to his signature thereto his official designation. XI–269

Should show the time as well as place set for the hearing. II–227

Of a hearing ordered by the Commissioner on a contest against a final entry should be given the contestant. XVII–133

Service of, is fatally defective where the purported copy delivered to the defendant does not show the true date of the hearing as fixed in the original notice. XII–44

Of contest will not be held defective for want of certainty as to the day fixed for trial, where it is apparent that the alleged defect did not operate to the prejudice of the defendant. XXVII–673

Of hearing must state the time and place therefor and describe the land involved, and if defective in these particulars jurisdiction is not acquired thereby. XIII–429

Of contest is sufficient if it substantially follows the affidavit of contest. XXIII–140; XXIV–383

Of a contest should recite the charges contained in the affidavit of contest, but will not be regarded as defective if it shows a sufficient allegation to support a judgment of cancellation. XI–418

That does not set forth the grounds of contest is defective and does not authorize proceedings thereunder. X–593

Of a hearing directed to ascertain priorities between adverse claimants is not defective though it may not contain the charges on which the hearing is ordered. XII–462

Where duly given and the case continued to a day certain, the jurisdiction of the local office is not defeated by failure to insert the day of hearing in a notice to take testimony before a commissioner. XV–47

Papers containing statements or arguments relative to contest cases should not be filed therein if they do not bear evidence of service on the opposite party. XVIII–167

Misnomer in notice a fatal defect. III–418

Slight error in spelling defendant's name will not defeat. VII–441

A slight error in the spelling of claimant's name, occurring in the service of, will not defeat said service, where the rule of *idem sonans* is applicable. XIX–220

Practice—Continued.

IX. NOTICE—Continued.

1. Generally—Continued.

If not addressed to the appellee in his true name and it does not appear that he received the same, the Department acquires no jurisdiction. IX–168

Of contest properly served, with correct description of the land, the charge against the entry, the contestant's name, and the time and place for the hearing, is not fatally defective because of a misnomer of the defendant therein, as the process is amendable in that respect either before or after judgment. VII–61

Question of, is jurisdictional, and if raised at any time or apparent on the face of the record the Department is bound to take cognizance thereof. IX–75, 561

A case will not be remanded on objection to, though such objection be well grounded, where the defendant appears, participates in the trial, and appeals, asking for a judgment on the merits of the case, and no prejudice is shown. XVIII–586

Jurisdiction not aquired in the absence of proper service.
II–220; IV–397, 425, 440, 537; VI–234, 335; IX–75, 168

Ex parte proceedings without, will not warrant an order of cancellation. IX–522

Proceedings may be dismissed for want of, though the entry is canceled on the admissions of the claimant. I–107

Must be shown affirmatively of record to confer jurisdiction.
V–398, 611; VIII–578; XIII–398

Proof of service must be filed in the local office by the contestant.
XIV–319

In the absence of legal, actual knowledge does not put a party upon defense. IV–378; V–213, 253

Personal service must be had when possible. I–107; V–253, 457

Should be personally served on the entryman in the case of a hearing ordered on the application of an adverse claimant.
XIX–406; XXII–436

Must be by personal service under Rule 10. IV–440,537

The rules of practice do not require that a, should be served within the jurisdiction of the local office from which it is issued.
XXIV–383

Personal service of, in case of contest may be properly made upon a non-resident. XXVIII–330

In personal service delivery of a "copy" only is required, and such copy may be printed or written or partly printed and partly written. VI–669

Practice Continued.

IX. NOTICE—Continued.

1. Generally Continued.

In the personal service of, of contest, Rule 9 does not require an exhibition of the original, when a copy thereof is delivered to the defendant. XXII–89

That the original instead of a copy was left with defendant is no valid objection to the service. V–590

Personal service is not secured by reading the notice to the wife of defendant and delivering to her a copy at the house and usual place of defendant's residence. XIV-162

Leaving a copy of, at defendant's house with some member of his family is not such service as is contemplated by the rules of practice. XXI–335

Personal service may be secured through registered letter. (See 11 L. D., 604.) V–254

Service of, by registered letter is personal service as required by Rule 15. (See 11 L. D., 604.) X–388.

Service of, by registered letter on non-resident held good where such notice was received more than thirty days before hearing. (See 11 L. D., 604.) V–213; IX–131

Of contest can not be served by registered letter, and such service confers no jurisdiction upon the local office. XI–604; XII–311, 620; XIII–546; XVIII–586; XIX–405; XXIV–14

Of contest by registered letter to a defendant who is a resident of the State does not confer jurisdiction upon the local office. XVI–120

Of contest served on resident defendants by registered mail is not personal service within the meaning of Rule 9. XXII–222

When the service is admitted or undisputed it is not material that the affidavit as to service should show the "place" thereof. VI–669

If the fact of service is not denied and such service is duly made, the manner in which proof thereof is made is not material. X–273

An objection to the jurisdiction of the local office, on the ground that the record does not afford due proof of service, is not well taken where the fact of legal service is not denied. XXI–383

On objection to the service of, the contest should be dismissed, if the ground of objection is well taken, and the contestant does not apply for an alias notice. XXIV–350

Acknowledgment of service is a waiver of all irregularities in the mode of service. XII–239

Of a motion to set aside proof of service, should be given the opposite party. VII–274

Service by a party in interest is permissible under Rule 10. VI–552

Practice—Continued.

IX. NOTICE—Continued.

1. Generally—Continued.

Of contest must be served in accordance with the departmental rules and not under the civil procedure of the State. X–477

Regularity of, as shown by the record, will be presumed. IV–570

Sufficient where through continuances service preceded the hearing sixty days. V–41

New, to the defendant not required where an objection to the charge is sustained and leave to amend allowed. X–405

New service of, not required where the contestant is allowed to amend, but a continuance of the case may be allowed in the discretion of the local office. XV–223

Issuance of new, without due showing of diligence and inability to serve the first is irregular, but does not defeat service thereunder. IX–68

A party that fails to appear on the day fixed for hearing will not be permitted to plead want of, as to adjourned proceedings. XVII–4

Failure to perfect service of, where a case is continued for that purpose is proper ground for dismissal of case. XIV–689

Where a contest has been dismissed for illegal inception, notice must issue and trial be had in a new contest though record in former contest sustains the allegations. II–286

Questions affecting the sufficiency of, can only be raised by the defendant or one claiming under him. IV–127; XI–199; XXVIII–136

Where testimony is to be taken under Rule 35 as amended the notice must state the date of taking the testimony and the date of hearing at the local office. II–235

In computing the period of, given by personal service of a hearing before the local office, the day on which service is made should be excluded and the time counted from the next succeeding day. XXI–164; XXII–640

Thirty days', of a hearing is sufficient though an earlier date may be named in the notice for taking testimony under Rule 35. IV–540; XV–289; XXVIII–301

Intervening entryman is entitled to notice of any action that necessitates cancellation of his entry. X–302

Of the time and place fixed for a hearing to one of contestant's attorneys is due notice to the contestant. XVI–152

To an attorney of record of any action in a case is notice to the party he represents. VII–252; XIV–287, 700

Service of, upon the attorney in fact for the defendant is not sufficient, in the absence of proof that such attorney was empowered to receive service on behalf of the defendant. XXVIII–361

Practice—Continued.

IX. NOTICE—Continued.

1. Generally—Continued.

Of a hearing granted on application in support of an entry is sufficient if given by registered letter. XVI–47

Notice of a defect to an agent through whom an application is filed is notice to the principal. II–279

Rights lost through want of diligence in giving notice of contest. IV–491

Should be given before considering motion to dismiss. IV–489

Motion to dismiss will not be entertained in the absence of notice to the opposite party. IX–619

Of proceedings on the part of the government is not on the same basis as in the case of a contestant seeking to secure cancellation. XIV–84

Of action on town-site application should be given the party who files the same. XIV–628

Should be given the attorney of a railroad company of proceedings involving title under the grant where such attorney has been designated by the company to receive all such notices. (See *Appeal*, sub-head *Notice of.*) XV–247

Should be given the opposite party in the case of a petition presented to the Commissioner requesting the submission of a question to the Department for summary action. XIII–277

Of an application for certiorari should be served upon the opposite party. XIII–673

Of an application for certiorari need not be served upon the attorney of the opposite party where due service is made upon the party himself. XIII–520

Of an attorney's act imputed to the party he represents. V–439

Proceedings on a case reopened should not be had without due notice to all parties. V–212

To be given in pending cases on removal of local office. VII–527

To Indian claimant should be given through the Indian agent and where practicable to the Indian personally. III–449

In the case of a contest against an entry made under the general homestead law by a native-born Indian who has abandoned the tribal relation, it is not necessary to serve notice of such proceeding upon the Indian agent. XXVII–502

2. By Publication.

The essentials of service by publication defined. IV–84, 230; V–213, 611

In publication of, Rules 13 and 14 must be strictly followed. IX–606

Practice—Continued.

IX. NOTICE—Continued.

2. *By Publication*—Continued.

Rule 14 amended so as to not require posting on the land in case of government proceedings against entries under the timber and stone act. XIV–54

Rule 14 (1896) does not require, in service of, by publication, where the suit is against the heirs of the entryman, and the post-office address of such heirs is unknown, that a copy of the notice should be sent to said heirs at the last known address of the entryman. XXIX–445, 587

In service of, by publication, under Rule 14, as amended to take effect July 1, 1898, it is essential that notice of a contest against the heirs of a deceased timber-culture entryman whose address is not of record or named in the affidavit filed as the basis for publication should be mailed to them, by registered letter, at the post-office nearest the land. XXX–304

The affidavit required as the basis for publication of, may be made by any person who possesses the requisite information. XV–238; XXII–566; XXV–74

There is nothing in Rule 11 that requires a formal order of publication to be made by the local officers. It is sufficient if they authorize publication, either by formal order or verbally. XXI–277; XXV–74

Service of, by publication is not authorized in the absence of due order therefor based on a proper showing of diligence and inability to secure personal service. XVII–159

Service by publication is authorized where it is made to appear that personal service can not be secured by persistent and diligent effort. XIV–162

Service by publication not authorized where failure to secure personal service is due to the claimant's neglect to advance the fees required by the officer for such service. XII–311

Service by publication should be set aside when it appears that by ordinary diligence personal service could have been obtained. IV–536

Notice by publication can be given only where personal service can not be had. II–203

By publication is the proper notice to be made where the party to be served is shown to be a non-resident. XXI–277

Publication of, is warranted on an affidavit that alleges the defendant to be a non-resident and shows that personal service can not be secured. XXVII–654

Practice—Continued.

IX. NOTICE—Continued.

2. By Publication—Continued.

On affidavit by the contestant that he can not obtain personal service the local officers may authorize him to give notice by publication; he must furnish evidence of the publication, post a copy of the notice on the land, and prove such posting by affidavit; if they know no address to which a copy of the notice can be mailed, their report should so state. II–230

Publication of, only authorized when it is shown by the affidavit of the contestant or such other evidence as may be required that, due diligence having been exercised, personal service can not be obtained. IV–84, 536; XIII–240

If evidence is offered in support of the affidavit filed as the basis for publication, it should be written out and attached to the affidavit. XIII-240

Order for publication should not be made if the affidavit therefor does not show what effort has been made to secure personal service. I–85, 107, 299; IV–229; VI–335, 669; IX–75, 168, 606

Publication of, without the affidavit required as the basis for such form of service confers no jurisdiction. V–456; VI–669; VII–49; VIII–452; XI–315

Where a proper affidavit as the basis for service of notice by publication is furnished, and the order therefor duly made, but the service thereunder is defective, and new notice is required, a further showing as a basis for publication is not necessary. XXVIII–279

If an error occurs in the service of, by publication, which makes necessary a republication, a new affidavit should be filed as the basis of an order therefor, except where the defect in the service is discovered during the period of publication and a proper publication is promptly made. XXIX–693

Affidavit as the basis for publication is sufficient which sets forth that affiant lives in the vicinity of the land, is well acquainted there, knows that the defendant does not there reside, and that after diligent search he is unable to find said defendant. VII–274

As a prerequisite it must appear that personal service can not be obtained, and such showing must include attempted personal service on a transferee where his interest is known and he is a party to the suit; and in the absence of any such showing as to said party an order for publication is not authorized. XX–380

The publication and posting of a notice of a hearing ordered on the application of a mineral claimant to determine the character of a tract of land returned as agricultural, and listed as part of an odd-numbered section within the primary limits of a railroad grant, is not sufficient notice to the company of said hearing. XXIX–27

Practice—Continued.

IX. NOTICE—Continued.

2. By Publication—Continued.

Allegation that the address of claimant is unknown will not warrant publication of notice. II–50, 63, 288; III–249, 418, 518

An allegation that personal service can not be made within the State is not essential as the basis of publication. V–635

In an affidavit filed as the basis for an order of publication which sets forth that the defendant is not a resident of the State and personal service can not be made it is not necessary to show what efforts have been made to secure personal service. XI–261

Failure to show diligence in attempting to secure personal service, prior to securing an order of publication, can not be set up on behalf of a non-resident transferee. XXII–701

An affidavit that sets forth conclusions and not facts is fatally defective as a basis for notice by publication. VI–669

The showing required to authorize publication must be made before issuance of the order therefor. VI–669; VIII–452; IX–218

Publication of, not authorized on an affidavit that fails to show what effort has been made to secure personal service. Such defect can not be cured by additional affidavits filed after the issuance of notice. VI–669; XVI–26; XIX–316

Though the required affidavit is the basis of publication, its absence is not necessarily fatal; the proceedings, so far as irregular, may be set aside and be resumed from the point of departure. II–286

Where notice by publication is insufficient (for want of proper affidavit) and personal service was not made thirty days before hearing, proceedings based on them are void. II–288

Where the superior standing before the land department acquired by the applicant is to be attacked the contestant must strictly observe the regulations (time, posting, and mailing). II–766

A case should be remanded for a further hearing where judgment by default is obtained, and it appears that the notice was served by publication and was not published in the newspaper nearest the land, and that a meritorious defense exists. XIX–123

In service of, by publication the day of the first insertion in the newspaper may be computed as forming a part of the required period. X–620

Publication of, once a week for four consecutive weeks an essential in service by publication. III–529; IX–131

Where publication of, for sixty days is required there must be publication once a week for ten consecutive weeks. XIX–105

In service by publication sending a copy by registered letter and posting are essentials. III–326; IX–75

Practice—Continued.

IX. NOTICE—Continued.

2. By Publication—Continued.

By publication defective for want of copy by registered letter is not made good by subsequently mailing such notice without new posting and publication. XI–433

The refusal of the defendant to receive and open a registered letter known by him to contain a notice of contest will not thereby defeat the service. XII–403

In service of, by publication a copy must be mailed by registered letter to the last known address of the defendant. I–107; IV–378; VI–269; VIII–558; X–664

The entryman's address as given in his application to enter may be properly accepted by the local office as the post-office address of the claimant in transmitting notice of contest by registered mail. IX–135

Service of, by publication is defective, if a copy of the notice is not mailed by registered letter to the defendant at his post-office of record. XXIV–350

Mailing by registered letter a copy of the, to the address of the defendant as appearing of record is compliance with Rule 14. XXVII–654

In the service of, by publication the copy of the notice to be sent by registered mail should be directed to the "last known address" of the defendant, and not to the post-office nearest to the land involved in the contest. XXI–319

An allegation as the basis of an order of publication that inquiry for the defendant has been made in the locality of the claim, and at his "last known address," may be accepted as sufficient in that respect, though that address is not the one shown by the record, in view of the fact that the place of publication and hearing is at said record address, and no appearance is made in response to the notice. XXII–566

An allegation that the post-office address of the claimant is unknown does not excuse failure to mail notice to the *last known* address of such claimant. X–666

A non-resident defendant will not be heard to say that the affidavit filed as the basis for publication of notice was insufficient in that it failed to specify his last known address, where it appears that he in fact received the notice sent by registered mail. XXVII–99

In making service of, by publication it is not material who deposits the registered letter in the post-office, so that in fact such letter is sent as required by Rule 14. XIX–220

Practice—Continued.

IX. NOTICE—Continued.

2. By Publication—Continued.

It is the publication, and not the registered letter required by Rule 14, that constitutes legal notice; but such letter must have been mailed thirty days before the date of hearing. II–229

Of contest by publication includes posting on the land, and jurisdiction is not acquired without. I–107; V–611; VIII–578; IX–131, 561

In service of, by publication, posting in the local office and mailing notice by registered letter are essentials without which jurisdiction is not acquired. VI–408

Misstatement as to date of posting will not defeat the service where the error is corrected by special affidavit and testimony of the contestant. VIII–46

An error in the description of the land, occurring in the proof of posting, is not material, where it is apparent that the posting was duly made on the land in question. XIX–220

A non-resident will not be heard to say that due diligence was not used to secure personal service. V–456

Service of, by publication can not be defeated by a subsequent allegation under oath that the defendant's residence could have been easily ascertained. XII–453

Want of actual, may not be alleged if there was proper service by publication. V–635

Where publication of notice was irregular the technical objection to it will not be heard when the record shows that the alleged abandonment existed. II–63

Service by publication should be set aside when it is satisfactorily made to appear that the defendant is a well-known resident of the county in which the land is situated and that personal service could have been obtained by ordinary diligence. XII–568; XVI–378

On motion to set aside service of, the local officers may properly review their own action in directing publication. XIII–240

Service by publication is fatally defective where in the affidavit therefor and the subsequent publication the defendant is erroneously designated as "Frederick Van Dem" instead of "Hendrik Van Oene." XII–47

Jurisdiction is not acquired by the local office through publication of, until the end of the period of publication, and an order of the General Land Office, made before the expiration of said period, allowing an amendment of the entry involved, prevents the acquisition of jurisdiction by the local office. XVII–400

3. Heirs, Minors, and Insane.

Notice must be served on all heirs and not on the administrator and one of them only. II–227

Practice—Continued.

IX. NOTICE—Continued.

3. Heirs, Minors, and Insane—Continued.

To an heir who is also an administrator of the deceased entryman may be regarded as notice to such party in both capacities. VII–267

Legal service of, upon minor heirs requisite to confer jurisdiction in case of proceedings against an entry made in their name. XV–1

Must be served upon the heirs and legal representatives in case of contest against the entry of a deceased homesteader. XII–510; XV–27

Diligence to ascertain the names and last known address of the heirs or legal representatives of deceased timber-culture entryman required. VIII–452

On the substitution of the widow as defendant she is entitled to. XII–14

Should be given heirs of defendant in case of his death during pendency of proceedings, and case continued for such purpose. XVI–146

Compliance with the requirements of Rule 9 must be affirmatively shown to confer jurisdiction under proceedings that require service of notice upon minor heirs. XXVII–432

Of timber-culture contest should be served upon the heirs or legal representatives of deceased entryman. VIII–452

In proceedings against the heirs of a timber-culture entryman jurisdiction is not acquired in the absence of, to all the heirs, or due appearance on their part. XVII–532

Should be given the sole devisee of a deceased timber-culture entryman in attacking the entry. VIII–452

Service upon an alleged guardian will not confer jurisdiction over a minor if the fact of guardianship is not established. IX–218

Where contestee is insane, notice may not be served on him nor on the superintendent of an asylum where he is confined. II–230

Of a contest against the entry of an insane person must be served in accordance with the statutory regulations of the State or Territory. X–238

4. To Transferee.

Transferee of record entitled to notice of hearing. V–170, 253

Transferee not of record not entitled to, on the adverse disposition of the entryman's appeal. V–276, 589

Transferee of an entry entitled to notice of hearing. V–22, 170, 253

Assignee who has filed in local office statement showing interest in pending entry is entitled to. V–603; IX–561, 576

Of proceedings against an entry should be given a transferee who has filed in the local office a disclosure of his interest. VIII–641; X–566

Practice—Continued.

IX. NOTICE—Continued.

4. To Transferee—Continued.

Of all action taken should be given a mortgagee whose interest is disclosed by the record of proceedings, and in the absence of such notice the right of said party to be heard is not defeated by a judgment of cancellation. XV–224

Mortgagee may not plead want of, unless it is shown that the existence of the mortgage was made known to the local office in time for service. IX–131

A tranferee who has not filed in the local office a statement of his interest can not plead want of. IX–561; X–446; XXII–701

The assignee of a desert entryman is not entitled to notice of action, on the part of the government, adverse to his interests, if he has not prior to such time filed evidence of the assignment. XXVI–499

Failure to give, to a transferee who has filed a disclosure of his interest will not authorize reinstatement of an entry in the absence of reversible error in the judgment of cancellation. X–566

Transferee entitled to, under proceedings by special agent where the county records show the transfer. IX–576

Local officers under no obligation to search the county records to ascertain whether there is a transferee before issuing. IX–576

One known to the contestant and local office as an actual party in interest is entitled to. IX–480

Objection as to that given the entryman can not be heard from a transferee who was duly notified. VIII–46

Transferee who is duly served with, and is represented at the trial can not be heard to object that the heirs of the deceased entryman were not properly served. VIII–197

Purchaser before patent not entitled to notice of contest proceedings. I–106

5. Effect of Appearance.

General appearance without objection to, waives defects therein. I–116; IV–378; VI–269, 335; IX–643; XI–198; XII–263; XVII–393

A general appearance is a waiver of all defects or irregularities, if any exist, of notice, process, or service, necessary to confer jurisdiction. XXV–122

A defendant who appears generally without objection to the sufficiency of, can not raise such question after judgment. XI–418

Where the entryman appears and invokes the judgment of the Department he will not be heard to subsequently plead want of notice. XII–14, 32, 620

One who admits the service of, and appears generally without allegation of prejudice can not plead a defect therein. XI–269

Practice—Continued.

IX. NOTICE—Continued.

5. Effect of Appearance—Continued.

Stipulated postponement to a day certain waives all objection. XVI–122

Of proceedings waived by an appearance for the purpose of securing a new trial. XV–404

General appearance on hearing day and stipulation for continuance is a waiver of any irregularity in the service. XII–263, 602

Any defect in the service or proof of service is waived by the defendant appearing and procuring a continuance. X–273

Insufficiency of, may not be alleged by one who has secured a continuance of the case to a day certain. VIII–524

Appearance for the purpose of objecting to service of, does not confer jurisdiction; nor is the objection waived by subsequent participation in the trial. XVI–120

Special appearance for the purpose of objecting to the service of, does not waive the errors in said service. IX–131

Right to legal, not waived by proceeding to trial after objection. IV–378, 440, 537; XII–620; XIV–689

Participation of counsel in the examination of witnesses after motion to dismiss is overruled does not affect the force of his objections to the service. IX–131

Objection to the jurisdiction of the local office, on the ground that the, was not properly served, is not waived by proceeding to trial after a motion to set aside the service is overruled and exception taken. XXII–222

Where notice is defective the defendant may waive the informality, and does so if he proceeds to trial; but he is entitled to the full period of notice and may demand a continuance if he has not had it. II–203

6. Of Decision.

Of decisions should be formal and in writing. I–477; IV–73, 591; XI–261

Of departmental decisions and orders should be promptly served by the local officers. XXVII–339

In giving, of a decision, in a matter between the entryman and the government, it is the duty of the local office to use all record means at its disposal to obtain service on the entryman. XXIX–77

Circular directions with respect to notice of decisions. III–140; V–204; VI–12

Of a decision holding an entry for cancellation may be given by registered letter. XII–192

Practice—Continued.

IX. NOTICE—Continued,

6. Of Decision—Continued.

Of a decision by unregistered letter is not sufficient evidence of service. XI–261

Of a decision by mail, whether by registered or unregistered letter, will not bind the party to be served if such notice fails to reach him. XI–574

A mere docket entry of, by registered letter is not evidence that service of a notice of a decision was in fact so made. XXV–533

In the absence of, decision does not become final.
I–366; VII–42; XVIII–421

Of decision must be shown affirmatively to cut off right of appeal.
VI–108, 123

Of a decision will not be presumed; it must affirmatively appear of record. X–678

To losing party of adverse decision should include a copy thereof.
V–233; XVI–187; XVIII–192

The rule that requires a copy of the decision to accompany the, is not applicable where the notice is sent by the General Land Office to attorneys of record resident in Washington.
XIX–461; XX–89; XXVI–348

An acceptance of service of a decision and of the "further right of appeal," signed by an attorney of record, is conclusive as to the service and a waiver of the right of such attorney or his client to receive a copy of the decision in question. XXII–22

In writing from the General Land Office to the resident attorney of record in a case that "action has this day been taken" therein, is sufficient notice of an adverse decision. XIX–461

To the attorney of adverse decision sufficient. III–248; V–248; IX–170

Of a decision to an attorney of record is notice to the party he represents. XI–394; XII–388; XVII–139; XIX–354; XXV–34

Of decision to one of several attorneys representing the party is sufficient. I–119; XIII–265

Of a decision to an attorney who appears in a case on acknowledged authority is notice to all counsel appearing for the party he represents. XVIII–88

Where a party is represented by two attorneys of record, and one of said attorneys accepts, of decision, such party will not be heard to plead a private understanding between himself and his attorneys under which all notices were to be served on the other attorney.

Practice—Continued.

IX. NOTICE—Continued.

6. Of Decision—Continued.

Of a decision to an attorney of record is notice to the party he represents; and such party will not be heard to say that the employment of said attorney had in fact terminated prior to the service of said notice, if such fact is not disclosed by the record. XXV–294

Of a decision to the attorney of record is notice to the party he represents, but not to the heirs of such party. XIII–594

Of a decision may be served either on the attorney of record or the party he represents. XIV–428, 443

Of a rehearing given to the attorney of the party who applies therefor is sufficient. XV–404

Of the dismissal of a contest by the local office should be given the contestant's attorney. XV–436

To one of contestant's attorneys of the dismissal of the contest is due notice to the contestant of such action. XVI–152

Of decision presumed from relation of attorney to the various parties. IV–194

Of decision to attorney who acted in the initiation of the contest, but not at the hearing, is sufficient. III–183

Admissions of claimant and counsel as to notice of decision conclusive. VI–122

Of a decision to which the attorney of a party is entitled is not susceptible of service by publication. VI–335

Of decision when given to both the party and his attorney through the local office dates from service on the party. (See 11 L. D., 439.) I–464; II–374

Of decision shown of record not impeached by unverified statement of attorney. VI–775

Of decision mailed from General Land Office on date of signature. VI–140

Of decision to resident counsel by General Land Office must be regarded as served on the third day after it is mailed. XVII–139; XVIII–478

Failure to receive, of decision is no ground for reinstatement of contest if due to contestant's negligence. XIV–319

Failure to receive, of a decision can not be set up by one whose own laches has prevented service in the manner prescribed. XI–574

A party is not entitled to be heard on the ground that he did not receive notice of adverse action on his application to enter where the notice of such action was sent to the post-office address furnished by him and adverse rights have intervened. XIX–195

Practice—Continued.

IX. NOTICE—Continued.

6. Of Decision—Continued.

In the absence of a showing of fraud, an entryman will not be heard to allege his failure to receive, of a decision holding his entry for cancellation where such failure is due to his own negligence and the rights of a third party have intervened. XVIII–161

Of a decision can not be claimed as a right by a transferee who has no statement of his interest on file in the local office. XIV–126

Of a decision should be given a transferee where the fact of transfer is disclosed by the evidence, and in the absence of such notice the decision does not become final as to said transferee. XIII–78; XVII–48

Of a decision is not served by mailing a copy to an address not given by the party. XIII–225

Relation of attorney and client with respect to notice from the Department considered. III–409

In the absence of proof it will be presumed that notice sent by mail from the General Land Office to non-residents was received at the expiration of fifteen days from date of mailing. VI–140

Written admission of receipt of, in case of decision is proof of service. VI–108

Of an order revoking the suspension of an entry must be definite in its terms to charge the entry therewith. XXIII–240

7. Of Cancellation.

Of cancellation given through the mails should be in strict conformity with Rules 17 and 18. IX–490

Of the cancellation of an entry to the contestant's attorney is notice to the contestant. III–409; IX–70, 478; X–324; XI–202; XV–307; XXI–542

Of cancellation to the successful contestant not sufficient when given by unregistered letter. VII–335

Sent to the address given by the contestant precludes his right to plead want of notice in the presence of an intervening claim. XI–574

Of cancellation to the successful contestant by registered letter, is not effective if it fails to reach said contestant, and such failure is not due to any negligence on his part. XXVI–1

Of cancellation can not be denied in the presence of an intervening claim when sent to the address given by the contestant's attorney. XIII–670

Of cancellation to a successful contestant sent by unregistered letter is not sufficient. VIII–477

Practice—Continued.

IX. NOTICE—Continued.

7. Of Cancellation—Continued.

Of cancellation to an attorney erroneously entered of record is not notice to the contestant. VI–509

To the entryman's agent of an order of cancellation is notice to the entryman. XII–189

Of cancellation should be given to assignee if the fact of such interest is known. V–603

Of cancellation can not be claimed by a mortgagee who has not filed in the local office a statement of his interest. XIII–556

Of cancellation to a successful contestant must affirmatively appear of record to charge him with failure to exercise his preferred right within the statutory period. XVIII–439

One who files an affidavit of contest pending the disposition of a prior suit against the same entry is not entitled to notice of cancellation if the entry is canceled under the prior proceedings. XXIII–378

8. Of Appeal and Review. See sub-title *Appeal.*

Should be given the appellee in case of appeal from the local office. IX–252

Of appeal and argument should include legible copies thereof. V–449

Of appeal may be served by registered letter, and the proof of such service is made by the affidavit of the person mailing such letter, attached to a copy of the post-office receipt. XII–59

Mailing appeal and specification of errors by registered letter within seventy days after notice through the local office of the adverse decision is proper service. V–475, 479

Of appeal from a decision favorable to the entryman must be served on the representative of his estate if said entryman dies prior to appeal. VI–779

Of appeal sent by non-registered letter is sufficient if the receipt thereof is acknowledged in writing. V–479

Transmission of, in case of appeal by registered letter *prima facie* evidence that it was duly received. V–479

Proof of mailing notice of appeal by registered letter is proof of service. V–475

Written admission of the receipt of, in case of appeal sufficient. V–479; VI–108

If not addressed to the appellee in his true name and he did not receive the same, the Department is without jurisdiction. IX–168

Service upon attorney of record sufficient notice of appeal. IV–8

Of appeal from the rejection of application to enter, departmental ruling in force at time of appeal should be recognized. XIV–662

Practice—Continued.

IX. NOTICE—Continued.

8. Of Appeal and Review—Continued.

Of appeal to other applicants for the same tract need not be given in case of a rejected application to enter where the question is solely between each applicant and the government (see 17 L. D., 325). XIII–392

Of motion for review should be given within the time for filing such motion. IV–99, 106

Of motion for review must be given to the opposite party. IV–145; V–382

Where two or more cases, involving the same tract of land, have been consolidated and considered together, notice of motions for review must be served upon all parties in interest. XXIV–402

Prior to the reconsideration of final departmental action, due, should be given all parties adversely affected thereby, and intervening claimants called upon to show cause why their entries should stand. XXVI–143

Of a motion for review, and oral hearing thereon, may be given to an attorney of record representing a party before the Department, and when so given is as fully conclusive upon such party as though served upon him personally. XXVI–111

X. PROCEEDINGS BY THE GOVERNMENT. See sub-titles *Appeal* and *Notice.*

Instructions respecting the practice at hearings for the purpose of inquiring into alleged fraudulent entries, ordered on the reports of special agents. II–807

Circulars of July 31, 1885, and May 24, 1886, directing the manner of proceeding against entries on special agent's report. IV–503, 545

Pending cases not affected by the circular of July 31, 1885. V–372

On special agent's report; order of July 6, 1886, returning cases for disposition under the circular of July 31, 1885, as amended. V–149

On special agent's report, instructions of November 4, 1895. XXI–367

Will not be held as conclusive in the absence of notice of such action as required by the circular of July 31, 1885. XI–278

Entryman not entitled to plead want of notice of, where he appeared as a witness for the government. XI–311

Ordered on the report of a special agent must be conducted in accordance with the practice in contests so far as it is applicable. IX–131

On special agent's report a proceeding *de novo.* V–22

Practice—Continued.

X. PROCEEDINGS BY THE GOVERNMENT—Continued.

It is within the discretion of the Commissioner to order a second hearing in the interest of the government. VI–39

The right of the government to test the validity of an entry in a direct proceeding is not defeated by its failure in a collateral proceeding to ascertain the character of said entry. XX–516

The Department will not control the discretion of the Commissioner in ordering a hearing on the report of a special agent where the facts as alleged in said report are denied. VI–705

Discretionary authority conferred upon the Commissioner by Rule 72 will not be controlled in the absence of an apparent abuse. IX–626

Investigation of an entry by special agent may be directed without recognizing an adverse claimant as a party thereto where the question at issue is solely between the entryman and government. XIII–524

Should not be ordered on report of special agent on matters covered by a former contest unless collusion existed between the parties. IX–217

Will not be ordered on the report of a special agent if the facts as shown therein are not denied. VIII–306

The government has the right to appear before the local office, submit testimony, or examine witnesses offered by the parties to a contest. VIII–2

The government has the right to direct the continuance of a case in order to investigate the same. VIII–2

Withdrawal or death of contestant does not prevent action on evidence adduced. V–40, 386; VIII–598

Error on the part of the contestant will not bar the government from acting upon facts established on trial. IV–512

The Department on behalf of the government may take advantage of information brought out on trial. V–372, 395, 590; VI–300

The Department may on its own motion institute proceedings looking to the cancellation of an entry. IV–235, 239, 249, 260; VII, 25

A hearing may be ordered after preëmption entry is allowed to inquire into fraud reported by a special agent. II–787

A hearing is not necessary where the facts as shown by special agent's report are not denied; but if the entry is canceled the claimant or assignee is entitled to be heard before the Department on the record as made. VIII–306

Admission by the entryman that the facts as stated by a special agent are true does not extend to a conclusion contained in the agent's report. XI–462

Practice—Continued.

X. PROCEEDINGS BY THE GOVERNMENT—Continued.

During the pendency of, a stranger to the record will not be allowed to show intervening rights, but must await the disposition of the pending action. XI–507

In proceeding by the government the local officers and special agent are under no obligation to examine court records to ascertain the interests of transferees. XVI–47

A transferee may be heard to defend the entry where the county records show his interest and the proceedings were had without notice to him. IX–576

Transferee entitled to be heard where the entry is canceled without notice to him even though the record does not show the transfer. VIII–283, 526

Transferee entitled to notice of, where the special agent's report disclosed the fact of transfer. V–170

Failure of the entryman to apply for hearing on due notice of order of cancellation on special agent's report is a confession of the charge and a waiver of claim to the land. VI–777; XVI–259; XXII–433

Circular of May 15, 1889, directing the suspension of, where success is doubtful, not applicable to hearings ordered by the Department. XI–369

Cases decided in the regular course of business should not be reopened by the Department *sua sponte* after the lapse of a considerable period and in the absence of any alleged fraud or wrong to an adverse claimant. VI–629

The entryman may show acts in compliance with law performed after notice of proceedings. VII–486

May be dismissed by the local office on motion, subject to review by the General Land Office. V–3

When ordered on special agent's report the government should submit its testimony first. IV–62, 65; V–2, 22

XI. PROTESTANT. See *Mining Claim* and sub-titles herein, Nos. IV and VII.

Status not that of a contestant. II–581; III–399; VI–765

Protestant loses his right to be heard by failure to appear at hearing after due notice. III–374

XII. REHEARING. See sub-title No. XIII.

Rule 114, regulating motions for, before the Department rescinded, and new rule substituted therefor. XVIII–472

Rule 114 amended. XXIII–106

Practice—Continued.

XII. REHEARING—Continued.

The Secretary of the Interior may, in the exercise of his supervisory authority, by due order, make a motion for, filed out of time, act as a supersedeas, but in the absence of such order, it should not be so treated in the General Land Office. XXVI–441

Should not be filed with motion for review, but separately. XIII–726

Motion for, is based upon newly-discovered evidence or error occurring in the trial. XIII–726

Newly-discovered evidence furnishes a proper basis for a new trial, if it is apparent that such evidence, if introduced and unrebutted, would determine the issue between the parties, and the applicant for new trial is not chargeable with laches in failing to procure such evidence at the time of the trial. XXIX–581

Error occurring at the time of trial, by which competent and material evidence is excluded, will be considered on application for a new hearing. XXIX–581

Application for, should not be considered without due notice to the adverse party. VI–236

Failure to serve notice of application for, not excused by misinformation from the local office as to the requirements of the rules of practice. VI–236

Application for, made by a contestee who shows want of notice of former proceedings and a meritorious defense should not be rejected because not served on the opposite party, but the applicant should be required to serve such party with notice of the application. XVI–506

Should not be granted in the absence of a *prima facie* case made out for investigation. VI–788; X–485

Permission to amend defective application for, will not impair intervening adverse right. VI–236

Prior to final action it is within the discretion of the local officers to reopen a case for the submission of additional testimony. XV–93

Application for, made while the case is before the local office should be considered by the register and receiver and decision rendered thereon. XIV–227

Application for, should be made before the local office if the grounds therefor are known while that office has jurisdiction. VI–9

Motion for, before the local office should be taken up and disposed of promptly. III–539

New trial will not be granted on contestant's application save in exceptional cases. III–551, 563

Except when based upon newly-discovered evidence, motion for, must be filed within thirty days from notice of decision. IX–668

There is no limitation as to the time within which a motion for, based on newly-discovered evidence, should be filed. XVII–220

Practice—Continued.

XII. REHEARING—Continued.

A motion for, filed out of time can only be received as an appeal to the supervisory authority of the Secretary, and should, therefore, be made by a petition addressed to such officer, and filed in the Department proper. XXV–154

Directed by the Department on the general merits of a case brings the record before the General Land Office for decision upon all questions that may thus be presented. XIII–254

When granted, the case is generally tried *de novo*, and the petitioner in such case will not be heard to complain of former proceedings therein, however defective they may be. XI–319

Ordered in a contest case is at the expense of the contestant. XVI–481

Will not be allowed unless the grounds for, assigned bring the case within the rules and well-established principles relating to new trials. II–344

Not granted in contested case except under the rules of practice. VI–239

An allegation of additional evidence not newly discovered made for the first time on review comes too late to justify. XI–565

Will not be ordered where the evidence proposed to be offered would be merely cumulative. II–721; VI–9, 32; IX–581; XII–233

On application for, *ex parte* affidavits may be considered where they present newly-discovered evidence. XIII–562

Will not be granted on the ground of newly-discovered evidence where such evidence tends simply to discredit or impeach a witness. VII–136; XXII–530

Will not be granted on the ground of alleged newly-discovered evidence where such evidence is cumulative and intended to contradict or impeach the witnesses of the adverse party. XXV–438

In motions for, resting on newly-discovered evidence it should be shown that said evidence could not have been discovered by due diligence, and the facts showing such diligence should appear. VI–9; VII–136; X–483; XVIII–31; XIX–543

A motion for, on the ground of newly-discovered evidence can not be allowed on the unsupported affidavit of the applicant. XVIII–72

Motion for, based on newly-discovered evidence should be supported by the affidavits of the witnesses who will testify to the alleged newly-discovered facts, or reasons given for their non-production. XI–618; XIII–265

Will not be granted on the offer of additional evidence that was withheld on the original proceeding. XIII–211; XVII–348

Practice—Continued.

XII. REHEARING—Continued.

A new trial will not be granted on the ground of newly-discovered evidence, where such evidence is expected from a witness who was called and examined on the trial, it being the duty of counsel to question the witness, when upon the stand, as to all matters pertinent to the case. XIX–543

Will not be granted on the ground of newly-discovered evidence where the applicant neglects to properly present his case at the hearing before the local office. XVIII–486

Facts known to the applicant at the time of the hearing and in his possession then can not be considered as newly-discovered evidence on application for retrial. XIII–562

An affidavit in support of a motion for, on the ground of newly-discovered evidence, must show that the evidence was unknown to the party, not merely to his counsel; and the affidavit of counsel is insufficient without that of the party. XIX–543

Allegation of newly-discovered evidence as basis for, should specifically state when the discovery was made. IX–581

Motion for, based upon newly-discovered evidence should show that the alleged discovery was acted upon without unnecessary delay, and the proof of diligence should be clear. X–96; XI–618; XIII–265

Will not be granted on the ground of newly-discovered evidence unless such evidence is of that character to necessarily cause the trial court to arrive at a different conclusion. VII–136; XIII–726; XXVI–441

Not ordered when the application sets up facts that should have been presented at the former hearing and gives no reasons for not presenting such facts at that time. VI–422; IX–581

On the ground of newly-discovered evidence will not be granted if the new evidence relates to matters not material under the issue at bar. XVIII–478

Will not be granted on the ground of newly-discovered evidence, competent only to support a charge laid in the contest affidavit on which no evidence was offered at the hearing. XVIII–257

Required where the record is indefinite and it can not be determined therefrom whether the defendant had due notice of the day set for the hearing. XI–117

In proceedings by the government against an entry held by a transferee the entryman is not entitled to, on the ground that he was not served with notice of such proceedings and the orders made thereunder where he appears as a witness for the government and sets up no rights under the entry. XI–311

Practice—Continued.

XII. REHEARING—Continued.

Application for, though once denied, may be allowed where it is made to appear that the decision in question was procured through fraud and deceit practiced upon the government. XIV–93

A second motion for, based upon the same alleged newly-discovered evidence, considered and passed upon in the disposition of a former motion for rehearing in the same case, should not be entertained. XXV–487

Denied where the motion discloses sufficient reasons for canceling the entry. VI–335

May be ordered on the report of the local officers based on an inspection of the land involved. VIII–38

An offer to prove statements made by the opposite party to his attorney does not furnish ground for a new trial. VII–136

Should be allowed where evidence was introduced and considered on an issue not raised on the hearing as originally ordered. VII–433; VIII–159

Ordered where the case rested upon *ex parte* evidence. IV–201

May be allowed where the contestant relying on the assurance of the local officer, before whom the case was heard, that evidence sufficient to warrant cancellation had been introduced, did not submit further testimony, and it is found on review of the proceedings below that the evidence in the case does not justify cancellation. XXV–464

Not granted on allegation that the evidence was not properly transcribed where such fact might have been discovered while the case was in the local office. IV–184

Will not be allowed where the applicant, relying upon technical grounds, did not submit testimony when the case came up for trial. VII–312

Defendant is not entitled to, when on the trial he submits no evidence, but elects to plead a statutory defense that is subsequently held not good. XVI–348

The remedy of a party who is not ready for trial is by way of motion for continuance, and not by application for, filed after default and judgment. XXVI–341

Will not be granted where it appears that on the trial the defendant rested his case on a demurrer to the evidence that was then overruled, and, at such time, declined to introduce testimony on his own behalf. XX–557

A party in whose interest a, has been ordered, that does not submit evidence, but relies upon a technical defense, must abide his election in the event of an unfavorable judgment. XX–369

Practice—Continued.

XII. REHEARING—Continued.

If the party adversely affected by an interlocutory order withdraws from the case, he is not entitled to have it remanded for further hearing even though it may appear that the local office erred in its ruling. XXIV–88

Not granted to one whose motion to dismiss for want of evidence is denied by the local office. XVI–88

May be allowed where the applicant, acting in good faith and believing that the officer before whom the testimony is to be taken is prejudiced and interested in the result, does not submit his testimony before such officer. X–433

Where all the parties interested had full opportunity to be heard on the question and no new matter of fact or law is presented, denied. II–345

Will be allowed for the purpose of showing that collusion between the entryman and the contestant's attorney defeated the hearing on its merits. II–583; VII–262

Incompetency of applicant's attorney in the original proceedings not sufficient grounds for. XI–618; XII–233

Not allowed on the plea of poverty as an excuse for failure to submit evidence at the hearing. XVII–116

A proposition to pay the costs of a rehearing, if one should be ordered, can not be considered in aid of a motion for a new trial. XXV–487

On a corroborated charge of fraud, though irregularly made, a rehearing will be ordered. III–57

Unsworn statement of the applicant's neighbors, showing his compliance with law, can not be considered on motion for, in a contested case. VI–239; X–96

Ex parte affidavits after judgment are to be received with great caution, for the reason that they are apt to encourage fraud. II–720

Can not be secured through an amendment of the contest affidavit that essentially changes the nature of the charge. XXI–94

A case will not be remanded for the purpose of inquiring into charges of abandonment subsequent to a final decision of the Department, though such charges may form the proper basis for a new contest. XIX–294

Failure to comply with the law since the decision is matter for new contest, but not for rehearing. IV–185

Matters arising subsequently to the initiation of a contest do not furnish proper grounds for a, but should be presented in a new and independent proceeding. XXVII–73

Practice—Continued.

XII. REHEARING—Continued.

Will not be ordered on a cause of action arising after the close of the hearing before the local office, and pending appeal from its decision. XXV–394

Matters occurring after the original hearing in a case do not furnish grounds for a, therein, though such matters may afford sufficient foundation for a new contest. XXV–155

A decision of the Department, denying a motion for, on the ground that the matters therein alleged were not in issue at the original hearing, does not preclude the Commissioner of the General Land Office, in the exercise of his original jurisdiction, from subsequently directing an inquiry, in the nature of a new contest, to determine questions arising since the hearing of the original suit. XXV–329, 471

Rehearing should not be allowed after default without excuse. III–247

Conditional application for, in the event of adverse action on a pending appeal not authorized. XVI–266

Not granted where an order therefor made by the local office was set aside on applicant's motion. V–425

The authority of the Commissioner of the General Land Office to order, in a contest case is not restricted to cases in which the applicant is entitled thereto. XVI–481

Commissioner's discretion in ordering, will not be controlled by the Department in the absence of an apparent abuse of discretionary authority. XI–260; XVI–481; XXVIII–503

A decision by the General Land Office ordering, will not as a rule be disturbed on appeal, but the Department has full authority to set aside such a decision whenever it is deemed proper to do so. XXX–442

Not accorded a transferee unless he shows that he can furnish other and better evidence than that submitted by the entryman. XII–462

Rule 72 is limited in its application to cases in the General Land Office. XV–195

The Commissioner has no authority under Rule 72 to consider a showing made for, when it has been considered by the Department and the application denied. XVI–180

In the absence of prejudice shown, it is no ground for a, that at the time of the trial the statute governing the proceedings received a construction that is no longer followed. XVIII–565

In case of a, ordered by the Department the evidence should be confined to the issue as defined in the departmental order. XXII–392

Practice—Continued.

XII. REHEARING—Continued.

A motion for, filed before the General Land Office, but transmitted without action on the appeal of the other party, should be remanded for the consideration of the Commissioner, but, if not so remanded, may be treated as protecting the right of the applicant to be heard before the Department. XVIII–409

The transfer of a case, during the hearing, from one townsite board to another is no ground for a, where all the testimony is reduced to writing and before the board that rendered judgment. XXIII–578

XIII. REVIEW. See *Notice.*

Rule 114, regulating motions for, before the Department rescinded, and new rule substituted therefor. XVIII–472

Rule 114 amended. XXIII–406

Report from the local office should be received before closing a case that has been before the Department. XXI–496

When two or more parties are each entitled to file motion for, and one of them files such motion, it should not be transmitted to the Department for consideration until a report has been received from the local office as to the service of notice of the decision, and whether motion for review has been filed, within the time allowed, by the other party or parties. XXVII–339

Motion for, is based upon some error in the findings of fact or construction of law. XIII–726

Motion for, should not be filed with motion for rehearing, but filed separately. XIII–726

Modification of practice in the matter of filing motions for. XV–424

Instructions concerning the closing of cases on motion for, under the change of practice as directed November 15, 1892. XVI–334

The rule of practice relative to closing cases on, announced in Allen *v.* Price, 15 L. D., 424, did not contemplate its application to cases where an entry had been formally canceled prior to said decision. XXV–377

Motion for, must be accompanied by an affidavit that it is made in good faith and not for the purpose of delay. IV–252; VIII–331; IX–65; X–43, 446; XI–623; XVII–348

The provisions of Rule 78 requiring a motion for, to be accompanied by an affidavit that the motion is in good faith, enforced with a reasonable degree of strictness when invoked by the opposite party. XVI–87

Motion for, must be accompanied by the affidavit of the applicant or his attorney that the motion is "made in good faith and not for the purpose of delay," and this requirement is not met by an affidavit of the attorney as to the verity of the matters stated in the motion. XVI–498

Practice—Continued.

XIII. REVIEW—Continued.

On motion for, before the Commissioner it is within his discretion to waive the requirement of an affidavit that the motion is in good faith. XII–647

When two parties are adversely affected by the same decision the appeal of one will not preclude motion for, by the other. V–410

When a motion for, and appeal by the different parties are based on the same grounds of error, the granting of the motion suspends the operation of the appeal, and the General Land Office should pass on all issues and determine therefrom which of the parties has the superior right. XVIII–575

The affidavit required under Rule 78, accompanying a motion filed out of time, can not be taken in aid of a previous motion that is not thus supported. XIII–265

Due notice of application for, must be given to the opposite party. IV–145; V–382

Notice of motion for, must be given all parties in interest. XXIV–402

Notice of a motion for, must be given within the time for filing the same. V–99

Where notice of a decision is given by the local office through the mails ten days additional will be allowed for filing motion for. XVII–295

In computing the time allowed for filing a motion for, where notice of the decision is given through the mail to resident counsel by the General Land Office, such notice must be regarded as served on the third day after it is mailed, and such day of service excluded. XVIII–478

Motion for, except when based upon newly-discovered evidence, must be filed within thirty days from notice of the decision. IV–11, 252; V–17, 382; IX–360; X–43, 413

Time within which a motion must be filed, except in case of newly-discovered evidence, begins to run from the date when notice of the decision is received. XIII–265

Time within which a motion for, must be filed begins to run from the date when service of the notice of decision is first made where such notice is served both upon the attorney and the party he represents. XIV–443

Motion for, based on alleged newly-discovered evidence may be entertained though not filed within thirty days from notice of the decision. XII–647

In the absence of sufficient reason shown, a motion for, will not be considered if not filed in time. XI–511

Practice—Continued.

XIII. REVIEW—Continued.

A motion for, not filed and served within the period prescribed by the rules of practice will not be entertained against the objection of the opposite party. XVII–295

Motion for, will not be dismissed on the ground of being filed out of time where the date of the service of the notice of the decision is not affirmatively shown. XII–226

Rule 79 does not apply to motion filed out of the time allowed for the appeal. XIV–154

Rules regulating time allowed for motions modified in Oklahoma town-site cases. XII–187

Rule limiting the time within which motion may be filed will be strictly enforced in contested cases. IX–668

That the application for reconsideration was not filed within thirty days is immaterial where the former decision rested upon an imperfect record showing as to the facts. III–42

Application for, is addressed to the discretion of the court. V–410

Not granted unless the case is brought within the rules and principles relating to new trials in the courts. I–209, 239; III–537, 607

Will be denied where no new question is presented for consideration. III–557, 598; V–438; IX–580; XII–226 XIII–506, 570; XIV–90; XV–195, 330; XVIII–478

Will not be granted in the absence of specific allegations of error. VI–781; VIII–331; X–43; XI–8; XVIII–565

Not sufficient to allege generally that the decision is not in accordance with the law and evidence; the errors of law should be specified and attention directed to the particular evidence relied upon to secure a reversal of the decision. V–150; IX–81, 340, 503; X–446

Not granted on the ground that a reëxamination of the evidence may bring about a different result. IX–580; XIV–98

Not granted on the ground that the decision is against the weight of evidence if there was contradictory evidence on both sides. I–111; V–150; VI–9, 243, 299

Not granted on the ground that the decision is against the weight of evidence if fair minds might reasonably differ as to the conclusion that should be drawn from such evidence. V–387; VIII–331; IX–55, 419, 580; X–36; XIII–562, 615; XIV–426

On the ground that the decision is not supported by the evidence will not be granted unless it is affirmatively shown that the decision is clearly wrong and against the palpable preponderance of the evidence. VIII–248, 331; IX–55, 98, 463; XIII–562

Practice—Continued.

XIII. REVIEW—Continued.

If allowed on the ground that the decision is contrary to the weight of evidence where there is some evidence to sustain the decision, it must appear that the latter is clearly against the palpable preponderance of the evidence. X–487

Will not be granted if the decision is warranted by evidence independently of the alleged erroneous finding of fact. VIII–331

Not granted in case of concurring opinions of the local office, the Commissioner, and the Secretary, if there is evidence to support the decision and it is not unquestionably in violation of law. VI–97

Reversal of concurring decisions of the local office, General Land Office, and the Department on a finding of fact not justified except on a strong and clear showing. XI–618; XIX–108

Concurring decisions of the local and General Land Office and of the Department not disturbed on motion for, on the ground that the decision is against the weight of evidence where the testimony is such that fair minds might differ. This rule is not limited to cases where the testimony is taken before the local officers. XV–196

Granted on newly-discovered evidence that is material to the issue. VI–243

If granted on the ground of newly-discovered evidence, it must appear that such evidence could not have been discovered by reasonable diligence in time for trial. X–489

Evidence not newly discovered comes too late when offered for the first time on motion for. XXV–533

Motion for review of a predecessor's decision will be entertained where it is alleged that newly-discovered and material facts are presented which, if before considered, would have changed the judgment. II–564

On application for, evidence of record and easily to be obtained will not be considered "newly discovered." IV–511; VI–41

Evidence in possession but not offered at the hearing can not be considered as newly discovered for the purpose of a reconsideration. III–104

Affidavits should not be submitted with a motion for, for the purpose of supplying facts that should have formed a part of the case as presented in the first instance. XXIII–28

Not granted on newly-discovered evidence which goes only to impeach the credit or character of a witness. VIII–331

Evidence cumulative in character or tending to produce a conflict with that already submitted can not be accepted as proper basis for. VI–243; IX–295; XV–424

Practice—Continued.

XIII. Review—Continued.

On the ground of newly-discovered evidence can not be granted where the evidence is first discovered and offered by another as the basis of a contest. XVI–39

In support of a motion for, testimony as to facts that occurred after the hearing can not be considered newly-discovered evidence. X–43

A cause of action arising after the hearing before the local office, and during the pendency of appeal therefrom, can not be made the basis of a motion for, of the departmental decision rendered on the appealed case. XXIV–399

Application for, before the tribunal rendering the decision should be made when new matter is relied upon to set aside such decision. VIII–294

Errors not alleged on appeal are not grounds for. VII–497; IX–581

Will not be granted on questions that should have been presented by way of appeal. IX–65

Will not lie for the consideration of a question not in issue when the original decision was rendered. IX–337; XX–535

A question as to the correctness of the record comes too late, when raised for the first time on motion for. XIX–473

A motion for, that raises a question that was not in issue either at the hearing, or before the General Land Office, or the Department, on appeal, will not be granted. XX–528

Objection to the affidavit of contest will not be considered when raised for the first time on motion for. VII–497

The sufficiency of the charge, on which a hearing has been held, can not be called in question on, if no objection thereto was made at the hearing. XXIV–301

Questions as to the regularity of a trial will not be considered when raised for the first time on motion for. XIII–269

On motion for, questions will not be considered that are raised for the first time which should have been presented at the hearing. XIII–615; XX–213

A question not raised nor determined in the decision will not be considered on motion for. XII–503

Will not be granted unless it clearly appears that manifest injustice has been done. X–311

Of a decision that approves the action of the Commissioner in ordering a hearing will not be granted except on the most cogent and conclusive reasons. X–600

Of a departmental decision ordering a hearing will not be granted, where the questions raised by the motion may be considered when final action is taken on the merits of the case. XVII–576

Practice—Continued.

XIII. REVIEW—Continued.

There is no authority in the rules of practice for, of an order of the Secretary of the Interior directing a hearing. A revocation of such order should be sought through an application to the supervisory authority of the Secretary. XXIV–400; XXVI–304, 377

A motion for, of a decision of the Secretary, in which he refuses to exercise his supervisory authority, is not provided for in the rules of practice, and will only be considered in cases presenting strong and exceptional reasons. XXV–154

Denied where it involves the reversal and disregard of repeated executive and judicial decisions and the matter has passed beyond executive control. VI–462

Will not be granted where the claimant or transferee is allowed a further opportunity to support the entry, unless there is a palpable abuse of discretion as shown by the record, in directing the hearing or requiring new proof. X–651

Not warranted on the ground that a witness was prevented by intimidation from testifying fully if the importance of the testimony is not shown. X–483

That applicant's attorney did not conduct the case skillfully is no ground for. X–483

Refusal of officer before whom testimony was taken to grant a continuance not ground of, where exception to such action was not taken below. VII–497

When a case involving purely questions of law is decided in an appellate tribunal re-argument is never heard except when based upon the suggestion of some member of the court who concurred in the judgment. II–845

Alleged error in construing a statute or dereliction in respect of the consideration given it is not ground of review. II–845

That a decision has been overruled is no ground for, if the decision has become final as between the parties. X–413

A decision of the Department will not be reviewed on the ground that the departmental rule followed therein has been reversed by the supreme court, where said decision, when made, was in accord with the rulings of the Department. XXI–128

Of a departmental decision affirming the action of the General Land Office will not be granted where prior to the appeal the appellant had acquiesced in the adverse judgment and subsequently complied with its requirements. X–439

Right of, waived by electing to proceed under the decision. IV–144

Promulgation of a departmental decision not subject to review in the General Land Office. XV–190

Decision denying a writ of certiorari not subject to. VIII–423

Practice—Continued.

XIII. Review—Continued.

Motion for, of decision denying a writ of certiorari should be treated as a petition for the exercise of the Secretary's supervisory authority. XVII–108, 111

Decision of board of equitable adjudication not subject to. I–411

Stranger to the record will not be heard on review. III–300; XIV–451

Not granted to transferee except on such showing as would entitle the entryman to be further heard. V–589; IX–580; XI–623

Motion for, filed by a transferee must set up facts sufficient to show that he is entitled to such hearing. XI–194

Transferee who applies for, alleging that the decision is not final as to him for want of notice, must show that a statement of his interest was on file in the local office. XIV–126

Will not be granted on the application of a transferee who, with notice of the pendency of the case, fails to disclose his interest therein while it is under consideration. X–81

A motion for, filed by an alleged agent and attorney of a State will not be entertained where such attorney has not complied with the regulations in regard to the admission of attorneys at law to practice before the Department, and has shown no authority to represent the State either as attorney or agent. XXIV–525

Allowed on showing that notice of decision was not received. IV–242

Not granted except on full hearing of all parties. IV–84, 106

On motion for, the Department may examine any material question which it appears from the record was not considered in the original decision. VIII–400

No ground for, that the decision rendered was embraced in a number of cases considered at the same time and covered by the promulgation of one decision. XIII–503

On motion for, the facts and issues in another and independent case pending in the General Land Office can not be considered by the Department. IX–497

Evidence submitted under a second contest allowed before the final disposition of the first can not be considered in support of a motion for, of the decision rendered in the prior case. XXIII–377

On motion for, it will not be presumed that papers improperly in the record were considered if the conclusion reached was warranted by competent evidence. IX–419

In consideration of motion for, it will be presumed that record facts as found in the government archives, as well as all facts presented by the parties, were within the Secretary's knowledge, and were by him considered in his former decision. XVII–79

Motion for, can not be entertained by the Commissioner after appeal from his decision. III–539; IX–165

Practice—Continued.

XIII. Review—Continued.

Motion for, can not be entertained by the Commissioner after an appeal has been taken from his decision unless the appeal is withdrawn and made of record. XII–80

Where the motion for, is lost or mislaid a copy thereof may be substituted. XII–220

Request for, based on *ex parte* affidavits after judgment received with caution. III–344

Where the Secretary dismisses a motion for review the case is not held open for thirty days thereafter under Rule 76. III–595

Pendency of motion for, excludes intervening claims. X–192; XII–529; XIII–429

A motion for, filed within time operates as a supersedeas, but if not filed within time the execution of the judgment can only be stayed by the direct action of the Secretary. XII–45

On denial of a motion for the, of a decision denying the reinstatement of an entry the land is at once open to entry. XX–391

Motion for, does not operate to reserve the land involved, but subsequently acquired rights are subject to the final disposition of the motion. XIII–182

During the pendency of a motion for, before the Department, the General Land Office is without jurisdiction to make disposition of the land involved. XVII–8

Denial of a motion terminates on the date of such decision all rights reserved by the pendency of the motion, and the judgment under consideration is thereupon final. The only right remaining to the losing party thereafter is an application to the supervisory authority of the Department. XV–421

Motions for, are disposed of as soon as a proper consideration thereof will admit. IX–295

Motions for, usually take precedence of appeals on the regular docket. IX–295

Application for, should be acted upon without prejudice to rights recognized in the first decision. V–608

Motion for, before the Department must be filed in the General Land Office. III–595

A motion for the review of a departmental decision filed in the General Land Office should be submitted to the Department for its action thereon. XIII–33

Rule 114 requires but the transmission of the papers filed in support of the motion. IV–275

The Commissioner of the General Land Office not authorized to review the decision of his predecessor. III–256

Practice—Continued.

XIII. REVIEW—Continued.

The Commissioner of the General Land Office has no authority to entertain a motion for, of a decision that has become final for want of appeal. XX–490

The Commissioner has authority to review a decision of his office *sua sponte* and without notice to the parties where such action is required to put the office in accord with its own record. VII–13

Commissioner may review his predecessor's decision where notice of such decision has not been given. VII–42

A final decision of the General Land Office should not be reopened by the Commissioner without prior notice to the adverse party in interest; but if such action is thus taken and the party adversely affected thereby is then notified of his right of appeal therefrom, such notice should be treated as a rule to show cause why the judgment, as modified, should not stand, and his appeal as the answer thereto. XXII–600

The Commissioner may review and revoke a decision of his office that is not final on the merits and from which no appeal will lie. XXII–159

The Commissioner of the General Land Office may reconsider the decision of a predecessor in a case where there has been no judgment on the merits. III–50

While the subject-matter of a case remains within the jurisdiction of the General Land Office the Commissioner has authority to revoke, on his own motion, and for due cause, a former decision therein, and render a judgment in accord with the record. XIX–312

A petition for, will not be entertained, where it is in effect an application for the reinstatement of an entry that was canceled under a ruling of the General Land Office not called in question when the case was before the Department on the appeal of the petitioner. The application in such case should be addressed to the General Land Office. XXVIII–451

On motion for, the Department may reconsider a decision, rendered on an incomplete record, where jurisdiction of the land yet remains with the Department, and it appears that the rights of others, not parties to said proceedings, have been prejudiced by subsequent departmental action based on said decision. XIX–446

A decision rendered on an incomplete record will be set aside, where, on application for relief under amended Rule 114, it appears that such action is required by the completed record. XIX–584

Prior to the issuance of patent, the land department may reopen a case, to correct an error in the decision thereof, and readjudicate the same, after due notice to the parties. XXIV–280

Practice—Continued.

XIII. REVIEW—Continued.

In the absence of motion for, the Department has the requisite authority to correct its own mistakes while the subject-matter is yet under its own jurisdiction. XIV–443

Secretary's decision dismissing a timber-culture contest, made on an imperfect record, will be reviewed, and any consequent error rectified. II–247

On the application of a party in interest the Department may reform its findings of facts in a previous decision, so that it may be in accord with the record in the case, where such action seems requisite for the protection of the applicant, though the judgment as rendered may not be affected thereby. XXIV–245

Application for, which calls for the exercise of the supervisory authority of the Secretary on behalf of a stranger to the record will not be entertained where such applicant can assert his rights through regular proceedings instituted for that purpose. XI–403

An allegation of amicable adjustment prior to judgment, made on motion for, may be properly treated as the basis for further inquiry and decision in accordance therewith. XXII–148

Second.

The Secretary of the Interior may, in the exercise of his supervisory authority, by due order, make a petition for re-review, act as a supersedeas, but in the absence of such order, it should not be so treated in the General Land Office. XXVI–441

Rule 114 amended, providing that second motions for, shall not be received or filed. XVII–194

Motions for re-review of Secretary's decision must be filed in the Secretary's office; circular of October 18, 1894. XIX–306

Petitions or motions of re-review should not be filed in the General Land Office, but should be addressed to the Secretary of the Interior in the form of application for the exercise of his supervisory authority, on grounds not covered in the former consideration of the case. XXV–292

Motions for second reconsideration should not be allowed. IV–383; VIII–111

After disposition of a case on review, suggestions of fact or law not previously considered may be presented by petition for such action as may be deemed appropriate. VIII–111, 443

Petition for re-review will be denied unless it presents some new question or suggests ground for the exercise of supervisory authority. VIII–443

Practice—Continued.

XIII. REVIEW—Continued.

Second—Continued.

A petition for re-review that presents no new question, that does not assert the existence of newly-discovered evidence, or that the former decision was secured through fraud on the part of the successful party, or otherwise, and is not filed within a reasonable time after the denial of the motion for review, does not present a case where the supervisory authority of the Secretary can be properly exercised on behalf of the petitioner. XXV–444

Petition for re-review will not be entertained unless it sets up new matter for consideration. XI–314, 349, 480

Re-review only granted under exceptional circumstances and on special application, and not secured indirectly through subsequent proceedings in the case. XII–364

A petition for re-review will not be granted unless it presents facts not previously discussed or involved in the case. IX–93, 588; XII–446

Petition for second, should be limited to the suggestion of new facts or questions not before presented. IX–295

Where a party has had a full hearing with decision on motion for review his case will not be again taken up on the technical plea that the right of appeal was denied. IV–227

Not a proper ground for re-review that the decision on review was prepared by the writer of the original decision. VIII–111

It is not a good ground for re-review that the oral argument on review was heard by the same official that rendered the decision in the first instance. IX–93

A petition for re-review that does not suggest new facts or law not theretofore discussed will be sent to the files without further action. XVII–101, 511

On motion for re-review questions can not be raised outside of the issues involved in the case when formerly before the Department. XVII–60

A motion for the re-review of a decision denying a writ of certiorari should be treated as a petition asking for the exercise of the Secretary's supervisory authority. XVII–108

A motion to reconsider a decision that was rendered on review and reversed a former decision, is a motion for re-review and must be disposed of under amended Rule 114. XVIII–408; XIX–104

After the denial of motion for, the Department will not reopen the case for further investigation except upon such a showing as would warrant a court of equity in granting relief against the judgment of a court of law. XXII–671

Preëmption. See *Alienation; Application; Entry; Filing; Final Proof; Indian Lands*, sub-title *Osage; Residence; Settlement.*

I. GENERALLY.
II. LAND SUBJECT TO.
III. QUALIFICATIONS OF ENTRYMAN.
IV. SECTION 2260, REVISED STATUTES.
V. TRANSMUTATION.
VI. HEIRS, DEVISEES, ETC.

I. GENERALLY,

Is the right to hold land before payment is made therefor upon promising to buy the land at a stipulated time, together with the right to purchase at such time; it is initiated by settlement and filing a declaratory statement and has had its full life when the stipulated time of purchase arrives. II–855; V–274, 538; IX–175

The term "preëmption" is not limited necessarily in its meaning to the privileges conferred by the general statutes, but may be applied to other cash purchases where the preferred right of purchase is restricted by conditions similar to those imposed by the preëmption law. XIII–59, 82; XXII–131

In general terms, is a special preference given to a claimant by which he may hold to the exclusion of others, dependent upon the performance of conditions. III–71, 433; V–555

The word "preëmption" is of broad significance and used in State statutes and other laws before incorporated into the land laws. III–71

Repeal of the act granting the right of, does not affect a claim lawfully initiated prior to said repeal. XV–482; XVI–8, 54

In the case of a filing made after the repeal of the preëmption law the burden of proof rests with the preëmptor, as against an adverse claimant, to show settlement prior to said repeal and residence as required by law. XXIII–189

The repealing act of March 3, 1891, does not protect the settlement of a preëmptor on land that is not subject to settlement. XV–179

A contestant who begins his suit prior to the repeal of the preëmption law, but does not secure a judgment of cancellation until after said repeal, has no right under said law that falls within the protection extended by the repealing act to claims "lawfully initiated." XVII–149

A contestant who secures the cancellation of an entry on a contest begun prior to the repeal of the preëmption law, but not concluded until thereafter, acquires thereby no right of entry under that law, if, prior to said repeal, he had not initiated a valid settlement claim to the land involved. XXVI–433

Preëmption—Continued.

I. GENERALLY—Continued.

A contestant who secures the cancellation of an entry prior to the repeal of the preëmption law, but does not settle on the land until subsequent thereto, has no right that can be protected under the terms of said repeal. XX–181

A contestant who secures a preference right of entry prior to the repeal of the preëmption law, and is at such period residing on the land with intent to preëmpt the same, has a claim thereto lawfully initiated, that is protected under the terms of said repeal. XX–396

Law of, in the States admitted into the Union by the act of February 22, 1889, not repealed by section 17 of said act. XI–307

A conditional claim is unknown to the law. I–404

Recognizes settlement on land subject thereto as the legal basis of a claim against the United States. III–272, 281; V–274, 289, 538

Good faith in settlement is the fundamental principle upon which the right of, rests. VI–285

Based on settlement and filing for the benefit of another void *ab initio*. III–488; V–52

The phrase in "accordance with the general provisions of the preemption laws," as used in section 2283, R. S., is construed as requiring compliance with said laws in the matter of settlement and residence. VI–600

No validity in the filing and settlement of one who has exhausted his preëmptive right. IV–560; V–16

Benefits of, not secured by mere occupancy of public land. I–453

Under the act of June 21, 1860, the occupancy of public land for a mail station does not form the basis of a preëmptive right. X–167

Right of, not acquired by the purchase of the possessory right of a prior preëmption claimant. II–559; III–100; VIII–623; X–504

The purchase of improvements already upon the land equivalent to making the same. I–137; IV–56, 62, 257

Cultivation in person not requisite. IV–56

Right of, as against adverse claims rests upon priority in settlement. IV–423

Right and extent of, determined by settlement. XI–72

Where rights and equities are equal the first in time has the better title. I–404; V–643

No vested rights are acquired by the settler prior to actual compliance with the law, payment of the purchase price, and due receipt given therefor. V–442; VIII–269; IX–41

Filing and settlement do not confer a vested right upon the settler that will prevent subsequent disposition of the land by Congress. XVI–526

Preëmption—Continued.

I. GENERALLY—Continued.

The right to a patent once vested is equivalent to a patent issued, and the final certificate obtained on the payment of the money is as binding upon the government as a patent. III–23

Acceptance of final proof and payment by the local office does not preclude inquiry into the claim of the preëmptor by the land department. IX–316

Final proof and payment only secure the right to a patent in the event that it is finally determined that the facts warrant its issuance. VIII–269

A preëmptor who has complied with the prerequisites of the statute is entitled to a certificate of entry. II–167

The rights of the purchaser are established on final proof and payment, and no failure of the district officer to act thereon can affect the same. III–172; VII–455; VIII–268; XIV–349

Right not lost through recognizing the title of another when such action was the result of erroneous decisions of the Land Office and the preëmptor reasserted his claim as soon as he learned that the land was open to entry. VII–92

The preëmptive right is exhausted where the settler files for a tract and subsequently abandons the filing and enters a portion of the land under the homestead law. XII–351; XXIII–539

Right of, exhausted by an entry made without requisite compliance with law. XI–290

Default in compliance with the requirements of the law can not be cured after entry. XI–290

Voluntary abandonment of claim duly protected by settlement and filing precludes a further exercise of the right. VI–617

Failure to contest an adverse claim which could have been contested successfully, with abandonment of the land, exhausts the preemption right. II–573

Final proof and payment for part of the land covered by a filing is an abandonment of the remainder. XVI–251; XVII–66

Right exhausted by the entry of eighty acres. I–485; VII–261

Right exhausted by an entry of forty acres. VII–204

Right of, once exhausted, can not be restored except by Congress. V–643

Right can not be maintained by one who is at the same time claiming another tract under the homestead law. VII–225; VIII–200; IX–63; XIII–617

Right of, not defeated by making a homestead entry pending consummation of the preëmption claim where residence on and improvement of said claim were maintained and said entry was subsequently relinquished. IX–129

Preëmption—Continued.

I. GENERALLY—Continued.

Right of settler not defeated by a former unperfected homestead of the claimant, not canceled nor relinquished, if he has in fact abandoned the land covered by his homestead entry. XIII–702

Claim finally concluded if unsuccessfully set up to defeat the final proof of another. V–260

Entry canceled for failure to comply with the law in the matter of residence can not be reinstated on a subsequent showing of residence and cultivation. XII–418

In the absence of due compliance with law the right of purchase is defeated by an intervening adverse right. XIII–663

S ıspension of plat considered as an excuse for non-compliance with the law. IV–333

In the presence of an adverse right, failure to make payment for offered land within twelve months from settlement defeats the right of. X–387

One who fails to make final proof within the statutory life of the filing can not be permitted to perfect his claim in the presence of an intervening adverse right. XXI–514

A contest having been decided and the right of one of the parties to perfect his claim by the payment of the purchase price within a specified period having been recognized, his failure to make such payment within said time will not subject his claim to an intervening adverse right where the delay is explained and it appears that he tendered payment with his original submission of final proof. XXII–29

Preëmptor having failed to prove up within statutory period may purchase in the absence of adverse claim. III–272

An intervening settlement right set up to defeat a preëmptor in default as to proof and payment within the statutory period must be based on substantial acts of improvement. VIII–417

Right of, not defeated by the intervention of an adverse claim on failure to make proof and payment for unoffered land within the statutory period unless such claim is made in good faith by one who has complied with the law. X–612

Claimant in submission of final proof may rely on the certificate of the register as to the "offered" or "unoffered" character of the land. XVIII–373

Failure to make proof and payment for "offered" land within the statutory period defeats the right of, in the presence of adverse claim, even though the failure may be due to an erroneous statement in the receipt issued by the local office that the land was "unoffered" (overruled). III–46; XV–218

Preëmption—Continued.

I. GENERALLY—Continued.

Right on unoffered land as defined by the act of 1841 and extended to lands in California by the act of March 3, 1853, is not defeated by failure to make proof and payment prior to the day fixed for public offering of the land where said land is subsequently withheld from such sale. XII–272

Right of, not defeated by failure to make proof and payment prior to a day erroneously appointed for the public offering of the land where such tract, on the discovery of the error, is subsequently withheld from sale. XI–445

Failure of settler to assert any claim prior to the date of offering will not defeat the preëmptive right where the tract is not sold at said offering nor the sale delayed through the fault of the settler. III–264

Failure to submit final proof, and make payment for the land, within the statutory life of a filing on unoffered land, does not defeat all rights under the filing, but subjects the claim to any legal settlement claim that may intervene. XXV–384

Preëmptive rights, under a filing for a tract of unoffered land, are not terminated by a proclamation of offering and sale, where the land is subsequently withheld from such offering. XXIX–613

Failure to purchase within the statutory period does not necessarily forfeit the claim as against the government, though subjecting it to the entry of any other purchaser. IX–221

Land "settled and improved" by a preëmptor only becomes "subject to the entry of any other purchaser" where it was open to private entry at date of settlement. VIII–346

Offered land is subject to the entry of other purchasers after laches in filing by the settler, but is not forfeited as to the government. III–119

The adverse claim of a railroad company is not that of "any other purchaser." V–474; VI–520; IX–221

Not defeated by homesteader who alleges residence within less than six months after entry and fails to show the same. V–440

Good faith to be determined from the circumstances surrounding each case. III–110, 411; IV–80

Right of, not defeated by the fact that through a change of circumstances the preëmptor prior to final proof forms the intent to sell, where previously thereto he has complied with the law in good faith. XII–20

An intention to remove from the land on the submission of final proof may be entirely compatible with good faith. VIII–508

Good faith in the matter of improvements not impeached though the money therefor may have been advanced by another. III–392

Preëmption—Continued.

I. GENERALLY—Continued.

Circumstances as well as time recognized in the development of the settler's good faith. I–446

Right to make entry recognized on return to land after absence. I–435

A pretended settlement on timber lands for the purpose of securing the timber thereon will not support a preëmption claim. IX–573

Under the act of August 4, 1882, opening to disposition the lands within Fort Larned military reservation. VI–600

Requirements with respect to settlement, residence, and improvement applicable to lands formerly embraced in the Fort Larned military reservation. XI–290

An entry can not be allowed under section 2, act of October 1, 1890, except on proof of continuous residence on the land so entered for a period of not less than three months prior thereto. XXV–367

The preëmption laws do not include Indians. I–491

Right to take timber from claim permitted for necessary improvements. IV–289

A preëmption claim is waived by a subsequent application to enter the land under the homestead law. II–504

No right of, under the act of April 22, 1876, can be acquired by an unauthorized settlement. XV–487

II. LAND SUBJECT TO. See *Indian Lands; Town Lots.*

Land settled and occupied for the purposes of "trade and business" at the date of entry is not subject to. V–182; VI–746

The "trade and business" contemplated in section 2258, R. S., must be actual. III–282

Right of, can not be exercised upon land included within the corporate limits of a town. XV–124

Section 2258, R. S., excludes from, "lands included within the limits of any incorporated town or selected as the site of a city or town," and a declaratory statement for such land, and final proof thereon, should not be accepted where no proceedings to subject the same to the settlement laws, under the act of March 3, 1877, were instituted prior to the repeal of the preëmption law. XXX–252

The right of, will not be recognized, where prior to the date of the preëmptor's settlement and filing the land was occupied and improved under a town-site settlement claim, and such occupants are seeking to make town-site entry, without affording them opportunity to be heard in the assertion of their claim. XXVIII–382

Preëmption—Continued.

II. LAND SUBJECT TO—Continued.

Right of, can not be exercised by one who enters upon public land for the purpose of "trade and business" and makes such use of said land. XII–647

Right of, can not be exercised by one who is using the land for purposes of trade only. XIII–665; XVI–209

Land settled upon in good faith for agricultural purposes, and so used, is not excluded from entry by the fact that the preëmptor erects and operates a sawmill thereon where the use of the lumber is restricted to the land in question. XV–108

Claim of, initiated in good faith upon unoccupied and unsurveyed land is not defeated by the subsequent occupancy of others for purposes of trade, nor by the fact that the preëmptor himself engages in business on said land. XV–41

The exemption under the head of "known mines" is applicable only to conditions existing at date of sale. VI–393

An entry, covering land that is mineral in character, and made with the knowledge of prior mineral location thereon, and of the fact that the land was at such time regarded by many in the vicinity as valuable for the mineral therein, must be canceled as having been allowed for "known" mineral land. XXIII–35

Lands containing known mines excepted from. VI–393; VII–73

In order to defeat an entry on the ground of the mineral character of the land, it must be shown that the mineral was known to exist at date of entry. XIII–108; XXVII–1

Where an entry is attacked on the ground that it covers mineral land it is not a sufficient defense to show that the land was not thus known to the claimant at time of entry if it was then so known by others and the ore was then exposed to such an extent that one who has been on the land could not be ignorant of the existence of the mineral. XIII–517

The phrase "known mines," as used in the preëmption law, construed. VII–73

Land containing stone that is useful for general building purposes only is not exempt from, as mineral land. XII–1

Mineral lands in the State of Minnesota not excluded from. XXV–157

Right of, not acquired by settlement upon land under control and occupation of another. IV–124

Right of, not initiated by forcible intrusion. III–278; IV–140, 388; V–377; VII–68, 92

Possession under an invalid adverse claim of a part of the land covered by the filing does not interfere with the constructive possession of the preëmptor or his right to the entire tract covered by the filing. IX–344

Preëmption—Continued.

II. LAND SUBJECT TO—Continued.

The fact that part of the land, including all the improvements, is within the inclosure of another person, does not necessarily impeach the good faith of the preëmptor. XVII–129

The possibility of one party taking the improvements of another is within the scope of the law. I–423

Right of, can not be exercised on land embraced within an Indian reservation. XII–563

Right of, does not extend to land occupied under military authority. V–376

Not precluded by abandoned town-site settlement. V–180

Land is not excluded from, because its altitude is such as to prevent residence thereon throughout the entire year. VI–811; VII–57; IX–450

Right of, extends to timber lands, but the final proof should show that the land was taken in good faith for a home and not for the value of the timber alone. VI–691; VIII–641; IX–139

Lands chiefly valuable for timber may be taken under the preëmption law if the claimant's good faith is clearly manifest. XI–7

In determining the good faith of a claim asserted for lands subject to entry under the timber and stone act of 1878 the character of the land may be properly considered. XI–145

Lands embraced within the forfeiture act of September 29, 1890, are not subject to. XVI–50

III. QUALIFICATIONS OF ENTRYMAN. See *Naturalization.*

Proof of the preëmptor's qualifications is furnished by the affidavit required by section 2262, R. S. XIII–378

Claimant must have the requisite qualifications at settlement. IV–116

A preëmptor who enters into a written contract prior to filing, by which he agrees to convey part of the land to another on securing title, is disqualified as a purchaser. VIII–269; XV–201

Claim initiated and maintained in the interest of another is illegal and the filing thereunder must be canceled. XI–548

Preëmptor at time of filing was not qualified, but as the disqualification had ceased to exist prior to the inception of an adverse right he was allowed to purchase. III–500

Compliance with the law allowed to be shown on the removal of statutory disqualification. IV–420

Daughter of an alien, deceased, who was a minor when her father declared his intention, may exercise right of preëmption. II–611

Preëmption—Continued.

III. QUALIFICATIONS OF ENTRYMAN—Continued.

The son of an alien, living, whose father has only declared his intention, and who was a minor at immigration, is not qualified to make entry without having filed his own declaration of intention. II–612

A declaration of intention to become a citizen filed by the father during the minority of the son does not qualify the latter in the matter of citizenship under the preëmption law. IV–116; XII–637

Settlement and filing before declaration of intention are of no legal effect; where filing is so made a subsequent settlement after declaration of intention will support the filing in the absence of an intervening adverse claim. II–627

Failure of preëmptor to declare his intention of becoming a citizen prior to filing may be cured before the intervention of an adverse right. III–452; VII–471

One holding title under a private land claimant to a larger amount of land than he would be entitled to take as a preëmptor is not thereby debarred from entering 160 acres of such land when it is restored if he is then a settler thereon. XIV–626

Right of, exhausted by one who files before declaring intention to become a citizen, and, in the absence of an adverse claim, subsequently makes such declaration. VI–15

A married woman is not entitled to make entry. II–600

Right of, can not be exercised by a married woman living apart from her husband under a voluntary agreement of separation. XIV–459

Right of, may be exercised by a married woman as the "head of a family" where it appears that the husband and children are actually dependent upon her for support. XIII–539

Right of, as the "head of the family" can not be exercised by a married woman who voluntarily leaves the home of her husband to reside elsewhere, even though she takes the children with her. XIII–579

May be made by a deserted wife as the head of a family. II–312; V–42

An entry by a divorced woman will not be allowed where it appears that she is not the head of the family and that the divorce was collusively obtained for the purposes of the entry. I–421

A divorced woman can not claim the benefit of acts performed by her former husband, but must rely on her own compliance with the law as a single woman or head of a family. I–401

A single woman who marries after filing declaratory statement and prior to final proof defeats thereby her rights of purchase. III–384; IV–70; VII–280

Preëmption—Continued.

III. Qualifications of Entryman—Continued.

Entry of married woman who had complied with the law and published notice of final proof prior to marriage sent to the board of equitable adjudication. I–460; IX–215; X–166

Entry by married woman who, prior to marriage, had complied with the law and tendered proof may be equitably confirmed. VIII–433

Entry in good faith by a married woman who, prior to marriage, had fully complied with the law in the matter of settlement, residence, and improvements may be equitably confirmed. X–629

Entry made in good faith by married woman may be equitably confirmed where due compliance with law prior to marriage is shown and the entry is allowed with full knowledge of the facts. XV–230

IV. Section 2260, Revised Statutes.

Right of preëmption can not be exercised by one who owns 320 acres of land, and a pretended transfer of title will not remove the disqualification. X–461; XII–103

Qualification of preëmptor not affected by the ownership of land as a trustee. I–462; XIV–215

The first clause of section 2260, R. S., does not cover land held jointly by the preëmptor and his wife in Dakota. IV–432

The proprietor of 320 acres can not render himself a competent preemptor by the conveyance of one acre to his infant child. III–56

The inhibitory provisions of the first clause of section 2260, R. S., extend to one who holds land under a contract of purchase though the payments thereunder have not been completed at the date of settlement on the claim. XVI–562

Under the first clause of section 2260, R. S., one who owns 320 acres is not entitled to the right of, and such inhibition extends to ownership under equitable title. XIII–95

A contract for the purchase of land does not bring the holder within the inhibition of section 2260, R. S., where the title to said land is not in the vendor. XIV–313

An allegation that one is not disqualified through the ownership of other land, in that a part of said land had been sold prior to final proof, must fail if the good faith of the alleged transaction is not made apparent. XII–103

Whether an entry is in violation of said section must be determined by the circumstances in each case and by the intentions of the claimant. I–492

To disqualify a settler under the second clause of section 2260, R. S., it must appear that he abandoned land of his own with the purpose of residing on public land in the same State. XV–85

Preëmption—Continued.

IV. SECTION 2260, REVISED STATUTES—Continued.

The inhibition of section 2260, R. S., does not apply to one who removes from a completed homestead to a timber-culture claim and changes the same to a preëmption where it is apparent that at the time he moved to said land he did not intend to acquire title thereto under the preëmption law. XV–161

A settler who removes from land of his own to another tract and makes homestead entry thereof may relinquish the same and file therefor under the preëmption law if such action is in good faith and not for the purpose of evading the provisions of section 2260, R. S. XVI–85

Claim of one who removes from land of his own to settle on public land in the same State invalid. I–406; X–326; XVII–41

The prohibition against persons who quit their residence on their own land is not restricted to those who hold legal title to said abandoned land, but includes those who hold under equitable title. II–616; VI–792; IX–619; X–208, 326; XIII–95

Removal from land held under contract of purchase is within the second inhibition of section 2260, R. S. VII–472

Joint ownership in land is sufficient under section 2260, R. S., to preclude removal therefrom to reside upon public land in the same State or Territory. VIII–367

One who removes from land in which he owns an undivided interest to settle on public land in the same State or Territory is within the second inhibition of section 2260, R. S. IX–605; XIII–248

One who removes from land of his own acquired under the homestead law to reside on public land in the same State or Territory is within the second inhibition contained in section 2260, R. S. V–413; VII–195; XX–64

Removal from a homestead after submitting final proof therefor, though prior to the issuance of final receipt, is within section 2260, R. S. IX–619

That the homestead was under mortgage at the time of the removal therefrom will not relieve the preëmptor from the statutory inhibition. VII–195

The second inhibition of section 2260, R. S., is applicable though the removal is from land encumbered by mortgage. X–447

One who removes from his own home in a city is not disqualified under the second clause of section 2260, R. S. I–490; VI–407

The ownership of city property, and removal therefrom, does not bring a preëmptor within the inhibitory provisions of the second clause of section 2260, R. S. XVII–337

Preëmption—Continued.

IV. SECTION 2260, REVISED STATUTES—Continued.

In cases arising under the second clause of section 2260, R. S., the character of the land from which the removal is made and the purpose for which it was used may be considered. IX–512

The disqualification imposed by the second clause of section 2260, R. S., can not be avoided on the plea that the land claimed was not in fact "public" at the date when residence was established. XVI–280

Bar under second clause of section 2260, R. S., removed by deed in good faith from husband to wife. IV–355, 432

Sale from husband to wife made in good faith prior to the establishment of actual residence removes the bar under the second clause of section 2260, R. S. VIII–502; XII–244, 455; XVII–381

The second inhibition of section 2260, R. S., does not apply to one who, prior to settlement or filing, sold in good faith that portion of his homestead on which he formerly resided. VIII–132

In determining whether a preëmptor is disqualified under the second clause of section 2260, R. S., his relation to the land formerly owned must be considered with respect to the date of establishing actual residence on the preëmption claim, and not with reference to the date of settlement thereon. XII–529

The inhibition in the second clause of section 2260, R. S., is against one who abandons residence on his own land "to reside" on the public land, and does not apply if the preëmptor had in good faith sold the land on which he formerly resided before establishing his actual residence on the preëmption claim. III–500; VIII–502; XII–244, 455

In applying the inhibition contained in the second clause of section 2260, R. S., the presumption of good faith attending the exercise of a legal right must be given due weight. VI–35

A pretended transfer of land from husband to wife will not defeat the inhibitory provisions of the second clause of section 2260, R. S. VII–69, 513; IX–463

The fact that an intending preëmptor divests himself of the title to land upon which he is then residing on the very day on which he alleges settlement on other land is a circumstance sufficient to warrant a doubt as to his good faith. VI–422

Where one owned land (homestead after final proof) in the same Territory and made a deed of it to another prior to settlement, but did not deliver the deed until after settlement, he was not a qualified preëmptor. II–579

Second inhibition of section 2260, R. S., not applicable to one who had in good faith prior to settlement disposed of the land then owned by him, though a formal deed therefor was not executed until after settlement. VII–436; XIII–375

Preëmption—Continued.

IV. SECTION 2260, REVISED STATUTES—Continued.

A subsequent sale of the homestead from which the preëmptor removed will not relieve him from the inhibition contained in section 2260, R. S. VI–767

Temporary removal prior to the establishment of residence on the preëmption claim does not take such claim out of the inhibition contained in the second clause of section 2260, R. S. III–56; X–117; XI–539, 553

One who has not, within a year prior to filing, made his home on other land belonging to him in the same State is not within the prohibition of the second clause of section 2260, R. S. VI–287

The second clause of section 2260, R. S., presumes an actual prior residence of the same character that the preëmption law requires. IV–198

Filing an entry of one who removes from land of his own to settle on public land in the same State exhaust the right of. V–413

A settler who has received final homestead certificate for a tract is not within the second inhibition of section 2260, R. S., where a subsequent survey brings his improvements within the lines of an adjacent tract and he files therefor under the preëmption law. XIV–309; XIX–166

Suit requested for the recovery of title where patent has issued to a preëmptor that removed from land of his own in the same State to establish his residence on the claim. XX–508

V. TRANSMUTATION.

Should not be transmuted to a homestead entry without notice to adverse claimant. XIV–120

There is no qualification of the provision allowing one to homestead land "upon which such person may have filed a preëmption claim;" the right to transmute is incident to a valid preëmption right, and when exercised relates back to the date of the preëmptor's settlement. II–635; IX–32

Right of transmutation after the filing has expired is not defeated by an intervening entry made during the pendency of final proof proceedings on the part of the preëmptor and with full knowledge of his existing *bona fide* relation to the land. IX–305

The right of a preëmptor to transmute his claim is not necessarily defeated by failure to take such action until after the expiration of the statutory life of the filing, and the intervention of an adverse claim based on an entry made within the life of the filing and with a full knowledge of all the facts. XVII–547

Right to transmute a claim under section 2, act of March 2, 1889, can not be exercised if title to the land can not be secured by the applicant under the preëmption law. XVI–331

Preëmption—Continued.

V. TRANSMUTATION—Continued.

The right of transmutation accorded by section 2, act of March 2, 1889, to one who has previously had the benefit of a homestead entry extends only to claims that can be perfected under the preëmption law. XV–525

A settler whose claim is initiated prior to the act of March 2, 1889, is authorized by section 2 of said act to transmute his filing into a homestead entry although he has already perfected title to another tract under the homestead law.

VIII–422; IX–556; X–634; XII–361; XIII–576; XVI–386

Right of preëmptor who initiates a claim by settlement prior to the passage of the act of March 2, 1889, to transmute his claim under section 2 of said act is not defeated by the fact that his declaratory statement erroneously shows his settlement to have been made after the passage of said act. XVI–517

A claim initiated after the passage of the act of March 2, 1889, can not be transmuted thereunder by one who has had the benefit of a homestead entry. XIV–252; XXVI–267

The right of a settler to change his claim to a homestead entry under the proviso to section 2, act of March 2, 1889, where such claim is initiated prior to the passage of said act, is not affected by the fact that the right of the settler was involved in a suit that was not finally determined until after the passage of said act. XXI–333

Transmutation of a filing exhausts the preëmptive right.

VI–103, 570, 602; X–188, 493; XI–322; XIX–111

Transmuted to a homestead entry under which title is perfected exhausts the preëmptive right though such filing is made prior to the adoption of the Revised Statutes. XI–322

Transmutation of a claim for 160 acres to a homestead entry of less amount is an abandonment of the former claim and exhausts the prëemptive right of the claimant. XII–351

Right of, is exhausted by transmutation of claim even though title is not acquired under the homestead entry. XV–402

Right of transmutation is dependent upon the validity of the preemption claim. IV–561

Invalid claim not strengthened by transmutation. IV–561; V–15

The right of a preëmptor, who is in default in the matter of making final proof, to transmute his claim can not be defeated by an intervening entry based on preliminary papers executed while the land is not subject to appropriation. XX–225

Filing on school section in California may be transmuted to a homestead. III–229

Preëmption—Continued.

V. TRANSMUTATION—Continued.

A prëemptor in Kansas having become insane after filing and three years' residence, the wife's homestead entry in her own name was, in view of the local law, treated as a transmutation and credit allowed for the residence. III–64

An application by a single woman to transmute a preëmption claim to a homestead entry is not defeated by her subsequent marriage where it appears that she was duly qualified at the date of her application. XVII–207

The right to transmute a filing to a homestead entry does not extend to the widow or heirs of the preëmptor. III–273

May be transmuted and final proof offered thereon the same day. VI–379

VI. HEIRS, DEVISEES, ETC.

Entryman can not by devise defeat the right conferred by statute upon heirs. VI–30

The administrator or heirs may complete the claim of the deceased preëmptor. III–274

Administrator may file the requisite papers and perfect the claim for the benefit of heirs where the settler dies prior to survey of the land. (Buxton *v.* Traver cited and distinguished.) XVI–161; XXII–258

No right of, is acquired by settlement on reserved land, and if the settler dies while the land is under reservation his heirs have no right thereto that can be perfected under section 2269, R. S., after the land is restored to the public domain. XI–477

Right of, can not be acquired by settlement and filing on land withdrawn for the benefit of a railroad grant; and if the settler dies before the land is restored to the public domain there is no preemptive interest to descend to the heirs. XIII–432

The heirs of a settler have no right that they can perfect where the decedent acquired no right in his lifetime. XV–487

Guardian or minor heir may file the necessary papers. IV–139

Heirs of a deceased preëemptor are entitled to a reasonable period within which to take action against an adverse claim. XIII–594

Heirs may enter within time accorded the preëmptor. V–454

The heirs of a preëmptor are not estopped by the action of the widow in recognizing the adverse claim of another. IX–221

Where a preëemptor dies leaving an unperfected preëmption claim it is lawful for the minor heirs, acting through their guardian, to transmute the filing to a homestead entry. XX–409

Right of heir to submit proof under section 2269 is not defeated by the fact that he may have sold his interest in the land. XIV–468

Preëmption—Continued.

VI. HEIRS, DEVISEES, ETC. Continued.

Heirs of a deceased preëmptor entitled to be heard as against an adverse claimant. VIII–405

A successful contest against a homestead entry, embracing land covered by a prior preëmption filing, will not defeat the right of a minor claimant under the preëmption filing to perfect his entry if, prior to the conclusion of said contest, application is made to complete the preëmption claim, and it appears that the contestant had not made settlement on the land at such time and was aware, at the time of initiating his contest, of the fact that the minor, with his guardian, was residing upon and claiming the land. XXV–384

Duty of administrator fixed by notice of the claim. V–454

Administrator may complete entry for the heirs, but he should show the existence of heirs capable of inheriting within a reasonable time after appointment. XV–177

Executor not authorized to complete claim for the benefit of devisee. VI–671

Administrator, after qualification, may enter. V–454

Right of administrator to complete claim defeated by the intervention of an adverse claim. V–454

Section 2269, R. S., does not authorize an administrator to complete the claim of deceased preëmptor where the heirs are of age and proceeding to perfect the entry. XIII–245

Failure to cultivate on the part of the heir excused for climatic reasons. III–345

Preference Right. See *Contestant.*

Price of Land. See *Indian Lands; Public Land.*

Private Claim.

I. GENERALLY.
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Private Claim—Continued.

I. GENERALLY—Continued.

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The provisions of section 1, act of March 2, 1889, with respect to the disposition of land at private entry, are in no wise applicable to the location of a, authorized by a special act. XXI–518

The extent of a, is limited to the land claimed in the petition for confirmation as presented to the board. I–167, 257; III–204; V–62

Pending final settlement of, the lands covered thereby are in a state of reservation. I–166, 167, 392

Land embraced within, as presented for confirmation, is reserved from other disposition until final rejection or location. I–167; V–62

On the disallowance of, and direction given for the disposition of pending claims under the public land laws, due opportunity to be heard should be accorded such claimants. XXIII–185

The lands within the exterior boundaries of a "floating grant" reserved until title vests. III–459; V–75

For a specific place or rancho reserves the land included within the boundaries as finally ascertained. XI–491, 538

Mexican grant of quantity within a tract of larger area is a float, and the lands reserved within such area are those that may be actually required to satisfy the float. XI–463

The reservation created by the eighth section of the act of July 22, 1854, of all lands claimed under Spanish or Mexican grants, did not depend for its efficiency upon action by the land department in giving notice of the withdrawal, but became immediately operative by force of the statute, and continued effective until said claims were finally adjudicated, whether such action was by Congress under the act of 1854, or by the Court of Private Land Claims under the act of March 3, 1891; and on the final rejection of a claim the lands embraced therein are immediately released from reservation and become at once opened to settlement and entry without any formal order by the land department announcing the termination of the reservation. XXX–220

Location of, if not fixed and definite, does not affect a disposition of the land. XIV–674

For land within specific boundaries reserves only such land as may be finally determined to be within said boundaries. XII–664

Grant of a, within larger exterior boundaries does not attach to specific tracts until after survey. III–180

Private Claim—Continued.

I. GENERALLY—Continued.

In one of quantity within larger outboundaries, only so much of the larger tract is reserved as may be required for the actual satisfaction of the claim. IX–471

Not reserved until boundaries are identified IV–294

Survey of, may become final as to a portion of the boundary while the remainder is undetermined. III–307

A grant can not be extended beyond the decree of confirmation. I–248

Ambiguity in a decree of confirmation can not be explained by testimony unless the terms are wholly indefinite. I–185

Decree of confirmation, *nunc pro tunc*, has the same force and effect as if entered at the actual time of the decision. I–210

Reference in decree to expediente and grant makes that instrument a part of the decree. I–188

The translation of the original title papers adopted in the decree of confirmation must be followed in construing said decree. I–181

Withdrawal of, from Congress not necessarily abandonment. I–166

A suit to change location of the claim will not be directed where the land forming the interest of the petitioners lies outside the grant limits and could not be included in a resurvey or reissue of patent. III–78

Where patent issued excepting for the government a military reservation with buildings and improvements, and was received without protest save as to the land, such protest is held to not include the improvements. III–146

If the selection and location of a confirmed floating claim is limited to a given period by the statute, the Department has no authority to extend the time. V–705

Failure to confine selection under a floating grant to non-mineral lands, in accordance with the granting act, will not authorize relocation if the statutory period for selection and location has expired. V–705

Claimant referred to Congress for relief where the lands have been for many years occupied in good faith by a large number of persons and the grant is unconfirmed. III–416

The land department has no authority to declare claims under foreign grants to be held by complete title. I–272; XVI–550

The Department has no authority to make an agreement by which confirmees can secure, through desert entry, lands improved by them that will fall outside of the grant if located as required by the confirmatory. XIV–606

Duty of the Commissioner to direct the survey of, and to issue patents thereon not limited to grants covered by the treaty of Guadalupe Hidalgo. XI–203

Private Claim—Continued.

I. GENERALLY—Continued.

Commissioner may investigate, on the suggestion of parties alleging interests in conflict with, if such action is otherwise proper. XVI–408

In the adjudication of, the Department must follow statutory enactments even though such enactments are in violation of treaty obligations. XVI–550

On application made for suit to set aside a patent issued for a, all matters that under the issues could have been or should have been determined by the board of land commissioners will be presumed to have been adjudicated by said board. XVIII–386

The Department will decline to advise suit for the vacation of a patent issued on a, where it appears that in the proceedings before the board of land commissioners the government had due opportunity to present all the alleged defects in the grant, where no direct charge of fraud on the part of the grantee as against the government is made, and where the patent has been outstanding for many years and the rights of third parties have intervened. XVIII–386

Where the attention of Congress has been called to the fact that the conditions subsequent in a grant have not been complied with, and no action is taken by Congress, such failure to act will be taken by the Department as an expression of the legislative will that the decisions of the courts be accepted as a guide in administering the law. XXIV–109

In the adjustment of the interests of the government in a confirmed, where a portion of said claim has been relinquished and other land taken in lieu thereof, the boundary lines of said grant, as judicially approved in the final decree of confirmation, should be recognized as determining the true extent of the grant, as between the grantee and the government. XXVI–576

II. SURVEY.

When confirmed, the sole duty of the Department is to ascertain the extent and place thereof. I–394

The official survey takes the place of the juridical measurement required by the Mexican law. I–198

In the location of, the survey must follow the decree of confirmation and act of juridical possession. I–213, 248; V–559

In the location of a, in which the decree of confirmation adopts the act of juridical possession, the survey is controlled by the record of juridical measurement. XIII–84

Private Claim—Continued.

II. SURVEY—Continued.

The survey of, under a decree of confirmation that adopts the act of juridical possession, must be governed by the record of juridical measurement, and not by a conjectural estimate of area set forth in said decree. XIV–259

The extent of a, must be ascertained by the record of juridical possession, where the grant is confirmed as recommended by the surveyor-general and that officer's recommendation is ambiguous. XVIII–376

It is the duty of the Commissioner to see that the location follows the decree of confirmation as closely as practicable. I–213

The instructions for the survey of a confirmed, must follow in terms the decree of confirmation. The Department may determine on appeal whether such instructions are in conformity with the decree, but it can not review the action of the court in the matter of fixing the boundaries of said claim. XXII–105

In survey of, reasonable, not arbitrary, discretion should be exercised. I–179

In closing, must terminate at "the place of beginning." VI–41

If the call is plain and no particular course is prescribed, a straight line must be adopted. VI–197

In the survey of, mandatory and specific calls must be followed. V–559

As the claim (New Mexico) was confirmed as "in the vicinity and beyond the limits" of a pueblo, the survey must be amended so as not to conflict with the patented pueblo. II–421

In the survey of riparian grants in Louisiana the direction of the side lines is determined by the form and general course of the water front. VI–473

Because of erroneous connections in its plats and descriptive notes and because it identifies and conforms to but one of the boundary calls, is rejected. II–368

Approved by the surveyor-general (California) becomes the official survey and must be followed in determining the location. II–366

The date of approval is the date of a survey. I–262; V–415

A survey approved by the surveyor-general is the official survey and must be published as such. I–248

Finality of survey determined by failure to appeal. IV–506

Whether the surveyor-general properly construed and followed the decree of confirmation must be determined by appeal to the General Land Office. I–237

Authority of surveyor-general ceases on approval of survey. I–210

Secretary has authority to reverse the action of the Commissioner in the matter of a survey. V–483

Private Claim—Continued.

II. SURVEY—Continued.

The location of, within the limits embracing larger quantity may be controlled by the land department. I–179, 245

Supervisory authority of the land department in the survey of, is amply provided for. I–198, 213

Whether invoked by appeal or otherwise, the Secretary under his supervisory authority may order a resurvey. V–483

Resurvey of town grant allowed on corrected description of the boundary lines. I–285

Questions relating to survey (New Mexico) are within the Commissioner's jurisdiction, and properly come before the Secretary only on appeal. II–420

The Secretary has complete jurisdiction over the survey (pueblo lands of San Francisco.) II–347

Appeal from action taken in the execution of an order for a modified survey brings up only new matter. I–239

The Department will be governed by decisions of the courts as to the validity of surveys in. III–177

The right to demand survey of a claim (California) under act March 3, 1851, inheres in the claimant only upon final decree of confirmation. II–365

Conflicting rights arising from premature survey protected in the location of. I–180, 245

A second survey allowed pending confirmation. III–438

Location by survey (New Mexico) may not be properly made until after confirmation; a preliminary survey prior thereto is not authoritative or final. II–419

Preliminary survey of, allowed on deposit of sum to cover estimated cost. IV–430, 482

The costs of survey that are required to be paid are only the costs of the survey that is finally approved as correct. XIII–294

Only the proper costs of surveying and platting are required to be paid by claimant; items in a certain bill of costs discussed. II–371

Payments of the costs of survey and platting is required in all cases subsequent to act of July 31, 1876. II–463

The government must be reimbursed for the cost of the survey before the patent issues. XIII–294

Cost of surveying and platting must be paid into the Treasury of the United States; payment of such costs to the surveyor-general is not the payment required by statute. XVI–347

In the absence of allegation or evidence of fraud the land department will not consider the question of necessity or cost of a completed survey. II–463

Private Claim—Continued.

II. SURVEY—Continued.

Survey made prior to decree rendered *nunc pro tunc*, but subsequent to the actual decision, is valid. I–210

Survey of, not disturbed on indefinite charge of fraud. IV–508

In construing words of limitation the final action of the executive authority is conclusive upon the Department. I–16

The grant claimants held estopped by the settlement rights of others from disputing the correctness of the survey. IV–546

When parties interested had full opportunity to be heard and no new matter of fact is presented the question of approval will not be reopened. II–345

The Secretary of the Interior having settled certain lines of survey, the Commissioner's indorsement of approval on the plat of survey thereafter is merely a ministerial act. III–424

Application for approval of survey in, having been rejected in 1874, the case was held *res judicata* on renewal of application in 1882. III–177

When the applicants for survey (Louisiana) are meagerly described, but have been recognized and survey ordered, on objection amendment will be allowed. II–395

A statute confirming a, "as recommended for confirmation" by the surveyor-general passes the title of the United States as effectually as if it contained in terms a grant *de novo*. XIX–396

Confirmation of a Mexican, as "examined, approved, and recommended" for confirmation by the surveyor-general and as "duly surveyed by the United States," without requiring the issuance of patent, leaves the Department without jurisdiction, and an order of the General Land Office for the resurvey of a grant thus confirmed is without authority. XVI–445

An application for the survey of lands alleged to be embraced within a Spanish grant must be denied, where it appears from the record that the official survey of said grant, on which patent issued, was made after due notice to the parties interested, apparently followed the lines fixed by the Spanish authorities, and was acquiesced in for a long term of years. XXV–491

The survey of a, having been duly made according to law, and so decided by the proper officers of the Department, their authority in that respect is thereby exhausted, and they can not rightfully order another survey of said claim. XVII–105

Department has no authority to order the resurvey of the patented, while the patent therefor is outstanding. XIV–557

The owners of a patented, will not be heard to dispute the correctness of a public survey, closing the lines thereof on said claim, where such survey excludes from the public domain the full amount of land covered by the patent. XIX–417

Private Claim—Continued.

II. SURVEY—Continued.

Resurvey of, for the alleged reason that the existing survey does not show the true boundaries, is not warranted where it appears that on a showing made by the grantee for legislative confirmation of the "remainder" of the grant the petition was granted, and the subsequent surveys recognize approximately the full area of the grant contemplated by Congress. XXI–559

After survey and patent, corrections must be secured in the courts. I–229

The Department has no jurisdiction to order the survey of a, embraced within an outstanding patent issued on the claim of another. XVII–42

The Higley survey accepted as defining the boundaries of the Moraga. III–204; V–155

The Higley survey substantially locates the claimed limits of the Moraga grant, and lands excluded therefrom by said survey are public and subject to entry so far as any conflict with said grant is concerned. XIII–297

Rule upon the Houmas claimants to show cause why the survey should not be closed upon the line fixed by the court. IV–472

Publication of survey made and certified under the act of 1860 is conclusive upon all parties. I–260, 377; V–415

A survey made after the passage of the act of 1860, duly advertised and not taken into the district court, is final. I–260

A survey approved after the passage of the act of 1860 was such a survey as that act contemplated. I–260

As to claims pending in the district courts for correction or confirmation of survey new jurisdiction was conferred by the act of 1864. I–173

A survey approved prior to the act of June 14, 1860, published and ordered into the United States district court under said act, and pending therein at the passage of the act of July 1, 1864, was within the jurisdiction of said court, and its approval thereof was final. I–173

Though survey had been published under the act of 1860 and approved by the court, as republication was ordered under the act of 1864 the case should proceed in the usual manner. I–246

Objections to survey are not required to be under oath by the act of 1864. I–266

Survey made and approved prior to the act of July 1, 1864, must be published in accordance therewith. I–210

Final determination as to survey under the act of June 14, 1860, conclusive as against claimants who do not protect their interests. V–415

Private Claim—Continued.

II. Survey—Continued.

A survey approved prior to the act of June 14, 1860, duly published and ordered into court, and pending at the passage of the act of July 1, 1864, is final. IV–102

The act of 1864 contemplated final adjudication of all questions affecting boundaries and extent on objection to the first survey under publication, and that subsequently no objections could be raised against such adjudication under cover of attack upon the reformed or modified survey. I–238

Authority of the court over surveys under the act of June 14, 1860, V–320

Publication of notice not required by the act of July 1, 1864. V–483

In a case pending in the United States district court at the passage of the act of July 1, 1864, the court was authorized to revise a former survey or order a new one. V–320

The approval of a new survey ordered by the district court in a case pending at the passage of the act of July 1, 1864, rests with the Commissioner of the General Land Office. V–320

Survey of, made under the act of July 1, 1864, does not segregate the land covered thereby if not approved by the Commissioner of the General Land Office. XII–664

Survey of, authorized by the eighth section of the act of July 23, 1866. V–43

Survey of, under section 8, act of July 23, 1866, is not effective for any purpose until a copy of the plat is filed in the local office. X–630

The confirmees of the Scolly, have the right to select the point of location when the government is ready to survey the tract confirmed, but a failure to exercise this right after due notice will be treated as a waiver of said privilege. XIV–606

A suit to set aside a patent for a, on the ground of fraud in the survey will not be advised, where said survey was regularly made, duly reported and approved, and held for a term of years prior to the issuance of patent, and where no fraud is in fact shown in connection with said survey and its approval. XIX–396

III. Boundary.

In establishing boundaries the decree of confirmation must be followed, and the land department has no authority to fix a different line agreed to by coterminous owners. VI–179

Words defining the extent of, without fixing a boundary construed and applied. VI–473

Quantity must control in the survey of a grant of quantity, even though all the monuments designating the boundaries thereof are not found in such survey. XIX–201

Private Claim—Continued.

III. BOUNDARY—Continued.

Parol testimony in the location of, only admissible where the boundaries as described in the decree of confirmation and act of juridical possession are ambiguous, or for the purpose of identifying said boundaries. V–559

In determining the boundaries of, the language of the decree of confirmation must be accepted and followed unless so ambiguous as to require extraneous aid to show its meaning. XII–364

The delivery of juridical possession involved the establishment of boundaries. I–198, 255

Confirmation presumes definite boundaries. I–181

The sixth section of the act of March 3, 1853, reserved until the location of the grant (Moraga) only such land as was claimed, and terms of boundary must be determined by the claim as filed before the board of land commissioners. III–204

Extent of, not diminished or boundaries changed because a river that marked a boundary line has changed its course. I–213

Where a tract (pueblo lands of San Francisco) is to be bounded by the ocean and a bay the line intended is the line of ordinary high-water mark of the bay and ocean proper crossing the mouths of inland streams, though navigable and affected by tides. II–346

Where hills, mountains, or mountain ranges are named as boundaries the foot or base is to be taken as the boundary meant unless the top or ridge is clearly indicated. I–288

The grant was of such depth "as shall be found unto Lake Maurepas," or "as far back as Lake Maurepas," but as said lake was not found within the side lines of said grant it is held that it did not constitute a boundary, but was named as a point to designate the depth of the grant, and that such depth will be correctly shown by a line drawn through the center of the grant from the front to the rear, terminating at the point of intersection with a line drawn at right angles thereto and touching the lowest point of the southern shore of the lake. VI–473

In fixing the back line of the McDonogh and Fontenot claims the lowest point of the southern shore of Lake Maurepas as it now exists should be taken as the starting point. XII–496

The words in the decree of confirmation (pueblo lands of San José) "including part of the oak grove now or formerly at this place," "and including all of the willow grove now or formerly at the source of said river," were not explanatory of other words of boundary, but were descriptive of the actual boundary lines. II–359

Permanent monuments and natural objects named as boundaries control courses, distances, and quantity. II–366

Private Claim—Continued.

III. BOUNDARY—Continued.

Confirmation "to the extent of one-half of a square league of land, a little more or less, . . bounded and described as follows:" the boundaries designated will control the location (California). II–366

Where a river and a point of table-land are named as the western boundary of a grant (New Mexico), the point of table-land forming the southwest corner, and the river, after a northeast and northwest course, runs easterly 3½ miles and then turns northeasterly to a point due north of said point of table-land, the line should be run north from the point of table-land to the said turn in the river. II–425

Boundary limits as defined through occupancy. IV–360

Exterior boundaries of the Rancho Azusa specifically defined. IV–357

Boundaries of Moraga and El Sobrante discussed. V–62

Boundaries of, established by adjoining claim. IV–294

The question of the boundaries of the claim (Houmas) should be determined by the Commissioner before submission of the evidence in an appeal to the Secretary. II–650

The adjudication of the boundary (pueblo lands of San Francisco) goes to the title of the claimant as it existed at the acquisition of the country. II–351

Where the lines of location necessarily conflict with prior grants (New Mexico) it is not the province of the land department to determine questions of title; the granted and confirmed boundaries must be followed, leaving such interferences to be adjusted by the parties or by the courts. II–426

The issue of patent finally settles all questions of boundary (California) in so far as the land department is concerned. II–459, 466, 467

In a proper case of error shown the Department may extend the boundaries although patent may have issued for a lesser area. V–43

Evidence in the case (Rancho Casmalia) considered and found not to justify interference with the original survey as patented. II–466

Where in the decree of confirmation the description of the boundaries of a Mexican private land claim is such that mistake as to identification of such boundaries on the ground is not inconsistent with entire good faith, a purchaser of the title of the claim, as confirmed, who receives patent for the lands included within the boundaries thereof as established by survey, has the right, under the seventh section of the act of July 23, 1866, to purchase from the government lands occupied by him as a part of said claim, to which no valid adverse rights had attached, but were by the survey excluded from said claim, though theretofore regarded as a part thereof, and were by the purchaser believed to be within the lines of his original purchase. XXX–345

Private Claim—Continued.

IV. PATENT.

Patent for, must follow confirmatory statute. v–61

Form of patent for, and to whom the same should be delivered, matters for the Commissioner of the General Land Office to determine. iv–375

Error in judgment of Commissioner in location of, will not invalidate patent. iv–568

Patent for unconfirmed grant will not issue. iii–416

A confirmatory act must govern in the issue of patent; where the confirmation was to "the inhabitants of the parish" (Louisiana) the patent will so issue, and not to "the people of the parish." ii–390

The action of Congress in designating the confirmee must control the Department in the issuance of patent. xiii–646; xv–58; xxvii–683

For a confirmed claim (Louisiana) issues in the name of the confirmee and inures to the benefit of those legally entitled. ii–397

Under the act of 1832 patents for claims in Florida issue to the assignee of the confirmee on the production of regular chain of title. v–677

Where delivery of patent (Florida) was the subject of controversy before the surveyor-general by certain representatives of the heirs, time for appeal should have been allowed; having been delivered, however, to one of the parties, the land department will not interfere with the possession. ii–386

Where right to the patent (Louisiana) is in controversy the local officers will decide the question, with usual time for appeal; if none is filed, they will deliver it in accordance with their decision; if appeal is filed, the case must be sent to the Commissioner and the patent held until final action. ii–388, 389

Persons claiming delivery of patent (Louisiana) must furnish an unbroken chain of title showing to whom the lands inure; if agents or representatives, they must connect themselves with the patentees. ii–389

Patents (Louisiana) should be delivered, with preference in the order named, to (1) the person to whom issued; (2) the claimant under the grantee, with unbroken chain of title; (3) one presenting a duly executed power of attorney from the person entitled as above. ii–389

Patent for, should be delivered to some one having an interest in the land conveyed. iii–554

Patent from the government would convey no title to land within a complete French grant. vi–149, 347

Private Claim—Continued.

IV. PATENT—Continued.

The act of June 6, 1874, only dispensed with the necessity of patents when the claimant was by law entitled to patent. III–179

"Patent" certificates for claims confirmed by the act of 1828 were transmitted to the General Land Office to show the action of the Land Office in the premises. XI–149

V. ARIZONA.

Instructions of January 29, 1901, under the act of January 14, 1901, relative to the Algodones grant. XXX–455

In Arizona under act of February 5, 1875, must be filed in the local office and then brought before the Commisioner on the question of occupancy before occupant can purchase; if decided adversely, the land is open for preëmption or homestead, the occupant for less than twenty years having the prior homestead right. II–340

Joint action by the local officers upon these claims is required by the law. II–340

Proof of occupancy must be by the facts showing it, and not by the conclusions of witnesses. II–341

Where proof of occupancy is not sufficiently definite, witnesses must be summoned and examined; instructions given. II–341

A preëmption claim may not be filed until the occupant claim is adjudicated. II–343

Falling within the act of July 22, 1854, is to be submitted to Congress for confirmation. IV–484

The repeal of section 8, act of July 22, 1854, and the acts amendatory thereof deprives the Department of authority to declare further reservations of land under said acts. XIV–97

Since the repeal of section 8, act of July 22, 1854, by the act of March 3, 1891, the Department is without jurisdiction over Spanish and Mexican claims in Arizona. XX–146

The statutory provision directing the surveyor-general to locate a selection under the act of June 21, 1860, does not take the action of said officer out of the supervisory authority of the Commissioner and Secretary. XIII–624

The duty of locating selections under the act of June 21, 1860, imposed upon the surveyor-general of New Mexico, devolved upon the surveyor-general of Arizona when the lands affected passed into the new surveying district created for that Territory. XIII–624

The provisions of section 8, act of July 22, 1854, as to claims in New Mexico, were extended by act of August 4, 1854, to the lands in the Gadsden purchase, and are applicable to claims within said purchase that are now included in the territorial limits of Arizona. XVI–408

Private Claim—Continued.

V. ARIZONA—Continued.

A reservation of land under section 8, act of July 22, 1854, is statutory in character and effective as soon as the claim is made before the surveyor-general; and it is not within the power of the executive to modify or revoke such reservation. XVI–408

A reservation under section 8, act of July 22, 1854, for the benefit of, is not dependent for its efficacy upon the filing of a plat showing the survey of the claimed lands or the notation of such reservation on the records of the land department, but such action is proper in the interest of good administration. XVI–408

The act of March 2, 1891, repeals section 8, act of July 22, 1854, but does not revoke the reservation made thereunder. XVI–408

The right to locate selections under the Baca grant is confined to non-mineral land, and the claimant must show the present known character of the land. XIII–626

There is no power or authority in the Department, on failure of the claimants to make selection and location within the period designated by the statute, to remove the limitation and authorize a selection and location thereafter. V–705

The Department has no authority to cancel a selection and location made within the period prescribed of non-mineral land or land not known to be mineral. V–705

The selection and location of lands known to be mineral might be properly vacated; but the right to select other land in lieu thereof would be barred unless made within the statutory period. V–705

The act of June 21, 1860, authorized the heirs of Baca to select non-mineral lands in lieu of the original, and the burden is therefore upon the claimants to show that the lands selected are of the character designated; and this showing can be required at any time prior to patent even though the character of the land may not have been known to the claimants at date of selection. XII–676

The right of the Baca claimants under selections made in accordance with the act of June 21, 1860, is not dependent in any manner upon the present claim of the town of Las Vegas. XII–676

VI. CALIFORNIA. See *States and Territories* for rulings under section 7, act of July 23, 1866.

The act of March 3, 1851, is remedial to the extent of protecting claimants under foreign grants in the assertion of their claims. V–65

Final decree of board and district court conclusive as between the claimant and the government. IV–567

Extent of jurisdiction conferred upon the board of commissioners and United States courts. V–320

Private Claim—Continued.

VI. California—Continued.

Confirmation by the board did not enlarge the grant, but passed title in accordance with the law of the nation from which the claim was derived. VI–186

The act of June 19, 1878, gave to the United States district court jurisdiction as to title and to the land department the location of the claim. I–262

A decision of the Department under the act of 1864 as to whether a grant is one of boundary or quantity is conclusive. I–238

The term "sobrante" means simply surplus; a grant for a sobrante is not a grant by name. I–181,248

The words "lying in between" construed in the location of El Sobrante. I–191

The statutory reservation for El Sobrante was limited to lands lying between the five ranchos (named). III–202, 204, 228

Held as "sobrante" in the sense that it applied to the surplus land limited by the lines of the surrounding ranchos. I–248; IV–95

The right to the pueblo title and possession rests in the city of San Francisco by judicial confirmation, sanctioned and ratified by legislative grant. II–346

The words "establishment of San José" construed to mean all the lands held for the benefit of the mission. V–68

Status of mission lands in California. V–68

The claim to the Azusa Rancho was *sub judice* until the issuance of patent thereon. V–691

Authority to hold and dispose of pueblo lands as recognized under the laws of Mexico. VI–179

Under the laws of Mexico in force in California at the time of the acquisition of the latter country the pueblos were entitled to lands occupied as the site of the town, excepting those reserved for national use. VI–179

Where the court has vacated a decree and granted a new trial the land department will not take action until the final decree is made. II–364

Selections under the act of October 1, 1890, in lieu of lands belonging to the Rancho Punta de la Laguna must be made within one year from date of said act, and may be by agent or attorney under appropriate instructions. XI–512, 550

VII. Colorado.

By the act of February 25, 1869, approved plats were made evidence of title. I–269

The delivery of approved plat as evidence of title directed. I–269

Private Claim—Continued.

VII. Colorado—Continued.

The utility and propriety of allowing entries (preëmption) on lands (Vigil and St. Vrain derivative claim) relinquished by the claimants is doubted; special considerations in this case which forbid it. II–382

The land in question (Vigil and St. Vrain derivative claim) is not open to entry or filing because action on the appeal from the rejection of the claim by the local office was suspended by the President on the ground that it was final, which decision was overruled by the circuit court, and the case is now pending in the supreme court and not finally determined. II–385

Motion to substitute another for the appellant in the rejected derivative claim (Vigil and St. Vrain), on the ground of judgment and sale under execution in his favor, denied on the ground that the land department has no longer jurisdiction under the President's order. II–378

Since the President's order affirmed the finality of the decision of the local office in the claim of Thomas Leitensdorfer and patent has issued for it, the tracts outside of the limits of the lands allowed by the local office are subject to the settlement claims. II–590

Section 1, act of February 25, 1869, does not authorize an appeal from the decision of the local office on claims presented under the Vigil and St. Vrain grant. XI–226

VIII. Florida. See sub-title No. IX.

In Florida under one square league in quantity reported for confirmation January 14, 1830, were confirmed by act of May 26, 1830, except such as were confirmed by the Spanish government after January 24, 1818. V–677

The specific exception of certain claims from the reports referred to Congress January 14, 1830, is conclusive that all other claims so reported and referred were confirmed by the act of May 26, 1830. V–677

Decided and recommended for confirmation by the commissioners, and referred to Congress by the Secretary of the Treasury, January 14, 1830, is confirmed by section 1, act of May 26, 1830. XXIV–205

The provisions with respect to the confirmation of, in Florida contemplates that all such claims, whether founded upon perfect grants or incomplete titles, should be presented to the board of commissioners for confirmation or to Congress for final action, and that all claims not finally acted upon by Congress should be brought into the courts within a specified period. XVI–550

Private Claim—Continued.

VIII. FLORIDA—Continued.

The term "league square" as used in the act of May 23, 1828, confirming certain Spanish claims in west Florida and east Florida, contemplates the same area described by such term in the prior acts confirmatory of Spanish grants in west Florida and Louisiana, and means 6,002.50 acres. XVIII–64

A patent having issued to the beneficiary in accordance with the terms of the special act of July 2, 1836, a conclusive presumption arises that all the requirements of said act were complied with by said beneficiary, including the relinquishment of the lands specified in said act. XXIII–130

The grant made to Dr. Perrine by the act of July 7, 1838, and subsequently conferred by Congress upon his heirs, was a grant *in præsenti*, conveying the legal title to the grantees, defeasible only by forfeiture duly declared by act of Congress; and until such forfeiture be so declared the grantees have the right to make the settlement required as a condition precedent to the issue of patent. XXIV–109

The right of settlement under the act of July 7, 1838, on the granted premises, is restricted to the grantees or those claiming under them, and all other settlers thereon are naked trespassers; and their settlements may be claimed by the grantees as a fulfillment of the conditions of the grant, whenever the settlement is such as the grant requires. XXIV–109

If the terms of the grant of July 7, 1838, are complied with it inures to the beneficiaries thereunder, and patent will issue accordingly; it is therefore not material for the government to inquire as to the interest of others in said grant. XXIV–109

IX. LOUISIANA. See sub-title No. VIII.

A claim to land in Florida and Louisiana resting on occupation, habitation, and cultivation under the former government is a "private land claim." V–613, 617

The term "grant" in the Florida and Louisiana treaties comprehends not only those made in form, but any concession, order, or permission to survey, settle, or possess, whether evidenced by writing or parol or presumed from possession. V–620

Louisiana settlement claims not confirmed absolutely for a certain number of acres. V–287

Title by "occupation," etc., is of the same validity as one founded on permission to settle or order of survey. V–617

Title resting on a permit to settle and an order of survey made prior to 1800, without any settlement or survey, is incomplete. V–576

Title through succession sale dependent upon the jurisdiction and order of the court. V–158, 283

Private Claim—Continued.

IX. LOUISIANA—Continued.

Where sale was ordered without proof as to heirs, former proceedings, or the want of them, application by the purchaser for satisfaction by issue of certificates of location is denied on the ground that the proceedings were insufficient to warrant the sale or effect a transfer of title. II–403

If the necessary jurisdictional facts appear on the face of succession proceedings, a purchaser at a sale thereunder is not bound to inquire into the truth of the allegations on which the court assumed jurisdiction; nor is the validity of such proceedings subject to collateral attack on the application of such purchaser for the issuance of scrip on the claim so purchased. XVII–56

In case of a, confirmed to the "legal representatives" of the claimant, and held under succession proceedings as property of the claimant's estate, the judgment of the court, on application for scrip by the purchaser at the succession sale, must be accepted, in the absence of any proof of the existence of an assignee or legal representative by contract. XVII–73

Where, in the prosecution of a, through succession proceedings, the jurisdiction of the probate court is attacked, the Department will suspend action pending the determination of such question in the courts. XX–60

Legal representative or confirmee determined by the local law. V–285

A decree of the state district court in the matter of a succession sale is conclusive as to all facts necessary to convey title. V–158

Purchaser of an inchoate claim at a succession sale duly authorized by law should be considered the legal representative of the confirmee. V–158, 286; VI–437, 490

In a claim under succession sale the government has a right to inquire whether the property or claim against it was properly subject to sale and sold upon a proper application. III–44

Where a claim depends upon section 3, act of March 3, 1819, for confirmation the confirmee or his legal representative must identify the land. VII–1; VIII–391

But one tract of land granted to the actual settler or his legal representative by section 3, act of March 3, 1819. IX–500

Section 2, act of May 8, 1822, providing for the confirmation of, theretofore reported as entitled to such recognition, operated to confirm claims so reported, without respect to the limitation in the matter of acreage contained in the act of March 3, 1819; and where, in the adjustment of a claim thus confirmed, said limitation has been imposed, additional certificates of location, equal in amount to such reduction, should issue under section 3, act of June 2, 1858. XXVIII–275

Private Claim—Continued.

IX. LOUISIANA—Continued.

Section 3, act of March 3, 1819, excepts from confirmation lands claimed or recognized under sections 1 or 2 of said act. VII–1

Founded upon a British grant is not confirmed by section 1, act of March 3, 1819, if it had not been sold and conveyed or settled upon and cultivated prior to the treaty of 1783. IX–514

Founded upon a British grant is not confirmed by either section 2 or 3 of the act of March 3, 1819. IX–514

Third section of act of March 3, 1819, limited to claims based upon inhabitancy and cultivation "not having any written evidence of claim reported," and does not operate to confirm a claim reported in the list of claims, founded on orders of survey, which ought not to be confirmed. XVI–499

Section 3, act of March 3, 1819, for the adjustment of certain private land claims in Louisiana, makes provision for two classes: (1) every person whose claim is comprised in the lists or register of claims reported by the commissioners, and (2) the persons embraced in the list of actual settlers. The words "not having written evidence of title," as employed in said section, are descriptive of the second class of donees, and not a limitation upon the first class. XXIX–698

Under the treaty of 1803 the United States acquired no title to land included within a complete French grant. VI–149

Grants made by the representative of France after the cession to Spain void unless recognized by the latter before the transfer to the United States. I–272

The proviso limiting claims confirmed by the act of February 5, 1825, to one league square is general and not restricted by the recommendation of the local officers that certain claims should be limited to one mile square. I–275

Confirmed by the act of February 5, 1825, should pass to patent if the survey did not embrace more than one square league. I–275

The mistaken classification of a claim in the report of the register and receiver as among those already confirmed by law will not bring it within the confirmatory provisions of the act of May 11, 1820. VIII–80; IX–166

Prosecuted under the act of June 22, 1860, must be in the form and with the proofs therein required and presented prior to the expiration of said act by limitation. III–72

Under the act of June 22, 1860, and amendatory acts a claim is barred after June 10, 1875, if not prosecuted prior thereto. IX–556

Jurisdiction of the Secretary under the act of June 22, 1860. IV–475, 593

Private Claim—Continued.

IX. LOUISIANA—Continued.

The claim (McDonogh) was one of those reported by the local officers on November 20, 1816, in the first class, which were recognized by the act of Congress and declared to be founded on complete titles; such recognition did not, however, fix its depth or extent, and the duty of survey and segregation followed; as to claims in the second class, where the equity was in the occupants and the fee in the United States, the act annexed the fee to the equity. II–646

Conflicting with claim of State (Louisiana) can not be settled in *ex parte* proceeding. IV–473, 592

The State (Louisiana) not estopped from questioning the extent and location of the McDonogh claim by its suit in assertion of its right as the legal representative of the interests in such claim bequeathed to the city of New Orleans. VI–473

Though the act of March 2, 1889, restoring to the public domain certain lands reserved on account of, covers in its descriptive terms only a part of the Conway claim, the intent of Congress was to embrace all the lands within said claim. XIX–1

The special act of January 10, 1849, authorizing a location in full satisfaction of a confirmed settlement claim is a grant of an estate in land which at the death of the grantee descends to his heirs. XXI–518

Where a private land claimant in Louisiana failed to present to the district court of the State a petition setting forth his claim, within the time allowed by the act of May 26, 1824, as re-enacted and extended by the act of June 17, 1844, the land embraced in his claim became, at the expiration of the period of reservation named in said later act, free, unreserved, and unappropriated public land, and if of the character granted to the State by the swamp-land grant of September 28, 1850, the subsequent confirmation of said private land claim, by the act of January 12, 1855, did not affect the State's title to so much thereof as had been granted as swamp land. XXX–465

X. MISSOURI.

A confirmation upon alleged occupancy does not inure to the benefit of parties claiming under a prior concession made to the same confirmee. VI–462

Confirmations under the act of June 13, 1812, were by virtue of inhabitancy, cultivation, and possession, and not by virtue of concession; and such confirmations were valid as against all claims except those previously confirmed by the board of commissioners. VI–586

Private Claim—Continued.

X. Missouri—Continued.

The final location of the Calve claim conclusive as to parties denying its correctness and asserting rights in conflict therewith. III–177; VI–462, 586

XI. New Mexico.

The sole power of determining the validity of claims arising under treaty stipulations with Mexico rests in Congress. I–581

Under the act of July 22, 1854, the local office is charged with the preliminary investigation of a claim in New Mexico. III–138

The local office under act of July 22, 1854, may inquire as to the title of claimants as well as the validity of the grant, and should locate the grant as nearly as possible. III–138

Appeal to the land department does not lie from the report of the surveyor-general to Congress. II–413

Examinations by the surveyor-general are *ex parte* and notice to outside parties is not required. II–416

The surveyor-general reports upon the validity (*i. e.*, the regularity and genuineness) of the claim, and it is not his duty to hear and determine controversies between conflicting grants. II–417

Under the act of confirmation the acceptance of patent was in full of all further claims. (Nolan grant.) IV–311

Nolan grant No. 39; statement of action made to the Secretary of State. XI–518

The Department has no authority to cancel a selection properly made under a floating grant of lands subject thereto or not known to be excepted therefrom by their mineral character. (See 12 L. D., 676.) V–705

Of Pueblo Tecolete, as confirmed by act of December 22, 1858, requires patent, as in ordinary cases to individuals. V–61

The grant of Las Vegas was a concession of separate tracts to settlers and occupants, and the title thereto is confirmed by the act of June 21, 1860, within the prescribed boundaries of the original grant, whether within the town of Las Vegas or outside of it. XIII–646

The confirmation of the Las Vegas was made direct to the town as a matter of convenience in confirmation and patent and for the reason that the town was a proper party to ask and receive relief on behalf of its people. XIII–646

A resurvey of Las Vegas, directed so as to include only the lands allotted under the original concession. XIII–646

In the resurvey of Las Vegas there should only be included the lands allotted to settlers under the original concession at the time the territory became subject to the laws of the United States. XV–58

Private Claim—Continued.

XI. NEW MEXICO—Continued.

Patent on the Las Vegas should issue to the town for the benefit of the proper parties. XIII–646

The land not included in the resurvey of Las Vegas should be opened to disposition under the general land laws. XIII–646

The right of the town of Las Vegas to take title as a confirmee, having been recognized by Congress, will not be questioned by the Department. XIII–646

The petition for the Las Vegas grant set forth specified boundaries, the grant was made conformably thereto, and the surveyor-general recommended the confirmation of the grant as a whole, and, as the act of June 21, 1860, confirming said grant, fixed no limitation as to the acreage thereof, it must be held that the grant was confirmed in its entirety, for the full amount of land embraced in the boundaries, and that patent should issue accordingly. XXVII–683

Section 6, act of June 21, 1860, authorized the heirs of Baca to select, in place of the land claimed by them, "an equal quantity of vacant land, not mineral," and made it the duty of the surveyor-general to survey and locate the lands so selected, subject to the proviso "that the right hereby granted to said heirs of Baca shall continue in force during three years from the passage of this act, and no longer." Held:

1. A selection regularly made by the grant claimants within the time fixed by said act, can not, after the expiration of said period, be changed, by an alleged amendment, to embrace lands not covered by the previous selection.
2. The time with reference to which the character of the land selected, whether vacant and not mineral, is to be determined, is the date of the selection, and not the date of the approval of the survey of the claim.
3. The duty of investigating and determining, in the first instance, the character of the land selected, rests upon the surveyor-general, who should conduct such investigation and make such determination as the work of the survey progresses in the field. XXIX–44

The state or condition of lands, whether vacant, or reserved on account of an existing Spanish or Mexican claim, at the date of their selection or location under the sixth section of the act of June 21, 1860, determines whether the title thereto passed by such selection or location; and an attempted selection or location of lands embraced in any such claim is not validated so as to become operative as to such lands upon their subsequent release from reservation by the final action of the courts declaring such claims to be invalid. XXX–97

Private Claim—Continued.

XI. NEW MEXICO—Continued.

The duty of making survey and location of lands selected by the Baca heirs under the act of June 21, 1860, and of investigating and determining, in the first instance, whether the lands were vacant and not mineral at the date of selection, rests upon the surveyor-general; and until such survey, investigation, and determination shall have been made, final action by the government can not be had upon the selection. XXX–497

The land embraced within the Sangre de Christo grant at the date of the confirmatory act belonged to the United States if not to the grantees, and it was therefore competent for Congress to confirm the title in the grantees either by a grant *de novo* or by confirming the Mexican grant. XI–203

The confirmation of the Los Trigos based on the report of the surveyor-general was a final settlement of all questions as to the limitations of area by inclosure and cultivation and conveyed full title to the land within the boundaries. XIV–355

Under the provisions of section 8, act of July 22, 1854, a, filed with the surveyor-general operates to reserve the land covered thereby from other appropriation until disposed of by direction of Congress, and the repeal of said section by the act of March 3, 1891, does not annul such a reservation in force at the passage of said act. XXVII–604

All lands within the section of country ceded to the United States by the treaty of Guadalupe Hidalgo and the Gadsden treaty, covered by Spanish or Mexican claims, were, by the eighth section of the act of July 22, 1854, and the act of August 4, 1854, reserved from other disposition until the validity or invalidity of such claims was finally determined. XXX–97, 497

Lands covered by a Spanish or Mexican grant surveyed and located prior to the Gadsden treaty, with respect to which the right of possession and title under the grant were asserted and claimed, according to such survey and location, at the date of the Baca selection of June 17, 1863, under the act of June 21, 1860, were reserved from sale or other disposition by the government, within the meaning of the eighth section of July 22, 1854, and the act of August 4, 1854, and were therefore not subject to selection under said act of June 21, 1860. XXX–497

By the treaties between the United States and the Republic of Mexico, all lands within the boundaries of Mexican and Spanish grants, at the date said treaties were ratified, were placed in a state of reservation, and by the act of March 3, 1891, said reservation is continued in force, and will so remain until final action is taken on the respective claims affected thereby. XXIV–1

Private Claim—Continued.

XI. New Mexico—Continued.

The phrase "disposed of by the United States," as employed in section 8, act of March 3, 1891, to define the lands excepted from the confirmatory provisions of said act, must be construed to mean a final and permanent divestiture of whatever title the United States may have had, or an obligation to convey such a title. XXVIII–544

A homestead entry, under which title had not been earned, at the time when a decree of confirmation was entered by the court, under the act of March 3, 1891, is not a disposition of the land embraced therein that excepts the same from the operative effect of the decree. XXVIII–544

By the terms of section 14, act of March 3, 1891, a claim of ownership, asserted under a Mexican, can not be considered as against a homestead entry on which final certificate has issued prior to the confirmation of said grant. XXIII–193

Under section 12, act of March 3, 1891, all claims under Spanish or Mexican grants, referred to in section 6 of said act, are to be held as abandoned, if not presented before the court of private land claims within two years from the taking effect of said act; and a grant occupying such status is consequently no bar to the adjudication of a "small holding" lying within the limits of such grant. XXV–391

Land embraced in a "small holding" claim, duly filed with the surveyor-general, and on which proof is subsequently submitted, is excluded from homestead entry. XXVII–278

The right of a "small holding" claimant to perfect the title under the act of March 3, 1891, is not defeated by a prior homestead entry, where at the time of said entry, and long prior thereto, said claimant was in actual possession under color of title, of which act the entryman had full knowledge. XXVII–604

XII. Scrip.

The holders of title are the proper claimants for indemnity. III–238

Action as to issue of indemnity scrip under the act of June 2, 1858, will not be taken except upon the application of a party in interest. V–357

If owned by different parties and the interests therein are separate and determinate, scrip may issue to any one of the owners to the amount of his ascertained interest. V–617

The purchaser of a confirmed claim (Louisiana) becomes *ipso facto* the legal representative of the confirmee, and as such is entitled to the scrip issued in satisfaction thereof. II–405

Private Claim—Continued.

XII. Scrip—Continued.

Indemnity under section 3, act of June 2, 1858, will only issue to the owner of the claim to which title has failed, and if the applicant has parted with a portion of the land alleged as a basis he can only receive indemnity for the part then owned. VIII–463

The confirmation of, to the "legal representatives" of the original occupant vests no right in said occupant, and parties claiming through such occupant are not entitled to scrip under the act of June 2, 1858. VI–436

"Occupation" claims in Louisiana and Florida are within the provisions of the third section of the act of June 2, 1858. V–617

In claims for, it must appear that the basis therefor was not expressly excepted from confirmation. V–283

Land deducted from, by judgment on remittitur can not afford basis for scrip though presented by the heirs of the party in whose favor the release was made. IX–556

Certificates of location will not issue except in case of actual loss. IV–129

The issuance of one set of certificates in satisfaction of a grant exhausts the jurisdiction of the Department. IV–13

Scrip can only issue under the act of 1858 where (1) the claim has been confirmed and (2) remains unlocated. V–283, 570; VI–487

Scrip only authorized under section 3, act of June 2, 1858, in case of confirmed claim, and proof of such confirmation must be furnished. VII–1

Not authorized by the act of June 2, 1858, for any part of a confirmed claim which at the date of its location was not in conflict with a prior confirmation. IV–129

The claim for which indemnity is sought under section 3, act of June 2, 1858, must be shown to have been confirmed by Congress and not located or satisfied in whole or in part. VIII–391; IX–514

The right to indemnity under section 3, act of June 2, 1858, does not exist if the claim under which such right is asserted was satisfied by location prior to the passage of said act. XI–147

An applicant for a certificate of location under section 3, act of June 2, 1858, must show that the claim as confirmed remains unsatisfied. XV–523

There is no authority for the issuance of scrip under section 3, act of June 2, 1858, if the basis had not been confirmed by Congress. VIII–80

Under the act of 1858 scrip should issue in case of an unsatisfied claim for a specific quantity of land, founded on an order of survey made in 1795 with no specific location of the land. V–570

Private Claim—Continued.

XII. SCRIP—Continued.

The uncontroverted finding of the surveyor-general that no location has been made is conclusive as to such fact. v–570; vi–437, 490

Scrip under section 3, act of June 2, 1858, can not be issued where it is apparent that the original settlement claim has been satisfied. ix–498

Act of June 2, 1858, does not necessarily include a claim specifically confirmed by a private act. iv–129

Indemnity will be accorded in case of conflict between confirmed claims belonging to the same person. iii–238

The third section of the act of March 3, 1819, confirmed the amount claimed by the parties named in the Commissioner's list referred to therein, and indemnity is not authorized for land in excess of the amount so claimed and confirmed. vii–152

Confirmed by the commissioners appointed under the act of March 3, 1807, is in effect confirmed by act of Congress, and hence within the provisions of the act of June 2, 1858. vi–447

The claims of Toups and St. Amand were merged in Lanfear by act of Congress; the patent thereupon issued upon approved survey, comprehended a location and satisfaction of the Toups claim in its entirety; the case is *res judicata*, and the parties are estopped by conduct and by the record from receiving scrip under the general act. ii–431

The relinquishment or yielding of a superior title in favor of subsequent and conflicting confirmations and locations where the parties in interest can obtain compensation in scrip is illegal. ii–433

The issuance of scrip by the surveyor-general under the third section of the act of June 2, 1858, is subject to the supervision of the Commissioner of the General Land Office. v–570; viii–463

Having been confirmed in its entirety by judicial proceedings and a decree entered that the claimant should have patent for a specified number of acres and scrip for the remainder, and it appearing that a part of the lands so confirmed in place had in fact been disposed of by the government prior to said decree, additional scrip may issue to cover said deficit. xxii–200

Private Entry. See *Application*, sub-title No. vi; *Public Sale*.

Public lands withdrawn from, by act of March 2, 1889. Circular of March 8, 1889. viii–314

Prohibited by the act of March 2, 1889. xiii–550

Of land excluded from such disposition by the act of March 2, 1889, and allowed after the passage thereof is invalid though made before the local office had been officially notified of the passage of said act. xii–201

Private Entry—Continued.

The repeal of the general right of, by the act of March 2, 1889, does not operate to restrict rights covered by special act. XXII–558, 657

The provisions of section 1, act of March 2, 1889, with respect to the disposition of land at, are in no wise applicable to the location of a private claim authorized by a special act. XXI–518

On one certificate not to include a larger number of tracts than provided for in the form. V–30

Non-mineral affidavit properly required with application to make. XI–216

Non-mineral affidavit may be made by applicant's attorney. XIV–461

Though illegally allowed, is while of record an appropriation of the land. VIII–514

Though irregularly allowed, excludes the land covered thereby from appropriation under the homestead law. XV–257

Of lands withdrawn from preëmption not permissible in the absence of express statutory authority. VI–522

Right of, can only be exercised after public offering of the land. IV–155

A special act of Congress authorizing the location of "one hundred and sixty acres of any of the public lands subject to," confers no authority to appropriate unoffered lands. XVIII–132

Must be equal opportunity for purchase to all persons. IV–311

Reoffering an essential prerequisite where the lands once disposed of were restored to the public domain by a statute which provided for such reoffering. VI–451; VIII–189

Land offered at double minimum, and subsequently reduced not subject to, without reoffering at the reduced price. I–634; III–129

Reoffering at public auction not required in case of temporary withdrawal. IV–155

Where the land was once offered, then increased in price, again offered, then declared by Congress to be subject to sale at the first price, and thereafter entered without further offering, the entry is held voidable, not void. III–441; IV–152, 285; VIII–87, 189

The case of Eldred *v.* Sexton cited and distinguished. IV–152; VIII–87

Lands which have been reduced in price should be reoffered at the reduced price before opened to. VIII–87

An entry which is voidable for want of restoration notice may be confirmed by the board of equitable adjudication. IV–152, 285; VIII–87, 189; IX–534

Not allowed for lands withheld from sale until after notice of restoration. V–25

Private Entry—Continued.

Restoration notice must follow the cancellation of an entry to make the land subject to. v–25

Restoration notice does not take the place of public offering. iv–156

Restoration notice is to notify the public that the land is again for sale at the minimum price. iv–156

Not allowed for land reserved through erroneous marking until after regular restoration. iv–311

An erroneous notation of record showing the disposition of tract withdraws such land from, until duly restored. xv–486

On cancellation of entry covering offered land private entry should not be allowed prior to restoration notice, but if so allowed is not void, but voidable, and may be sent to the board of equitable adjudication. vi–518

Offered lands subsequently withheld from sale not subject to, without restoration notice. vi–685

Cancellation of a *prima facie* valid timber-culture entry covering offered land does not render it subject to. vi–819

Can not be allowed of land embraced within a prior timber-culture entry though such entry may not be of record at the date of the purchase. xiv–242

Should not be allowed of land once included within a withdrawal or covered by a filing until after reoffering or restoration notice. ix–534

Lands which have been once offered, then temporarily withdrawn, and afterwards restored should not be sold at private sale without restoration notice. viii–87

Can not be allowed until after restoration notice of land included within an erroneous notation of record showing a prior disposition of said land. ix–10

Lands once offered, then withdrawn from entry, and subsequently restored to the public domain are relieved from their previous offered condition, and hence not subject to. vi–522; viii–410

Under the graduation act of 1854 no public reoffering is required. iv–156

Allowed for land enhanced in price when the record of the local office showed it subject thereto may be referred to the board of equitable adjudication on additional payment of $1.25 per acre. vii–495

A tract of land withdrawn under a railroad grant, and included in a list of lands announced for public sale under a subsequent proclamation, that excepts therefrom all lands "reserved for railroad purposes" can not be regarded as "offered:" and a private entry of a tract occupying such status is void, and not subject to equitable confirmation. (See 15 L. D., 257.) xviii–236

Made in good faith of unoffered land may be submitted for equitable action. xv–257

Private Entry—Continued.

Made in good faith of land included within an indemnity withdrawal may be referred to the board of equitable adjudication where the withdrawal is subsequently revoked and no adverse claim exists. VIII–410

Made in good faith of land withdrawn for railroad indemnity purposes may be equitably confirmed in the absence of any adverse claim. IX–232

Of a tract withdrawn for railroad indemnity purposes can not be equitably confirmed in the presence of a subsequent selection thereof made during the existence of the withdrawal. XVIII–241

Of land once offered and thereafter excepted from an indemnity withdrawal by a homestead entry which is subsequently canceled may be referred to the board of equitable adjudication. IX–534

Of land previously withdrawn as within the primary limits of a railroad grant, though made in good faith, is invalid and must be canceled. IX–159

Made in good faith of the land covered by the previous timber-culture entry of the purchaser may be referred to the board of equitable adjudication in the absence of an adverse claim. XI–395

Of land embraced within a prior timber-culture entry may be equitably confirmed where said entry has been canceled, no adverse claim exists, and good faith is apparent. (See 14 L. D., 242.) XIV–99

May be equitably confirmed when made on land appropriated by entry if said entry is subsequently canceled for illegality. XIV–244

Sent to the board of equitable adjudication where the lands had once been offered and were after withdrawal restored to entry under the "homestead and preëmption." VI–262

Allowed for land included within a prior swamp-land claim should be suspended, with the right to show that the land did not pass under the swamp grant. If such fact is shown, the entry should be sent to the board of equitable adjudication. VIII–644

For land within a prior swamp selection may be submitted to the board of equitable adjudication where the selection was subsequently canceled and good faith manifest. VII–218

A tract is not excluded from, because it had been embraced within a list of swamp selections where the field notes showed that the land was not subject to selection and the claim of the State was not noted of record. VII–193

Allowed to stand though admitted pending the disposition of a prior claim. IV–364

Origin of section 2272, R. S., authorizing private entry by a preëmptor after expiration of the right of preëmption. II–856

Private Entry—Continued.

The act of January 31, 1885, forfeiting the grant to the Oregon Central, did not restore to private entry lands that were offered prior to the granting act and included therein. IV–17; VI–685

May not be made of land within the limits of the official survey of a private claim in excess of the amount confirmed and patented. V–660

Lands affected by the repeal of the act of June 21, 1866, not subject to, until offered (Arkansas). VIII–155

Cash entry for certain land reduced in price prior to reoffering held to be confirmed by the act of March 3, 1883 (Alabama). III–339

The general withdrawal of public land from, by the act of March 2, 1889, is not applicable to the State of Missouri. IX–10

Of lands in Missouri; see circular of June 10, 1898, under act of May 18, 1898. XXVII–68

Application to make, may be filed by a homesteader of (Missouri) lands embraced within his entry that can not be confirmed. X–661

Lands suspended from, by the joint resolutions of May 14 and July 16, 1888, were finally excluded from such disposition by the act of March 2, 1889. X–351

Not permissible for lands affected by the repeal of section 2303, R. S., until after offering. VIII–514

Amendment of, allowed under statutory provisions in case of errror. I–516

The act of April 7, 1896, providing for the reinstatement and confirmation of certain, on condition that such action should only be taken in the absence of intervening adverse claims, contemplated, by such exception, *valid* adverse claims, and inquiry as to the character of apparent adverse claims may therefore be properly made on application for action under said statute. XXIII–582

Protest.

The corroboration of a, is not a prerequisite to its recognition as a proper basis for inquiry where the facts as charged, if true, are a matter of record of which judicial notice must be taken by the officers of the land department. XXII–345; XXV–550; XXVII–53

Filed by a State against the allowance of an entry should be corroborated, in accordance with the requirements of Rule 3 of Practice. XXII–629; XXIII–313

Does not justify a hearing if a *prima facie* case calling for cancellation is not made out. XXV–125

Protestant. See *Final Proof*, sub-title No. VIII; *Mining Claim*, sub-title No. IX; *Practice*, sub-title No. XI.

Departmental definition of the term "protest" as used in section 7, act of March 3, 1891. XII–453

A distinction should be made between protestants under mineral entries and those in agricultural entries. XIII–509

One who prefers charges against an entry, furnishes evidence in support thereof, and pays the cost of his own testimony is not a protestant, but a contestant, even though he formally waives the preference right of a successful contestant. XIII–722

Against preëmption final proof acquires no preferred right of entry in the event of the cancellation of the declaratory statement. XXII–188

A protest may be dismissed if not properly corroborated, but such action will not prevent consideration of a second, presented in proper form. XVII–108

Should not be heard on a charge that is at such time the subject of investigation by the government. XIX–442

Public Land. See *Survey*.

I. GENERALLY.
II. PRICE.
III. ILLEGAL INCLOSURE.

I. GENERALLY.

The limitation in acreage prescribed by the act of August 30, 1890, applies equally to all the land laws and restricts the applicant thereunder to 320 acres in the aggregate. XII–81

The limitation of acreage subject to entry under the act of August 30, 1890, does not include timber and stone lands. XIX–299

The provisions of the act of August 30, 1890, are prospective, and the right to secure 320 acres is not affected by the fact that the applicant has acquired a like amount prior to said act if he is otherwise entitled to enter such amount. XII–81

Is land subject to sale or other disposal under the general land laws. I–393

Is that over which the surveys have been extended or over which it is contemplated to extend them. X–369

The phrase "public lands" as used in the act of May 14, 1880, means "public" in the sense that no one else has any claim to them. VI–516

Islands and all accretions thereto are. I–596

The Department has no jurisdiction over lands formed by accretion to a tract to which the government has no title. VII–255

Public Land—Continued.

I. GENERALLY—Continued.

Land formed by accretion belongs to the owner of the adjacent land. I–596; VI–20; VII–255

The bed of non-navigable streams and shallow lakes is not, but belongs to the adjacent riparian owners. XIII–588, 724

Land within the channel of a meandered stream does not become, on a change of the channel. XXI–429

Lands with definite boundaries ceded by treaty become public when said treaty is ratified. III–302

Within the limits of the official survey of a private claim in excess of the amount confirmed and patented is not subject to disposition until after the survey has been duly amended. V–660

On cancellation of an entry the land covered thereby becomes vacant public land, and the Department has full authority to protect the same from trespass. VI–239

Where the claim of a settler (preëmption) is rejected finally, further occupation of the land by the claimant is a trespass. II–505

May be withheld from entry pending an examination in the field of the survey. IX–12

Not withheld from settlement for an unreasonable period pending the assertion of a claim thereto. IV–313

Should not be withheld from settlement on account of indefinite Indian claim. V–557

Improperly withdrawn for railroad purposes restored to the public domain. IV–459

Lands excluded from the survey of the pueblo of San Francisco withheld from disposition pending inquiry as to their actual status. III–528

Open to entry after cancellation on contest, subject only to the right of the contestant. IV–534; VII–186; IX–70, 491

Land within the limits of a railroad grant, but excepted therefrom, is subject to entry without restoration notice. IX–213

A decision of the supreme court of the United States that annuls a patent, and restores the title to the government, renders such lands subject to settlement, in the absence of any prohibition; but in such case it is competent for the land department to determine when said lands shall be open to entry, and make due provision therefor. XXVI–350

A decision of the Department directing that a tract of land, that had been embraced in a railroad indemnity selection, should be held "subject to entry by the first legal applicant," operates to restore such tract to the public domain as effectually as though restored to settlement and entry. XXVI–538

Public Land—Continued.

I. GENERALLY—Continued.

Scheme for opening to entry lands formerly embraced in Santee Sioux reservation. III–534

Plan for opening to entry lands formerly reserved under the Nolan claim. IV–479

A lot made by uniting a small and presumably unsalable tract to an adjoining subdivision in another quarter section is a legal subdivision of the public land. II–460

"Public land strip" not attached to any land district. V–384

Held under a quitclaim deed from the State is not excluded from appropriation. XII–519

II. PRICE. See *Indian Lands; Isolated Tract; Repayment.*

The term "minimum" means the least price at which lands are to be sold. IV–54

The phrase "minimum price," used in section 2387, R. S., means the price fixed by statute. XXIX–503

The price of the alternate reserved section along the line of railroads was fixed by statute (Sec. 2357, R. S.) at double minimum, which has not since been changed. II–681

Price of, under the act of January 13, 1881, restoring forfeited railroad lands. Circular of April 30, 1886. V–165

Price of, within forfeited railroad grants and lands excepted from such grants reduced to single minimum by the act of March 2, 1889. Circular of March 8, 1889. VIII–314

Discretionary authority of the Secretary in fixing price of, under special statute must be presumed to have been exercised with full knowledge of the true status of the land. XXIV–151

Where a reservation is opened to entry the Commissioner of the General Land Office fixes the price of the land. V–269

Where the price of alternate ungranted sections is increased by statute there is no authority for reducing the price on the forfeiture of the grant in the absence of express statutory direction. V–269

Within the limits of a railroad grant and reduced in price by the act of June 15, 1880, is again raised to double minimum if it subsequently falls within the limits of another grant. XI–99

Settlers on, prior to railroad withdrawal entitled to purchase at ordinary minimum. IX–404

Settlers on, prior to notice of withdrawal entitled to purchase at minimum price. IX–423

Decision holding for cancellation an entry at $1.25 made in an even section prior to receipt of notice of executive withdrawal for railroad purposes reversed. II–557

Public Land—Continued.

II. PRICE—Continued.

A tract of railroad land released under the act of June 22, 1874, is subject to entry at single minimum. I–327

Lands falling within the indemnity limits of a railroad grant (Northern Pacific) are not by such fact increased in price. XIX–381; XXIV–159

The circular of June 29, 1887, was not intended to enhance the price of desert land covered by initial entry made prior to the promulgation of said circular. VI–145

Price of desert land within railroad limits is properly fixed at double minimum. VII–436; VIII–368; XII–632

The act of March 3, 1853, fixing the price of, in railroad limits at $2.50 per acre, was not repealed by the desert land act. IX–49; X–541

The price of desert land within the primary limits of a forfeited railroad grant remains at double minimum where said land is also embraced within the limits of another grant not forfeited, although said land may be excepted from the latter grant. XII–296

Desert land within the granted limits of the Texas Pacific could not prior to the act of March 2, 1889, be sold at less than double minimum. IX–271

The price of desert land under the law as amended by the act of March 3, 1891, is $1.25 per acre, without regard to the limits of railroad grants. XIV–74; XVI–170

By the act of March 3, 1891, amendatory of the act of March 3, 1877, the price of all desert lands entered under the amended law is fixed at $1.25 per acre. XXIII–574

Price of desert land entered since the act of March 3, 1891, is $1.25 per acre. If initial entry has been made on double minimum basis, credit for the excess may be allowed on final payment. XVI–170

The provisions of the amendatory act of March 3, 1891, fixing the price of all desert land at $1.25 per acre, are applicable to a desert entry of land made prior to said act, but not perfected, as required by law, until thereafter. XIX–83; XX–406

The act of March 3, 1877, did not reduce the price of desert land within the limits of railroad grants to single minimum; nor did the amendatory act of March 3, 1891, operate to reduce the price of such lands embraced within entries under the original act, but on which final proof had not been submitted at the passage of the amendatory act. XXIII–450

Public Land—Continued.

II. PRICE—Continued.

The price of desert lands within the limits of a railroad grant, entered under the act of March 3, 1877, is not affected by the act of March 3, 1891, and such lands can only be patented on the payment of the double minimum price. XXV–231

The price of the reserved alternate sections falling within the limits of the withdrawal made on the general route of the Northern Pacific was, by the terms of the grant to said company, fixed at double minimum. VII–495, 578; XXV–309

Even sections within the granted limits (Northern Pacific) could not be sold at less than $2.50 per acre after the map of the general route was filed. VI–507; XIV–377

Where an entry within railroad limits was allowed at single minimum the entryman will be required to make a further payment of $1.25 per acre or relinquish one-half of the land entered. VI–507

Lands not passing under a railroad grant but within its limits should be raised to double minimum. III–158

Under a railroad grant which provides that "the sections and parts of sections which by such grant *remain* to the United States * * * shall not be sold for less than double minimum," the sections so *remaining* are identified when the map showing the definite location of the line of road is filed and accepted, and from such time are subject to sale only at the double minimum price. XXVIII–25

Land within the common limits of the Chicago, Minneapolis and Omaha, and Wisconsin Central roads, under the act of May 5, 1864, and excepted from the operation of the grant to the latter company by the indemnity withdrawal made under the grant of 1856, is properly rated at double minimum price. XX–62

An even-numbered section lying within the common granted limits of two railroad grants remains at double minimum though one of such grants may be forfeited. XXIV–9

Even sections raised in price though reserved when the grant took effect. III–477

The grant to the Northern Pacific expressly limits the increase in price to the "reserved alternate section," and such increase does not, therefore, extend to odd-numbered sections excepted from the grant. (Overruled, 12 L. D., 127.) VIII–58

Odd sections or parts of such sections within the primary limits of the Northern Pacific and excepted from the grant by existing entries are properly held at double minimum if such entries are subsequently canceled. XII–127

Public Land—Continued.

II. PRICE—Continued.

Odd-numbered sections within the primary limits of a railroad grant, but excepted from the operation thereof, must be held at double minimum where such grant requires the alternate reserved sections to be sold at said price. XXII–673

Covered by the settlement of a preëmptor prior to the filing of the map of general route (Northern Pacific) is not enhanced in price as against the settler. VIII–318

The act of March 27, 1854, providing that settlers on "public lands which have been or may be withdrawn from market in consequence of proposed railroads, and who had settled thereon prior to such withdrawal, shall be entitled to preëmption at the ordinary minimum," refers to withdrawals that are made in anticipation of the location of proposed roads, and not such as are made after the road has been definitely located. XXVIII–25

A mere *de facto* appropriation of a tract for city purposes, by an act of a State legislature, is not a legal appropriation of government land, and does not defeat the provision made in the grant to the Northern Pacific Railroad Company, raising the alternate reserved sections to double minimum. XXI–331

Though certain odd sections within the limits of the Northern Pacific railroad did not pass by the grant because at its date within the limits of the Bitter Root Valley reservation, they are nevertheless fixed at double minimum. II–676

On the theory that the Northern Pacific Railroad Company is entitled to indemnity for lands within reservations existing at date of the grant, if the even sections are sold at single minimum, the government suffers financial loss. II–676

Lands within the primary limits of the grant to the Oregon Central Company included within the forfeiture act of January 31, 1885, are by the express terms of said act reduced to single minimum, and such reduction extends also to said lands within the overlapping primary limits of the subsequent grant to the Northern Pacific. XVI–493

Under the act of September 29, 1890, forfeiting the odd-numbered sections granted to the Northern Pacific within the overlapping primary limits of the Oregon and California road, no rights of the latter road are recognized, and it therefore follows that the even-numbered sections within said forfeited limits are subject to disposition at the minimum price. XVII–285

The price of lands within the limits of the forfeited grant of the Atlantic and Pacific Railroad Company in New Mexico is fixed at $2.50 for both odd and even sections. V–269

Public Land—Continued.

II. PRICE—Continued.

The act of July 6, 1886, forfeiting the grant to the Atlantic and Pacific, and restoring the lands to the public domain, does not constitute the bringing of a reservation into market within the meaning of section 2364, R. S.; and as said lands have never been raised in price they are now subject to disposal at $1.25 per acre, irrespective of the fact that they are also within the limits of the grant for the main and branch lines of the Southern Pacific. XXVII–241

Alternate reserved sections within the limits of the grant along the constructed main and branch lines of the Southern Pacific railroad, and also within the limits of the forfeited Atlantic and Pacific grant, must be held at double minimum, irrespective of any question as to whether the Southern Pacific can acquire title to any or all of the odd numbered sections within said conflicting limits. XXVIII–479; XXIX–166; XXX–111

The price of restored lands within the limits of the forfeited Texas Pacific grant is fixed at double minimum. VI–157

All lands subject to entry within the limits of the Texas Pacific grant were double minimum in price from the date of withdrawal on general route to the passage of the act of March 2, 1889. VIII–530

The price of lands within the limits of the forfeited Texas Pacific grant remained at double minimum until the act of March 2, 1889. XIV–8

Lands in the San Francisco district withdrawn for the Central Pacific railroad were held not to inure to that company; before restoration they were embraced in the grant to the Southern Pacific railroad, but were held to be excepted from the grant; the odd sections were ordered to be sold at minimum and the even sections at double minimum prices. II–679, 680

Lands raised to double minimum on account of railroad grants and put in market prior to January, 1861, are reduced to a single minimum by section 3, act of June 15, 1880; said act required a public offering before entry; where sales were afterwards allowed without such offering, or made at double minimum, they were confirmed by the act of March 3, 1883. II–677

Odd-numbered sections, excepted from the grant to the Union Pacific and sold to grantees of the company, under section 5, act of March 3, 1887, are properly rated at double minimum. XXI–318

Price of land under a commuted timber-culture entry authorized by the act of March 3, 1891, is $1.25 per acre without reference to limits of railroad grants. XIV–75

In the location of agricultural college scrip issued under the act of July 2, 1864, the scrip must be computed at single minimum. XIV–377

Public Land—Continued.

II. PRICE—Continued.

One who transfers an entry under the act of October 1, 1890, from single minimum to double minimum land, must pay the difference in price. XXI–427

An excess in the area covered by a homestead entry may be paid for at single minimum rate where the land, though double minimum at date of entry is, prior to payment, reduced to single minimum by the act of March 2, 1889. XIII–225

Section 4, act of March 2, 1889, does not reduce the price of land within the limits of a railroad grant if the portion of railroad opposite thereto was completed prior to the passage of said act. XI–99

Though the language in the railroad grant of March 3, 1863, defining the limits of the grant and that measuring the limit within which the even sections are increased in price, differs in terms, the effect thereof is to fix but one limit and increase the price of even sections therein. XIII–572

The minimum price of isolated tracts of land in alternate reserved sections within the limits of a railroad grant is, by section 2455, R. S., as amended by the said act of 1895, reduced from $2.50 per acre to $1.25 per acre. XXVIII–214

Lands within an abandoned military reservation subject to disposition under the act of August 23, 1894, belonging to the single minimum class, must be sold at $1.25 per acre, though appraised at a less figure. XXIII–14

III. ILLEGAL INCLOSURE.

Unlawful inclosures of. Circular of April 5, 1883. I–683; II–640

Unlawful inclosures of. Circular of July 19, 1883. I–684

It is illegal to fence a large tract of public land and to attempt to exclude settlers from it. II–178; IV–392

Persons desiring to become *bona fide* settlers may tear down the fences illegally surrounding such tracts. II–638

Injunctions will lie in the courts for unlawfully fencing the public lands. II–798

The inclosure of any portion of, is illegal unless made with a *bona fide* intent to claim the same under the public land laws. XIII–702

An illegal inclosure of, is no bar to the acquisition of a settlement right thereon. XIII–702

Unauthorized inclosure of, is not an appropriation thereof under which any right can be secured. XXIX–363

Public Sale. See *Isolated Tract.*

Has its origin in the act of 1820 as a condition precedent to private entry. IV–156

Public Sale—Continued.

"Sales of public lands," in all laws relating to public lands, means cash sales; fees are not part of the price of land. II–696

Public lands will not be opened under policy of the Department to cash purchase under public offering. III–149

There is no general statutory authority for the disposition of public lands at auction; authority is given for such action by special statute in each case. X–652

The Commissioner of the General Land Office is authorized by section 2455, R. S., to order into market isolated tracts of unoffered land. X–615; XVI–496

Authority of the Commissioner to order into market isolated tracts of unoffered land not abridged by the act of July 15, 1870. VIII–421

The authority of the Commissioner to offer isolated tracts at public sale is not held to apply in localities where there remains a considerable quantity of unoffered land. III–149

The Commissioner's authority to order into market isolated and disconnected tracts of land extends to a late military reservation reduced to 148.11 acres (Fort Brooke, Florida). II–605

Where an isolated tract has been surveyed at the instance of a person who has deposited the expenses of advertising and offering under section 2455, R. S., it is not subject to soldiers' additional entry. II–242

An order directing the sale of an isolated tract excludes the land covered thereby from settlement, filing, or entry. XII–397; XIV–458

Land chiefly valuable for timber will not be ordered into market as an isolated tract under section 2455, R. S. III–149

The disposition of an isolated tract surveyed as an island is not precluded by the fact that such land is not at all times surrounded by water if there is no claim under riparian ownership. XII–97

The only statutory authority for the proclamation of May 3, 1870, for the offering of certain lands is found, if at all, in the last clause of section 13, act of July 22, 1854, and as said clause is open to such construction it must be presumed the President acted thereunder. X–652

The legality of the offering under the proclamation of May 3, 1870, of certain lands in New Mexico must be held *res judicata* in view of the lapse of time and the expenditures of purchasers on the faith of such offering. X–652

Lands covered by *bona fide* settlement claims can not be offered at public sale under the act of March 3, 1883, regulating the disposition of lands in Alabama. III–169

Public Sale—Continued.

The public sale extinguished the preëmption right because of the failure to make final proof and payment prior thereto, though the land was in fact not offered thereat, being mineral. (Overruled, 11 L. D., 445.) II–525

Purchaser. See *Alienation; Confirmation; Homestead*, sub-title No. XIII; *Practice*, sub-title No. IX; *Railroad Lands; States and Territories.*

Railroad Grant. See *Final Proof*, sub-title No. VIII; *Railroad Lands; Right of Way; Wagon Road Grant.*

I. GENERALLY.
II. PLACE AND QUANTITY.
III. CONFLICTING GRANTS.
IV. DEFINITE LOCATION.
V. WITHDRAWAL.
VI. INDEMNITY.
VII. SELECTION.
VIII. LANDS EXCEPTED.
IX. MINERAL LANDS.
X. INDIAN TITLE.
XI. RIGHTS OF THE STATE.
XII. RELINQUISHMENT.
XIII. ACT OF JUNE 22, 1874.
XIV. ACT OF APRIL 21, 1876.
XV. ADJUSTMENT.
XVI. FORFEITURE.
XVII. CERTIFICATION AND PATENT.

I. GENERALLY.

Where the language of a grant is doubtful the construction must be against the grantee.
I–331, 336, 362, 368; III–243; IV–216, 429; V–49, 380

Rights under, must be asserted in accordance with established procedure. I–466

Rights under, controlled as to acreage by the returns of the surveyor; as sections or fractional sections, must be regarded as containing the exact number of acres expressed in the return.
XVII–88

The maps, tract books, and official plats of survey, on file in the General Land Office, must determine the location of railroad lines, and the distances therefrom of lands in dispute between railroad companies and settlers. XXIV–180

The construction and operation of a railroad is sufficient to put subsequent settlers on notice as to the rights of the road. VI–322

Railroad Grant—Continued.

I. GENERALLY—Continued.

When the language imports a present grant, title passes by the act and attaches to the grant, and such title becomes complete and perfect when precision and identity are given to the particular tract by selection or location of the land. II–493

Lands within an unforfeited grant not subject to entry though the road is not constructed within the period specified in the grant. VIII–589

An applicant for land can not set up failure to construct a road within the statutory period, nor the fact that the company in constructing its road deviated from the original line, if the land claimed is within the granted limits of the road as originally located and finally constructed. XXI–471

An applicant for a tract of land falling within the limits of a, as adjusted on the map of definite location, can not be heard to allege that the land is in fact outside the limits of the grant as shown by actual measurement from the line of road as constructed. XXII–542

Priority of right as between a settler and the company should be determined by hearing before the local office. IV–256; V–474; X–281

In cases of conflict as to the right to lands within either the primary or secondary limits the beneficiary should be notified, with due opportunity to be heard. X–684; XIII–464

Rights under, not affected by a decision against one claiming as a grantee of the company in the absence of notice to said company or proof of the alleged transfer. IX–71

Where lands have been erroneously awarded to a railroad company by decision of the General Land Office, the Secretary of the Interior may review such action without regard to the manner in which the matter is brought before him. XXIII–433

Where a company designates an attorney upon whom all notices and papers shall be served, jurisdiction is not acquired in proceedings involving title under the grant in the absence of notice to such attorney unless said notice is waived. (See 22 L. D., 184 and 688.) XV–247

The act of July 27, 1866, did not confer upon the Atlantic and Pacific company any grant of lands within the Indian Territory. XIII–373

The failure of the company (Southern Pacific) to establish the connection named in the granting act and its possible effect upon the grant. IV–218

The amount due the government from the 5 per cent earnings of the Kansas Pacific railway ascertained upon the mileage basis. III–585

Railroad Grant—Continued.

I. GENERALLY—Continued.

The lands opposite the unconstructed portion of the Northern Pacific road from Wallula to Portland, forfeited by act of September 29, 1890, and within the limits of The Dalles wagon road, will not be suspended from entry pending judicial action that may be taken on behalf of said wagon road. XVI–459; XVII–432

Action suspended on all entries allowed within the conflicting limits of the grants for The Dalles Military Wagon Road Co. and the Northern Pacific R. R. Co., pending a judicial determination of the status of said lands. XXIV–332

The enlargement of the grant to the Union Pacific made by the act of July 2, 1864, is operative as to lands which were at the date of said act public lands, and were otherwise subject to the grant on definite location. XXVIII–128

The act of July 2, 1864, enlarging the grant of 1862 to the Union Pacific, did not make a new grant as to the lands included within the ten-mile limits. XXVIII–575

Until the completion, in 1872, of the Union Pacific bridge across the Missouri River from Omaha to Council Bluffs, the entire road constructed by the Union Pacific Railroad Company under the acts of July 1, 1862, and July 2, 1864, was not completed, and until such time the period of "three years after the entire road shall have been completed," during which the company was authorized to sell or dispose of the granted lands, did not begin to run. XXIX–38

The execution of the "sinking fund mortgage" on the granted lands by the railroad company in 1873, constituted an authorized disposition of said lands, within the meaning of the last clause of section 3, act of July 1, 1862. XXIX–38

The map and diagram, approved by the Department April 14, 1894, defining the limits of the Indian reservation of 1855, in the "Bitter Root valley above the Loo-lo Fork," will be recognized and followed in determining the extent of said reservation as against the subsequent grant to the Northern Pacific. XXVIII–305

Under the act of March 1, 1877, of the State legislature of Minnesota, the protection extended thereby to settlement claims can not exceed 160 acres to any one settler. (St. Paul, Minneapolis and Manitoba.) XXVIII–501

II. PLACE AND QUANTITY. See sub-title No. VII.

Whether one of quantity or in place determined by the price fixed on the sections not granted V–137

The additional grant of March 3, 1865 (Minnesota), was one of quantity requiring selection. III–527; IV–232, 428

Railroad Grant—Continued.

II. Place and Quantity—Continued.

The grant of four additional sections by the act of March 3, 1865 (Minnesota), was of lands in place. v–565; vi–326; vii–151

Under the grant of March 3, 1857, as extended by the act of March 3, 1865, the right to take lands as granted lands is confined to the ten-mile limit. vii–151

The grant of June 3, 1856, for the Ontonagon road is one of "place" and not of "quantity." xiii–464

The words "to be selected within twenty miles from the line of said road," in the granting clause of the act of July 25, 1866, do not operate to make the grant a float, but serve only to define the limits of the grant. v–135

The joint resolution of May 31, 1870, did not make a new grant for the Cascade branch line of the Northern Pacific, and as to lands within the place limits along said line their status under the grant of July 2, 1864, must determine the right of the company thereto. xxix–224

III. Conflicting Grants. See sub-titles Nos. vii, xv, and xvi.

Priority of grant determines the right to land lying within common granted limits. i–332; v–135; vi–443, 677, 816

Overlapping lands derived under the grant of 1864 are held by the Omaha company and Wisconsin Central as tenants in common. vi–195

The definite location and withdrawal under the act of June 3, 1856, reserved the lands within the six and fifteen mile limits from the grant of 1864 made for the benefit of the Wisconsin Central. vi–195

The relocation of the West Wisconsin railway, though authorized, waived all claims under the first location, and no claims of said company under the act of 1864 can conflict with those of the Omaha company derived under the grant of 1856, the location of 1858, and the construction of its road. vi–195

Lands reserved by executive order for indemnity purposes under the grant of June 3, 1856, are by the express terms of section 6, act of May 5, 1864, reserved and excluded from the grant made by section 3 of said act. x–63

The act of May 5, 1864, does not confer any rights upon the Wisconsin Central where its grant overlaps the limits of the prior indemnity withdrawal made under the grant of 1856. x–63

The grant of May 5, 1864, of which the Wisconsin Central is the beneficiary, and that of July 2, 1864, to the Northern Pacific, did not take effect upon lands within the indemnity withdrawal under the grant of June 3, 1856. x–147

Railroad Grant—Continued.

III. Conflicting Grants—Continued.

The act of May 5, 1864, operated upon the indemnity limits of the grant of June 3, 1856, so as to convert four miles of said limits into place limits under said act of 1864 in favor of the roads common to both grants. x–63

The status of lands withdrawn for indemnity purposes under the grant of 1856, for the benefit of the Omaha company, and afterwards falling within the primary limits of the grant of 1864, to the Wisconsin Central, was changed by operation of the latter grant, and definite location thereunder, from lands reserved for indemnity purposes, to granted lands, and, on the failure of the latter company to construct its road opposite said lands, the grant therefor was forfeited, and the title restored to the United States. xxiii–58

By the act of June 3, 1856, title to land in intersecting limits passed to the State of Alabama upon definite location of the road first located. ii–476

In the adjustment of, questions of moiety do not arise except in the case of grants made by the same act for different lines of road that overlap. xviii–255

The grant to the Atlantic and Pacific and Southern Pacific was by the same act, each company being entitled thereunder to an undivided moiety of the odd sections, subject to the grant and within common granted limits, without respect to priority of location or construction. vi–349

When grants are made for different roads by the same statute, priority of location gives no priority of right. viii–38

Where the limits of the primary grants which are settled by location conflict the roads take the sections within the conflicting limits of primary location in equal undivided moieties without regard to priority of location or construction. viii–38

Within the common primary limits of two grants made by the same act, a moiety is granted on account of each road, and where for any reason the State, being the grantee under both grants, is estopped from claiming on account of one of the grants, the United States and the State become tenants in common, each entitled to a moiety, of the lands so situated. xxx–319

Where the primary limits of one company conflict with the indemnity limits of another and both derive their grants from the same act the former is entitled to the lands in question without regard to priority of location or construction. xi–607

Where grants to different roads are made by the same statute, priority of right in conflicting indemnity limits is determined by priority of selection. iv–426; viii–38

Railroad Grant—Continued.

III. CONFLICTING GRANTS—Continued.

For the St. Vincent extension of the St. Paul, Minneapolis and Manitoba railway is a new grant, made by act of Congress after the original grant for the main line. The grant for said extension can not, therefore, be adjusted in connection with the other grants as an entirety. The grants must be adjusted separately, according priority of right to the prior grant in case of conflict.

XIII–349, 353

Priority of selection determines the right as to odd-numbered sections within the overlapping indemnity limits of the St. Paul, Minneapolis and Manitoba Ry. Co., St. Vincent extension, and the Northern Pacific R. R. Co., and not within the withdrawal on general route of the latter company. XXIII–454

The priority of right on the part of the Northern Pacific as against the Manitoba company, recognized by the supreme court in the case of the Northern Pacific R. R. Co. *v.* St. Paul and Pacific R. R. Co. (139 U. S., 1), is not applicable to lands within the indemnity limits of the former that were not included in the withdrawal therefor on its map of general route filed in 1870.

XIV–624; XXI–462

At the time of the filing and acceptance of the map of definite location of the St. Vincent extension of the Manitoba road there was no reservation of lands for the benefit of the Northern Pacific outside the withdrawal on general route, and the primary limits adjusted to definite location, that would defeat the grant to the Manitoba company. XXIV–195; XXVII–674

The grant of lands made to the State (Alabama) by sections 1 and 6, act of June 3, 1856, are separate grants, and should be so adjusted. A certification in excess of lands in aid of the Wills Valley road does not preclude certification on behalf of the Northeast and Southwestern road. XVII–70

The grant of May 12, 1864, to aid in the construction of the two roads named therein was a grant in place and of a moiety for each road within the common granted limits. VI–47, 54

Under the grant of July 4, 1866, to the State of Minnesota, in which indemnity is provided where the numbered sections have been "reserved by the United States for any purpose whatever," at the time when the line of said road is definitely located, no rights attach to lands included in the prior indemnity withdrawal made on behalf of the grant to the same State under the acts of March 3, 1857, and May 12, 1864; and aside from said indemnity withdrawal, if the lands are needed in the satisfaction of the prior grant they were appropriated for that purpose as against the grant of 1866. XXVII–406

Railroad Grant—Continued.

III. CONFLICTING GRANTS—Continued.

Lands falling within the limits of the Texas Pacific were excepted from the grant to the Southern Pacific. IV–215

Land in common limits of Central Pacific and California and Oregon roads, if excepted from the grant to the former, passed to the latter, if public, when the map of survey was filed. XV–484

Lands embraced within the indemnity limits of the Atlantic and Pacific were excepted from the grant to the Southern Pacific. VI–679, 812, 816

Land within the subsisting granted limits of the Atlantic and Pacific when the map of the designated route of the Southern Pacific was filed is excepted from the grant to the latter company. VIII–282

The odd sections within the primary limits of the grant of June 10, 1852, excepted therefrom, but withdrawn under said grant, having been "offered" after the adjustment thereof and before the grant of July 27, 1866, were not reserved from the operation of the latter. VIII–165

In the overlapping primary limits of the Northern Pacific and Oregon and California roads east of Portland the grant is to the former under the act of July 2, 1864, and is forfeited by the act of 1890 to the extent of the withdrawal made under section 6, act of 1864, and under said act of forfeiture no rights of the Oregon road are within said conflicting limits. XIV–187

The act of June 3, 1856, granting lands for the Ontonagon road, also provided for a similar grant to another line, and where the granted limits overlap each company takes an undivided moiety. XIII–464

The Ontonagon company is entitled to the odd sections within its primary limits coterminous with the constructed road and outside the primary limits of the Marquette road and a moiety of the odd sections within the common granted limits of the two roads coterminous with the constructed road of the Ontonagon company. XIII–464

Lands within the San Francisco, California, district did not inure to the Central Pacific although withdrawn; prior to restoration they were embraced by the grant to the Southern Pacific, but it was held that they were excepted therefrom. II–679, 681

The lands west of range 38 west within the granted limits of the Hastings and Dakota grant and indemnity limits of the Manitoba were free from the claim of the latter at the date of definite location under the former, and hence passed thereunder. XIII–440

Railroad Grant—Continued.

IV. DEFINITE LOCATION.

A line of road is definitely located when the map thereof is filed and the Secretary of the Interior gives his consent and approval to such location. v–661

Date of survey of the road in the field no longer accepted as definite location. II–484; v–62

Line fixed by definite location may not be changed except by legislative authority. II–488; VI–195, 209

Rights that attach by definite location are absolute until forfeiture is declared. IX–246

After a formal definite location, rights acquired thereby can not be disturbed by departmental action. v–661

A company is not entitled to the benefit of two locations of its road, and where the limits have been readjusted under an amended location, and the changed limits have been recognized, it must be held, as to the portion of the road so changed, that the right of the company attached as of the filing of the amended location. XXVI–593; XXX–241

The fact that lands are unsurveyed does not except them from the operation of a, on definite location. XXIV–180

Definite location of the line of road excludes the subsequent acquisition of settlement rights on unsurveyed lands subject to the grant. X–136

Under the former rulings of the Department it was held that a line of road was not definitely fixed where it passed over unsurveyed land. v–356

When a route is adopted by the company and a map designating it is filed with the Secretary of the Interior (as required by the granting act) and accepted by that officer, the route is established; it is, in the language of the act, "definitely fixed." II–481

The right of the State and of the company attached to the granted lands when the route of the road was definitely fixed (*i. e.*, when the map was filed and accepted). II–483

Locality and quantity of grant fixed by the road as made or located. v–468

A deflection from the line of definite location in the construction of the road does not change the location of the grant or make it operative upon lands not affected by the definite location. VI–54, 209, 565

The location of one of two roads provided for in same grant held preliminary and not precluding change if necessary to comply with statutory requirements as to course and direction of said roads. VI–54

Railroad Grant—Continued.

IV. DEFINITE LOCATION—Continued.

The construction of a road on the line of "general route" will not cause the map thereof to be treated as that of "definite location" unless so offered. v–79

The acceptance of the completed sections between San José and Sacramento determines the date when the line was "definitely fixed" (Central Pacific). v–62, 157

Right of the California and Oregon Railroad Company attached on filing map of survey in the General Land Office. iv–484

No direct authority for the appointment of the commission to determine the line of definite location between the completed portions of the Central and Union Pacific. v–661

The status of land at the date of definite location determines whether it is subject to the grant. (See 15 L. D., 36.) ii–477; v–62, 140, 155, 277, 397; vi–356; ix–402; x–167; xi–91

The right of the road under its grant attaches to lands that are disembarrassed at definite location though said lands are reserved at the date of the grant. (See 15 L. D., 36.) ii–477; v–62; vi–356; vii–207, 223, 241

Status of land at definite location determines whether it is subject to the grant irrespective of any subsequent order of withdrawal. xi–186

The grant of July 1, 1862, and July 2, 1864, is not controlled by the designation of the general route, but by the definite location of the road, and the departure of the company in its location and construction of the road from the general route, as designated by the map of 1866, does not abridge the grant. xi–108

Land appropriated when the map of general route is filed, but free prior to definite location, is not held to await the same, but is subject to the first legal application (Northern Pacific). v–333

The existence of a homestead entry at date of withdrawal on general route does not except the land covered thereby from the grant if such land is public at definite location. ix–156

Where local officers rejected a preëmption entry erroneously and the settler thereupon actually abandoned the land (without appeal) it became public and passed to a railroad company on definite location of the road. ii–474, 570

The occupancy of land within the primary limits of a railroad grant, at the time of the definite location of the road, by one who is not shown to have had any intention of acquiring title thereto from the United States, and who subsequently disposes of his improvements and abandons the land, is not sufficient to defeat the operation of the railroad grant in favor of a party who went upon the land long after definite location and who seeks to make entry because of such prior occupancy. xxx–241

Railroad Grant—Continued.

IV. DEFINITE LOCATION—Continued.

The lines of the South and North Alabama company (successors) were definitely fixed on May 30, 1866, between Decatur and Calera, and on July 26, 1871, between Calera and Montgomery, the dates respectively when maps of definite location were filed in the General Land Office, notwithstanding the fact that the granting act did not require the filing of such maps. II–484

The right of the California and Oregon company under the act of July 25, 1866, attaches to the granted sections when the map designating the line of its road is filed with the Secretary of the Interior and accepted by that officer. XII–133; XXX–51

The grant of July 25, 1866, does not in express words provide for the "definite location" of the road, but contemplates that the "map of the survey of said railroad," for which provision is made, shall perform that service. XXIX–237

The provision in section 2, act of July 26, 1866, requiring the survey of sixty miles of the road prior to any withdrawal therefor, is not intended to require subsequent maps of definite location to be in sections of sixty miles. XV–56

The grant of March 3, 1871, not only contemplates a preliminary designation of the general route, but also a map of definite location, and by such map the limits of the grant are determined (Southern Pacific). XI–582

The map of definite location of the Central Pacific company was received and approved by the Secretary October 20, 1868, upon which date its right attached, and not, as heretofore held, on July 18, 1868, the date of the adoption and certification of the map by the officers of the company. II–488

The line of the Dubuque and Pacific (now Iowa Falls and Sioux City) company was definitely fixed October 13, 1856, the date of acceptance by the Secretary of the map of definite location, and not at date of survey in the field, as heretofore held. II–483

The line of the St. Vincent extension of the St. Paul and Pacific (now St. Paul, Minneapolis and Manitoba) company became definitely fixed on December 19, 1871, when the map of definite location was accepted by the Secretary, and not at date of survey in the field, as formerly held. II–481

The St. Paul, Minneapolis and Manitoba company is estopped from claiming under the map of definite location filed December 5, 1857, lands west of range 38 west, as that portion of said map was rejected, and the company, acquiescing in such action, filed other maps under which additional lands were secured. XIII–440

Railroad Grant—Continued.

IV. DEFINITE LOCATION—Continued.

Where the line of the road (Northern Pacific) is definitely fixed the grant relates back and takes the lands reserved by filing the map of general route so far as the line of definite location corresponds with the line of general route. II–539

The President's acceptance of the Union Pacific road as constructed on its line of definite location west of Fort Riley to the one hundredth meridian meets the statutory requirement that such route shall be subject to the approval of the President, as the map of said route was accepted by the Secretary of the Interior and the road constructed on the faith of said acceptance. XI–108

Where the act required the governor of the State (Iowa) to file a map of definite location, held that a map certified and filed by the president and chief engineer of the company (McGregor and Missouri River) was sufficient. II–567

The act did not require the filing of a map of definite location; the road being definitely located on the ground from Waldo to Tampa Bay, such a map was filed in 1860 certified by the officers of the company, but, lacking the governor's signature, was returned in 1861 for that purpose, and was lost; a duplicate map was filed in 1875, but was not approved until 1881; held that the original map was due notice of the definite location of the road (Atlantic, Gulf and West India Transit Company), that it should have been kept on file and proof of the authority of the State otherwise obtained, and that it operated as a legislative withdrawal. I–359; II–561; V–107

Duplicate map of definite location treated as original though filed after the time allowed for the completion of the road. II–107

V. WITHDRAWAL.

1. Generally.
2. On General Route.
3. Revocation.

1. Generally.

It is the duty of the land department to give timely notice by prompt withdrawal of the date and extent of the granted limits, for the protection of both company and settlers. II–514

When executive withdrawal of granted or indemnity lands is made in general terms it only withdraws from market the "public lands" lying within the limits mentioned. II–507

Executive withdrawal not effective until notice thereof is received at the local office. V–651; XIV–591

Railroad Grant—Continued.

V. WITHDRAWAL—Continued.

1. Generally—Continued.

The power of the Department to withdraw the granted lands without any direction expressed in the act is well settled; its purpose is to prevent a defeat of the grant by private appropriation; and the authority to withdraw the indemnity lands must follow. II–514

The Department has power to make indemnity withdrawals, though no express authority therefor is conferred by the grant. V–655; VI–18

Contemplated by section 6, act of July 27, 1866, relates only to lands within primary limits, and the validity of any further withdrawal is dependent upon executive action. XIV–610

An executive withdrawal for indemnity purposes is in violation of the terms imposed in the grant of July 27, 1866, and is without effect except as notice of the limits within which the company would be entitled to select indemnity. XXIII–500

If there is no statutory denial of authority to withdraw lands in aid of a congressional grant, the exercise of such authority by the executive reserves the land so withdrawn though the withdrawal may not have been contemplated by the grant. VI–522

An executive withdrawal of lands from private entry is sufficient to defeat a settlement for the purpose of preëmption while the order is in force notwithstanding the law under which it was made did not contemplate such withdrawal. II–553

An executive withdrawal should be given effect only to the extent intended by the Department. VIII–23

If the company (Northern Pacific) neglects to make its selection and uses the prior or subsequent withdrawals for the purpose of defeating the operation of the settlement laws, it will be the duty of the Department to revoke the withdrawals. II–516

Withdrawals for indemnity purposes should not be maintained beyond a period sufficient for the assertion of rights that may be properly claimed thereunder. VI–77

Section 6, act of July 2, 1864, authorizes withdrawal for the benefit of the Nothern Pacific. (See 7 L. D., 100.) I–382

Withdrawal of indemnity lands (for Northern Pacific) is made in the sound discretion of the Department, so as to subserve the purposes of the grant. II–508

On May 17, 1883, the Secretary declined to withdraw from settlement any portion of the odd sections lying within the second indemnity limits in the Territories, on the ground that withdrawal is not at present necessary for the company's protection. II–511

Railroad Grant—Continued.

V. WITHDRAWAL—Continued.

1. Generally—Continued.

The extension of the homestead and preëmption laws by section 6 of the grant to the Northern Pacific "to all other lands on the line of said road when surveyed, excepting those hereby granted," prohibited an executive withdrawal of any "lands on the line of said road." VII–100; XIX–87; XX–138, 288

As there was no authority for the withdrawal based on the map of amended route, and the sixth section of the grant (Northern Pacific) prohibited an indemnity withdrawal, it follows that land within such withdrawals was not excluded from entry. VII–244

An indemnity withdrawal for the benefit of the Northern Pacific grant is in violation of the terms of said grant, and is ineffective as against an authorized withdrawal, covering the same lands, on behalf of another grant. XIX–275; XXV–67

The establishment of indemnity limits on the definite location of the Northern Pacific, and action taken thereon, did not amount to a finding on the part of the Department that all the lands in said limits would be required to satisfy the grant to said company. XXIV–195

A withdrawal of land for indemnity purposes in violation of the provisions of the grant, for the benefit of which the withdrawal is made, confers no right upon the grantee, and is no bar to the acquisition of settlement rights. XXI–487

Where the tract was covered by an entry (homestead) at date of withdrawal (1870) on general route (Northern Pacific), and was afterwards (1872) relinquished and the entry canceled, it fell into the subsequent withdrawal (1880) for indemnity purposes on definite location. II–529

The provisions of the grant to the California and Oregon Railroad Company forbid the withdrawal of land for indemnity purposes, and a withdrawal for such purpose confers no right upon the company. XX–123

A withdrawal for indemnity purposes under the grant to the Oregon and California R. R. Co. is in violation of the statute making the grant, and no bar to the subsequent withdrawal for the benefit of the wagon-road grant made by the act of July 5, 1866, and during the existence of the latter withdrawal the lands embraced therein are not subject to selection under the railroad grant. XXVI–546

An unauthorized indemnity withdrawal is no bar to a homestead application, and such application will defeat a subsequent selection. VIII–282

Railroad Grant—Continued.

V. WITHDRAWAL—Continued.

1. Generally—Continued.

An application to purchase from the company land in an unauthorized, does not defeat the right of such applicant to enter the land under the homestead law. XXI–402

The act of July 28, 1866 (Atlantic and Pacific), is both a contract and a grant, but is not a grant of quantity and directs no withdrawal for indemnity purposes; hence there is no violation of the contract, though the company may not get the full amount of sections in the primary limits or make up the deficiency in the secondary. VI–84

The provision in the grant of July 25, 1866, that "the Secretary of the Interior shall withdraw from sale public lands herein granted on each side of said railroad so far as located and within the limits before specified," renders unauthorized any withdrawal beyond the granted limits. VII–240; XXVIII–222, 363

The directions in section 2, of the grant of May 4, 1870, for a withdrawal on the survey and location of the road, are applicable only to the lands within the primary limits of the grant. XXVIII–231

Lands within the indemnity withdrawal for the Atlantic and Pacific were excepted from the grant to the Southern Pacific. V–691

The withdrawal covering lands in the granted limits of the Southern Pacific and indemnity limits of the Atlantic and Pacific continued in force. VI–816

As the line of road (Atlantic and Pacific) terminates at the Pacific coast, there was no authority for a withdrawal of lands along the coast. IV–458

By definite location of road and indemnity withdrawal under the additional grant of 1865 (St. Paul, Minneapolis and Milwaukee Railway Company) the lands covered thereby were excluded from entry and settlement. V–565

The statutory, of indemnity lands on behalf of the main line of the St. Paul, Minneapolis and Manitoba road, as provided in the act of 1865, is a bar to the subsequent selection of said lands for the benefit of the St. Vincent extension of said road under the new grant therefor made by the act of March 3, 1871. (Overruled, 25 L. D., 86.) XX–249

For the benefit of the St. Vincent extension could not take effect on lands covered by the prior withdrawal for the main line, hence a homestead entry of land so withdrawn is properly allowed so far as said branch line is concerned, but improperly allowed as to the main line, and would have to be canceled, had the company selected the tract for the benefit thereof, prior to the revocation of said withdrawal; but no such selection having been made, and the lands having been restored to the public domain, the entry may stand. XX–249

Railroad Grant—Continued.

V. WITHDRAWAL—Continued.

1. Generally—Continued.

Prior to the filing of the maps showing the definite location of the modified line of road, under the act of June 2, 1864, there was no authority for the withdrawal of the even sections within the six-mile limits of the original grant, and such withdrawal, when made, was not operative upon lands included within homestead entries. X–180; XXVI–156

The executive withdrawal (Atlantic, Gulf and West India Transit Company) in anticipation of the probable limits of the grant (before definite location) was entirely valid; such withdrawal reserved the lands from entry and sale and could only be vacated by the authority that made it; a new withdrawal made after approval of the map of definite location is not inconsistent with the idea that the former withdrawal (which had been overlooked and ignored) was still extant. II–568

The statutory withdrawal provided for in the act of July 28, 1866, is limited to the lands within the primary limits by the words "all lands mentioned in this act and hereby granted." VI–535

Under section 12, act of March 3, 1871, it was not competent for the Department to withdraw from the operation of the settlement laws the indemnity lands of the New Orleans and Pacific grant, and such withdrawal is no bar to the allowance of an entry. VII–487

The act of June 22, 1876, repealing the statute prohibiting the disposal of public lands in Florida, except under the homestead law, did not relieve lands from the effect of a subsisting withdrawal; nor did the "offering" under the proclamation of July 13, 1878, affect their status, for "lands reserved for railroad purposes" were expressly excepted from such offering. VII–56

After withdrawal (indemnity) the land department retained jurisdiction of tracts covered by entries and preëmptions at the time the withdrawal was made. II–506

Homestead entry of record excepts the land covered thereby from the effect of withdrawal. I–352; VIII–588

For indemnity purposes does not take effect upon lands embraced within a subsisting preëmption filing or homestead entry. XIV–79; XVII–592

Does not take effect upon land embraced within a private cash entry. XIV–591

Land within the indemnity limits of the road (Hastings and Dakota), which was covered by entry (homestead) subsisting at date of the withdrawal was excepted from the withdrawal. II–501

Railroad Grant—Continued.

V. WITHDRAWAL—Continued.

1. Generally—Continued.

Where a subsisting entry (homestead) excepted a tract from the withdrawal (for Hastings and Dakota), on its cancellation (for failure to make final proof) thereafter the land became public and was subject to entry or selection by the first legal applicant. II–505

Land covered by entry at date of indemnity withdrawal is excepted therefrom and after cancellation of the entry is subject to entry or selection by the first legal applicant. IV–232, 266, 405

Where an entry (homestead) existed at date of the withdrawal (indemnity), on cancellation thereafter the tract does not fall within the ban of the withdrawal. II–507

Entry was made in 1878 embracing land in sections 14 and 23, and held for cancellation in May, 1879, with right of amendment so as to locate the entire tract in either section, but no actual cancellation was made or appeal taken or amendment offered; withdrawal for the road was made July, 1879, embracing section 23, and in 1880 the entryman made a second entry (including one-half of the land covered by the first entry) of land within section 23; held that said second entry, being an amendment of the first entry, was valid. II–852

The map of September 13, 1867, filed under the grant July 25, 1866, was for the purpose of showing a trial or preliminary line, upon which an anticipatory executive withdrawal could be made, so as to hold the land in reservation until after survey and final location of the road; and the order of withdrawal based on such map of preliminary route was executive in character, not taking effect, according to its terms, until received at the local office (Southern Pacific). XXIX–237

Entries made prior to receipt at the local office of the executive withdrawal on preliminary line except the tracts from the grant (Northern Pacific). II–554

An entry (homestead) on the tract at date of withdrawal (for Northern Pacific), though the land was afterwards abandoned, excluded it from the withdrawal; on cancellation of the entry the land was subject to appropriation by the first legal applicant. II–506

A *prima facie* valid preëmption filing existing at date of indemnity withdrawal excepts the land covered thereby from the operation of the withdrawal. III–305; V–568; VII–405; XIII–97; XIV–364, 664; XVII–288, 592

Valid subsisting preëmption claim excepts land from withdrawal, and upon its cancellation the land reverts to the United States. III–227

Railroad Grant—Continued.

V. WITHDRAWAL—Continued.

1. Generally—Continued.

For indemnity purposes of "vacant lands" does not take effect upon land embraced within an unexpired filing, and the fact that under present rulings said filing would not be permitted does not operate in aid of the grant. XIII–167

The act of May 9, 1872, extended the life of preëmption filings for the period of one year in certain States, and land embraced in a filing thus kept alive is excepted from the operation of an indemnity withdrawal. XVII–537

Does not take effect upon land covered by the settlement and filing of a preëmptor temporarily absent in the military service of the United States. IX–489

Failure of preëmptor who settled prior to indemnity withdrawal to make final proof within the required period does not inure to the benefit of the grant. I–400

Land occupied at withdrawal by a qualified preëmptor who filed no claim is excepted from the grant. III–253

An expired filing, in the absence of a settlement right claimed thereunder, does not except the land covered thereby from the operation of a withdrawal. VIII–570

A settlement right existing at the date of indemnity withdrawal excepts the land covered thereby from the effect of such withdrawal. II–512; III–285; VI–756; VIII–21; XI–437

A corroborated allegation that a tract is excepted from an indemnity withdrawal, by reason of a conflicting settlement right, may be accepted as conclusive as against the company without a hearing, in the absence of any showing to the contrary by the company. XVII–507, 584

The ruling heretofore made (17 L. D., 507) that a corroborated affidavit of settlement antedating an indemnity withdrawal might be accepted as against the withdrawal, in the absence of a showing by the company, was made pending the review of the case of said company against Guilford Miller, wherein it was held that such a withdrawal was in violation of law, and, as such holding has since been reaffirmed, a showing of settlement prior to such a withdrawal is not now requisite. XXI–402

Settlement made during a temporary withdrawal, but continued until the revocation of such withdrawal, and existing at the time of the permanent withdrawal, excepts the land therefrom. VI–611

A claim based upon occupancy and cultivation existing at the date of indemnity withdrawal under the act of July 25, 1866, excepts the land from the withdrawal. X–499

Railroad Grant—Continued.

V. WITHDRAWAL—Continued.

1. Generally—Continued.

For indemnity purposes made November 2, 1866, and December 16, 1871, for the St. Paul and Duluth and Northern Pacific companies, respectively, did not take effect upon lands within the former Mille Lac reservation, upon which the Indians had a right of occupancy that was not extinguished, until provision was made therefor by the act of January 14, 1889. XIII–230

Takes effect upon unsurveyed as well as surveyed land. XI–186

Where settlement (preëmption) was made on unsurveyed land after withdrawal, and on survey was found to be an odd section, the entry allowed must be canceled. (Valina Taylor case.) II–557

The principle enunciated in the Valina Taylor case is to be regarded as a precedent. III–285

A filing based on settlement prior to survey, made when it was held that an indemnity withdrawal did not take effect upon unsurveyed land, is good as against the withdrawal. VIII–21

The abandonment of a settlement claim after withdrawal does not render the land subject thereto. VIII–542

Executive withdrawal for indemnity purposes does not take effect upon land covered by a voidable school selection. X–31

Land within indemnity limits but not withdrawn or selected is subject to appropriation under the settlement laws. VI–535

No rights, either legal or equitable, are acquired by settlement on lands withdrawn by executive order. XIII–214; XIV–369; XIX–275

For indemnity purposes, while existing, excludes the land from any other appropriation. XII–27, 228, 261

For railroad purposes excludes the acquisition of rights by settlement or application. XV–91

Entry within an existing withdrawal is invalid as against the grant. VIII–570; XXIII–161

A settlement within an indemnity withdrawal is unavailing as against the company's right to selection. VIII–355

Entry allowed under an existing practice for land within an indemnity withdrawal is not illegal, though subject to the rights of the company. VIII–243

An order of, is effective though the lands may not be disposed of as contemplated, but restored to the public domain. XIII–665

An order withdrawing lands from "preëmption or homestead entry or sale" excludes appropriation under the desert-land act though such entries are not named in the order or in the excepting clause of the grant (Texas Pacific). XIII–665

Railroad Grant—Continued.

V. WITHDRAWAL—Continued.

1. Generally—Continued.

Of indemnity lands under the act of July 4, 1866, reserves said lands from any disposal except for the purposes of the grant, and settlement on lands so withdrawn is subject to the company's right of selection (Hastings and Dakota). XII–228

Plea that a withdrawal can not take effect before the company accepts the conditions imposed by the State, if effective for any purpose, can only be set up by one who has been induced by such condition of affairs to go upon land otherwise subject to the withdrawal. XI–186

Lands withdrawn by executive order in aid of a grant can not be diverted therefrom by settlement claims initiated after such withdrawal. X–85

Where preëmption settlement was made subsequently to withdrawal the claim may remain, subject to the right of selection by the company (California and Oregon). II–512

The practice of allowing preëmption claims or homestead entries on lands withdrawn for railroads, subject to final adjustment of the grant, is forbidden (circular). II–517, 558, 560

Directions given for indemnity, on the line of the Gulf and Ship Island definite location south of Hattiesburgh. XII–269

Directed, in accordance with the supreme court decision in the St. Paul, Minneapolis and Manitoba Company *v.* Phelps, of the lands granted in aid of the main and branch line of said company now lying in the Dakotas. XII–373, 375

2. General Route.

The withdrawal on general route contemplated by section 6, act of July 2, 1864, extends only to lands within the primary limits of the grant. XXI–487

The line of the Northern Pacific between Wallula, Washington, and Portland, Oregon, as shown by the map filed August 13, 1870, followed the north bank of the Columbia River within the Territory of Washington, and the width of the withdrawal thereon was governed by the provisions in the grant relative to the extent thereof where the line of road passed through a Territory; and the fact that the said river was not correctly located on said map would not affect the extent of said withdrawal. XXV–309

When the map of general route (Northern Pacific) was filed the statute withdrew from sale or preëmption the odd sections within the designated forty-mile limits.

II–555; III–537; V–295; VI–11, 21; IX–155; X–662

Railroad Grant—Continued.

V. WITHDRAWAL—Continued.

2. General Route—Continued.

On general route reserves the land until definite location, and the status of such land meanwhile not affected by the fact that it subsequently falls within the limits of an order purporting to withdraw it for indemnity purposes. XI–92

Under a, that directs a withdrawal by the Secretary of the Interior on the filing of a map of general route, no rights attach to specific tracts on the filing of said map; and where the order for withdrawal is by its terms not effective until received at the local office, and a homestead entry is allowed prior to such time, though after the filing of said map, and remains of record at date of definite location, it excepts the land covered thereby from the operation of the grant, and this is true even though the entry is not enforceable. XXVIII–32

Under the terms of the grant to the Central Pacific the withdrawal made upon the map of general route precludes the subsequent acquisition of settlement rights adverse to the company; and a settlement so made, even though it existed at definite location, would not serve to except the land settled upon from the operation of the grant. XIX–100

Lands withdrawn on general route of Northern Pacific are not subject to settlement or purchase under the coal land law. XIV–484

That followed on filing map of general route under the grant of July 27, 1866, excluded the lands covered thereby from preëmption filing and settlement. XIV–158

Where several maps were filed and withdrawals under them made, only that map finally fixing the general route created a legislative withdrawal; the former withdrawals were executive and took effect on receipt of notice thereof at the local office. II–554

The statutory withdrawal for the Northern Pacific took effect in Washington Territory when the map of July 30, 1870, was filed and accepted. VII–100

Under the grant of July 2, 1864, a statutory withdrawal followed the filing of a map of general route. Said withdrawal, once exercised, could not be repeated, but remained in effect until the definite location of the road. II–554; VII–100

The filing and acceptance of an amended map of general route was not authorized by the granting act (Northern Pacific), and an executive withdrawal made in accordance with said map was without sanction of law. VII–100; X–288, 440

Railroad Grant—Continued.

V. WITHDRAWAL—Continued.

2. General Route—Continued.

The map of general route approved August 13, 1870, designated the general route of the Northern Pacific through the Territory of Washington, and authorized the only withdrawal therefor. The later withdrawal on amended map of February 21, 1872, was unauthorized by law and inoperative as against the subsequent acquisition of settlement rights. XVII–8, 507

Section 6 of the act of July 2, 1864, provides for but one withdrawal on general route, which becomes effective at once on approval of the map, and precludes the subsequent exercise of executive authority to make a further withdrawal for such purpose on a second or amended map of general route. XVII–8; XXII–636

Upon accepting a certain map of amended route (Northern Pacific) it was ordered that the rights of settlers within the new withdrawal must be protected if settlement or entry were made prior to receipt of notice at the local office. II–552, 556

On general route for the main line, while standing, excludes the land covered thereby from selection as indemnity for lands lost on the main or branch line (Northern Pacific). XIV–525

On general route for the branch line of the Northern Pacific road did not operate to reserve lands for the benefit of the main line. VIII–365; XXIII–6

The withdrawal on general route of Northern Pacific did not debar the executive from the exercise of its ordinary authority in establishing military reservations. VI–657; XXVII–505

The legislative withdrawal following the designation of the general route of the Union Pacific, was only from "preëmption, private entry, and sale," and did not bar the executive from the exercise of its ordinary authority in the matter of establishing military reservations. XXIX–261

For the benefit of the Northern Pacific is "from sale, entry, and preëmption" only, and does not debar the executive from the establishment of an Indian reservation; and lands within said limits, so reserved at date of definite location, are excepted from the operation of the grant. XX–332; XXVI–422

A homestead entry of record excepts the land covered thereby from, on general route, and the subsequent cancellation of the entry leaves the land open to entry till definite location. II–536; III–490; X–307, 427

On general route does not take effect on land covered by a homestead entry even though the statutory life of such entry may have expired. XI–568

Railroad Grant—Continued.

V. WITHDRAWAL—Continued.

2. General Route—Continued.

An entry made before receipt of notice of withdrawal on general route (Northern Pacific) excepts the land covered thereby from such withdrawal. VI–21

Where entry was made on the same day as that on which the map of general route (Northern Pacific) was filed, the tract was excepted from the withdrawal; on subsequent relinquishment, it became public and was embraced in the withdrawal on amended line of general route. II–569

Preëmption claim existing at date of withdrawal on general route (Texas Pacific) excepts the land therefrom. I–388

Withdrawal on general route (Northern Pacific) did not take effect on land covered by a preëmption claim. V–529

Prima facie valid filing of record excepts the land covered thereby from withdrawal on general route (Sioux City and Pacific). VIII–292

On general route does not take effect on land covered by an unexpired preëmption filing. X–288; XI–443, 471; XVI–343; XIX–184

An unexpired filing by one *in esse* excepts the land covered thereby from subsequent withdrawal on general route, and the company will not be heard to allege that the preëmptor has not complied with the law. X–662; XIII–617

Preëmption filing made the same day the map of general route was filed, and of record when the order of withdrawal was made thereon, excepts the land included therein from the withdrawal. VIII–542

Where the tract was excepted by a claim (filing) from the withdrawal on general route (Northern Pacific), but was afterwards actually abandoned on erroneous information given by the local officers, it thereupon became public and passed to the company on definite location. II–474, 570

Lands north of the western terminus of the main line of the Northern Pacific, as fixed at Tacoma, were released from the effect of the prior withdrawal thereof on general route, by the establishment of said terminal, and the right to equitable action on a private cash entry made of such lands after such withdrawal and prior to said release is not defeated by the subsequent withdrawal for the branch line of said road east of said terminal. XXI–252

By the establishment of the western terminus of the main line of the Northern Pacific at Tacoma lands north of such terminal line are released from the effect of the prior, thereof on general route. XXII–636

Railroad Grant—Continued.

V. WITHDRAWAL—Continued.

2. *General Route*—Continued.

A cash entry of land within the withdrawal on general route, made after the map of such route was filed but before notice of withdrawal, is illegal and does not except the land covered thereby. IX–155

The amended map of the general route of its branch line, filed by the Northern Pacific in 1876, was an abandonment of its previous general route of said line, as shown by the map of 1873, and a relinquishment of all rights under the, in accordance therewith. XXII–637

For the benefit of the Northern Pacific, on the map of general route filed August 15, 1873, can not be pleaded by the company as against the operation of a preëmption claim filed after the abandonment of such route by the company, and prior to definite location. XXIV–516

Where settlement was made after receipt of notice of withdrawal on general route (Northern Pacific) on unsurveyed land which was found on survey to be on an odd section, and a subsequent withdrawal on amended map embraced the land, the entry (homestead) is disallowed. (See also p. 557.) II–551

The withdrawals of 1873 and 1879 on general route of the Northern Pacific (branch line) and amendment thereof confer no right as against a settlement made after the first and before the second. (Reversed, 2 L. D., 551.) I–397

A claim based on settlement, residence, and improvement existing at the date of withdrawal on general route excepts the land included therein from such withdrawal (Northern Pacific). VII–131, 238; VIII–362; X–264

A settlement right, though unprotected by a filing, existing at withdrawal on general route excepts the land covered thereby from the operation of such withdrawal. VII–131

On general route does not take effect upon land covered by a valid settlement right, and the land is thereafter open to settlement and entry by the first legal applicant. XI–482

Where after date of grant (Texas Pacific) withdrawal (on preliminary line) was made covering land for which had been filed an application to purchase (section 7, act July 23, 1866), and the land embraced in the application was afterwards suspended from sale pending its consideration, the withdrawal was not affected by said suspension. II–549

Railroad Grant—Continued.

V. WITHDRAWAL—Continued.

2. General Route—Continued.

Withdrawal on general route (Northern Pacific) took effect on lands (unsurveyed) which were within the limits of an Indian reservation (in Montana) upon subsequent extinguishment by executive order of the right of Indian occupancy. II–519

A map of general route is not a requirement attached to the grant made for the benefit of the Sioux City and Pacific line by section 17, act of July 2, 1864, and the filing of such map works no withdrawal. XIV–196

The act of July 27, 1866, making a grant to aid in the construction of the main line of the Southern Pacific, provided for the filing of a map of general route and for withdrawal thereon, and also for the filing of a map of definite location, which latter map fixes the limits of the grant, and upon the filing thereof rights under the grant attach. XXX–247

The filing of the map of general route and withdrawal thereon do not prevent an appropriation of the land within said withdrawal, by the government, for Indian or other needful purposes, at any time prior to the filing of the map showing the line of definite location of the road opposite thereto. XXX–247

3. Revocation.

Indemnity withdrawal confers no vested right and is dependent upon the will of the Secretary of the Interior, who may revoke the order and restore the lands to entry. II–516; V–658; VI–77

The Department may prescribe rules under which the failure of the company to properly assert its right as against a settler after indemnity withdrawal will operate as a revocation thereof as to the tract involved. V–658

Question as to the revocation of certain executive withdrawals submitted to the President. VI–77

Rule of May 23, 1887, entered on certain companies to show cause why the executive withdrawals made for their benefit should not be vacated. VI–80, 82

The statutory withdrawal on the location of the Pacific grants extends only to lands within the granted limits, and all withdrawals of indemnity lands therefor rest on executive authority alone, and may be revoked by the Secretary whenever, in his judgment, the necessities of the case require such action. XVIII–314

A withdrawal resting solely on the general authority of the Secretary of the Interior in such matters may be vacated without violating any law or contract. VI–84; XII–541; XXVIII–231

Railroad Grant—Continued.

V. WITHDRAWAL—Continued.

3. Revocation—Continued.

If that made for the St. Paul and Sioux City company was under legislative direction contained in section 7, act of March 3, 1865, no objection can be made to the revocation of said withdrawal after the repeal of said section. XII–541

Section 4, act of September 29, 1890, is intended to restore lands formerly withdrawn for indemnity purposes, and this restoration is not limited by the adjustment act of March 3, 1887. XII–541

Executive withdrawal for the benefit of the Atlantic and Pacific revoked on the ground that such action is required by a sound public policy with respect to settlement rights and is not in violation of either law or equity. VI–84

Withdrawals revoked under the rule of May 23, 1887. VI–92, 419, 456

Statement showing the names of roads included in the orders revoking certain indemnity withdrawals under the rule of May 23, 1887, the dates of said orders, and the location of the lands affected thereby. VI–131

Certain grants not affected by the order made under the rule of May 23, 1887, revoking indemnity withdrawals. VI–328

The order of August 15, 1887, revoking the indemnity withdrawal made for the Wisconsin Central to stand pending an early adjustment of the grant. VI–190

Directions given for a rule on certain companies to show cause why the indemnity withdrawals made for their benefit should not be revoked. XI–625

Directions given for the restoration to settlement and entry of lands heretofore withdrawn for certain companies. XII–541

The departmental order of May 22, 1891, 12 L. D., 541, restoring to settlement and entry, "in accordance with the rules established in similar cases," certain lands withdrawn for railroad indemnity purposes, referred to the "rules" contained in the special circular of September 6, 1887, 6 L. D., 131, governing the restoration of railroad indemnity lands. XXIX–218

Withdrawals for the Memphis and Little Rock company and the Madison and Portage company revoked. VIII–427

The order of August 17, 1887, revoking the indemnity withdrawals made in aid of the grants of June 3, 1856, and May 5, 1864, suspended. X–85

For indemnity purposes for the benefit of the Chicago, St. Paul, Minneapolis and Omaha company revoked. X–147

Railroad Grant—Continued.

V. WITHDRAWAL—Continued.

3. Revocation—Continued.

Order of February 12 (11), 1890, revoking withdrawal for the Chicago, Minneapolis and Omaha Railway company, modified. XI–607

The order of December 7, 1887, restoring the odd-numbered sections south of the terminus of the Denver Pacific and west of the terminus of the Kansas Pacific at Denver withdrawn but not certified or patented, vacated. Patents not to issue for lands within said area. VI–581

The revocation of an indemnity withdrawal takes effect as soon as issued, and a settlement on land within such withdrawal existing at the date of revocation will be protected as against a subsequent selection. VIII–355; XIII–145

Revocation of withdrawal opens land to appropriation under pending applications. VI–309

Revocation of withdrawal opens land to settlement and entry from the date when order becomes effective. VI–378, 382; XVIII–314

Revocation of, does not restore to the public domain land included within pending selections. IX–74; X–317; XII–29; XVII–70

Procedure to be observed on the part of the company and settlers in case of conflicting claims for lands within the limits of a revoked indemnity withdrawal. VIII–237; IX–251

Under the order revoking its indemnity withdrawal the "right of the company to make selection" should be determined by the Land Office in cases of unapproved selections covered by applications to file or enter. VIII–237

The company will not be heard to object to a settlement claim within its indemnity limits after revocation of the withdrawal and in the absence of a selection. VIII–355

A *prima facie* valid entry for land withdrawn as indemnity is relieved from conflict with the grant on revocation of the withdrawal if the land has not been selected. VIII–243

Revocation of withdrawal effected by appropriation of the land and its subsequent restoration to the public domain. V–332

The statutory withdrawal on general route is not defeated nor impaired by an erroneous order of restoration issued by the General Land Office. (Northern Pacific.) XX–498; XXVI–279

VI. INDEMNITY. See sub-title *Selection*.

Indemnity lands included within the general descriptive phrase "granted lands." IX–468

A railroad grant does not take effect upon particular indemnity lands prior to selection. I–332, 340, 389, 627; II–506, 510; IV–256; VI–431, 615; VIII–23; X–504

Railroad Grant—Continued.

VI. INDEMNITY—Continued.

If there is no ascertained or established deficiency in a railroad grant, and the indemnity lands are not withdrawn, the company has no rights within the indemnity limits prior to selection, that will bar the initiation of a settlement claim. XXVIII–222

The rule that the right of a railroad company took effect at the same time upon both indemnity and granted lands obtained for many years and until April 7, 1879. II–528

Right to indemnity must be recognized though the road is not built in the required time. V–93, 512

The provision in the grant of July 4, 1866 (Hastings and Dakota), for a reversion of the lands granted if the road is not completed within the period specified does not, in the absence of action to enforce forfeiture, defeat the right of selection even though the road is not completed in said period. XII–228

The judicial dissolution of a company does not defeat the right of the stockholders to select and receive, through a trustee appointed for such purpose, indemnity for lost lands (Hastings and Dakota). XVIII–511; XXI–312

The joint resolution of May 31, 1870, created a second indemnity belt (Northern Pacific). VIII–13

The object of the law is to give the company (Northern Pacific) within the entire indemnity belt just what has been lost in place by other appropriation within the granted limits to the amount of lands intended to be granted, and no more. II–514

The Northern Pacific company is entitled to indemnity for lands excepted from its grant on account of a prior grant to another company. XXII–606

Land not within the withdrawal on general route, but within the indemnity limits on definite location, was free from the operation of the grant until duly selected (Northern Pacific). VII–100; XIX–87; XX–138, 288; XXI–487

Indemnity can not be allowed for lands sold by the government after definite location. VI–195

Indemnity can not be allowed for lands in place erroneouly certified to another company. VI–195

On relinquishment, may be allowed for lands improperly patented as within the granted limits if in fact such lands were excepted from the grant. IX–483

Claim for, based upon a loss of lands taken under the swamp grant can only be allowed so far as the claim of the State has been recognized. IX–483

Railroad Grant—Continued.

VI. INDEMNITY—Continued.

Through discrepancy in the indemnity limit diagrams, intervening rights are held to bar the claim of the company. III–428

Where the grant (to Florida) designated neither even nor odd sections the company (Atlantic, Gulf and West India Transit) elected to take the odd sections. II–561

The act of July 13, 1866, provided for deficiency in case the road ran nearer than ten miles to the State line and did not apply to lands east of the road (St. Paul and Duluth). IV–407

Under the act of July 13, 1866, "deficiency" and "lieu" lands occupy the same status. IV–407

If the indemnity provided for one of the lines or branches (St. Paul, Minneapolis and Manitoba Railway) prove insufficient therefor, the deficiency may be supplied from the indemnity limits of the other lines or branches. (See 13 L. D., 354.) VIII–255

The grants to the Wills Valley road, and Northeast and Southwestern by the act of June 3, 1856, were distinct and separate, and there is no authority for the certification of lands within the limits of one road to satisfy losses on account of the other (Alabama). XIV–129

The grant of February 9, 1853, as revived and extended by the act of 1866, was intended equally for every part of the road and its branches, and deficiencies on one branch may be made up by selections from lands within the indemnity limits of the other (Little Rock and Memphis company). XI–168

In adjustment of the grant made by the acts of 1856 and 1864 (Wisconsin) the right to indemnity must be recognized as extending to losses ascertained at definite location. VI–195, 209

Principles announced in the case of the Chicago, St. Paul, Minneapolis and Omaha Railway Company (6 L. D., 195) followed in the adjustment of the grant to the Missouri, Kansas and Texas company. XI–130

The acts of 1856 and 1864 provide indemnity for losses before definite location caused by the swamp and internal improvement grants previously made to the State (Wisconsin). VI–195

The indemnity accorded the Farm Mortgage Company for losses between Portage and Tomah should not be deducted from the indemnity claimed by the Omaha company (Wisconsin). VI–19

The Chicago, St. Paul, Minneapolis and Omaha Railway Company is entitled to, for losses sustained through the overlapping of the six and ten mile granted limits at the junction of the main and branch lines of the road. IX–483

Railroad Grant—Continued.

VI. INDEMNITY—Continued.

Under the act of March 3, 1873, the Chicago, St. Paul, Minneapolis and Omaha Railway Company can make indemnity selections for lands settled upon within the indemnity limits between Tomah and Hudson, and which might have been selected if the order of withdrawal had been made on definite location. IX–465

The right of the Gulf and Ship Island company under the last clause of section 7, act of September 29, 1890, to select is restricted to even sections within the original indemnity limits "nearest to and opposite" that portion of the road that may be constructed at date of selection. XII–269

The right to select indemnity provided for in section 7, act of September 29, 1890, is restricted to the even-numbered sections in the indemnity limits opposite to and coterminous with the portion of the road constructed and in operation at the date the act of forfeiture took effect (Gulf and Ship Island). XVI–237

The completion of the Gulf and Ship Island road entitles the company to select indemnity, for lands relinquished, anywhere within the indemnity limits of the grant. XXIII–566

The proviso to section 1, act of July 4, 1866, excepting from the grant made by said act, "all lands heretofore reserved * * * for the purpose of aiding in any object of internal improvement," etc., was not intended to limit or restrict the indemnity grant specifically provided for in said act. XXIX–264

The grant of May 12, 1864, to the State of Iowa was a grant in place and of a moiety for each road within common granted limits; hence no indemnity can be allowed either road for lands lost by reason of the moiety granted the other. VI–47, 54

Lands within the indemnity limits of the old line (Cedar Rapids and Missouri railroad) east of Cedar Rapids may be selected in lieu of lands west of said city if required to make up the six sections per mile to which the company is entitled. IX–370

Grant to the Grand Rapids and Indiana railroad provides for a continuous line, with the right to take indemnity anywhere along said line. X–676

Lands subject to the grant in aid of the Marquette company at date of withdrawal and certification thereunder, though within the indemnity limits of the Ontonagon company, were not subject to selection therefor. VI–649

For the moiety lost in common granted limits the Ontonagon company is not entitled to indemnity. XIII–464

Railroad Grant—Continued.

VI. INDEMNITY—Continued.

Lands within the overlapping limits of the grants for the Northern Pacific main and branch lines, embraced within the act of September 29, 1890, forfeiting the grant for the unconstructed main line, and excluded from the moiety taken on behalf of the branch line, can not be made the basis for indemnity. XXVI–113

The fee simple of lands within the limits of the grant (Northern Pacific) to which the Indian title had not been extinguished passed under said grant, subject only to the right of Indian occupation, and said lands therefore afford no basis for indemnity. (See 16 L. D., 229.) VII–100

The odd-numbered sections within the limits of the Yakima Indian reservation did not pass under the grant to the Northern Pacific company, and afford legal bases for indemnity selections by the company. XXIII–543; XXVI–312

Where indemnity is sought for lands included in a reservation (Camp Verde) the true boundaries of said reservation should be established, in order to properly determine the lands for which indemnity may be allowed. XXI–18

The Northern Pacific under its grant is entitled to select indemnity for losses caused by an unsurveyed Indian reservation. XX–187

It appearing that lands east of Superior City have been made the basis of indemnity selections on behalf of the Northern Pacific in North Dakota, and that the action of the Department hitherto has given color to such claims, the company is allowed sixty days from notice within which to specify a new basis for any selections avoided by the decision of November 13, 1895. XXI–412

Indemnity selections of the Northern Pacific resting on alleged losses east of Superior City, regular and legal under the existing construction of the grant at the time when made, should be protected under the changed construction of the grant with due opportunity to assign new bases, as against intervening adverse claims. XXIII–351; XXIV–444

The Northern Pacific company should be allowed to specify new bases for selections made on account of lands within the limits formerly recognized east of the terminal established at Duluth. XXV–47

Between Thomson and the city of Duluth the Northern Pacific company will not be entitled to indemnity for any lands to which the Lake Superior and Mississippi company may have been entitled under its grant. XXIII–428

Railroad Grant—Continued.

VI. INDEMNITY—Continued.

On account of the consolidation of the Northern Pacific and Lake Superior lines of railroad between Thomson and Duluth, the grant to the first-named company must be charged with all lands received by the latter company, between said points, under its prior grant, and for the lands so taken by said company, whether within its primary or indemnity limits, the Northern Pacific is not entitled to indemnity. XXV–68

As to lands lying within the granted limits of the Northern Pacific grant, and also within the additional indemnity limits of the Lake Superior and Mississippi road provided for in the act of July 13, 1866, the right of the latter company is defeated by the grant and location of the Northern Pacific made prior to selection on behalf of the Lake Superior and Mississippi road; but, if lands occupying such status are erroneously patented to the latter company, indemnity therefor cannot be allowed the Northern Pacific as the lands so patented must be charged to its grant. XXV–536

Action suspended on indemnity selections of the Northern Pacific where the losses assigned therefor are of lands between Thomson Junction and Duluth and within the limits of the grant to aid in the construction of the St. Paul and Duluth railroad. XXVII–525

Action will not be suspended on indemnity selections of the Northern Pacific, where the losses originally assigned were of lands east of the terminal limit established at Duluth and the company acting under departmental permission has substituted other bases, west of said terminal, that have proved to be invalid. XXVII–525

Indemnity may be properly allowed for an odd-numbered section embraced within a Mexican grant on which patent has been issued by the United States. XXI–432

VII. SELECTION. See sub-title No. VI.

Until selection is made and approved the title to indemnity lands is in the government and subject to its disposal. II–820; III–306; XIII–230; XVIII–314; XXVII–348; XXVIII–231

Prior to selection the lands within the indemnity limits of the Northern Pacific grant are open to settlement and entry. XX–138, 288; XXIV–40; XXVI–153.

The fact that a deficit exists in the grant does not relieve the company from the necessity of selection to acquire title to indemnity lands. XIV–610; XVI–457; XXII–493

The supreme court of the United States, in the case of the St. Paul and Pacific company against the Northern Pacific, did not rule that title to, can be acquired without selection. XIV–591

Railroad Grant—Continued.

VII. SELECTION—Continued.

An indemnity selection is not a "filing" or an "entry," as such terms are ordinarily used. XXVIII–282

Priority in selection determines rights dependent thereon to land in common limits. IV–426

No absolute right to granted land exists and no right of indemnity selection can possibly rise until the line of road is definitely located. VII–100

The right to select indemnity accrues at definite location though the title to selected lands does not vest till approval, and this right may be sold or encumbered. XVIII–518

The status of indemnity lands at the date of selection, not definite location of the road, determines the right of the company thereto. III–51; XXII–273

Right acquired by selection dependent upon the status of the lands at date of selection and not at date of withdrawal. X–504; XII–19; XIII–535

The right of a railroad company to take a tract of land as indemnity must be determined by the status of such tract at the date of the application to select the same. XXI–395; XXII–493

A selection that is not susceptible of approval at the time made on account of a prior adverse claim may be approved where such claim is subsequently relinquished. XX–408

An indemnity selection admitted of record at a time when the land was embraced within a pending application for the right of entry, and allowed to stand subject to said application, is a bar to other disposition of the land, if such application is subsequently abandoned. XXVII–462

If the local officers erroneously allow an indemnity selection to go of record during the pendency of a prior adverse claim, it is within the authority of the Secretary to permit such selection to stand, and to give it his approval upon the subsequent abandonment or other elimination of the adverse claim. XXVII–464, 470

An indemnity selection permitted to go of record for a tract of unoffered land embraced within an expired, though uncanceled, preëmption filing is notice to all who may thereafter attempt to initiate a claim to said land, and may be approved, where it appears that the preëmptor had in fact abandoned the land prior to its selection by the company. XXVII–543

An indemnity selection regularly allowed to go of record under the rulings then in force, should not be canceled without affording the company due opportunity to be heard. XXVII–470

Railroad Grant—Continued.

VII. SELECTION—Continued.

An indemnity selection, regularly allowed, should not be canceled on the ground that a proper basis had not been assigned therefor, without affording the company due opportunity to supply another and sufficient basis. XXVIII–298

While the company's right to land within the indemnity limits is determined as of its status at the date of selection, yet an adverse adjudication as to the company's right will not prevent a subsequent assertion of right on behalf of the company if the land thereafter becomes subject to selection. XXVII–435

An indemnity selection of lands embraced at such time within a reservation for a reservoir site is inoperative, and the subsequent release of said lands from such reservation will not inure to the benefit of the prior selection. XXII–617

A selection tendered for land that is embraced at such time within a prior existing entry is properly rejected; and an appeal from such action secures no right under said selection that will attach on the subsequent relinquishment of said entry. XXVII–542

Under a judgment holding an entry subject to the right of a railroad company to make selection of the land, the subsequent allowance of such selection works in effect a cancellation of the entry then of record; and the validity of such selection is not affected by the fact that the entry is not formally canceled at such time. XXVII–651

The right of selection within indemnity limits is a preference right that may be asserted as against every one. V–658

Rights secured by indemnity selections take effect as of the date when the selections are filed in the local office and not from the date of their approval by the local officers. XVIII–333

Selections of, can not be allowed until the land included therein has been surveyed and a plat of the survey duly approved and filed in the local office. VIII–307; X–214; XV–8; XXVII–122

Selection of unsurveyed land should be canceled, not suspended to await survey. XXIV–40

Selections of indemnity should be made of surveyed lands subject thereto nearest the lands lost. XX–187

Selections should be made from lands nearest the granted sections in which the loss is alleged. IV–90; VIII–373; X–147

Selections should not be rejected on the ground that they are not "nearest to the lost lands," if they are in fact the nearest available surveyed lands subject to indemnity selection at that time. XVII–313

Indemnity selections. Circular instructions August 4, 1885. IV–90

Railroad Grant—Continued.

VII. SELECTION—Continued.

The validity of a selection can not be determined if the basis is not designated. IV–90; IX–370

The requirements of the order of August 4, 1885, must be enforced, and companies required to specify a basis not only for pending selections, but for all selections heretofore approved on account of which no previous loss has been assigned. XVII–406

The Commissioner directed to call on all railroad companies having pending selections to revise their lists within six months from the date of such call, so that a proper basis will be shown for all lands now claimed as indemnity, the same to be arranged tract for tract. XVII–406

The failure of a railroad company to revise a list of indemnity selections in accordance with the order in the La Bar case relieves the lands embraced therein from the effect of prior selection. XXII–482

Failure to rearrange losses within the time specified in the La Bar decision can not operate to the advantage of one whose settlement and application to enter were made when the lands were withdrawn and embraced within a selection made prior to said decision, and where before any steps were taken by the government toward the disposition of the land the company had complied with the requirements of said decision. XXVI–429

A railroad company is entitled to six months from date of actual notice of the order issued under the La Bar case in which to file rearranged indemnity lists. XXIII–552

In the rearrangement of an indemnity list, under the directions issued in the La Bar case, it is not essential that the rearranged list should be signed by the selecting agent of the company. XXIII–552

Indemnity selections, accompanied by designations of loss in bulk, made prior to the decision in the La Bar case, operate to protect the right of the company, as against subsequent applications to enter, filed prior to said decision and the rearrangement of losses in accordance therewith. XXII–202; XXIV–439; XXVI–429

A list of indemnity selections resting on a designation of losses in bulk will not be regarded as a bar to the disposition of the lands so selected; nor will a subsequent specific designation of losses validate such list if the company is not entitled to make said selections on the losses so assigned. XXII–610

On the rearrangement of a list, based on losses alleged in bulk, so that the lands selected and the losses specified shall correspond, tract for tract, the rights of the company date as of the presentation of the first list so far as the selections and losses are the same. XXIV–444

Railroad Grant—Continued.

VII. SELECTION—Continued

In the rearrangement of specifications of loss in bulk, so as to show a specific loss for each tract selected, the correction of a clerical error in the description of a tract included in the original assignment of losses, will not be regarded as the substitution of a new basis in support of the list, nor be held to invalidate such list as against the subsequent acquisition of adverse rights. XXIII–324

On the rearrangement of a list of indemnity selections a change in the basis assigned for a specific selection does not amount to a new selection of such tract, or an abandonment of the original selection thereof, where the bases used were included in the original list, and are lands actually lost to the grant. XXIX–442

The circular requirement of a specified basis issued August 4, 1885, was not intended to invalidate selections theretofore made, but to require a specification of the losses for which such selections were made. XII–450

A list of indemnity selections in which due specifications of loss are assigned, should not be rejected on account of the company's failure to designate losses for prior selections, as required by the circular of August 4, 1885, but should be suspended awaiting compliance with said requirement; and a list so filed operates to protect the right of the company from the date of its presentation. XXIII–489

A list of indemnity selections rejected by the local office on account of the company's failure to designate losses in lieu of selections made prior to the circular of August 4, 1885, does not operate to reserve the lands included therein from homestead entry. XXII–438

An indemnity selection made without specification of loss, and prior to the departmental requirement of such specification, is entitled to recognition, where the company subsequently, and within the time accorded, assigns a basis therefor. XXIX–440

A list of indemnity selections in which no losses are designated as bases for the selections is no bar to a subsequent adverse appropriation of the lands embraced therein; and a list of such character can not be perfected by the specification of losses after the intervention of adverse claims. XXII–493

In case of a duplication of bases in an indemnity selection list, an approval of the list to the extent of the basis assigned renders the remaining tracts dependent upon said basis unsupported, and a new assignment of basis for such remaining tracts can not be allowed so as to affect intervening adverse rights. XXX–106

Departmental order of May 28, 1883, dispensing with designation of basis under Northern Pacific selections. XII–196

Railroad Grant—Continued.

VII. SELECTION—Continued.

The order of May 28, 1883, permitting selections without designating the basis, did not extend to lands subject to settlement, but only applied to lands protected by withdrawal (Northern Pacific).
XI–428; XIV–378; XVII–289; XXII–57; XXVI–17

A selection made under the order waiving the requirement of a specified loss is legally made and excludes the acquisition of settlement rights; and an application to make preëmption filing on land thus selected at date of settlement must be rejected where the loss has been designated previously thereto. XII–448

Made under the departmental order waiving specifications of loss are valid and while of record a bar to the allowance of adverse claims. XXIV–444

Made under the departmental order waiving specification of loss are valid, and while of record a bar to the allowance of adverse claims. A list in bulk of lost lands filed thereafter in support of such selections does not invalidate the same, nor can a subsequent rearrangement of said list, tract for tract, to correspond with the selections, be regarded as an abandonment of the company's right under its original action. XXII–135; XXIV–370

A list of indemnity selections filed by the Northern Pacific company without designating the basis therefor, prior to the order of May 28, 1883, excepting said company from the general terms of the circular of 1879 requiring such designation, is protected by said order of 1883, in the absence of any intervening claim, and is not invalidated by the circular order of August 4, 1885. XII–448; XXII–606; XXIV–444

The Northern Pacific is not entitled to invoke the protection of the order of May 28, 1883, waiving specification of loss, where it assigns an insufficient basis for a selection in the presence of a contest involving the right to enter the selected tract; nor can a subsequent assignment of a sufficient basis avail the company as against the right of the contestant in such a case. XXVI–589

The company is not entitled to plead the protection extended by the order of May 28, 1883, to indemnity selections made without designation of loss, if, after making such selection, it assigns an insufficient basis therefor, and subsequently an adverse right intervenes. XXVI–114

A list of indemnity selections made under the order of May 28, 1883, waiving specifications of loss, subsequently amended by designation of loss in bulk, under the circular requirements of August 4, 1885; and thereafter rearranged, in accordance with departmental decisions, tract for tract, with the losses specified, is protected as against a settlement made after the designation in bulk and prior to said rearrangement. XXVI–312

Railroad Grant—Continued.

VII. SELECTION—Continued.

The order of May 28, 1883, waiving specification of loss in support of indemnity selections, was made at a time when the indemnity withdrawals for the benefit of the Northern Pacific were held valid, and that fact must be considered and given effect in determining the scope and purpose of said order, although such withdrawals are now held invalid. XXII–309; XXIV–417

Where the company waives the privilege conferred by the order of May 28, 1883, and designates a basis that proves to be invalid, it is not entitled to plead the protection of said order. XIX–233; XXV–67

The right to select a particular tract not recognized if the basis is not specifically designated. XI–1, 428; XII–518; XIII–97, 440

An indemnity selection must fail in the absence of a valid basis therefor. XXIII–543

In the preparation of lists of, each loss should be separately specified and the selection therefor designated. The difference in acreage that may exist between the loss and selection should approximate the area of the smallest legal subdivision. XV–529

The fact that by applying the rule of approximation a particular tract might be excluded from an indemnity selection, as in excess of the basis, will not affect the validity of such selection as to other tracts for which a sufficient basis is duly designated in a list wherein the losses fully support the selections. XXVI–693

A selection, in the absence of a specified basis, is no bar to the acquisition of a settlement right, and after such has intervened the company will not be permitted to designate a loss, and thus perfect the selection. XV–101; XXIV–453

The specification of a loss is a prerequisite to the legal assertion of the right to select indemnity; and an application to select, not based on a specified loss, is no bar to other disposition of the land. XVII–289; XXIV–195; XXVI–17

The loss on which the selection rests should be specified tract for tract, not exceeding in any case an entire section. XIII–349; XVII–313

It is not necessary in the case of indemnity selections under the grant of July 4, 1866, and the designation of losses in support thereof, that the lands should be described according to their smallest legal sub-divisions. XXIX–554

A specification of losses by sections instead of parts of sections may be accepted as sufficient where the losses are within a reservation and the status of the entire section is the same. XXVII–513

Railroad Grant—Continued.

VII. SELECTION—Continued.

A selection of an entire section in lieu of a specified section designated as a whole, may be accepted as based on a sufficient specification of loss, where the entire section so specified is in fact lost to the grant, and no danger exists of an enlargement of the grant through the acceptance of such selection. XXVII–427

If the tracts specified as the basis for a selection are actually lost to the grant there is no objection to the inclusion of them all in a single loss. XXIX–264

An indemnity selection made subsequent to the regulations of 1879, without a specification of loss, is no bar to the acquisition of rights initiated prior to such specification. XVII–592

In the case of an indemnity selection list where the losses are not arranged tract for tract, and a tract is included therein that is in fact not lost to the grant, any applicant for a tract embraced within said list is entitled to claim that the failure in the loss assigned relates to his tract. XXIII–380

A selection made without specification of loss and prior to the departmental requirement of such specification is legally made; and the circular instructions of 1885 do not require a subsequent designation of loss to validate such a selection, though it can not be approved until a loss is duly specified. XVII–592

A selection of, in which the lost lands are not specified is no bar to a subsequent selection of the same lands with a proper designation of losses. XVII–34

A selection of land protected by statutory withdrawal will not defeat the perfection of a subsequent preëmption claim where said withdrawal is afterwards revoked and the company fails, after due opportunity given, to specify a loss as a basis for its selection. XIX–423

A selection of land excepted from withdrawal is no bar to subsequent appropriation of the land under the homestead law where such selection is not accompanied by a designation of loss. XIX–422

The substitution of an amended list of indemnity selections on a specification of losses different from that assigned in the first, and where the losses in neither list are arranged tract for tract, must be treated as an abandonment of the first. XVII–406; XIX–233

The amendment of a list of indemnity selections by the designation of losses not assigned in the original, is, to the extent of such substitution, an abandonment of the prior list, and, to said extent, a new selection, and as such it will not bar the completion of a homestead entry made subject to the original selection. XXVI–595

Railroad Grant—Continued.

VII. SELECTION—Continued.

The failure of a railroad company to furnish a specification of losses as the basis for a list of indemnity selections can not be excused on the ground that it was due to the erroneous advice of the local officers. XVIII–511

In order that the bases may be specifically designated for losses in an unsurveyed Indian reservation the adjacent surveys may be projected by calculation over such reservation. XX–187

The requirement that where selections have been made without specifications of loss such deficiencies should be specified before further selections are allowed may be waived on final adjustment where the grant is deficient and the list submitted contains a proper designation of loss. XVI–235

The provision in the circular of August 4, 1885, directing that the company should be required to designate the deficiencies before further selections are allowed, is not applicable where the grant is deficient in quantity, and the danger of duplication of losses does not exist. XIX–30; XX–162

Failure to designate a loss in support of a selection, in limits common to two grants, can not be taken advantage of by the company claiming under the conflicting grant where all the lands in said limits are required to make up the deficiency existing in the grant under which said selection is made. XIX–395

There is no necessity for the enforcement of the rule requiring specifications of loss, where the grant is practically adjusted and found largely deficient, and no one is claiming adversely to the company at such time; and under such circumstances, a selection without designation of loss will be recognized, as against a homestead entry not made until after the submission of the adjustment. XXV–458

A suit to vacate a patent issued to a railroad company under an indemnity selection, on the ground that a proper basis therefor was not designated, will not be advised, in the absence of adverse superior equities, if it appears that the indemnity lands are not sufficient to satisfy the losses in place. XXVI–694

The failure of a railroad company to specify a loss in support of an indemnity selection of lands duly withdrawn in aid of the grant, will not defeat its right, where, prior to the revocation of the withdrawal, the grant is found largely deficient. XXVIII–226

Indemnity selections are made under the direction of the Secretary of the Interior, and the enforcement of any requirement in the matter of a specification of a loss is only for his information, and as a bar to the enlargement of the grant, and may be waived whenever he deems such course advisable. XXVI–621

Railroad Grant—Continued.

VII. SELECTION—Continued.

There has been no departmental recognition of an ascertained deficiency in the Northern Pacific grant; nor has the company been relieved, on account of such deficiency, from the specification of losses in making indemnity selections. XXV–512; XXVI–589

Will not be held invalid on account of the basis including a fractional tract that is in fact not lost under the grant, if it appears that the designation of loss, without including said tract, is sufficient to support the selection. XXII–373

In the absence of statutory direction the right of a selection not governed by the coterminous principle. V–81

Selections, regular and legal under the existing construction of the grant at the time when made, should be protected under a changed construction of the grant. XXIV–370

Where a company designates as the basis for a selection land indicated by the records as within an Indian reservation, and it is subsequently ascertained that such tract is not within said reservation, the company is entitled, as against intervening adverse claims, to a reasonable time within which to assign a new basis for said selection. XXVII–133, 469

A selection is an entry or appropriation of land within the meaning of the act providing for repayments. II–681

The term "selection" not applicable to granted lands and no right is acquired thereby. V–396; VI–750; VII–358; XI–482

The "listing" of a tract within the primary limits of a, confers no right upon the company, if, for any reason, said tract is excepted from the grant. XXI–109

The mere "listing" of a tract as within the primary limits of a railroad grant does not operate to reserve it from other appropriation; and where a tract so listed is subsequently found to be within the indemnity limits of the grant, no rights thereto on behalf of the company can be recognized prior to the selection thereof. XX–175

In the preparation of lists of lands granted to aid in the construction of railroads, the lands should be listed to the grantee company or corporation when it is in existence. XXIV–138

The company required to "list" its granted lands. VIII–30

The failure of the company to "list" lands within the granted limits will not defeat proceedings had to determine the mineral or non-mineral character of the land. VIII–30

Railroad Grant—Continued.

VII. SELECTION—Continued.

In the exchange of lands, provided for in the act of January 12, 1891, between the United States and the Southern Pacific Railroad Company, the company should file a relinquishment of the lands in lieu of which it proposes to make selections, and present to the local office a formal application to select the lieu lands, as duly listed for such purpose, and pay the statutory listing fees on the selections so made. XXIV-543

The words "to be selected within twenty miles of the road" do not make the grant a "float." V-135

Failure to assert the right of selection within indemnity limits as against a settler until after final proof on his claim is a waiver of such right. V-658

Lands "in place" excepted from the grant are not subject to indemnity selection under the same grant. IV-407; V-432

Lands excepted from the grant to the Southern Pacific by homestead entries that were existing at the date when the grant took effect may be taken on behalf of said grant in lieu of mineral lands, if at the date of selection such entries have been canceled, and the lands are free from other claims or rights. XXVI-452

The even-numbered sections within the primary limits of the grant for the Leavenworth, Lawrence and Galveston road are reserved to the United States, and therefore excepted from the grant to the Missouri, Kansas and Texas road, and can not be taken in lieu of deficiencies in its place limits. XIV-164

Lands granted to one company not subject to selection as indemnity by another. VI-816

Indemnity selection can not be made of land within the granted limits of another road not constructed within the required period, but definitely located and remaining unforfeited by Congress. V-582; VIII-33

The Southern Pacific R. R. Co. is not entitled to make indemnity selections within the forfeited primary limits of the Atlantic and Pacific grant. XXV-351; XXIX-135

Action suspended on that part of the departmental decision of November 5, 1897, herein, which relates to the question of the right of the Southern Pacific R. R. Co. to make indemnity selections within the forfeited primary limits of the Atlantic and Pacific grant. XXV-393

A tract is not excluded from indemnity selection by reason of its being within the limits of another grant if it is in fact vacant public land at date of selection and otherwise subject to such appropriation. IX-452; X-15; XI-138; XIII-201; XVII-288

Railroad Grant—Continued.

VII. SELECTION—Continued.

Land within common limits and excepted from withdrawal is subject to selection by either company or open to settlement and entry. XIII–440; XIV–79

Land excepted from withdrawal by the existence of a preëmption claim is not excluded from subsequent selection if at the date thereof such claim has expired and been abandoned. XII–19

The grant to the Northern Pacific by the act of July 2, 1864, and the grant to the same company by the joint resolution of May 31, 1870, must be adjusted separately; a loss, therefore, under the latter grant will not support a selection along the line for which the grant of 1864 was made. XXV–511

The separate adjustment of the grants for the main and branch lines precludes the right of selection by the older grants along the line of the younger, and *vice versa* (St. Paul, Minneapolis and Manitoba). XIII–354

A specification of losses on the St. Vincent extension can not be accepted as the basis for selections on the main line (St. Paul, Minneapolis and Manitoba). XIII–440

In the selection of indemnity the Ontonagon company is not restricted to lands coterminous with constructed road, but may go beyond the same within the original indemnity limits to make up deficiencies. XIII–464

Under section 4 of the forfeiture act the Ontonagon company is not entitled to select as indemnity lands formerly embraced within the granted limits of the Marquette road, as said lands were not subject to selection under the original grant. XIII–464

The provisions made in the act of January 14, 1889, for the release and disposition of Mille Lac lands defeats any selection of said lands by the St. Paul and Duluth and Northern Pacific companies. XIII–230

The order of August 15, 1887, as to filings and entries on lands covered by unapproved selections, made applicable to the second indemnity limits of the Northern Pacific. VII–334

Selections may be made within the first indemnity belt irrespective of State or Territorial lines within which the loss occurred (Northern Pacific). VIII–13; XXIV–417

Indemnity selections of land in the State of Washington can not be made by the Northern Pacific for losses in the State of Idaho, until it is first shown that such losses can not be satisfied from lands within the limit of the grant in Idaho. XVII–404

Under the grant to the Northern Pacific indemnity may be taken in one State for losses sustained in another, though said losses might be satisfied from lands within the limits of the State in which said losses occur. XX–187; XXVI–312

Railroad Grant—Continued.

VII. SELECTION—Continued.

The Northern Pacific must exhaust the lands in the first indemnity belt before it can obtain title to lands in the second; but this does not prevent selections in the second belt on proper basis pending final adjustment within the primary limits and first belt. XIII–201

The right to select, within the second belt can not be recognized until it is made to appear (1) that the grant, in the State in which the selection is sought to be made, can not be satisfied within the limits of the first belt, and (2) that the loss, specified as the basis for such selection, occurred from a disposal subsequent to the passage of the act of July 2, 1864. (Northern Pacific.) XVIII–596

The right of the Northern Pacific to select indemnity within the second belt can not be recognized, unless it is made to appear that the loss specified, as the basis of such selection, is the result of a disposal occurring in the interval between the date of the granting act and that of definite location. XXV–68

A selection within the second indemnity belt is not permissible where the loss does not occur subsequent to the act of July 2, 1864, and where it can be satisfied within the first indemnity belt. (Northern Pacific.) XIX–233

Lands reserved prior to the passage of the act of July 2, 1864, can not be made the basis of a selection within the second indemnity belt of the Northern Pacific grant. XXIX–242

Land within the second indemnity belt may be selected on a *prima facie* basis without waiting for the final adjustment of the grant within the primary limits and first indemnity (Northern Pacific) belt. X–15

Report called for from General Land Office as to alleged excess indemnity selections in the second indemnity belt of the Northern Pacific grant in the State of Minnesota. XXIV–141

Lands within the limits of the withdrawal on general route of the Northern Pacific main line, and also within the indemnity limits of the grant to said company for a branch line, are not subject to selection as indemnity for losses on the branch line while so withdrawn, and the subsequent forfeiture by the act of September 29, 1890, of the lands thus withdrawn precludes the assertion of indemnity claim thereto on account of said branch line.

XVII–448; XVIII–255

Railroad Grant—Continued.

VII. SELECTION—Continued.

Odd-numbered sections within the indemnity limits of the grant made by the act of July 25, 1866, and also within the overlap with that portion of the prior grant for the Northern Pacific road, *via* the Valley of the Columbia river, which was never definitely located or constructed, and the grant for which was forfeited by the act of September 29, 1890, are subject to indemnity selection under said grant of 1866, so far as any claim under the Northern Pacific grant is concerned. XXIX–440, 442

The act of August 5, 1892, is for the sole benefit of settlers, and does not confirm selections made by the Northern Pacific within the limits defined by said act. XV–538

The occupancy of town lots under a scrip location should not be held such an adverse right, or claim, as will defeat the right of selection under the act of August 5, 1892, where at the date of such selection the scrip has been withdrawn and the occupants and purchasers thereunder disclaim any interest adverse to the company. XXV–545

The provisions of paragraph 104 of the Mining Regulations are not applicable to selections made under the act of August 5, 1892. XXIX–254

Under the act of June 2, 1864, the right of the company to even sections within the six-mile limits of the grant of May 15, 1856, does not attach until selection, and the right of selection can not be exercised until after definite location of the modified line of road. X–176; XI–271

The act of June 2, 1864, did not work a legislative withdrawal of the even-numbered sections within the original six-mile granted limits, and in the absence of an executive withdrawal of said lands no right of the company thereto can attach prior to selection. XXVI–508

Lands excepted from the withdrawal made in aid of the act of June 2, 1864, are not subject to selection thereunder, if at the date of such selection a qualified homesteader is residing thereon. XI–271; XXVI–156

A deed executed by the company prior to selection does not alter the status of the tract included therein as "public land" or preclude the subsequent selection thereof by the company. X–504

In case of a contract of purchase made with a railroad company, involving a specific tract within the indemnity limits of the grant, the subsequent selection of such tract by the company will be presumed to have been made for the protection of the purchaser. XXII–143

Railroad Grant—Continued.

VII. SELECTION—Continued.

The pendency of a selection bars other disposition of the land; but a subsequent filing may be allowed to stand subject to the final disposition of the selection. XII–195

Selection can not be allowed for land included within a prior *prima facie* valid selection, and such an application should be rejected, not held to await the result of the prior selection. XIII–535

The pendency of a motion for the reconsideration of adverse action taken on an indemnity selection bars the allowance of an entry of the land involved until final disposition of the question so raised. XXVII–470

The filing of a list of indemnity selections initiates a claim on behalf of the company that can only be defeated on due cause shown why such selections should not be approved. XXVI–312

Until the approval of an indemnity selection no rights are secured thereunder that can be asserted against the government; and the creation of a forest reservation prior to the approval of a selection embraced within the limits of said reservation, is such a disposition of the land as to defeat the selection thereof, even though the tract was subject thereto when selected by the company. XXVIII–281, 363

Selection of, pending on appeal, precludes the acquisition of adverse rights by filing or settlement. XIV–418

During the pendency of an indemnity selection filings should not be recorded for the land covered thereby. IX–250; X–454

A pending indemnity selection excludes the land covered thereby from entry. II–504; VII–80; X–15; XII–386

Under the circular of September 6, 1887, governing the procedure in case of application to enter land covered by indemnity selections, a hearing will not be ordered, where the applicant makes a *prima facie* showing that the land applied for was not subject to such selection, and the company does not traverse the allegations made by the applicant. XXVII–700

Under the special circular of 1887, an applicant for the right of entry, who attacks the validity of a prior indemnity selection, is entitled to the allowance of his application, if the company, after due notice, fails to respond, and such allowance of necessity works an avoidance of the selection. XXIX–218

Settlement claim can not be recognized for land covered by selection until it is shown that the tract was not subject to selection, and the failure of the company to appear at a hearing ordered to determine the status of the land does not relieve the settler from the necessity of submitting such proof. X–683

Railroad Grant—Continued.

VII. SELECTION—Continued.

The right of a settler who is residing on land covered by a prior indemnity selection, and whose settlement is subject to such selection, will attach on the cancellation of said selection, if the land is then open to settlement, and defeat the right of the company under a subsequent selection. XXVI–390

At date of the grant and withdrawal the land was within the boundaries of a Mexican claim (Diaz), which was subsequently declared invalid, and thereafter, but before claim of the settler (Ryan), the company (Central Pacific) selected it; held by the supreme court that it was public land at date of the selection, and that said selection barred the settlement claim. II–509

The outstanding certification of lands to the State (Louisiana) under the grant of 1856 did not prevent reinvestment of title in the United States by the forfeiting act of July 14, 1870, and is therefore no bar to selection after the passage of said act. XVI–65; XXVII–274

Lands included within pending selections are not restored by the revocation of the withdrawal. IX–74; X–317; XII–29; XVII–406

Land covered by an uncanceled homestead entry is not subject to indemnity selection. VII–405; XVII–592

Conflict between a selection and a homestead entry may be settled either under the selection or an offer of final proof. XIV–79

As between an applicant for the right of entry, and a company, claiming under selection, where the application is rejected on account of the selection, and the appeal from such action is dismissed for want of regularity, and in the same decision the selection held invalid, the right of the applicant should be considered when final action is taken on the selection. XXIII–513

An existing homestead entry within indemnity limits made before withdrawal became effective bars selection by the company. III–304

The right of selection can not be exercised upon land that is covered by existing entries and not protected by withdrawal. XIII–230

An order revoking an indemnity withdrawal restores the lands to the public domain, and subsequent selection of such land can not be made in the presence of a prior intervening entry. XVIII–314

An entry of land previously withdrawn is no bar to the right of selection if exercised before the revocation of the withdrawal becomes effective. XIV–111

Railroad Grant—Continued.

VII. SELECTION—Continued.

No rights are acquired as against a selection by a settlement on lands previously withdrawn for the benefit of the grant. XVII–34

A homestead entry of land within an indemnity withdrawal which had not been selected at the date of final proof, or prior to the revocation of the withdrawal, is not defeated by a mere protest of the company against the final proof filed while the withdrawal is in force. XVII–270

An application to enter erroneously rejected, and pending on appeal, is a bar to the subsequent selection of the tract as indemnity. XX–288; XXI–487

Selection not defeated by a pending rejected application to enter under which no rights are secured. XVIII–163

A selection should not be allowed for land included within a pending homestead application. VI–649, 666; VII–244; XX–123

A settlement right existing at the date of indemnity selection excepts the land covered thereby from the operation of said selection. VII–182; XX–127

The right of a qualified settler who is in the possession of land to perfect title thereto is not defeated by an intervening selection. XXIV–439

An applicant for land within indemnity limits whose application is wrongfully rejected, and who fails to appeal from such action, but remains in the possession and occupancy of the land, is protected thereby as against a selection on behalf of the company made after the acquisition of the applicant's settlement right. XXII–61

The right of a qualified settler on land excepted from an indemnity withdrawal defeats a subsequent selection under the grant. XVII–537

Settlement claim precludes indemnity selection of lands not withdrawn. V–566; XIII–167; XIX–249; XXIV–274

An indemnity selection of land not protected by withdrawal, and included within a prior settlement claim, is no bar to the subsequent recognition of the settlement right. XXVI–375

Land within a settlement claim is not subject to selection, and the failure of the settler to file his claim within the statutory period will not defeat the effect of said claim as against the company, nor limit the extent of said claim to the tract on which the improvements are situated. XVII–122

It is discretionary with the Secretary whether he will permit a company to select lands occupied by *bona fide* settlers, and he may protect such occupants so far as it can be done consistently with law and due regard to the company's rights. II–508

Railroad Grant—Continued.

VII. SELECTION—Continued.

The authority of the Secretary over the selection of indemnity lands will be exercised to protect a settler who has placed improvements on a tract, and is residing thereon, at the time an indemnity selection is tendered, even though such settler may have failed to make timely filing or entry prior to the proffer of the company's selection. XXVII–467

The ruling of the supreme court in the case of Northern Pacific R. R. Co. *v.* Colburn, 164 U. S., 383, does not preclude the recognition of settlement rights as against subsequent intervening indemnity selections, for that case dealt with lands in the primary limits, where rights attach at definite location, while in the indemnity limits no right exists prior to the selection of indemnity, and the approval thereof. XXVII–361

The protection which should be accorded to one who has settled on a tract prior to the offer of an indemnity selection therefor, is personal to such settler, and not transferable; hence, a purchaser of the possessory claim and improvements of such settler, does not by such purchase strengthen the position resulting from his own settlement on the land, or other initiation of claim thereto, after such selection is noted of record.

XXVII–467, 470, 513; XXIX–264, 554

A settlement made on a tract released from indemnity withdrawal, but subject to a pending selection, takes effect at once upon the abandonment of said selection, and precludes the subsequent selection of said land on account of the grant. XVII–406

A settlement on land covered by withdrawal attaches at once on the revocation of the withdrawal, and will exclude such tract from subsequent selection; and the failure of the settler to assert his claim within three months after notice that the land is open to entry can not be taken advantage of by the company. XXVI–538

Pendency of preëmptor's appeal reserves the land from selection.

IV–232, 405; V–396

A settlement right existing when an indemnity withdrawal is revoked is superior to a subsequent selection.

X–444, 454; XIV–192

A settlement right within indemnity limits, acquired after revocation of the withdrawal and prior to selection, excludes the land covered thereby from selection. IX–250; X–31; XI–494; XVI–507

A company claiming under a selection within a revoked indemnity withdrawal can not plead insufficient notice of an adverse settlement claim where it appears in response to final proof notice, files protest, and is heard thereon. XI–494

Railroad Grant—Continued.

VII. SELECTION—Continued.

Lands occupied and cultivated by qualified settlers, entitled to make entry thereof, are not subject to indemnity selection, and the recognition of such right of entry, though irregular, may be permitted to stand. XXII–257

A claim of occupancy, set up to defeat the right of indemnity selection, can not be recognized if it appears that at the date of selection the alleged occupant had not established residence on the tract, but was maintaining a home elsewhere in the prosecution of a claim under the preëmption law. XXV–542

A claim of occupancy will not be held sufficient to defeat the right of selection in the absence of actual residence on the land. XXIV–452; XXVII–137; XXVIII–572

The occupancy of land for the sole purpose of speculating in the improvements thereon does not constitute a *bona fide* settlement that will except the land from indemnity selection. XXIII–543

Improvement of land under the timber-culture law will not operate to exclude the same from indemnity selection. XXII–662; XXIII–1; XXVII–86

Possession and occupancy with intention to enter under timber-culture law do not bar indemnity selection. XXX–250

The occupancy and improvement of land within indemnity limits by one who is not asserting any right thereto adverse to the company, but is expecting to secure title through the company, is no bar to selection. XXVII–404, 435

A claim of residence will not be accepted as sufficient to defeat a railroad indemnity selection, if it does not affirmatively appear that the occupant was duly qualified to assert a claim under the settlement laws at the date of said selection. XXVII–694

The occupancy of a tract in connection with settlement and residence upon adjoining land operates to exclude such tract from indemnity selection. XXVII–78

Prior to adjoining farm entry residence on the original farm, with cultivation of the adjacent tract, is not residence on said tract, and does not constitute a claim that will exclude it from indemnity selection. XXVII–348

A homestead settler who makes entry of a part of the land embraced in his settlement claim thereby abandons said claim as to the remainder; and the land thus released from said claim is thereafter open to indemnity selection. XXVII–134

A settlement claim will not defeat a selection of the land, where at such time the settler was asserting a similar claim, under another law and for a different tract, which he subsequently perfected. XIX–516

Railroad Grant—Continued.

VII. SELECTION—Continued.

Of land occupied by one who at such time had exhausted his rights under the settlement laws is not defeated by the subsequent qualification of the occupant to make a second homestead entry under the act of March 2, 1889. XXII–99

Settlement of an alien no bar to selection. X–463

Residence upon, and improvement of land by an alien, prior to his declaration of intention to become a citizen, will not defeat the right of the company to make indemnity selection of land so occupied. XXVII–357

Of land included within an unexpired filing is subject to the rights of the preëmptor, and the company can not take advantage of his failure to occupy and improve the land. X–499

No rights are secured by selection of lands embraced within an unexpired preëmption filing of record. XIV–692; XVII–592

Land covered by an expired preëmption filing, but on which the preëmptor is residing, is not subject to selection. XIV–605

On application to select land covered by an expired filing, where it does not affirmatively appear that the preëmptor has in fact abandoned his claim, a hearing should be ordered to determine the status of the tract at date of selection. VI–613

Land covered by an uncanceled preëmption filing is not subject to indemnity selection, though the statutory life of said filing may have expired without final proof and payment having been made thereunder. XXI–423

An expired preëmption filing under which no claim is asserted does not exclude the land covered thereby from indemnity selection. IX–452; XI–138; XIII–637; XVII–288; XXVIII–496

Expired filing of record does not bar selection of the land unless it be shown that the preëmptor had not in fact abandoned the land (St. Paul, Minneapolis and Manitoba Railway). VIII–291

An indemnity selection made for land included in a preëmption filing, under which residence has been duly established and maintained, will not defeat the right of the preëmptor to subsequently transmute his claim to a homestead entry. XXVI–340

On application to select land covered by an expired filing a hearing should be had to determine the status of the land (St. Paul, Minneapolis and Manitoba Railway). VIII–291

Lands embraced within the limits of a forest reservation, established by order of the President, are not subject to indemnity selection. XXVII–122

The right of one holding under a purchase from the railroad company is no bar to the selection of the land as indemnity. XVIII–106

Railroad Grant—Continued.

VII. SELECTION—Continued.

During the pendency of judicial proceedings that affect the status of lands under a grant, selections therefor should not be allowed. XII–88.

The designation of a tract as the basis of an indemnity selection at the time that the right to said tract is in dispute between the company and a homesteader must be construed as a waiver of the company's claim in favor of the entryman. XXII–688

Where a company makes selection in lieu of land apparently excepted from the grant, and in consequence of such action the basis of said selection is subsequently entered under the homestead law, the company is estopped from claiming the land so entered, even though it was not in fact excepted from the grant. XIX–227

Procedure in case of application to enter lands covered by an unapproved selection. X–504

Directions given for publication of notice advising settlers of the pendency of indemnity selections and contemplated action thereon. XVIII–511

No action should be taken on selections for lands covered by expired filings until after notice to the claimants to assert any rights they may possess. XI–595; XII–88; XIII–349

Directions given for the publication of selections on behalf of the Florida Railway and Navigation Company that may be covered by former entries made under the "armed occupation acts." XII–553

For the protection of settlement rights recognized by the confirmatory act of February 8, 1887, action will not be taken on selection lists until after publication of notice (New Orleans and Pacific). XV–346

An application of the company for the return of selection fees on the cancellation of a selection and the acceptance of such repayment is a waiver of the company's claim to the land. XII–545

The failure of a railroad company to perfect a selection within a reasonable time after notice of final decision recognizing the right of selection must be held to work an abandonment of its prior right, where the withdrawal has been revoked and an adverse claim intervened. XXIV–145

Consent of the company to a judicial decree recognizing the validity of an entry under which settlement rights are alleged is an abandonment of the company's pending selection of the land so far as the rights of the settler are concerned. XI–271

All fees and costs must be paid before favorable action can be taken upon list of selections. XV–346; XX–22; XXIV–543

Railroad Grant—Continued.

VII. SELECTION—Continued.

The provision in the appropriation act of July 30, 1876, requiring payment by railroad companies of the cost of surveying, selecting, and conveying the lands, is of a general and permanent nature. (See 2 L. D., 669.) II–463

A departmental decision canceling railroad indemnity selections takes effect as of the date of the decision, and the lands affected thereby are thereafter subject to selection by the first qualified applicant. XVIII–511

If a railroad company desires to correct a list of selections it should first file application for permission to make such correction, which should be considered by the General Land Office having due regard for intervening rights. XXVII–545

VIII. LANDS EXCEPTED. See sub-titles Nos. IV and V.

Lands forming a part of the bed of the Missouri River at the date of the grant, and covered by the waters of the main channel of said stream at such time, were not public lands subject to the operation of said grant XXII–341

The effect of section 17, act of July 2, 1864, was not to make a new grant but to provide a new beneficiary under the original grant of July 1, 1862, as to the Sioux City branch, and said beneficiary could only take such lands as were capable of passing under the original grant, and would therefore not acquire title to lands that were a part of the bed of the Missouri River at the date of the original grant. XXIV–29

Congress reserved all claims recognized by the government from the operation of the grant (Central Pacific). I–341

Land in reservation at the date of the grant and definite location is excepted from the terms of the grant. IV–94, 429

The provision in section 2, act of March 3, 1863, with respect to settlement rights "on any of the reserved sections" refers to the even-numbered sections, not granted. VIII–570

A subsisting order of the President withdrawing lands for the use of Indians excepts the land covered thereby when the grant takes effect. V–432

Lands embraced within a technical Indian reservation at date of definite location of the Northern Pacific are reserved from the operation of the grant. V–138; XVI–229

Railroad Grant—Continued.

VIII. LANDS EXCEPTED—Continued.

Land embraced at the date of the Northern Pacific grant in an Indian reservation created by treaty is excepted from the operation of the grant, though at definite location such land has been relieved from the reservation subject only to the right of Indian occupancy; and the provisions in section 2 of said grant with respect to the extinction of Indian title are not applicable to land that acquires the status of Indian country after the date of the grant, but is included in a technical reservation prior thereto. XXII–568

Lands embraced within a reservation created for Indian purposes do not, under the grant of this company, occupy the status of lands granted subject to the right of Indian occupancy. Lands so reserved when the grant becomes effective are absolutely excepted therefrom, and when released from such reservation become a part of the public domain. XVII–587; XXVIII–494

The executive order of May 16, 1855, withdrawing certain lands for the purposes of a contemplated Indian reservation was made with due authority, and lands embraced therein at the date of a subsequent grant were excepted therefrom, even though released from such withdrawal prior to the definite location of the road. XVII–420

Lands embraced within the Camp Verde Indian reservation at the date of the definite location of the road are excepted thereby from the operation of the grant, and the subsequent release of said lands from such reservation will not inure to the benefit of the grant. XVII–554

At the date of the grant to the Northern Pacific company the lands in the Bitter Root Valley "above the Loo-lo fork" were included in the Indian reservation created by the treaty of April 18, 1855, and therefore excepted from the operation of said grant. XIX–532; XX–90

Lands in the Bitter Root Valley above the Loo-lo fork, included in the reservation made by the treaty of 1855, and surveyed under section 2, act of June 5, 1872, are excepted from the grant to the Northern Pacific. XXVI–43

Land within a military reservation at date of definite location is excepted from a grant, and no subsequent act of the executive could render the land subject thereto. VII–430

The approval of a military reservation, by the Secretary of War, as theretofore defined by the military authorities, is the legal equivalent of the President's order to the same effect; and lands so reserved are excepted from the subsequent operations of a railroad grant on definite location. XXIX–261

Railroad Grant—Continued.

VIII. LANDS EXCEPTED—Continued.

The act of June 10, 1880, abolishing Fort Seward military reservation, was a legislative recognition of such reservation as an exception from the grant to the Northern Pacific, and the law to govern the disposition of the lands embraced therein. VI–657

The proclamation of the President under the act of June 18, 1878, withdrawing from sale and disposal certain lands required for reservoir purposes, did not affect the status of lands to which rights under a railroad grant had attached by definite location. XXV–451

Failure to officially inform the local office of an executive order releasing land from a military reservation will not operate to reserve such land as against the grant. XII–465

Erroneous action of the local office in designating land as within a military reservation will not defeat the operation of the grant. XII–465

The clause "that any and all lands heretofore reserved to the United States by any act of Congress * * * for the purpose of aiding in any object of internal improvement * * * be, and the same are hereby, reserved to the United States from the operation of this act," construed. IV–573

Lands within the grant to the Atlantic and Pacific are expressly excepted from the later grant to the Southern Pacific; and the forfeiture of certain lands granted to the former company confers no rights upon the latter to select lands never embraced in its grant. XI–534

Definite location of the Northern Pacific did not take effect upon lands within the previous indemnity withdrawal made under the act of May 5, 1864. XI–607

The lands reserved for indemnity purposes under the grant of June 3, 1856, are excluded by express terms from the grant made by section 3, act of May 5, 1864, and the lands so reserved, but not required as indemnity, do not become subject to the latter grant on the final adjustment of the former. X–63; XI–615

The decisions of the Department as to the effect of the indemnity withdrawal under the act of June 3, 1856, upon the subsequent grant of May 5, 1864, are reversed by the decision of the supreme court in the Forsythe case. XXII–33, 78

Lands within the withdrawal on general route of Northern Pacific and within the indemnity limits on definite location thereof are excepted from the subsequent operation of the St. Paul, Minneapolis and Manitoba grant. XII–395, 398

Railroad Grant—Continued.

VIII. LANDS EXCEPTED—Continued.

Lands reserved on account of a prior grant at the date of the passage of the act of July 2, 1864, making the grant to the Northern Pacific, are excepted from the latter grant, but do not afford a basis for the selection of lands within the second indemnity belt of that grant, provided for by the joint resolution of May 31, 1870. XXX–403

The withdrawal made on behalf of the wagon-road grant of July 5, 1866, operates to except the lands so reserved from the attachment of rights on definite location of the Oregon and California road under the grant of July 25, 1866. XXVI–688

The unappropriated odd sections within the primary limits of the grant of June 10, 1852, were not "reserved" lands when the grant of 1866 was made to the Atlantic and Pacific, and therefore passed to said company when found in the primary limits of its grant. XII–116

For the St. Vincent extension is a new grant, later in date to that made for the main line, and lands withdrawn as indemnity for the benefit of the latter are excepted from the subsequent operation of the grant for the branch line. XIV–545

Lands embraced within the indemnity withdrawal for the benefit of the main line of the St. Paul, Minneapolis, and Manitoba road, under the grant of March 3, 1857, are not by such reservation excluded from the operation of the subsequent grant of 1871 for the St. Vincent extension of said road. XXV–86

Lands within the indemnity limits of the Northern Pacific, and the primary limits of the grant of March 3, 1871, for the St. Vincent extension of the St. Paul, Minneapolis and Manitoba railway, and not included within the withdrawal on the general route of the Northern Pacific, passed under said grant of 1871. XXIX–115

The withdrawal of June 3, 1869, on account of the main line of the St. Paul, Minneapolis and Manitoba Railway Company did not extend north of a line drawn due east from Breckinridge, and a preëmption filing after such date for lands in the indemnity limits on said main line, north of said easterly line, was properly allowed, and being of record and unexpired at the date of the definite location of the St. Vincent extension of said road, served to except the lands covered thereby from the grant made on account of said extension. XVIII–120

The lands in the Bitter Root Valley, being reserved for the use of the Indians, were not public lands free from "other claims or rights" when the Northern Pacific Railroad Company filed its map, and therefore were not affected thereby. I–368

Railroad Grant—Continued.

VIII. LANDS EXCEPTED—Continued.

The prior adverse right of a town settlement defeats a selection under the act of August 5, 1892, to the extent of the lands that may be entered by the town settlers under the land laws. XVIII–258

If the grant is a present one and the title does not vest when the grant takes effect, it can not vest afterward. I–336, 362, 366; V–13

The act of July 1, 1862 (Pacific roads), granted "public lands," but defined them as those lands which were public at date of definite location of the roads. II–480

Land *sub judice* at the date the grant becomes effective is excluded therefrom. IV–100, 357, 397

The grant of May 4, 1870, is a float and does not take effect upon specific tracts until definite location, and a homestead entry made prior to such location excepts the land covered thereby from the grant though no exception is made therein of lands thus appropriated (Oregon Central). XIV–283; XXVI–592

A homestead entry of record at date of definite location excepts the land covered thereby from the grant of June 3, 1856, as revived by the later acts. XV–390

Land not free at definite location does not pass. V–138

Lands embraced within homestead entries or preëmption filings at the date of a, or at the time when said grant takes effect, are excepted from the operation of the grant. XXVI–503

An unexpired preëmption filing existing of record at the date of a. excepts the land covered thereby from the operation of the grant. XXVII–46; XXVIII–94, 575

Does not take land covered by homestead entry at date of granting act though said entry is subsequently canceled. I–388; XVI–488; XVII–265

Land embraced within a subsisting homestead entry at the date of the grant of July 4, 1866, is excepted therefrom though said entry may be canceled prior to the definite location. XV–431

Land within a preëmption claim at date of, is excepted therefrom though such claim is abandoned at definite location. XV–36; XXIII–588

The ruling of the supreme court in the case of Bardon *v.* Northern Pacific Railroad Company, as to the effect of a claim at the date of the grant to that company, is equally applicable to the Hastings and Dakota grant. XIX–20, 215

Land embraced within a homestead entry at the date of the grant to this company (Hastings and Dakota) is excepted therefrom, though said entry is canceled prior to definite location. XIX–20

Railroad Grant—Continued.

VIII. LANDS EXCEPTED—Continued.

Land embraced within the claim of a qualified settler at the date a grant becomes effective is excepted by such claim from the operation of the grant. XIX–225, 270

Land embraced within a homestead entry at the date of the granting act is excepted from the operation thereof, whether said entry has been perfected at such time or not. XX–514

Land embraced within a homestead entry at the passage of the act of June 2, 1864, 13 Stat., 95, is not of the character authorized to be certified under said act on account of the modified line provided for therein. XXIX–228

Land covered by *prima facie* valid entry when the right of the road attached is not granted. I–362; IV–206, 281, 405, 421, 438; V–396; VIII–378; IX–654; XII–545

Entry of record at date of definite location excepts the land covered thereby, though it appear that the settler had abandoned his claim. VI–750

The effect of a *prima facie* valid entry existing when the grant became operative unchanged by the subsequent declaration of the entryman that the entry was fraudulent. IV–421

A homestead entry of record at date of definite location excepts the land covered thereby from the grant, and the entryman's subsequent compliance with the law is immaterial. XI–535

The company will not be heard to question the validity of an entry or filing except under allegation that the claim is void *ab initio* because the alleged settler was not in existence at the date of the record. XI–533

Does not take effect upon land covered by an entry at date of definite location, and the subsequent cancellation of the entry does not affect the status of the land under the grant. XI–157

Homestead entry of single man made through an agent while in naval service held to defeat the grant. III–446, 479

Land included within a suspended entry at definite location is excepted from the grant. XII–572

Pending reinstated entry within indemnity limits excepts the land covered thereby. VI–444

Lands covered by entries or filings, and so excepted from the grant, inure to the public domain on the cancellation of said entries. II–505; III–166; VII–357

An entry erroneously allowed to remain of record after final judgment of cancellation can not operate to except the land covered thereby from the subsequent effect of a. XX–191

Railroad Grant—Continued.

VIII. LANDS EXCEPTED—Continued.

That the cancellation of an entry was not noted of record until after definite location, though ordered prior thereto, would not operate to defeat the grant. VII–163

The fact that an order canceling an entry is not received at the local office until after definite location, though made prior thereto, will not operate to defeat the grant. XII–59

Erroneous allowance of an entry can not divest the company of its right under the grant. XI–430

A homestead entry, improperly allowed of lands withdrawn for the benefit of a railroad grant, confers no right as against the grant; nor does the successful contestant of such entry secure any right against said grant. XIX–11

Precedence as against a grant is accorded a homestead entry made on the day when the map of definite location was filed. II–570; V–356

Land within the granted limits of the road (St. Paul and Pacific, now St. Paul, Minneapolis and Manitoba) which was covered by an entry (homestead) subsisting at date of the grant, was excepted from said grant. II–501

An entry (homestead) of record when the State conferred the grant on the company (Hastings and Dakota), though allowed after withdrawal, excepted the land from the grant. II–541

An application to enter, erroneously rejected and pending on appeal, serves to defeat a railroad grant on definite location as to the land covered thereby. XXIII–433

The right of purchase under section 2, act of June 15, 1880, defeats the operations of, at definite location. V–333, 529; VI–8; XI–596

Right of purchase under section 2, act of June 15, 1880, excepts the land covered thereby from the effect of definite location, and can be exercised as against the grant at any time prior to patent. XII–310

The right of a widow to purchase under section 2 of the act of June 15, 1880, existing at date of definite location defeats the claim of the company. III–490

An entry under the act of June 15, 1880, existing at definite location excepts the land covered thereby from the grant, and this without regard to any subsequent decision as to the validity of such entry. VII–148

Right of purchase under section 2, act of June 15, 1880, can not be set up by one who claims no interest through the original entryman for the sole purpose of defeating a. XV–81

Railroad Grant—Continued.

VIII. LANDS EXCEPTED—Continued.

A mineral application made after the filing of the map of general route, and prior to definite location, and pending at the latter date, is a claim under the excepting clause in the grant to the Northern Pacific that operates to exclude the land covered thereby from said grant. XXV–72

Existence of a preëmption claim at date of definite location excepts the land covered thereby from the operation of the grant. I–366, 380; V–553; IX–221; X–464

Subsisting preëmption and homestead claims at the date when the grant took effect excluded the lands covered thereby (Central Pacific). I–336

Preëmption claim existing when the line of road is designated excepts the land included therein; on the subsequent abandonment of the claim the land reverts to the public domain. IX–173

In determining whether, under the grant of July 2, 1864, land is free from a preëmption or other claim or right, the validity of the claim is not material. VII–238, 354

A railroad company is precluded from inquiring into the validity of claims existing within its granted limits at date of definite location (Union Pacific). VII–13

A *prima facie* valid preëmption filing of record at the date when the right of the company attaches excepts the land covered thereby from the operation of the grant. VII–13, 85; VIII–380; X–54, 288, 568, 645; XI–1, 143, 163, 195, 224; XII–2; XIII–97; XIV–9, 237, 656, 664; XVII–263

An unexpired preëmption filing of record at definite location raises a *prima facie* presumption of the existence at that time of a preemption claim sufficient to except the land covered thereby from the operation of the grant (Union Pacific). IX–595

Land covered by a preëmption filing and settlement at definite location is excepted from the operation thereof, and the validity of the claim can not be questioned by the company (Northern Pacific). VII–354

Land embraced within an unexpired preëmption filing at the date of the grant made by the act of July 1, 1862, is excepted from the operation of said grant. XXIX–86

A *prima facie* valid unexpired preëmption filing of record when the grant becomes effective raises a presumption as to the fact of the claim that is conclusive as against the grant in the absence of an allegation which, if proven, would render the filing void in its inception. X–645; XI–224

Railroad Grant—Continued.

VIII. LANDS EXCEPTED—Continued.

That a preëmption filing was made without settlement or that the preëmptor did not subsequently comply with the law are facts that can not be shown to defeat the effect of an unexpired filing as against the grant. x–288, 645; xvii–263

A *prima facie* valid preëmption filing existing at date of definite location excepts the land covered thereby from the operation of the grant, and the fact that the preëmptor did not reside upon or improve the land does not relieve the grant from the effect of the filing. xi–163, 225; xvii–288, 592

Land covered by a *prima facie* valid preëmption filing when the grant to the Oregon and California company becomes effective is excepted therefrom, and the failure of the preëmptor to comply with the law does not defeat the exception. xii–232

Under the terms of the grant of July 25, 1866, wherein lands "pre-empted" are excepted therefrom, a tract covered by a valid subsisting preëmption filing at date of definite location is taken out of the operation of said grant. xxii–254

Land embraced within an unexpired preëmption filing at the date of the grant of July 25, 1866, is excepted from the operation thereof. xxix–268; xxx–51

A settler upon surveyed land lying within the limits of the grant of July 25, 1866, prior to the definite location of the road, who does not file his preëmption declaratory statement until after definite location, has no such claim as serves to except the land from the operation of said grant. xxx–51

Existence of a *prima facie* valid preëmption filing at the date when the grant becomes effective excepts the land covered thereby even though such filing may embrace an excessive acreage. xii–567

Under the grant to the St. Paul, Minneapolis and Manitoba company the existence of a filing when the grant became effective will raise a presumption of right which, in the absence of proof to the contrary, is conclusive as against the grant. viii–380

Lands covered by an unexpired preëmption filing at the date when the grant becomes effective are not subject to the operation of a grant from which are excepted lands to which the "right of preemption" has "attached" when the line of road is definitely fixed. x–575, 684

A hearing to determine the validity of an unexpired filing of record at date of definite location will not be ordered in the absence of an allegation that the claim had in fact ceased to exist at said date (Union Pacific). ix–595

Railroad Grant—Continued.

VIII. LANDS EXCEPTED—Continued.

A declaratory statement filed after the map of general route (Northern Pacific) was accepted, but alleging settlement prior to such acceptance, does not establish the fact of settlement as alleged, and a hearing will be required to settle the status of the tract at the date of the statutory withdrawal. VII–235

A declaratory statement filed after the attachment of rights under definite location is ineffective as against the operation of a railroad grant. XXVI–57

A preëmption filing made after the map of definite location is filed, alleging settlement prior to notice of withdrawal, will not in itself defeat the operation of a. XXV–15

A preëmption settlement upon land within the limits of a railroad grant, for which filing was not tendered at the local office until after the definite location of the road, does not except the tract covered thereby from the operation of the grant. XXX–490

While a railroad company can not attack a declaratory statement of record on the ground of the non-citizenship of the claimant, it will be heard on such charge where acts of settlement are relied upon to defeat the grant. XXVI–57

A preëmption claim, based on alleged settlement prior to definite location, and filing made prior to notice of withdrawal, can not be held to defeat the operation of a, where the fact of settlement is not clearly established, and the preëmptor has failed to show due maintenance of his claim after his filing, and it further appears that the land involved has been, for a long term of years, in the adverse possession of one against whom the preëmptor is estopped from setting up his alleged settlement right. XXVI–28

A mere allegation of settlement prior to definite location will not work an exception of the land where the filing in which such allegation appears is not made until after the rights of the road have attached. XII–384

An expired filing of record when the grant becomes effective is not a "preëmption claim" that excepts the land covered thereby from the grant. X–645; XIV–624

An expired preëmption filing of record at the date when a railroad grant becomes effective is not an existing claim that serves to defeat the operation of the grant (Oregon and California). XXVIII–477

If an expired preëmption filing is found of record when the grant becomes effective, it will be presumed that the claim of the settler is abandoned, but such presumption is open to rebuttal. X–645

Railroad Grant—Continued.

VIII. LANDS EXCEPTED—Continued.

An uncanceled preëmption filing of record at the date when a, becomes effective, excepts the land covered thereby from the operation of the grant, even though at such time the statutory life of the filing has expired. XXI–165; XXIII–15; XXIV–141, 195

An uncanceled preëmption filing excepts the land covered thereby from the operation of a, on the definite location thereof. XXI–123, 263

Land embraced within a preëmption filing of record at the time when a railroad grant becomes effective is excepted from the operation of the grant, and the company in such case is not entitled to question the legality of the filing or the qualifications of the preëmptor. XXIV–21

An expired preëmption filing upon "offered" land is not an existing claim, and does not constitute a preëmption, or other lawful claim, within the meaning of the excepting clauses in section 3, act of July 1, 1862. XXVIII–76, 128

Expired preëmption filing at date of definite location does not except the land from, if the preëmptor is not then asserting any claim under said filing. XV–552

Land covered by an expired filing at definite location should not be awarded to the company without a hearing to ascertain whether in fact the preëmptor had at such time abandoned his claim. V–520, 613

The expiration of a preëmption filing without final proof and payment will not alone be accepted as proof of abandonment of the settlement claim at such time, so as to relieve a railroad grant therefrom. XIX–225

A preëmption filing on unoffered land under which proof and payment are not made prior to public offering raises no presumption of occupancy as against the subsequent operation of a grant. XIII–22

By the express terms of section 14, act of September 4, 1841, failure to make final proof and payment under a preëmption filing for unoffered land prior to the day fixed for the sale thereof, operates to extinguish all rights under said filing, and though not formerly canceled of record such filing will not thereafter serve to defeat the attachment of a, on definite location. XXVI–680

Preëmptive rights, under a filing for a tract of unoffered land, are not terminated by a proclamation of offering and sale, where the land is subsequently withheld from such offering. A filing occupying such status is a subsisting record claim that will except the land covered thereby from the operation of a grant on definite location. XXIX–613

Railroad Grant—Continued.

VIII. LANDS EXCEPTED—Continued.

The fact that a preëmption filing is made in violation of an executive order for the benefit of a railroad grant will not relieve said grant from the operation of said filing against the subsequent definite location of the road, where said order has expired by limitation prior to such location. XVIII–429

A preëmption filing fraudulent *ab initio* because there is in fact no such person as the alleged preëmptor is a nullity and ineffective as against the grant. X–662

Land included within an expired filing is not excepted from the grant of May 15, 1856 (Iowa), in the absence of a preëmption right at definite location. VIII–546

Burden of proof upon company to show that a preëmption filing for land within the limits of the grant is not valid. I–379

Land not excepted from, by fraudulent preëmption claim existing when the grant took effect. I–390

Where the tract was covered by a preëmption filing at date of the grant (Texas and Pacific) and withdrawal (on preliminary line) the burden rests upon a subsequent claimant (preëmption), alleging that the filing excepted it from the grant, to show that the said filing was a valid claim. (Overruled, 7 L. D., 18.) II–550

The act of May 6, 1870, was a present grant, absolute and unconditional, to the Central and Union Pacific roads, conveying certain specified tracts; A filed a preëmption claim on one of said tracts May 19, 1869, and relinquished it March 29, 1871, on which day B made homestead entry thereon; held that, as there was no privity between B and A, B's case was not within the provision of said act protecting the rights of private persons. II–844

Under the original grant to the Central Pacific and the amendatory act of 1864 the equitable claim of a settler is protected. VII–406

Under the excepting clause in the grant to the Central Pacific providing that the odd-numbered sections granted are those "to which a preëmption or homestead claim may not have attached at the time the line of said road is definitely fixed," the cultivation and improvement of a tract at such time does not constitute a preëmption claim that has "attached" within the meaning of said grant. XXVII–182, 297

Non-mineral land is not excepted from the grant to the Northern Pacific by reason of a "claim" thereto under the mining laws, unless the claim is one which has been asserted before the local land office, and is pending of record there, at the time the line of the road is definitely fixed. XXVII–286

Railroad Grant—Continued.

VIII. LANDS EXCEPTED—Continued.

Land not free from "preëmption or other claims or rights" does not pass, and the validity of such claims is not material (Northern Pacific). VIII–379

A claim resting on settlement, residence, and improvement existing when the grant becomes effective is within the excepting phrase "occupied by homestead settlers" (Northern Pacific). VIII–362; X–258, 386; XI–584; XXI–123

The exception in the third section of the grant to the Northern Pacific applies not only to settlers who have made entry, but also to those who are entitled to make entry. X–427

Where a settlement right is set up on behalf of an Indian to defeat the operation of a railroad grant at a time prior to the act of 1875, it must be made to appear that said Indian was a citizen of the United States, in that he was an "Indian taxed," or subject to be taxed, under the laws of the State, or the United States. XX–401

The unauthorized occupancy and possession of public land by an Indian does not operate to except the land covered thereby from the grant to the Northern Pacific. XXI–457

Homestead settlement claim of an Indian who has abandoned the tribal relation, existing at date of definite location, excepts from the grant the land covered thereby. X–440

The occupancy of an Indian who has not abandoned the tribal relation, existing at date of definite location, will not except the land covered thereby from the operation of the grant. XI–50

The occupancy of land by an Indian, at the date when the Northern Pacific grant became effective and prior to the act of July 4, 1884, will not serve to except such land from said grant if at such time the Indian had not abandoned the tribal relation. XI–304; XVIII–305; XXV–478

The unauthorized possession and occupancy of land by non-tribal Indians at the date of the withdrawal on general route will not serve to except the land covered thereby from the operation of the grant; nor will the fact that the homestead privilege was subsequently conferred upon such Indians protect them as against the grant. XVIII–549

Occupation by qualified preëmptor at date of withdrawal on preliminary line of Texas and Pacific excepts the land from the grant. III–164

Land occupied and claimed by a qualified preëmptor at the date the grant became effective is excepted therefrom (Northern Pacific). XII–299

Railroad Grant—Continued.

VIII. LANDS EXCEPTED—Continued.

Claim of a qualified preëmptor based on residence and improvement existing when the grant to the Southern Pacific becomes effective excepts the land covered thereby from the grant. XII–479

Land under cultivation at date of definite location is excepted from the grant to the Northern Pacific even though the claimant did not at such time reside on the land. XI–583

The claim of a qualified settler who has for a long period maintained residence on unsurveyed land and is in occupation thereof at date of withdrawal on designated route, though not then residing thereon, is sufficient to except it from a grant that protects the occupancy of a homestead settler. (Act of July 25, 1866.) XI–571

A settlement claim on land within the indemnity limits of the New Orleans and Pacific grant is protected by section 2 of the act of February 8, 1887. XIV–365

The mere possession and cultivation of land, without actual residence thereon, can not be construed as bringing a claimant within the protection extended to "actual settlers" by section 2, act of February 8, 1887. XXIX–244

The occupancy of a tract in connection with land covered by an original homestead entry, with a view to establishing a claim thereto as an additional homestead, excepts the tract so occupied from the operation of a railroad grant on definite location. XXIII–381

The possession and occupancy of a qualified settler existing at definite location except the land covered thereby from, even though the settler at such time is not asserting any claim under the public land laws. XV–112

Land embraced within the settlement claim of a qualified preëmptor at date of definite location is excepted from the grant even though such claim is never asserted by a filing or entry. XXII–292

The occupancy of a tract by a qualified preëmptor at the date of definite location excepts the land from the operation of the grant; and the fact that the subsequent filing of the preëmptor did not include said tract can not be taken as proof that he had abandoned his claim thereto at the time the grant became operative. XXII–93

Possession, occupancy, and improvement of a tract by a qualified claimant at definite location except the tract from the grant though the claimant had not at such time established residence on the land. XVI–343

Railroad Grant—Continued.

VIII. LANDS EXCEPTED—Continued.

Possession of land with valuable improvements thereon at definite location by one qualified to assert a settlement claim thereto defeats the grant. The fact that the claim subsequently set up by such occupant is not under the settlement laws in no manner affects his rights. XVI–80

Possession and occupancy of a tract by a qualified settler except the land covered thereby from the operation of, at definite location of the road; and the subsequent failure of the claim ultimately asserted by the settler leaves the land open to the first legal applicant. XVII–40

A settlement right existing at the date when the grant becomes effective excepts the land covered thereby from the operation of the grant. I–341; V–274; VI–151, 172, 224, 485; VII–182; VIII–58, 362, 365, 378; X–290; XXVI–252

When possession and occupancy alone are relied upon to except land it must affirmatively appear that the party in such possession had the right to assert a claim under the settlement laws. XI–531, 568, 584; XII–554; XIV–362; XXII–609

A claim of occupancy, set up to defeat a, will not serve such purpose if the qualifications of the alleged settler, and the character of the occupancy are not made to appear. XXVI–16

Where the facts and circumstances surrounding the use and occupancy of land overcome the presumption that the occupant intended to claim the tract under the public land laws, the occupancy must be regarded as a mere trespass, and not sufficient to except the land covered thereby from the operation of the grant. XVIII–224

A preëmptor who has made an affidavit in support of a railroad selection, to the effect that he was not residing upon the tract embraced within said selection, at the date when the company's right attached, is estopped from setting up a contrary state of facts, as against the heirs of one who subsequently purchased said tract from the company. XXVI–28

A claim resting on settlement, residence, and improvement existing when the grant becomes effective excepts the land covered thereby from the operation of the grant. VIII–520, 542; XVIII–454

A preëmption claim based upon settlement, occupancy and improvement existing at the date when the grant attaches excepts the land from the operation of the grant. VII–406; IX–213, X–281; XI–443, 589

Settlement on unsurveyed land within the granted limits by intending homesteader excepts the land from the grant. III–130

Railroad Grant—Continued.

VIII. LANDS EXCEPTED—Continued.

Failure of the homestead settler to make entry within the statutory period does not subject to the operation of the grant the land covered by his settlement. IV–256; X–427, 637; XI–271

The settlement of a qualified preëmptor, though unprotected by a filing, prior to the attachment of the grant excepts the land therefrom. VI–98; VII–131

The settlement and occupation existing when the right of the road (Central Pacific) attached of one who had failed to assert his claim thereto excepts the tract from the grant. III–264, 271

A claim that land is excepted from the grant to the Central Pacific on account of adverse occupancy can not be recognized, if it does not appear that residence was established prior to the time when the grant became effective. XXII–408

When a preëmption claim has attached by settlement, though the settler may be in laches with his filing, the land is excepted from the operation of a grant which is limited to the lands free from such claims, and abandonment after filing does not affect the question. III–117

The settlement right of a preëmptor existing at date of definite location excepts the land covered thereby from the grant although at such date the preëmptor had failed to make proof and payment. I–357; VI–520

A valid settlement claim existing when the grant becomes effective excepts the land therefrom, and the failure of the settler to place his claim of record can not be called in question by the company. XI–482, 571

Defeated by preëmption claim for offered land existing at definite location though the settler had failed to make proof and payment within the statutory period. IV–353; V–473

A railroad company is not entitled to plead the status of a "purchaser" as against a preëmptor who fails to purchase within the statutory period. I–380; III–271; V–474; VI–520; VII–133; IX–221

Does not take effect upon land covered by preëmption claim though filing was not made in time, such default being only to the advantage of the "next settler." I–380

If the preference right of purchase under a preëmption claim exists at definite location, the land is excepted thereby though actual habitation may have ceased prior thereto. V–553

Where a preëmption right was extinguished on the day of public sale (1858), but the preëmptor was still maintaining settlement, etc., at date of definite location (1863), the tract was not excepted from the grant. (Overruled, 11 L. D., 445) II–525

Railroad Grant—Continued.

VIII. LANDS EXCEPTED—Continued.

Final proof and payment for part of a preëmption claim leaves the remainder subject to, on the subsequent attachment of rights under the grant. XVI–251; XVII–66; XXVI–379

A preëmptor who makes homestead entry of a part of the land embraced within his filing thereby abandons all right under his preëmption claim, and though the filing may not, at such time, be canceled, it is thereafter not evidence of the existence of a preëmption claim, and will not defeat the operation of a, as to the tract not included in the homestead entry. XXIII–539

A preëmptor who makes homestead entry of a part of the land embraced within his filing thereby abandons all right under his preëmption claim, it is thereafter not evidence of the existence of a preëmption claim, and will therefore not defeat the operation of a railroad grant, as to the tract not included in the homestead entry. IX–402; XII–351

The abandonment of a settlement right after the grant becomes effective does not render the land subject thereto.
V–274; VI–172, 326, 485; X–290

To establish the allegation that a tract is excepted from a grant by reason of a settlement thereon it must be shown that when the grant became effective there was a valid subsisting settlement of one qualified to perfect his claim. VII–228; XXIII–436

A settlement claim, that will defeat the operation of a, must be of a character capable of being asserted by the party in possession under the settlement laws. XIX–569

An application of a settler to purchase the land settled upon from the railroad company will not preclude his subsequently asserting a settlement right thereto, where the land is then open to such disposition. XX–288; XXVI–375

The subsequent change of the settler's intention to take the land as a preëmption claim, and his appropriation thereof under the desert land law, are matters not affecting the right of the company. XXI–472

An existing settlement when the public land laws were extended over the Territory bars operation of the grant. IV–341

The purchaser of a possessory right who settles on a tract of land and occupies and improves the same, does not forfeit his settlement right as against a railroad grant by subsequently attempting to secure title through the company, where such action is taken to protect said settlement right, and is repudiated by the settler as soon as he learns that the land is subject to entry.
XX–138

Railroad Grant—Continued.

VIII. LANDS EXCEPTED—Continued.

The uncontradicted testimony of one witness may be accepted to establish the fact that a tract of land was covered by a preëmption claim when the grant became effective. IX–213; X–464

Where settlement is made on the day the right of the road attaches the land should be awarded to the settler. I–331

A hearing will not be ordered as between a company and a settler where the settler has submitted final proof that makes a *prima facie* case for him and no showing to the contrary is made by the company. XVI–93

The possession and occupancy of one who has exhausted his rights under the settlement laws will not except the land covered thereby from the operation of a. XI–531; XV–53; XXIII–331

Residence on land, in reliance on the company's title, can not be held as conferring any right as against the company. XXII–143

Occupancy of land by one who intends to purchase it from the company is not effective as against the grant. XII–322; XV–159, 552

Occupancy at definite location by one who holds under the company, and asserts no right under the settlement laws, will not defeat the grant. XI–471

The possession and occupancy of land, based on a purchase from the company of a portion thereof, does not constitute a claim that will except the land from the operation of the grant on definite location. XXIX–224

Settlement at date of definite location by a qualified settler excepts the land covered from the grant even though such settler is ignorant of his right and holds the land under the belief that it is subject to the grant. XII–554

Land embraced within the occupancy of a qualified preëmptor at the date of definite location is excepted from the operation of the grant, whether the settler then sought to secure title from the company or the government. XIX–184, 229

The occupancy and improvement of land at the date of the definite location of the Union Pacific road, do not constitute a preëmption claim that has "attached" at such time, within the meaning of the excepting clause in the grant to said company. XXVIII–18

Occupancy and cultivation of a tract at definite location by one who subsequently makes timber-culture entry thereof, do not except said tract if the entryman was not qualified to take the land under the settlement laws when the grant attached. XIX–28

Possession and occupancy of a tract, at date of definite location, with intent to subsequently enter the land under the timber-culture law, do not serve to except it from the operation of the grant. XIX–452

Railroad Grant—Continued.

VIII. LANDS EXCEPTED—Continued.

A settlement on public land with intent to appropriate the same under the desert-land law does not operate to except the land from the effect of a. XXIII–247

The purchase of the possessory claim and improvements of another confers no right under the settlement laws that will defeat the operation of a. XV–69

A settlement right as against a, can not be acquired through the possession of a tenant. XV–69

Inclosure and use of land without settlement thereon does not except it from a. XV–544

An allegation that land is excepted from, by a settlement claim is not established by showing that the tract is included within a large body of land improved and occupied as a whole for a cattle ranch. XI–463

Temporary settlement on known coal land, abandoned shortly thereafter, under which no right or color of right is acquired under the settlement laws, does not operate to except land from the grant to the Northern Pacific. XVI–144

An allegation that land is excepted from, by reason of a settlement claim will be investigated even though such action may not inure to the benefit of the applicant. XI–444

Recognition of the company's claim by the widow of a preëmptor will not estop the government or the heirs of the preëmptor from asserting title. IX–221

Not defeated by settlement where the filing showed that the land was not claimed thereunder. IV–401

A mere allegation that land not covered by a preëmption filing was in fact embraced within the claim will not be accepted as sufficient to defeat the grant. XII–471

The citizenship of a settler can not be questioned by the company if on the date of its selection a certificate of naturalization issues to the settler who is then on the land. X–444

Settlement of an alien not effective as against. VI–98, 615; XI–89, 354; XII–507

Settlement of an alien is not effective as against the operation of the grant, and the subsequent qualification of the settler will not relate back to defeat the grant. XI–354

An affidavit as to the citizenship of a settler, who is claiming adversely to a railroad indemnity selection, duly served on the company, may be accepted as a satisfactory showing in such matter, in the absence of any counter showing on behalf of the company. XXVIII–563

Railroad Grant—Continued.

VIII. LANDS EXCEPTED—Continued.

The occupancy of a trespasser at the time when the grant becomes effective does not except the land covered thereby from the grant. VI–322

Does not take effect upon land included within an application to locate a military bounty land warrant. XIV–278

Not defeated by an unauthorized location of scrip on unsurveyed land prior to definite location. XVIII–290

The sale by a State of land to which it has no title can not be recognized as excepting the land from the operation of a railroad grant. XXVI–227

Does not take effect upon land within the claimed limits of an unadjudicated private claim. I–392

Though subsequently excluded from the private claim, the land, being *sub judice* when the grant became effective, did not pass thereunder. VI–33

Takes land excluded from private claim prior to the date when the right of the road attached. V–415

The status of lands lying upon the boundary lines of a private claim determined by the major portion thereof. IV–98

Where the tract was within the exterior limits of a Mexican claim (Moquelamos) which was *sub judice* (in the courts) at date of the grant and withdrawal it was not public land and did not pass to the company (Western Pacific). II–510

Where the tract was within the exterior limits of rancho (by the La Croze survey) at the date of the grant (Central Pacific), but was segregated therefrom (by the approved and confirmed Stratton survey) at date of executive withdrawal and of definite location, it was public land and inured to the grant. II–477

Where the tract was in the exterior limits of a rancho (San José) as surveyed at date of filing map of designated route (Southern Pacific), but was excluded therefrom by a subsequent approved survey, it was excepted from the grant. (See 15 L. D., 36.) II–546

The rancho claim (Millijo or La Punta) was rejected finally in 1855 and application to purchase made in 1869 under section 7, act July 23, 1866; the grant was made in March, 1871, and withdrawal (on preliminary line) in October, 1871; in 1872 the sale of the land was suspended pending consideration of the application, which in 1873 was rejected; held that the land was subject to the grant and reserved for the company (Texas Pacific) though definite location of the road has not yet been made. II–548

The right under the grant remains the same whether the survey proceedings in the private claim were dismissed for want of "prosecution" or "jurisdiction." IV–100

Railroad Grant—Continued.

VIII. LANDS EXCEPTED—Continued.

Does not take effect upon land within the claimed limits of a private land claim. v–691

Lands not finally required to satisfy a private claim for a specific place are not excepted from. xi–491, 538

A private claim for land within specific boundaries reserves only such land as may be finally determined to be within said boundaries, as against the operation of a railroad grant, though other land may be claimed as within said boundaries at the time such grant takes effect. xii–664

Does not take effect upon lands that are at the date of the grant embraced within the claimed limits of a Mexican private grant by specific boundaries, though at such time the question of the true location of said boundaries is pending and undetermined. xxv–108

Lands within the larger outboundaries of an unlocated private claim of quantity are subject to the operation of, except as to the quantity actually required to satisfy the claim.
ix–471; xi–49, 463; xii–507

Lands lying within an odd-numbered section, and embraced within the outboundaries of a private claim of lesser quantity, but not required in satisfaction of the private claim, nor included within the survey of such claim at the time of the attachment of rights, under a railroad grant, are subject to the operation of said grant.
xxix–608

Land embraced within a survey of a private claim under section 8, act of July 23, 1866, is not excepted from the grant if a copy of the plat is not filed in the local office before the grant becomes effective. x–630

Survey of a private claim under the act of July 1, 1864, not approved by the surveyor-general, the Commissioner, or the Secretary, is not effective as against the operation of a. xi–491

The survey of a private claim that is not approved by the surveyor-general is not effective as against a grant. xi–538

The right of purchase under section 7, act of July 23, 1866, existing at the date the grant becomes effective excepts the land covered thereby. xiv–536

Pending application under section 7, act of July 23, 1866, does not except the land from operation of withdrawal on preliminary line. ii–548

Prima facie valid school selection excepts land from the effects of.
iv–437

A school indemnity selection, made prior to statutory authority therefor, does not reserve the land so selected from the operation of a railroad grant. xvii–43; xxi–316; xxii–515

Railroad Grant—Continued.

VIII. LANDS EXCEPTED—Continued.

A voidable State selection covering land at the time the rights of the road attached excepts the land from the grant. III–88, 501; VII–350

Discovery of the invalidity of school selection after the right of the road attached will not aid the grant. IV–437, 579

A *prima facie* valid school selection of record when the grant becomes effective excepts the land therefrom; the subsequent cancellation of the selection does not affect the status of the land. XI–49

The notation of a swamp-land selection, appearing of record at the date a railroad grant becomes effective, will not operate to except the land covered thereby from the grant, where prior thereto the approval of such selection has been revoked and the selection itself superseded by subsequent lists. XXIV–163; XXV–203

Under the provisions of the grant of February 9, 1853, lands covered by *prima facie* valid swamp selections when it became effective were excepted therefrom (St. Louis, Iron Mountain and Southern Railroad Company). XI–157

A swamp-land selection pending at date of definite location excepts the land covered thereby from the operation of. XV–121

Land embraced within an uncanceled donation notification is excepted thereby from the operation of a, on definite location. XXIII–392; XXVIII–345

A donation claim of a married man embracing more than 320 acres is not void, but voidable only, and land included therein, at the time when a, becomes effective, is excepted from the operation of the grant. XXIV–4

Where the land was reserved for the settler (donation) at date of definite location (Northern Pacific) it was excepted from the grant. II–440

A donation claim, void on its face, does not except the land covered thereby from the operation of a. II–522; XXII–349

Land embraced within a notification of a donation claim, at the time when a railroad grant becomes effective, is excepted from the operation of said grant, though claims of such character are not specifically named in the excepting claim of the grant. XXII–308

Land embraced within the notification of a donation claim at the date of the grant and the definite location of the road is excepted from the operation of said grant, though claims of such character are not specifically named in the excepting clause. XXIII–569

Does not take effect upon land held under donation settlement at date of definite location though the donee had failed in the matter of filing notification. I–305

Railroad Grant—Continued.

VIII. LANDS EXCEPTED—Continued.

Donation claim of record prior to the attachment of rights under the grant and asserted until after said grant becomes effective excepts the land covered thereby from the grant. XII–238

The inadvertent notation of a scrip location will not except the land covered thereby from the operation of a railroad grant that takes effect prior to the discovery of the error. XIX–227

Settlement claims protected under the act of February 8, 1887, will not be affected by the fact that the land was included within a grant to another company where such grant was subsequently forfeited. VIII–377

Under section 2, act of February 8, 1887, lands occupied by actual settlers at definite location of the road (New Orleans, Baton Rouge and Vicksburg) and still remaining in their possession are excepted from the grant. VIII–377; X–637; XIII–157

Section 2, act of February 8, 1887, does not protect a claimant whose settlement, on indemnity lands, is not made till after selection by the company, and who claims no interest through a prior settler. (New Orleans Pacific.) XXI–246

The evident intent of section 2, act of February 8, 1887, was to protect in their possession only those who were actual settlers at the date of definite location, or other qualified persons to whom they might thereafter have assigned their possessory rights. XXV–61

An assignee of an alleged settler at the date of definite location who claims the benefit of the protective provisions of section 2, act of February 8, 1887, is not entitled thereto, if such settler is not shown to have been qualified at such time to assert a settlement claim. XXVI–418; XXVII–274

The recognition of the Blanchard-Robertson agreement in section 4, act of February 8, 1887, is limited to the protection of persons who on December 1, 1884, were occupying lands to which the company was entitled (New Orleans and Pacific). X–637

The act of February 8, 1887, in confirming the grant of 1871, provided that it should not take effect upon lands that were free when the grant to the original grantee took effect, but only upon such lands as were free when the New Orleans and Pacific was definitely located. XIII–157

The lands upon which the grant of 1866 would operate were not identified until the passage of the joint resolution of 1870, which saved the rights of actual settlers (Southern Pacific). I–626

Joint resolution of June 28, 1870, protects prior settlement within indemnity limits (Southern Pacific). III–321; V–380

Railroad Grant—Continued.

VIII. LANDS EXCEPTED—Continued.

The right to either granted or indemnity land of actual settlers on June 28, 1870, though settlement was made after withdrawal, was saved by the joint resolution of that date authorizing a construction of the road on the route indicated by the map filed in 1867. II–559

An entry of land embraced within the act of May 6, 1870, granting certain lands for a common terminus of the Central and Union Pacific railroad companies, may be permitted to stand as against the protest of one of said companies, it appearing from the status of lands covered by said act that the purposes of the grant made thereby can not be accomplished. XXIII–326

IX. MINERAL LAND.

Circular of July 9, 1894, announcing manner of proceeding to determine mineral or agricultural character of lands. XIX–21, 105

Selections in mineral belt, circular of July 9, 1894, modified. XXIV–321, 416

Instructions of July 25, 1895, as to designation of deputy surveyor to assist mineral commissioners, under the act of February 26, 1895. XXI–68

Classification of lands under the act of February 26, 1895; instructions of August 10, 1895, as to hearings. XXI–108

The act of February 26, 1895, providing for the classification of lands within the Northern Pacific grant, with respect to their mineral or non-mineral character, does not suspend the action of the Department in its administration of the land laws in the land districts affected by said act, nor suspend mineral locations or entries. XXI–65

The Northern Pacific, in making selections within the limits of its grant, will not be required to make a showing as to the non-mineral character of lands so classified under the act of February, 26, 1895. XXIX–503

In classifying unsurveyed lands under the act of February 26, 1895, where the entire area of the tract, as designated by natural or artificial boundaries, is of the same character, the classification should be made without reference to the particular section. XXVI–423

A final mineral return by the commissioners appointed under the act of February 26, 1895, operates to except the lands so classified from the grant to the Northern Pacific. XXV–446

Railroad Grant—Continued.

IX. Mineral Land—Continued.

To justify a hearing as to the character of land classified under the act of February 26, 1895, where the protest is not filed until after the prescribed time, and after the approval of the classification by the Secretary of the Interior, such a showing of fraud in the classification must be made as would condemn and avoid it, if sustained by proof produced at the hearing. XXIX–120

The classification of land as mineral, by the board of commissioners, acting under the act of February 26, 1895, and the final approval of such classification by the Secretary of the Interior, is in effect a cancellation of a previous selection of said land by the Northern Pacific company; and thereafter the said company, or any one claiming right or title through said company, can not be heard to question the character of the land, except upon the ground of fraud in the matter of such classification. XXIX–675

Railroad companies in giving notice of application for patent under the circular of July 9, 1894, will be required to describe by sections and by portions of sections when less than a section is selected, in the public notice, the lands covered by their applications, except where the list covers all the odd-numbered sections in a township, in which case the notice can so state. XXI–381

A protest in which no specific allegation is made as to mineral in any particular tract does not warrant a hearing thereunder as to the character of the land, or further suspension of the list, where due notice of the application has been given as required by the departmental regulations of July 9, 1894. XXI–387

Land chiefly valuable for its deposits of fire-clay is included in the exception of "mineral lands" from the grant to the Northern Pacific. XXV–349

Lands chiefly valuable for the petroleum contained therein are excepted from selection as indemnity. XXV–351

Lands chiefly valuable for their deposits of asphaltum are not subject to selection as indemnity under a railroad grant from which mineral lands are specifically excepted. XXIX–269

Lands containing valuable mineral deposits, whether of the metalliferous or fossiliferous class, of such quantity and quality as to render them subject to entry under the mining laws, are "mineral lands" within the meaning of that term as used in the exceptions from the grant to the Northern Pacific Company for railroad purposes, and to the State for school purposes. XXV–233

Land principally valuable for the marble and slate contained therein is mineral in character, and within the meaning of the excepting clause in the grant to the Northern Pacific. XXIX–327

Railroad Grant—Continued.

IX. MINERAL LAND—Continued.

Land is excepted as mineral where the development and its results display such promise that a prudent man would be justified in expending money and labor in legitimate mining operations. XV–439

The location of a mine on tract prior to a grant does not establish the fact of the mineral character of such tract and operate to except the same from the grant where mineral does not exist in paying quantities and mining operations have been abandoned. XV–463

The non-mineral character of free odd sections being shown, title thereto passes under the grant (Central Pacific). VIII–30

Lands "classified as non-mineral" at the time of actual government survey are of the class of lands subject to selection under the act of August 5, 1892, and the character of lands, so classified and selected, will not be investigated on indefinite charges, or protests alleging mineral locations made after survey and selection. XXIX–254

A hearing to determine the character of land claimed under a railroad grant, but returned as mineral, will not be allowed in the absence of application to select and due notice. VIII–30; IX–613

On a corroborated allegation that certain land patented to the company is excepted from its grant by reason of its known mineral character, a hearing may be ordered to ascertain whether the facts justify judicial proceedings for the recovery of title. XI–590

The authority of the Department to order a hearing between the company and a mineral applicant as to the character of the land is not abridged by a prior *ex parte* proceeding on behalf of the company in which the land was found to be agricultural. XII–608

Hearing to determine the mineral or non-mineral character of a tract should not be ordered until an affirmative showing as to its agricultural character is made where a showing to the contrary has been made by a mineral claimant. XV–247

Does not operate to pass title to mineral land. XVIII–105

Prior to the approval of a selection the land included therein, if mineral in character, is open to exploration and purchase under the mining laws of the United States. XXIV–172

The discovery after patent that the land is of mineral character does not affect the title taken under the grant (Central Pacific). V–193

Land known to be of mineral character prior to the issuance of patent is excepted from the grant to the Central Pacific. V–193

Railroad Grant—Continued.

IX. MINERAL LAND—Continued.

A decision of the local office holding certain tracts within the granted limits (Central Pacific) to be non-mineral, after hearing ordered to test that question, will be approved in the absence of appeal. VIII–30

The discovery of the mineral character of land at any time prior to the issuance of patent therefor, or certification where patent is not required, effectually excludes such land from a grant which contains a provision excepting all mineral lands therefrom (Central Pacific). XI–238

"All mineral lands" are excluded from the grant to the Central Pacific, and until patent issues the Department has authority to determine the character of land claimed under the grant, and this is true though the company may have sold the land. XII–608

The burden of proof is upon the company (Central Pacific) to show the agricultural character of land returned as mineral. XIII–603

The Northern Pacific company is not entitled to notice from the General Land Office, with the view to appeal, where mineral claims are approved for patent and the record shows discovery and location of the mine after definite location. XIII–691

The discovery of the mineral character of land at any time prior to the issuance of patent effectually excludes such land from the grant to the Northern Pacific. XIV–699; XVII–274, 545

The Southern Pacific grant expressly excludes mineral lands, and it can not select such lands as indemnity. XIII–165

Selections of lands for the Southern Pacific in lieu of lands taken for the Mission Indians under the act of January 12, 1891, can not be approved unless it is made to appear (1) that the company was entitled under its grant to the lands so taken, hence that such lands are non-mineral in character, and (2) that the lieu selections are of the same character. XXV–368

The patents issued to the Atlantic and Pacific company should contain in express terms an exclusion of "all mineral lands other than coal and iron lands." XII–116

A patent under a "excepting and excluding all mineral lands should any such be found to exist," does not reserve to the Department the power and authority to subsequently inquire into the character of the lands. XIX–410

In the adjustment of, the non-mineral character of lands can not be considered as established by the fact alone that the returns of the surveyor-general do not show said lands to be mineral. XVI–262

Lands otherwise of the character to pass under the railroad grant made by the act of May 17, 1856, are not excepted therefrom by the fact that they are shown to contain phosphate deposits. XIX–414

Railroad Grant—Continued.

IX. MINERAL LAND—Continued.

The act of May 17, 1856, making a grant of lands to the State of Florida, does not in express terms include mineral lands, nor are such lands expressly excluded therefrom, but in view of the settled policy of the government to reserve such lands from grants to States or corporations for any purpose, it is held that all such lands, whether valuable for phosphate or other mineral deposits, are excepted from the operation of said grant. XXVI-600

The word mineral as used in the act of June 22, 1874, does not include phosphate deposits. XIX-414

Though the mineral character of a tract is admitted by the railroad company, in a judicial proceeding instituted for the possession thereof by the company, yet the Department, in the administration of the law, is required to determine the actual character of the land in question. XIX-188

X. INDIAN TITLE.

The Indian title resting in occupancy alone was that which the grant of July 2, 1864, undertook to extinguish. I-368

A stipulation in the grant of July 2, 1864, with respect to the extinction of Indian titles did not include permanent reservations or land reserved before the grant was made. I-368

The extinction of Indian title after the right of the road attached will not inure to the benefit of the grant. IV-429

The "Indian title" referred to in the second section of the grant (Northern Pacific) did not include rights protected by technical reservation. V-138, 343; XVI-229

The fee simple of lands to which the Indian title had not been extinguished along the line of the Northern Pacific and within the limits of the grant passed to said company subject only to the right of Indian occupation, which the government at its pleasure could extinguish. (See 16 L. D., 229.) VII-100

Legal subdivisions of odd-numbered sections lying south of Goose River (which formerly constituted the northern boundary of the Indian country claimed by the Sisseton and Wahpeton Sioux) inured to the Northern Pacific grant on extinction of the Indian title. V-670

Settlement and residence on an odd-numbered section partly within the former boundaries of the "Indian country" claimed by the Wahpeton and Sisseton Sioux and wholly within the grant to the Northern Pacific does not, on the extinction of the Indian title, confer any right as against the grant if on that part of the land within the Indian country. XI-502

On the extinguishment of, the withdrawal under the grant becomes effective and excludes the acquisition of settlement rights. II-519

Railroad Grant—Continued.

X. INDIAN TITLE—Continued.

Of lands subject to Indian occupancy pass to the company subject to such right, excluding settlement claims thereto. XIV-300

XI. RIGHTS OF THE STATE.

The Department will not interfere with the discretion of a State in disposing of lands granted in aid of internal improvement. V-81

The State as trustee must determine what lands the company shall receive in case of conflicting limits and where one road is not constructed, and the Department has no authority to direct the State in such matter. I-345, 374

The grant to a State in aid of a railroad is not an absolute conveyance, but a trust, and the State taking as a trustee is limited in the execution of the trust to the purposes expressed in the act of Congress. VIII-37

The location of a road within a State fixes the extent of the grant for the benefit of the State. III-242

Relinquishment of the State (Minnesota) under its act of March 1, 1877, after selection cuts off the right of the company. IV-300; VI-128

A patent issued by the State on account of the Manitoba grant, prior to the passage of the State act of March 1, 1877, is no bar to the State relinquishing thereunder a tract embraced in such patent for the benefit of a settler, if at the passage of said act the company had not earned title to said land. XXIX-291

The Northern Pacific company took nothing by the decree of the United States supreme court (139 U. S., 1) in its favor against the St. Paul and Pacific, as to lands properly relinquished by the State under the act of March 1, 1877, prior to the institution of said suit. XXIX-291

The granting act of 1856 (Alabama) withheld from the State power to dispose of the granted lands except as the several roads were constructed, and such a tenancy in common was created in trust in favor of the several intersecting roads as to deprive the State of power to confer the grant on one or to dispose of it for the benefit of one to the exclusion of the others. II-476

Whether the only power of disposal in the State (Alabama) was to make distribution for quantity to extent of lands earned by a completed road, leaving the residue, either as an undivided share or segregated by act of partition, for future disposal in favor of any intersecting road as completed; or whether the State may set over lands outside of intersecting lines for the benefit of that road only to which they properly attach, and may apportion lands within intersecting lines, as purely a matter of State concern, subject only to judicial and legislative control: *Quære.* II-476

Railroad Grant—Continued.

XI. RIGHTS OF THE STATE—Continued.

Prior to March 3, 1865, the disposal of lands granted to Minnesota, as in other States, was governed by the act of March 3, 1857, namely, that on completion of specific sections the quantity of land as described "may be sold," and certification was the uniform mode of identification; the act of March 3, 1865, requiring patents to issue upon completion of the sections gave no direction as to the manner of disposal by the State; but by the act of July 13, 1866, the power of disposal by the State was expressly recognized to take effect after definite location and identification of the lands by certification. II–495

XII. RELINQUISHMENT. See sub-title No. XIII.

Relinquishment of rights under a withdrawal estops the assertion of any claim thereunder as against a subsequent settler. XIV–694

Where a homesteader, prior to definite location of the road, acts on the company's relinquishment of the land the company is estopped from claiming the land as against him. XVIII–435

The acceptance of the benefits of the State act of March 1, 1877, imposes upon the company the conditions of said act and authorizes a reconveyance by the governor of lands occupied by settlers at the date of said act (St. Paul, Minneapolis and Manitoba Railway Company). VII–184; X–507

By accepting the terms of the State in extending the time for constructing the road the company (St. Paul and Pacific) relinquished claims in favor of actual settlers and authorized the governor to reconvey such lands to the United States. IV–300, 509; VI–128

The governor's relinquishment under the State act of 1877 for the benefit of a settler on a listed tract within the primary limits divests the company of all title. (St. Paul, Minneapolis and Manitoba Railway Company.) XIV–449

It is not within the province of the Department to review the action of the governor of Minnesota in the execution of a relinquishment under the State act of March 1, 1877. XII–615

The relinquishment of a tract by the governor of Minnesota under the State act of March 1, 1877, reinvests the government with full title, and the validity of such relinquishment is not affected by the fact that the settler in whose favor it was made did not attain his majority until after the passage of said act. XII–615

An applicant for the right of entry is not entitled to plead the benefit of the State act of March 1, 1877, if the land in question was not one of the tracts described in the deed of relinquishment executed under said act, and the applicant was not a settler thereon at the date of said act. XXVII–160

Railroad Grant—Continued.

XII. RELINQUISHMENT—Continued.

The right of the St. Paul, Minneapolis and Manitoba company, successors of the St. Paul and Pacific company, did not attach under the act of March 3, 1871, until the release required by said act was executed. XII–512

Made by the act of March 3, 1871, did not take effect until the relinquishment provided for therein was duly filed and accepted by the Secretary of the Interior. XXIII–408, 541; XXIV–141

Lands to which legal title was perfected in the St. Paul and Pacific company prior to the State act of March 1, 1877, were excepted from its effect, and a subsequent deed of reconveyance from the State of such lands would not invest the Department with jurisdiction. IX–509; XII–354

A relinquishment of lands in the original withdrawal on general route, and not within the amended route, should not be applied by the government as against the company, in view of the fact that said relinquishment was at the instance of the Department, and that the second withdrawal is not effective under the law. XVIII–435

The State relinquishment of lands granted to the Marquette company was an abrogation of the withdrawal of June 13, 1856, and restored said lands to the public domain. VI–649

The Mobile and Girard's acceptance of the conditions imposed by the act of September 29, 1890, and the relinquishment filed thereunder are held sufficient to furnish the proper basis for action in the adjustment of the grant. XII–118

The acceptance of the relinquishment filed by the Mobile and Girard under the act of September 29, 1890, waives no objection to the sufficiency of said instrument not apparent on its face. XII–118

The Gulf and Ship Island Railroad Company, by accepting the provisions of section 7, act of September 29, 1890, and executing the relinquishment required thereunder, did not by such action forfeit its right to indemnity for lands relinquished prior thereto under the. XXII–560

The relinquishment of the Gulf and Ship Island company executed under section 7, act of September 29, 1890, covered earned lands of the company not included in the relinquishment of 1884, on which filings and entries had been allowed after said relinquishment; and for the lands so relinquished under the act of 1890 the company is entitled to select other lands in lieu thereof from the odd or even sections within the indemnity limits of the road actually constructed. XXII–560

Railroad Grant—Continued.

XII. RELINQUISHMENT—Continued.

The rights of actual settlers within the limits of the grant prior to March 16, 1881, protected by the relinquishment of the company (Florida Railway and Navigation Company). IX–34

A relinquishment made with full knowledge of the law and facts is to be regarded as absolute and unconditional notwithstanding a reservation in it of the company's right to indemnity; questions concerning the date of filing the map, the date of withdrawal, or the right to indemnity do not affect its validity. II–534, 535

Where the company (Atlantic, Gulf and West India Transit, now Peninsular) relinquished certain granted lands in 1875 and 1881 in favor of actual settlers they can not be heard to object to the patenting of the settlement claims on said lands. II–531, 564

Where withdrawal for the road (Atlantic, Gulf and West India Transit Company) was made in 1856 and the map of definite location was filed in 1860, but returned for amendment and lost, and a duplicate map was not approved until 1881, relinquishment is necessary to protect the rights of settlers initiating claims in violation of the executive withdrawal of 1856 and of the legislative withdrawal of 1860. II–561

Relinquishment in favor of actual settlers applies to indemnity limits as well as to granted (Atlantic, Gulf and West India Transit Company). III–186

Hearings directed where settlers on selected land claim the benefit of relinquishment (Florida Railway and Navigation Company). IV–148

Entries and filings allowed on unselected land on *prima facie* showing that the claim is within the terms of the relinquishment. IV–148

The company given opportunity to contest claim of settlers to the benefit of the relinquishment. IV–148

The Commissioner of the General Land Office to determine who are entitled to the benefit of the relinquishment. IV–150

If the fact of a settlement right is conceded, the burden is upon the company to show that the benefit of the relinquishment has been waived by subsequent acts (Florida Railway and Navigation Company). IX–34

Lands relinquished in favor of a settlement claim can not again be claimed by the company (Florida Railway and Navigation Company) even though the settler fails to perfect his entry. XII–547

The relinquishment of the company in favor of *bona fide* settlers is not defeated by the failure of the settler to place his claim on record; nor will his subsequent purchase of the land from the company defeat his right under the relinquishment (Florida Railway and Navigation Company). XII–301, 549

Railroad Grant—Continued.

XII. RELINQUISHMENT—Continued.

The relinquishment of June 25, 1881, filed by the grantee under the act of May 17, 1856, was for the benefit of *bona fide* settlers, and one who in fact never effected a settlement is not entitled to the benefit thereof. XIV–103

The relinquishment of June 25, 1881, in favor of "actual *bona fide* settlers" does not extend to one who was at said date not a qualified settler, being a minor and not the head of a family. XIV–288

The effect of the general relinquishment executed by the company June 25, 1881, for the benefit of certain settlers did not depend upon the subsequent compliance with law on the part of such settlers, but operated as a final waiver of all right to the lands embraced therein (Florida Railway and Navigation Company). XV–3; XX–79

Lands covered by entries when the general relinquishments for the benefit of settlers were executed by the Florida Railway and Navigation Company should not be subsequently listed where such entries have been canceled without proof that there were no entrymen or settlers entitled to the benefit of the relinquishment. XV–528; XXI–120

The act of August 5, 1892, does not provide for relinquishment and selection in case of an entry under which the claim was not initiated prior to January 1, 1891. XIX–531

By a railroad company of a tract falling within the terms of its grant can not be accepted, if prior thereto the company has parted with its title to said land. XXII–534

The act of April 14, 1896, authorizing the New Orleans Pacific to relinquish lands within its indemnity limits in favor of settlers, and to select other lands in lieu thereof, is a privilege conferred upon the company which it may exercise at its pleasure, and confers no authority upon the Department to dispose of such lands to settlers without the consent of the company. XXVII–274

A settler on land to which the Northern Pacific is entitled may, under the act of July 1, 1898, take other land in lieu of his settlement claim, and if he declines to exercise such privilege the company should then be invited to relinquish such tract and select other land in lieu thereof. XXVII–357, 466, 469, 545

XIII. ACT OF JUNE 22, 1874. See subtitle No. XII; also *Wagon Road Grant*.

Amended by an act of Congress August 29, 1890, and circular issued thereunder November 1, 1890. XI–434

This act is for the benefit of settlers and in no manner operates to enlarge the grant. XV–62

Railroad Grant—Continued.

XIII. Act of June 22, 1874—Continued.

The act of, and the amendatory act of August 29, 1890, relate only to railroad lands that are settled upon and claimed under the preëmption or homestead laws, and do not extend to lands occupied by Indians, not under said laws, but merely in continuance of their ancient right of occupancy or possession. XXVIII–134

There is no authority in the, or the amendatory act of August 29, 1890, to warrant a relinquishment of land in favor of one who is not at such time a record claimant therefor, or an actual settler thereon. XXVII–382

The cultivation of a tract by one not entitled at such time to initiate a claim thereto does not constitute such person an "actual settler" within the meaning of said act. XXIX–115

And August 29, 1890, while offering inducements to companies to relinquish lands on which filings and entries have been made, leave them at liberty to relinquish or not, as they may think best. XIV–695

The provisions of the act are remedial and should be construed *in pari materia* with the original grant. XXV–77

When relinquishment is filed the land is released from all claim of the company and subject to disposal under the general land laws. VI–716; IX–237

Relinquishment under, when accepted, is at once operative, and the land covered thereby becomes subject to disposal under the general land laws. VII–481

A relinquishment only serves to relieve the entry or filing from a conflict that would otherwise defeat the settler's claim. (Overruled, 9 L. D., 237.) III–324

The ability or intention of the settler to perfect his claim does not affect the operation of the relinquishment. VI–716

Lands released under said act are held in trust by the government for the settler. I–327

An entry can not be confirmed under said act if it has not been relieved from conflict with the grant in the manner prescribed. XIII–665

A relinquishment may be made only where the filing or entry (granted limits) was made under the preëmption or homestead law, not of land covered by a timber-culture entry. II–528

The right to a selection depends upon the right to relinquish. III–459, 504

Indemnity not allowed if the settler's claim is superior to that of the company. I–359

Railroad Grant—Continued.

XIII. Act of June 22, 1874—Continued.

For the lands relinquished under the act of 1874 the Gulf and Ship Island company is entitled to select lieu lands from the odd or even sections anywhere within the primary or indemnity limits of the unforfeited portion of the grant. XXII–560

For earned lands relinquished under said act, the company acquires a vested right to select indemnity, anywhere within the limits of the grant, and subsequent legislation, forfeiting the grant to the extent of unconstructed road, will not limit said right of selection to the lands unaffected by the forfeiture. XXIII–565

Lieu selections may be made of either even or odd sections. II–562

Selections under said act can not be made of alternate reserved sections within the primary limits of a grant. XV–460

Said act intended to confer upon railroad companies the right to select any unappropriated, nonmineral lands, within the limits of their grants that were subject to entry and disposal under the general land laws at the date of selection, in exchange for lands relinquished under the provisions of said act. XVIII–275

An entry confirmed under section 1, act of April 21, 1876, excepts the land covered thereby from the operation of the grant, and consequently affords no basis for a selection under the XXVII–42

A relinquishment confers no right if the land covered thereby was in fact excepted from the grant. X–264

A selection under said act must be rejected if it appears that the company had no title or right in the tract relinquished. VI–611.

An indemnity selection under said act, based on a relinquishment necessary for the protection of entrymen, under the rulings then in force as to the date when the rights of the company attached, should not be defeated by a changed ruling as to the attachment of rights under the grant, where the lands so selected have been sold by the company, and the grant is not enlarged by the approval of the selection. XXIV–381

The rights of all persons who were actually settlers at the date of the joint resolution of 1870 were protected; and it accordingly follows that lands occupying such status do not afford a basis for indemnity selections under the, as the company had no title thereto. XXII–185

Selections not authorized on relinquishment of indemnity lands to which the right of the company had not attached. III–504; IV–127; VIII–472

Lands within the indemnity limits of a grant do not afford a basis for relinquishment and selection. X–50, 609; XV–62; XVII–429

Railroad Grant—Continued.

XIII. Act of June 22, 1874—Continued.

Recognition by the General Land Office of the right of selection after relinquishment will not preclude departmental consideration of such right when the selection comes up for approval. VI–611, 815; XXII–186; XXV–248; XXVII–42

Acceptance of relinquishment by the local office does not amount to an approval of the selections based thereon. VIII–472

For the purpose of protecting a *bona fide* occupant, a railroad company may waive its right to a selection made under said act and select another tract in lieu of the land first relinquished. XXI–455

Where a tract of land is apparently subject to the operation of a railroad grant, but the company treat it as excepted therefrom, and select indemnity therefor, the selection may stand on condition that the company relinquish the basis as provided in said act. XX–401

Though relinquishment may not be authorized, such fact should not affect a prior entry made in good faith. VI–820; VII–81

The right of indemnity does not turn upon the legality or illegality of the entries in question. III–275, 485

The right of relinquishment and selection is confined to entries made after the rights of the road attach. III–274

A selection of indemnity involves an absolute and unconditional relinquishment of the basis. IX–72

Selection not entertained prior to relinquishment of basis. VI–661

A selection of lieu lands under said act, invalid for want of a prior formal relinquishment, does not bar an entry. II–540

A waiver of the company's claim will relieve entries from conflict with the grant, and entitle the company to select lieu lands under said act. XVIII–549

The company may relinquish, with right to make lieu selection, in a case where, by its own action, it is estopped from claiming the tract in question as against an entryman. XIX–227

The designation of a tract as the basis of a selection under said act estops the company from subsequently alleging that its relinquishment, in favor of settlers, did not include the entry embracing said tract. XXVI–68

Right to select not considered in the absence of application for specific tract. VI–815, 820

A relinquishment of a specified tract (granted limits) properly executed by the company (Hastings and Dakota) must be filed before or concurrently with a lieu selection. II–540

On relinquishment, indemnity is authorized by said act where settlement was made after withdrawal and filing allowed subsequently to the time when the right of the road attached. VI–292

Railroad Grant—Continued.

XIII. Act of June 22, 1874—Continued.

The land (indemnity limits) was located with scrip (agricultural college) after withdrawal and patented; the company (Dubuque and Sioux City) must select it before making relinquishment and lieu selection. II–542

A relinquishment under said act may not be made of a tract (indemnity limits) prior to its selection; where entry (homestead) is allowed after withdrawal and the tract is selected; if it appears that it is needed to satisfy the grant, relinquishment and lieu selection will be allowed to the company (Hastings and Dakota). II–527

Whether entry (homestead) allowed after withdrawal but before the State conferred the grant on the company (Hastings and Dakota) gives right of lieu selection: *Quære.* II–541

Where relinquishment of granted land and lieu selection were made after definite location, but before the road (Northern Pacific) was completed opposite to the tracts relinquished, said selection of record barred subsequent claim (additional homestead). II–530

The right of a qualified settler excludes the land covered thereby from selection under said act. XIV–286; XX–82

The right of a prior settler as against a selection is not waived by his attempting to secure title to a portion of the land through the company, in the event that his claim is not recognized by the government. XX–82

A possessory claim to public land, not asserted under the public land laws, but resting on the prior possession of another, does not operate to appropriate such land as against the right of a railroad company to select the same under said act. XXVI–628

The word "mineral" as employed in said act can not be construed to mean phosphate deposits, hence lands containing such deposits are not excluded from selection thereunder. (Overruled, 25 L. D., 233.) XIX–414

Where a homestead entry is canceled on account of the right of a railroad company to select the land under said act, and the company fails, after due notice, to perfect its selection within a reasonable time, such failure on the part of the company must be held to work an abandonment of its right, and entitle the entryman, who has continued to reside on the land, to the reinstatement of his entry. XXIX–650

XIV. Act of April 21, 1876.

The protection extended by the act is equally applicable whether the withdrawal is legislative or executive on general route or definite location within granted or indemnity limits. IX–423

Railroad Grant—Continued.

XIV. Act of April 21, 1876—Continued.

The word "withdrawal" employed in said act must be held to refer to withdrawals of lands remaining subject to control by Congress. XXVIII–95

Made necessary by the rulings of the Department, and is held mandatory. V–146

The act covered all cases that had not become final prior to its passage. IV–208

The act is remedial and was intended to relieve settlers who, without notice of a withdrawal of lands in aid of a railroad grant, made entries of lands so withdrawn, but should be construed in connection with the granting act, and so applied as not to impute to Congress an intention to defeat vested rights, or to legislate with respect to lands that had passed beyond legislative control. XXVIII–95

Where, prior to said act, the legal title to lands has passed by definite location, such lands are not subject to disposal under said act, in the absence of a forfeiture for breach of a condition subsequent. XXVIII–95

Where prior to said act the legal title to lands had passed to a railroad company, such lands are not subject to the provisions of that act. XXX–490

Filings and entries made in good faith by actual settlers are the only claims confirmed by said act. IX–155

A homestead entry allowed under instructions of the General Land Office, though based on a former entry now held to be illegal, is confirmed by said act. I–357

Rights of a preëmption settler on lands within the limits of a grant, before notice of withdrawal is received at the local office, protected by said act. IX–423

Does not protect a private cash entry made after the map of general route was filed, but before notice thereof was received if the entryman was not an actual settler. IX–407; XVII–33

A cash entry of lands within withdrawal on general route, made after the map of such route was filed but before notice of withdrawal, is not protected by said act. IX–155

The act protects an entry made after the map of general route (Northern Pacific) was filed, but before notice of withdrawal thereunder. VI–6, 223

Railroad Grant—Continued.

XIV. Act of April 21, 1876—Continued.

By the grant to the Northern Pacific a legislative withdrawal took effect upon the filing and acceptance of the map of general route, by which the lands thus withdrawn were taken out of the public domain, as between the company and individuals, irrespective of any notice to the local office. A homestead entry of lands so withdrawn is without effect as against the company, and while, prior to definite location, it may be confirmed by act of Congress, if it is not so confirmed during said period it is ineffective as against the grant on definite location, and thereafter it is not competent for Congress to confirm said entry, in the absence of a breach of condition subsequent, and the said act of 1876 is consequently not applicable thereto. XXVIII–95

Protects a preëmption settlement claim initiated after the map of general route was filed but before notice of withdrawal was received at the local office. VI–223

An entry made within the limits of a grant when the land was subject to appropriation under an order of the Department is protected by the act. VI–567

The right to patent under an entry protected by the act depends only on the settler showing due compliance with the law and the regulations of the Department. VI–567

A preëmption claim initiated before notice of withdrawal on general route was received excepts the land from such withdrawal. VIII–318

A settlement right, acquired prior to the receipt of notice at the local office of the withdrawal, is within the protective provisions of section 1. XXIII–6, 435

A desert-land entry made prior to the receipt of notice of withdrawal at the local office, by an actual settler, is protected under the provisions of section 1, and the operation of the statute is not defeated in such case by the fact that the entry was made after the passage of the act. XXIII–436

A desert-land entry upon land within the primary limits of a railroad grant, made after the definite location of the line of road opposite said land, is not confirmed by section 1, and in no wise affects the attachment of rights under the railroad grant, where the entryman does not claim to have ever been an actual settler upon the land. XXX–308

A homestead claim existing prior to the receipt of notice of withdrawal excepts the land from the operation of the withdrawal. VI–21

The confirmatory provisions of section 1 are not limited to the entries made prior to the passage of said act, but apply with equal force to entries made thereafter. XX–526

Railroad Grant—Continued.

XIV. Act of April 21, 1876—Continued.

Where it appears that a tract is not included in a final order of restoration for the reason that the Department regards it as in effect already restored, an entry thereof is confirmed by section 1. I–353, 354

The comfirmatory provisions of section 1 can not be invoked except on behalf of one who was an actual settler prior to the time notice of withdrawal was received and has shown due compliance with law. X–136

The confirmation, by section 1, of a preëmption filing, as against a prior withdrawal on the general route of the Northern Pacific, is dependent upon compliance with the preëmption law and the presentation of proper proofs thereof by the claimant. XXVIII–118

The withdrawal on the general route of the main line of the Northern Pacific of lands lying within the common limits of said route and the primary limits of the branch line, as thereafter fixed by definite location, took effect at once, on the filing and approval of the map of said route, and a preëmption filing on lands, while so withdrawn is without effect, nor is it confirmed by section 1 if the preëmptor does not comply with the law and submit proof thereof, and hence will not defeat the attachment of rights under the grant for the branch line on the subsequent location thereof. XXVIII–126

The confirmation by section 1, of entries otherwise regular, is not conditional or dependent upon compliance with the preëmption or homestead laws, or the presentation of proper proofs of such compliance, but validates them as against the withdrawal and any rights of the grantee company thereunder. XXIX–550

The confirmatory provisions of section 1 are not applicable, where, prior to the passage of the act, title has passed by definite location, and been earned by the construction of the road. XXIX–98

Where an entry or filing is confirmed by section 1, as against a withdrawal on definite location, the land covered thereby is excepted from the operation of the grant. XXIX–550

Section 1, providing for the protection of entries made prior to the time when notice of the withdrawal under a railroad grant is received at the local office, has no applicability where rights have heretofore vested under railroad grants, but establishes a new rule subject to the conditions of which such rights shall thereafter attach. XXIX–655

Railroad Grant—Continued.

XIV. Act of April 21, 1876—Continued.

The act is *in pari materia* with the several railroad land grants, and section 1 thereof has the effect, as to all lands the right to which had not theretofore vested in the grantee company by definite location of the line of road, or other identification of the lands granted, of protecting actual settlers who, prior to the time when notice of the withdrawal of the land was received at the local land office, made preëmption or homestead entries thereof. XXIX–550

The confirmation of entries under section 1 is solely for the benefit of the individual claimant, conditioned upon his compliance with law, and was not intended to confirm the entry absolutely, as against the right of the company, so as to except the land from the grant in favor of any other settler. (See 22 L. D., 224.) XX–191; XXIII–115

An entry made in good faith by an actual settler before notice of withdrawal is received at the local office, and under which compliance with law is shown, is confirmed by section 1, and the cancellation of such entry prior to the passage of said act will not defeat the confirmatory operation thereof. XI–85

Where no withdrawal is directed on filing map of general route and a homestead entry of land within the limits of the grant is made subsequently thereto and prior to definite location, such entry is confirmed by section 1. XIII–187

The exercise of the right of purchase conferred by section 2, act of June 15, 1880, is a compliance with law that brings the homestead entry within the intent and meaning of section 1. XXII–264

A homestead entry made prior to receipt of notice of withdrawal on general route, and canceled prior to definite location for failure to submit final proof within the statutory period, but subsequently perfected under section 2, act of June 15, 1880, is within the confirmatory provisions of section 1. XXII–264

Land within a withdrawal is subject to entry in the interval between its restoration and the suspension of the order therefor; a subsequent entry of such tract is confirmed by section 1. I–354

Entry after definite location but prior to withdrawal therefor confirmed by section 1. I–477

The first section confirms an entry made after the filing of map of definite location but before notice of withdrawal. V–144

Settlement made after the right of a railroad company had attached but prior to the notice of withdrawal is protected by said act. III–277

Railroad Grant—Continued.

XIV. Act of April 21, 1876—Continued.

The confirmatory operation of section 1 is not defeated by an order of cancellation that becomes final for want of appeal prior to the passage of said act, nor by the notation of said order on the records after the passage thereof. XXII–224

Action will not be taken under the first section if patent has issued for the land involved. IV–344; V–144, 205

Section 2 takes effect upon all entries that have not been finally disposed of prior to passage of the act. IV–208

The confirmatory provisions of section 2 are not limited to entries made prior to the passage of said act, but are equally applicable to entries made thereafter. XXII–686

An entry allowed, under the rulings and decisions of the land department, of land to which a homestead claim had attached prior to notice of withdrawal on general route, that remained of record till after definite location, and was then abandoned, is within the confirmatory provisions of section 2, though made after the passage of said act. XXIV–318

The provisions of section 2 are not restricted to persons who made entries under section 1, but apply, in the event of abandonment of such original entrymen, to cases where, "under the decisions and rulings of the land department," the lands covered by such original entries have been "reëntered by preëmption or homestead claimants who have complied with the laws governing preemption and homestead entries," and submitted satisfactory proof of such compliance. XXIV–119

Entry reinstated and held to be confirmed by section 2 of said act though application for repayment had been made after cancellation. I–387

Section 2 of April 21, 1876: Three facts are prerequisite to title thereunder, viz, (1) a valid claim existing at date of the withdrawal; (2) reëntry under decisions and rulings of the land department; (3) final proof must show full compliance with the law. II–560

Settlement and filing protected by section 3 of said act, as well as an entry. I–333

A desert-land entry is not within the confirmatory provisions of section 3 of said act. XIII–665

The third section of this act is not unconstitutional, as it only protects entries made at a time when Congress might have properly declared a forfeiture for breach of condition subsequent. VI–427

Under the third section an entry should not be rejected because of a prior withdrawal if at the time of such entry the grant had expired. VI–427

Railroa Grant—Continued.

XIV. Act of April 21, 1876—Continued.

The clause "at a time subsequent to the expiration of such grant" in section 3 refers to the dates fixed for the completion of the roads, and not to the date when forfeiture might be declared. I–333; VI–427; VII–223

The third section confirms entries made within the limits of a grant after its expiration. VII–223

The status of land entered under the third section is not altered by a legislative revival of the grant. VI–427

Section 3 does not include an entry made after the grant has expired where the grant is revived and the road constructed in accordance with the reviving act prior to the passage of the act of 1876. X–306

In the absence of an entry made under the permission of the land department the protection accorded by section 3 of said act is not applicable. IX–246

Section 3, act of April 21, 1876: Entry (homestead) was made within the conflicting limits of the Coosa and Tennessee and the Wills Valley portion of the Alabama and Chattanooga railroads; no portion of the former road has been completed, and the entry was made after expiration of the time for completing the latter road and prior to the extension granted by act April 10, 1869; held that it is confirmed. II–500

XV. Adjustment. See sub-title No. III.

Should be adjusted without delay under the act of March 3, 1887. VI–144

The adjustment act of March 3, 1887, contemplates the final adjustment and formal closing of railroad grants. XVII–437, 589

A formal declaration of adjustment not necessarily nullified by the subsequent approval of tracts found to be within the grant. X–610

Departmental declaration of final adjustment will not be disturbed on the allegation that a tract was erroneously patented under the grant. X–610; XVII–437, 589

A statement furnished by the General Land Office as to the condition of a, with respect to its adjustment can not be regarded as the final adjustment contemplated by the act of March 3, 1887, where subsequent selections are certified and others remain unadjudicated. XVIII–270

A railroad company will not be heard to say that by a certain decision the grant was finally adjusted where subsequently thereto the company files additional lists of selections. XXI–162

A, can not be regarded as adjusted until it has been finally determined what lands the company is entitled to, both in the granted and indemnity limits. XXI–49

Railroad Grant—Continued.

XV. ADJUSTMENT—Continued.

So long as a railroad company is able to specify satisfactory bases for indemnity selections it can not be held to have acquired lands in excess of its grant. XXI–462

Adjustment of, under the act of March 3, 1887. Opinion of the Attorney-General as to the construction of sections 3, 4, and 5. VI–272

Adjustment of. Circular of November 22, 1887, issued under the act March 3, 1887. VI–276, 544

Directions given for the adjustment of the railroad grant to the Cedar Rapids and Missouri River R. R. Co., made by the acts of May 15, 1856, and June 2, 1864. XXIX–79

The Secretary of the Interior is charged with the adjustment of railroad grants, and should withhold from other disposition lands granted for such purpose, even though the grantee may fail to appeal from an erroneous adverse decision of the General Land Office. XXII–515

A decision of the Department, in accordance with the rulings then in force, that a certain tract of land passed under a, does not, in view of the provisions of the act of March 3, 1887, requiring the adjustment of railroad grants "in accordance with the decisions of the supreme court," preclude subsequent departmental action, on the application of a third party, under the later decisions of said court. XXIV–441

Further approvals on account of a, will not be made where the adjustment shows that the certifications already made are in excess of the amount granted. XVI–442

The construction of a grant adopted and followed for many years in its adjustment becomes a rule of property and should not be changed. VIII–255

The beneficiary under a grant to a State is entitled to be heard on questions of adjustment. X–684; XIII–464

The right of a railroad company to a specific tract of land should not be determined by an adverse *ex parte* showing, and the testimony taken in another and independent case involving a different tract of land. XXII–622

In the adjustment of, the Department can not depart from statutory authority to protect the rights of parties claiming under the company. XI–607

The certificate of the governor provided for in section 4, act of June 3, 1856, is limited to the fact of completion and does not extend to conclusions of law. XII–117

Directions for the adjustment of selections and settlement claims on revocation of withdrawal. VI–84

Railroad Grant—Continued.

XV. ADJUSTMENT—Continued.

The revocation of certain indemnity withdrawals under the rule of May 23, 1887, was not intended to suspend adjustment of the grants. VI–144

Adjustment of, deferred pending congressional action (Florida Railway and Navigation Company). II–561; V–107

Inasmuch as no action has been taken toward the forfeiture of the grant made by the act of May 17, 1856, and the State (Florida) has recognized the rights of the company thereunder, the Department must proceed with the adjustment though the road was not constructed within the time fixed therefor. XVI–217; XVII–6

Lands within the primary limits of a, and subject thereto, but erroneously certified to another grant, must be charged to the first on the adjustment thereof. VI–196; XXI–49

A railroad company succeeding to the rights and benefits conferred upon another takes the same subject to the conditions and limitations imposed upon its predecessor. VI–130

Rights of a company claiming as assignee, having been determined in the courts, will be recognized by the Department. V–81

The amendatory act enlarging the grant (Minnesota) subject to the limitations in the original grant takes effect by relation as of date of the original grant against the United States only, and the enlarged grant is subject to all reservations by way of preëmption, homestead, or other lawful claims. II–510

Under the provisions of the Minnesota State law it is competent for the stockholders of a company, after a decree of dissolution, to execute a deed conveying all interest in its land grant to a trustee, for the purpose of closing up the affairs of said company and settling the claims of creditors and stockholders, and the power so conveyed survives the existence of the company (Hastings and Dakota). XVIII–511

Lands not earned by the construction of a fractional part of a ten-mile section. VI–47, 54

Lands patented on the governor's certificate under the act of May 12, 1864, for constructed road were earned though the whole line of road was not completed. VI–54

No authority for the issuance of patents without governor's certificate except on final completion of the road (Sioux City and St. Paul Railroad). VI–47, 54

Certification of lands within the common limits of a completed road and one not constructed will not be made until the State (the grantee in trust) indicates the lands belonging properly to the constructed road. I–343, 376

Railroad Grant—Continued.

XV. ADJUSTMENT—Continued.

In the adjustment of the Ontonagon and Brulé River grant under the act of forfeiture the company is only entitled to lands for the portion of road constructed for the purpose of being used and maintained as a railroad. IX–227

The Ontonagon and Brulé Railroad company, having constructed twenty miles of its road, is entitled under the act of forfeiture to the lands earned thereby if that quantity of land can be found within the limits prescribed by said act. XIII–464

Title should be conferred for lands earned by construction prior to the expiration of the grant. I–373

Acceptance of the constructed road, adjustment of the grant, and issuance of patents finally dispose of any question as to the construction of the road on the line of definite location. VI–54

The actual road as located and constructed is the object and measure of the grant, and with the road thus fixed lines drawn perpendicular to it at each end will determine the final limits of the grant. VI–195

Lateral limits of, determined by the line of definite location. VI–565

The lateral limits of a grant are determined by drawing lines on each side of the route of the road through a series of points at the precise distance therefrom of the width of the grant on tangential lines to arcs having a radius equal to the width of the grant on each side of the route. V–468, 551

In constructing a diagram showing the limits of a, some tracts are necessarily included that are more than the designated distance from the line of road if the measurement is made to a point directly opposite such tracts, but are within said distance from some other point on the line. XV–35

The approved plat on file in the General Land Office, on which the limits of a, are marked, must determine whether a selection falls within the limits of the grant. XXV–468

A diagram showing the limits of a, prepared concurrent with the filing of the map of definite location, and upon which withdrawal is ordered, will not be disturbed after the withdrawal has stood unquestioned for years and rights have vested thereunder. XIII–572

The limits of a, as shown on a diagram recognized for a long term of years by the General Land Office, and upon which the grant has been practically adjusted, will not be disturbed. XXII–227

Railroad Grant—Continued.

XV. ADJUSTMENT—Continued.

The lateral limits of the grant as fixed by the original withdrawals should not be readjusted with the view to recovering title to lands patented to the Missouri, Kansas and Texas company that may thus be shown to lie outside of its grant, as (1) the title to said lands has passed out of the company, (2) the original withdrawals must be presumed to have been made after due consideration, and (3) said withdrawals have stood unquestioned for many years and titles vested thereunder. XI–130

The lateral limits of the grant to the Southern Pacific should be adjusted on the line of location, but where the constructed road has been adopted as the basis of adjustment the limits thus established will not be changed. XIV–264

The right to fix the terminus, if once exercised, is thereby exhausted, and the company thereafter has no authority to establish another place as the initial point of its road. IV–458; VI–195; XXI–412

The authority of the Northern Pacific company to fix the initial point of its road on Lake Superior can only be exercised subject to the approval of the Department. XXI–412

The acceptance of the constructed road to Ashland, Wisconsin, east of Superior City, can not be set up by the Northern Pacific as an adjudication of its terminal right, and that such question is therefore *res judicata*, for the only power to fix said terminal was exhausted when the road made its previous connection with Lake Superior, as contemplated by the grant, and no act of the Executive thereafter, in approval of another terminal point, could confer any right in such matter. XXI–412

The right of the Northern Pacific to form a connection with Lake Superior as its eastern terminus could be exercised either through actual construction, or through association with some other company, and by the latter course said company, through an apparent consolidation, secured such terminus, and thereby exhausted its right to fix the eastern terminal point of its road, if such consolidation was in fact effected. But if such consolidation was not such an association as contemplated by the grant, then the eastern terminus of the grant is at Superior City, Wisconsin, the first point at which said company, by its own road, reached Lake Superior. XXI–412

The arrangement between the Northern Pacific, and the Lake Superior and Mississippi companies with respect to the latter company's line of road from Thomson's Junction to Duluth, was such a consolidation as was contemplated by the grant to the former company, by which said company effected its connection with Lake Superior, and thereby fixed the eastern terminus of its grant at Duluth. XXIII–204

Railroad Grant—Continued.

XV. ADJUSTMENT—Continued.

In the adjustment of the grant to the Northern Pacific between Thomson's Junction and Duluth the land covered by the prior grant to the Lake Superior company must be deducted, so that between said points the Northern Pacific company will take only the granted lands within the lateral limits of its own grant, which fall outside the limits of the former grant, and will be entitled to indemnity only for losses sustained outside the limits of the former grant. XXIII–204

In the adjustment of the Northern Pacific grant between Thomson and Duluth said grant should be charged with all lands received by the Lake Superior and Mississippi Company between said points under the prior grant thereto, whether within the primary or indemnity limits of said grant. XXIV–320

The authority to fix the lateral and terminal limits of a railroad grant rests entirely with the land department. XIX–148

The authority conferred upon the governor of a State to certify to the completion of the constructed sections of the road does not empower such officer to fix the terminals of the grant during the construction of the road, or on its completion. XIX–148

The order allowing the amendment of the terminal limit of the withdrawal on definite location of Northern Pacific revoked. III–478

The fixing of a terminal limit is a matter of mathematical ascertainment, and if a correction is necessary to truly represent the grant on either side of the road such correction may be made in the General Land Office. III–450, 478

In fixing the terminal limits of a constructed road the line of such road, with its sinuosities, is measured backward from the end for the distance of the statutory section, and from that point the general course of the road to its end is taken, and the terminal line drawn at right angles or perpendicular thereto. XIX–148

In establishing the terminals separating the granted lands from those forfeited the lines should be run at right angles to the general course of the last twenty-five miles of the road (Northern Pacific). XI–625

The line fixing the terminal limit of the Northern Pacific should be run at right angles to the general course of the last section. V–455

The terminal line of the Northern Pacific grant at Duluth must be fixed at right angles to the last section of twenty-five miles of the road. XXIII–428

All selections by the Northern Pacific company of lands east of the terminus established at Duluth should be canceled. XXIII–428

Railroad Grant—Continued.

XV. ADJUSTMENT—Continued.

Instructions with respect to the establishment of a terminal line near Portland, Oreg., in accordance with the departmental decision in the case of Spaulding *v.* Northern Pacific Railroad Company, and also as to a proposed change in the lateral limits of the grant along the constructed road north of said city. XXI–435

The joint resolution of May 31, 1870, designated Portland as the point of connection between the branch line provided for in the grant of 1864, and the extension to Puget Sound authorized by said joint resolution, and it follows, that in the establishment of a terminal line between the lands granted by said joint resolution, and those of a prior grant forfeited by the act of September 29, 1890, said line should be drawn through Portland. XIII–70

By the act of forfeiture, March 2, 1889, the line of constructed road furnishes the measure of the grant and the basis of the terminal lines, and said lines must be drawn at right angles with said basis. XIII–464

In the execution of the forfeiture act of March 2, 1889, the western terminal line separating the lands opposite the unconstructed portion of the Marquette, Houghton and Ontonagon road from those opposite the constructed portion thereof must be drawn at right angles to the line of constructed road. XII–214

The provisions of the act of 1871 authorizing the Houghton and Ontonagon company to make a new location of the unconstructed portion of its road, on condition that the company should be entitled to receive "only its complement of lands for each mile of road constructed and completed * * * within the limits heretofore assigned to said line of road," do not require the land department to disregard the constructed road as the measure of the grant, and fix the terminal limit of the grant on the basis of the old location. XIX–148

The proviso to the act of March 3, 1875, which authorized the Wisconsin Central to straighten its road between Portage City and Stevens Point provides that no land shall pass to the company, under its grant, south of Stevens Point which may be outside of the ten-mile limits measured from the modified line; and to determine what lands should be thus excluded can only be ascertained by continuing the terminal heretofore established at Stevens Point until it meets the twenty-mile limits of the grant as originally established. XIX–254

Selections not allowed beyond the terminal limits as defined by a line drawn at right angles with the general route of the road at such terminus. I–394

Railroad Grant—Continued.

XV. ADJUSTMENT—Continued.

An incorrect terminal limit can not be recognized on the ground that the company has adopted the same in specifying losses under its indemnity selections, where it appears that such limit has never received the sanction of the General Land Office or the Department. XVIII–22

The words "point of junction," as used in, designate the place where two lines of railway meet. V–549

Made for the construction of a road from Portland to Astoria and from a point of junction near Forest Grove to McMinnville was in effect a grant for the construction of two roads (Oregon Central). V–549

By the act of March 3, 1869, the grant in aid of the Denver Pacific was separated from that made for the Kansas Pacific, and said grants must therefore be adjusted separately. VI–385, 581

In the partition of lands within the overlapping limits of the grants to the Union Pacific Railroad Company and the Kansas Pacific Railway Company, the companies alone were parties thereto, and each must look to its grant within said limits as the source of its title, and not to the award under said partition. (See 23 L. D., 161.) XXII–291

The grant to Minnesota in aid of a road "from Stillwater, with a branch by St. Cloud and Crow Wing," is in effect an entirety and indivisible (St. Paul, Minneapolis and Manitoba Railway.) (See 13 L. D., 354.) VIII–255

For the purposes of boundary and patent the Northern Pacific road is divided into sections of twenty-five miles. V–459

To the Northern Pacific, between Portland and Tacoma, was made by the joint resolution of May 31, 1870. VI–400, 409; XVI–488

Whether the provision in the resolution of May 31, 1870, relating to the time for the completion of that portion of the main line between the western terminus and Portland affected or abrogated existing legislation as to the time for the completion of the other portions of the main line: *Quære.* II–860.

The joint resolution of May 31, 1870, was in the nature of a new grant, and only such lands as were in a condition to pass under the terms of the grant to the company, at the date of the passage of said resolution, were intented to be granted thereby. XXIII–265, 445

The joint resolution of May 31, 1870, while making a new grant to the Northern Pacific between Portland and Puget Sound, and enlarging the limits along the Cascade branch within which indemnity might be taken, did not make a new grant for said branch, hence, as to lands within the place limits along said line their status under the grant of July 2, 1864, must determine the right of the company thereto. XXVI–652

Railroad Grant—Continued.

XV. ADJUSTMENT—Continued.

The grant to the Northern Pacific by the act of July 2, 1864, and the grant to the same company by the joint resolution of May 31, 1870, must be adjusted separately. XXV–511

Under section 6 of the act of September 29, 1890, the Northern Pacific should be required to elect as to alternate odd-numbered sections it will take in satisfaction of the moiety for its constructed branch line where the limits of such line overlap the limits of the forfeited main line, and the remaining odd sections be restored to the public domain. XI–625

By the terms of section 6, of the forfeiture act of September 29, 1890, lands within the forfeited limits of the Northern Pacific main line, not subject to selection on behalf of the branch line prior to said act, are thereafter not open to such appropriation. XIX–281

The Northern Pacific permitted to amend its selections of moiety lands retained on account of the constructed branch line within the common limits of the main and branch lines and opposite the unconstructed portion of the main line, the grant for which was forfeited by act of September 29, 1890. XVI–504

Plan of adjustment adopted in the matter of settlement claims in conflict with the Northern Pacific grant on the northern boundary of the former Sisseton and Wahpeton Sioux "Indian country." V–670

The grants to the St. Paul and Northern Pacific R. R. Co. and the Northern Pacific R. R. Co. were made by different acts of Congress, and are entirely separate and distinct, and the lease of its road and franchises by the former company to the latter will not justify the Department in holding that rights granted to the company first named can only be exercised by its lessee. XXIV–339

Congressional action attaching a further condition to a grant (Pacific roads), requiring payment for survey and selection, prior to the vesting of title, is upheld by the supreme court. II–670

Failure of the company (Northern Pacific) to pay for the survey raises only a question as to delivery of title. V–343

Though survey of the land within specified limits may be directed by the grant, there is no authority therefor in the absence of an appropriation to cover the expense (Atlantic and Pacific). VI–84

There is no authority in the Department to accept or use a deposit advanced by the company to cover the cost of a survey for the identification of lands subject to the grant (Atlantic and Pacific). VI–84

Railroad Grant—Continued.

XV. ADJUSTMENT—Continued.

In all cases where made directly to a company, or to a State in trust for a designated company, the cost of surveying and conveying the lands so granted must be paid into the United States Treasury before said lands are conveyed to such company. XX–22

Under the joint resolution of April 10, 1869, the Central Pacific became entitled to the granted lands between Ogden and Promontory Summit. V–661; XXVI–57

The act of June 20, 1874, was passed in the interest of commerce and transportation and did not affect the grant of lands to the Union Pacific. VI–385

The status of certain lands selected by the Western Pacific opposite the first completed section. V–277

The phrase "sold or disposed of" occurring in section 3, act of July 1, 1862, considered and construed (Sioux City and Pacific). I–345

The Central Pacific assigned to the Western Pacific the right to construct the road between San Jose and Sacramento, and Congress ratified the assignment March 3, 1865; the lands involved are held under the terms of the original act and not as of date of said ratification. II–479

Failure of the Leavenworth, Pawnee and Western Company to signify under seal its acceptance of the provisions of the act of July 1, 1862, does not defeat the right to patents thereunder (Union Pacific). XI–108

The act of March 3, 1869, authorizing the Union Pacific Railway Company, eastern division, to contract with the Denver Pacific Company for the construction of that part of its railroad between Denver and its point of connection with the Union Pacific, is recognized as authority for the consolidation of said lines of road. XX–466

Directions given for the issuance of patents to the Union Pacific Company for lands in the State of Kansas. XI–108

In estimating deductions on account of prior grants in accordance with section 3, act of March 3, 1865, the St. Paul and Sioux City grant is not to be included within the grants increased by the act of 1865, as special provision is made for said road by section 7, act of May 12, 1864. XIII–349

As the company (St. Paul and Pacific) did not accept the conditions imposed by the act of June 22, 1874, said act did not become effective as against the company or confer any rights upon settlers prior thereto. V–145; IX–246

Railroad Grant—Continued.

XV. ADJUSTMENT—Continued.

The act of June 22, 1874, extending the time for the completion of the St. Paul, Minneapolis and Manitoba road, and protecting the rights of actual settlers at the date of said act, required the company to file its acceptance of the terms imposed thereby, but the protective provisions therein, for the benefit of the settlers, are not dependent upon the company's acceptance of the act. XVIII–101

The certification of lands prior to the passage of the act of June 22, 1874, in no wise affects the right of an actual settler protected thereby, nor does it embarrass the Department in extending to such settler the protection of said act. (St. Paul, Minneapolis and Manitoba Railroad.) XVIII–101

The grant is properly charged with lands relinquished by the governor under the State act of March 1, 1877, though the title thereto does not pass to the company (St. Paul, Minneapolis and Manitoba). XIII–349

The grant in aid of the St. Paul and Pacific Railroad under act of March 3, 1857, was adjusted along the main line as far west as range 38 in 1863; the lands to which the company was entitled were certified to it, and those not needed to satisfy the grant were restored to market by public offering under proclamation No. 700, dated April 18, 1864, and the offering was made September 5, 1864. II–502

Lands certified as indemnity under the grant of March 3, 1857, but falling within the granted limits as extended by the act of March 3, 1865, must be reckoned in the adjustment as granted lands. If not subject to selection, as indemnity, when certified, nor in a condition to pass at the time of the passage of the act of 1865, the company can have no rightful claim thereto. XVIII–87

Both in the title and the body of the acts of 1856 and 1864 the terms "land" and "public land" are used interchangeably (Wisconsin.) VI–195

Hudson held as the terminus of the Omaha road; construction beyond that point confers no right (Wisconsin). VI–195

The grant of June 3, 1856, is not repealed by the act of May 5, 1864, only to the extent that the latter act destroys the continuity of the line provided for or made possible under the former grant (Wisconsin Central). X–63

Application for suspension of proceedings under the decision of January 24, 1890, in the Wisconsin Central case denied. XI–615

The grant to the Oregon Central was not limited to lands in the State of Oregon. VI–292, 677

Railroad Grant—Continued.

XV. ADJUSTMENT—Continued.

The deduction required from the lands granted by the act of July 27, 1866, in so far as the road located thereunder was upon the same line as that provided for in the grant of 1852, should be made from the aggregate amount of the later grant (Atlantic and Pacific). VIII–165

The New Orleans, Baton Rouge and Vicksburg company, its mortgagees or bondholders, have no standing in the Department to object to the issuance of patents to the New Orleans and Pacific if the latter company has complied with the act of 1887. VIII–25

The grant to the New Orleans and Pacific took effect when the Secretary of the Interior was notified that the company had accepted the provisions of February 8, 1887, and attendant obligations. VIII–25

The Department must issue patents to the New Orleans and Pacific whenever due compliance is shown with the act of February 8, 1887. V–593

Instructions under the act of February 8, 1887, with respect to the New Orleans and Pacific railroad claiming under the grant to the New Orleans, Baton Rouge and Vicksburg Railroad Company. V–686

The effect to be given the Blanchard-Robertson agreement by section 4, act of February 8, 1887, is the right to purchase from the company lands that are confirmed to it by said act and were occupied by actual settlers December 1, 1884. XIII–157

Under the agreement filed by the New Orleans and Pacific the company will be called upon to restore title where it has received patent for lands in possession of actual settlers at definite location. XV–576

All pending appeals of the New Orleans and Pacific from decisions of the General Land Office in which settlement rights at definite location are recognized, dismissed under an agreement filed by said company. XV–576

Directions given for the issuance of patent on clear list No. 8 for lands within the primary limits of the New Orleans and Pacific. XV–576

By the terms of the joint resolution of June 28, 1870, the Southern Pacific company was authorized to construct its road along the route indicated by the map of January 3, 1867, and entitled to have the road accepted, if so constructed, but the acceptance of said road will not determine conflicting rights or claims within the grant. XXV–223

Railroad Grant—Continued.

XV. ADJUSTMENT—Continued.

The report of the commissioners as to the construction of the Southern Pacific Railroad, as provided for in said joint resolution, must be made to the Secretary of the Interior, and does not require the approval of the President. XXV–223

A lease of a portion of the constructed road of the Southern Pacific to the Atlantic and Pacific company can not be accepted as a valid basis for a claim on the part of the latter company, that it has, under the provisions of sections 3 and 17, of the act of July 27, 1866, thereby earned its grant opposite said constructed road. XXV–223

The map of January 3, 1867, was not filed as a map of definite location, but rather as a map of general route, and a deflection from said route, in the construction of the road, made necessary on account of engineering difficulties, and to secure a more feasible route, does not warrant the rejection of the road thus constructed. (Southern Pacific). XXV–223

Action suspended on the location under the forfeiture act of the western terminal line of the grant in aid of the Marquette, Houghton and Ontonagon Railroad Company. XI–466

The line of constructed road is made the measure of the grant provided for in the act of April 20, 1871 (Marquette, Houghton and Ontonagon company). XII–214

In the grant of April 20, 1871, the coterminous principle is recognized in determining the measure of the grant and the "line of road as completed" forms the basis of measurement. XII–214

The determination in the case of the Ontonagon road that the company is entitled to the amount of land measured by the constructed road, without regard to whether said road was in operation, will not govern in cases arising under the general forfeiture act. XIII–464

The claim that the Ontonagon company is entitled to 120 sections of land for the location of its entire line in addition to that quantity earned by actual construction can not be recognized either under the terms of the grant, the act of forfeiture, or the ruling of the supreme court in the Courtright case. XIII–464

Section 4 of the forfeiture act of March 2, 1889, expressly provides that said act shall in no way enlarge the original grant. XIII–464

Adjustment of the grant to Bay de Noquet and Marquette road and instructions thereunder. XV–312

The act of July 2, 1864, for the benefit of the Burlington and Missouri River Railroad in Nebraska contemplated that one-half of the land granted should be taken on each side of the road, and did not authorize enlarging the quantity on one side to make up for deficiencies on the other. VI–589

Railroad Grant—Continued.

XV. ADJUSTMENT—Continued.

The lands taken in excess on the north side of the line (Burlington and Missouri River in Nebraska) may be identified by adjusting the grant so that the company will receive nowhere along the line lands to the north of a line parallel with the line of the road, south of which any lands subject to the grant may remain unselected. VI–589

The Burlington and Missouri River Railroad in Nebraska is entitled to lands for the length of the original line to a point where it will meet a line drawn on the plat perpendicular to it from the present terminus at Kearney. VI–589

In the adjustment of the grant (Burlington and Missouri River in Nebraska) under the joint resolution of 1870 the length of the line must be computed on the definite location made prior to passage of said resolution. VI–589

The lands on the south side of the Burlington and Missouri road, where the grant is deficient, that were subject to the grant at definite location, are not open to entry, but must remain in reservation, subject to such action as may be required on the termination of the judicial proceedings now pending with respect to the excess of lands received by said company on the north side of its road. XX–496; XXV–38

To the State of Iowa by the acts of May 15, 1856, and June 2, 1864, is a grant in place, the extent of which is determined by the location under the original grant, and the amount of lands earned thereunder ascertained by the road constructed west of Cedar Rapids, with the additional right to satisfy deficiencies by resorting to even-numbered sections within the six-mile limits, and both even and odd within the fifteen-mile limits, and if there is still a deficiency to resort to the even and odd sections along the modified line within twenty miles thereof. XXIII–79

The act of June 2, 1864, authorized a modification of the line of unconstructed road as located under the original grant of 1856, and provided for a branch line connecting said modified line with the line of the Mississippi and Missouri Railroad Company, so as to form a connection with the Union Pacific system. For the modified main line the company was entitled "to the same lands and to the same amount of lands per mile" as provided in the original grant, but for the connecting branch line a new grant was made, to be satisfied from lands within twenty miles thereof; hence in the adjustment of the grant, as made by the two acts of Congress, the "connecting branch line" can not be regarded as a part of the modified main line. XXIV–125

Railroad Grant—Continued.

XV. ADJUSTMENT—Continued.

The act of June 2, 1864, so far as the modified main line is concerned, enlarged the source from which the amount of lands granted by the act of 1856 might be satisfied; but the lands certified prior to said act of 1864, along unconstructed road, must remain a charge against the company in the final adjustment of the grant under the two acts. XXIV–125

On the adjustment of the grant made by the act of May 15, 1856, it is not material whether the line as originally located, or the modified line as authorized by the act of June 2, 1864, is taken as the measure of the grant, as the difference between the two is but small, and the grant is largely deficient under either line. XXV–440

Instructions given for determining what lands are subject to the Mobile and Girard grant and for the presentation of claims that are protected by the forfeiture act of 1890. XII–118

Section 8, act of September 29, 1890, is a limitation on the grant made to the Mobile and Girard company by the act of June 3, 1856, and restricts said grant to the lands earned by the construction of the road from Girard to Troy. XII–117

Instructions with respect to the adjustment of the grant to the Mobile and Girard company under the act of September 29, 1890. XVI–70

Directions given for the adjustment of the Mobile and Girard and submission of a list in proper form for certification in full satisfaction of the grant. XVI–355

The Gulf and Ship Island road required to indicate the exact point where its line will cross the New Orleans and Northeastern road. XI–625

The right to sell lands on account of preliminary work and for constructed road provided for in section 4, act of August 11, 1856, is limited to the number of acres contained in the designated sections within the twenty miles specified therein (Gulf and Ship Island). XVI–236

The measure of a, in its adjustment under the forfeiture act of September 29, 1890, is the granted land that lies opposite to and coterminous with the completed portion of the road (Gulf and Ship Island). XVI–236

The quota of lands to aid in the construction of the Alabama and Chattanooga road in the common limits of other grants having been satisfied, the remaining lands in such limits appertain to the other roads, and, being opposite the unconstructed portion of said roads, are restored to the public domain by the forfeiture act of September 29, 1890. XVI–442

Railroad Grant—Continued.

XV. ADJUSTMENT—Continued.

The State (Alabama) is entitled to have certification of certain lands granted June 3, 1856, lying within the intersecting lines of a completed and of an uncompleted road, for the purpose of identification, leaving questions of reversionary right to be declared on by Congress. II–475

The revival of the grant of June 3, 1856, was made subject to the conditions originally imposed (South and North Alabama). XV–390

The revival of the grant in aid of the Alabama and Chattanooga Railroad Company did not relieve it from the limitations originally provided for the disposition of the granted lands. I–345

The State (Alabama) as trustee must determine what lands the company shall receive in case of conflicting limits and where one road is not constructed, and the Department has no authority to direct the State in such matter. I–345, 374

The number of roads provided for in the grant of June 3, 1856 (Alabama), being considered, it is held that said grant contemplated a road from Gadsden through the Chattooga Valley to the Georgia and Tennessee line. (See 17 L. D., 170.) VIII–33

The construction of a fractional part of a section of twenty miles, the whole road not being completed, does not entitle the company (Tennessee and Coosa) to any lands under the grant of June 3, 1856. XII–254

The failure to construct any part of the Tennessee and Coosa road in accordance with the grant renders it subject to the forfeiture act of 1890, not only as to the uncertified lands, but also as to the 120 sections certified in advance of construction, if such lands remain in the possession of the State or company. XII–254

The act of July 28, 1866, reviving the grant of February 9, 1853, was not a new donation of lands included within the limits of the original grant, but a waiver of the terms of reversion contained in said grant. (St. Louis, Iron Mountain and Southern Railroad Company.) XI–157

Departmental action for the recovery of lands within the New York Indian reservation patented to the Missouri, Kansas and Texas company under the grant of 1863 and acts amendatory thereof precluded by executive and congressional action based on the opinion (acquiesced in by the Indians) that said reservation had ceased to exist. XI–130

Railroad Grant—Continued.

XV. ADJUSTMENT—Continued.

Act of July 1, 1898.

Circular under the act of July 1, 1898, for the adjustment of claims in conflict with the Northern Pacific grant. XXVIII–103, 470

Regulations of June 15, 1901, under act of March 2, 1901, extending provisions of act of July 1, 1898, to certain claims to lands within the indemnity limits of the Northern Pacific grant. XXX–620

All claims in conflict with the Northern Pacific grant, coming within the provisions of the act of July 1, 1898, which remained unpatented at the date of the passage thereof, should be adjusted in accordance with the terms of said act. XXVIII–470

Departmental regulations of February 14, 1899, under the act of July 1, 1898, so modified as to recognize the Northern Pacific Ry. Co. as the lawful successor in interest as to all lands within the limits of the grant made to the Northern Pacific R. R. Co. XXIX–316

In accordance with paragraph 30 of the regulations issued under the act of July 1, 1898, where a showing is made sufficient to exempt the company from relinquishing the tract, the individual claimant who has theretofore elected to hold said tracts, should be advised of such showing, that he will be given another opportunity to relinquish his claim and take other lands, and that in the absence of such action on his part the contest will proceed to decision in the usual way. XXIX–316

The act of July 1, 1898, providing for the adjustment of conflicting claims within the limits of the Northern Pacific grant, is not operative as to lands patented prior to the passage of said act. XXIX–224

A claim resting upon a rejected application to make homestead entry, and not upon settlement, entry, or purchase, is not within the provisions of the act of July 1, 1898, or the regulations thereunder. XXVIII–124, 126; XXIX–242

Conflicting claims to lands excepted from the grant to the Northern Pacific by reason of a withdrawal made prior to the grant are not subject to adjustment under the provisions of the act of July 1, 1898. XXX–602

An attempted selection, subsequent to January 1, 1898, does not present a claim for adjustment under the act of July 1, 1898, for the reason that by the terms of said act the claims of the company are limited to those which are claimed to have attached by definite location or selection prior to January 1, 1898. XXX–16

Railroad Grant—Continued.

XV. ADJUSTMENT—Continued.

Act of July 1, 1898—Continued.

Possession and occupancy of a tract with an intention to subsequently enter it under the timber-culture law do not serve to bar indemnity selection thereof; and a claim under said law, based upon mere possession and occupancy, is not subject to adjustment under the act of July 1, 1898, as the claimant is not a purchaser of the land, and was not a settler thereon, under color of title or claim of right under any law of the United States or ruling of the land department, at the date of the passage of said act. XXX–250

In the case of an unperfected claim, the relinquishment contemplated by the act of July 1, 1898, is of the whole thereof, and where such claim includes land in both odd and even numbered sections, and the individual claimant as against the Northern Pacific Railroad Company, had, prior to the execution of a relinquishment under said act of the portion in the odd-numbered section, made entry for that portion of the claim within the even-numbered section, such partial relinquishment of the claim should not be accepted as a basis for the transfer of that portion of the claim to other lands. XXX–193

The stipulation entered into between the Northern Pacific Railroad Company and the St. Paul, Minneapolis and Manitoba Railway Company, whereby the latter company consented and agreed that the former should be adjudged the owner of certain lands theretofore selected by both companies, within the conflicting indemnity limits of their respective grants, the superior right to which had been held to be in the Manitoba company, but which lands had not been certified or patented, and the decree of the United States circuit court, rendered by consent of said companies in pursuance of such stipulation, in legal effect operated as a waiver and relinquishment by the Manitoba company of all claim to said lands, under its grant, as against the government. XXX–594

A certified copy of such decree having been filed in the General Land Office, it is the duty of the Department to take cognizance of the legal effect thereof in so far as the same pertains to the claim theretofore asserted to said lands by the Manitoba company and the consequent effect of the elimination of such claim upon conflicting claims asserted thereto by a settler and the Northern Pacific company, respectively, and if the facts shown, in the absence of the claim theretofore asserted by the Manitoba company, would otherwise bring the conflicting claims of such settler and the Northern Pacific company within the purview of the act of July 1, 1898, such conflicting claims should be adjusted in accordance with the provisions of that act. XXX–595

Railroad Grant—Continued.

XVI. FORFEITURE.

Forfeiture for breach of condition subsequent may be declared judicially or by act of Congress. XIV–321, 328

Lands granted do not revert after condition broken until a forfeiture has been declared either through judicial proceedings or legislative enactment. I–345; V–81; VIII–589; X–317

The forfeiture of a, on the failure of the company to construct its road within the period fixed by the granting act, can only be enforced through the courts, or by action of Congress. XXI–471

The Department can not enforce forfeiture though the company has not complied with the terms of the grant. I–328

A provision that all lands not disposed of within three years after the completion of the road shall be subject to settlement as other lands (the purchase price to be paid to the company) is a condition subsequent, and default therein does not defeat the grant. I–345

Completion of road within time allowed is a condition subsequent of which no one can take advantage except the grantor. I–360

Patent can not be refused on the ground that the road was not completed within the time required by the granting act. I–378

Failure to construct road within the time named does not defeat, in the absence of forfeiture through the action of Congress or the courts. V–81, 511; VIII–589

Though breach of condition subsequent may appear, in the absence of declaration of forfeiture patents must issue for granted lands along the constructed line and indemnity selections therefor (Wisconsin Central). VI–190

No authority conferred upon the Department to enforce the last clause in section 3, act of July 1, 1862 (Sioux City and Pacific). I–345

The grant of the California and Oregon Railroad Company having expired, further selections are not allowed pending legislative action as to forfeiture. III–604

Selections not received where the road was not constructed within the required period (California and Oregon). I–330

The Central Pacific (successors to the California and Oregon) company have failed to complete their road in the prescribed time (July 1, 1880), but as Congress has not declared the consequent forfeiture provided in the granting act, patents must issue for the granted lands as they are earned by the construction and acceptance of a portion of the road. II–489

The additional provision that, on failure to complete the road (Central Pacific) in the prescribed time, the granting "act shall be null and void" adds nothing to the legal effect of the forfeiture clause. II–491

Railroad Grant—Continued.

XVI. FORFEITURE—Continued.

If the whole of the proposed road has not been completed, any forfeiture thereon can only be asserted by the grantor, the United States, through judicial proceedings or through the action of Congress. II–491

No proceedings can be taken, even by Congress, to declare a forfeiture of the Northern Pacific grant until one year after the time fixed for the completion of the road (July 4, 1880). II–859

The failure of Congress to take action, though its attention has been called to the fact that large tracts of land are reserved by withdrawal for uncompleted roads, is accepted as an expression of the legislative will that the decisions of the courts and the opinions of Attorneys-General upon the points involved (that the grant must be held intact) shall be a guide to the Secretary in administering the law. II–549

At Portland, Oregon, the Northern Pacific has two grants, the first for the line eastward, under the act of 1864, and the second northward, under the joint resolution of 1870, and, so far as the limits of the grant east of said city overlaps the subsequent grant, the latter must fail; and, as the road at such point eastward is unconstructed, and the grant therefor forfeited by the act of September 29, 1890, the lands so released from said grant do not inure to the latter grant, but are subject to disposal under said forfeiture act. XXI–57

Forfeiture of, and circular order as to restoration under the act of January 13, 1881. V–165

Under the act of January 31, 1885, no lands were forfeited along that part of the road constructed (Oregon). IV–15

The forfeiture of the Texas Pacific grant included lands along the branch line of the Southern Pacific where it passes through lands withdrawn for the former company. IV–215

Act of forfeiture (Oregon Central) executed by adjusting separately at the point of junction the limits of the two roads included in said act. V–549

Title under the grant not defeated by the failure of the company (Northern Pacific) to pay for the survey. V–343

The forfeiture of the grant to the Atlantic and Pacific did not reinvest the Southern Pacific with the interest of which it was divested by the definite location of the Atlantic and Pacific. VI–349

The act of July 6, 1886, forfeiting the grant to the Atlantic and Pacific Railroad Company did not give the Southern Pacific company any rights to lands so forfeited and lying within its indemnity limits; but said lands reverted to the United States, and after the passage of said act were open to settlement. XVII–391

Railroad Grant—Continned.

XVI. FORFEITURE—Continued.

The act of June 28, 1884, forfeited the grant to the Iron Mountain road and confirmed entries allowed for lands within said grant. VI–443

Actual rights acquired by construction of road not affected by the congressional forfeiture (Oregon Central). V–549

Adjustment of conflicting rights under the act of July 6, 1886, forfeiting the grant of the Atlantic and Pacific. V–269

The forfeiture of the grant of June 3, 1856, by the act of July 14, 1870, rendered the lands embraced therein at once subject to settlement. X–637

Lands of the Texas Pacific forfeited grant restored to entry. III–450

Order restoring to entry the lands of the forfeited Texas Pacific should include certain lands along the branch line of the Southern Pacific where it passes through the limits of the former. III–472

Not a declaration of forfeiture to restore to the public domain lands certified back by the State as unearned under the grant. VI–162

The forfeiture act of March 2, 1889, operated to restore to the public domain the lands forfeited thereby free from the effects of the original grant and the certification thereunder. XIX–307

The lands certified under the grant of June 3, 1856, and embraced within the forfeiture act of July 14, 1870, were by said act restored to the public domain and the certifications thereof vacated; the lands so released, being public when the grant to the New Orleans and Pacific became effective, passed to said company.

XIV–321, 328; XVI–65; XXI–246

The forfeiture declared by act of September 29, 1890, was complete on the passage of the act and opened to settlement at once the lands designated therein. XIV–359

The forfeiture provision in the act of September 29, 1890, did not operate upon lands opposite completed roads. XXX–319

A homestead settler, who by alienation of the land has disqualified himself as an entryman, is not entitled to relief under the act of June 22, 1874, extending the time for the completion of certain railroads in Minnesota and protecting the rights of settlers prior thereto. XXV–530

The conditions on which the extension of time was given by act of June 22, 1874, operates as a revocation of the grant to the extent of the rights of actual settlers at the date thereof. It is in effect an extension of the protection intended to be given by the excepting clause in the original grant, and is applicable to all lands whether patented or otherwise. (St. Paul, Minneapolis and Manitoba Railroad).

XVIII–101; XXI–436; XXIV–226; XXVI–226; XXVII–391

Railroad Grant—Continued.

XVI. FORFEITURE—Continued.

To the extent of the lands occupied by actual settlers the State act of March 1, 1877 (Minnesota), was a forfeiture, and where the governor of the State has relinquished such lands in accordance with said act they are restored to the public domain free from their previous patented condition. XXI–254

The act of March 1, 1877, of the State legislature of Minnesota contemplated in the use of the words "legal and full title," a title which could not be successfully assailed; hence a conveyance of lands by the State to the company in excess of the amount to which the company was then entitled, and prior to the passage of said act, is no bar to the State's reconveyance to the United States of a tract embraced therein for the benefit of a settler as provided by said act. XXVI–582

The rule laid upon the Ontonagon and Brulé Railroad Company to show cause why an order of forfeiture should not be made for failure to construct the last eight miles of its road dissolved, the answer thereto being satisfactory. XIII–462

The provision in section 3, act of July 1, 1862, incorporating the Union Pacific Railway Company, that the lands granted and unsold after three years from the completion of the road should be subject to settlement, can not be enforced as against a mortgage on said lands wherein the fee is hypothecated to secure the payment of a debt not yet due. XX–466

In determining whether a mortgage operates as a sale of the land, and so prevents forfeiture, the status of the mortgagee must be settled under the law of the State. In the State of Mississippi the holder of a mortgage that has not been foreclosed takes only a chattel interest, and consequently such transaction does not constitute a sale of the land nor place it beyond the power of Congress to declare a forfeiture thereof. XVI–236

Under the grant to the State of Mississippi the right to sell the lands along forty miles of the located line was conferred on completion of the first twenty miles; and, under the laws of said State a mortgage on said lands would operate as a sale thereof, in case of default on the part of the mortgagor, and take the lands so sold out of the operation of the forfeiture act of September 29, 1890. XIX–534

The Hastings and Dakota Railway Company is entitled to the lands earned prior to the forfeiture of its charter, and the State can not, through legislation intended to operate as a forfeiture, and the relinquishment of the lands by the governor, defeat the right of said company to receive said lands through its trustee. XXI–312

Railroad Grant—Continued.

XVI. FORFEITURE—Continued.

The judicial proceedings resulting in a decision that the Hastings and Dakota company, by failure to maintain its road, had forfeited all rights under its charter, including its land grant, except as to lands already earned, will be accepted by the Department as determinative of the rights of the company, under the laws of the State, in regard to matters properly passed upon. XVIII–511

That a railroad is not constructed within the period fixed by the grant, or that the charter of the company is declared forfeited by judicial decree, does not authorize the Department to disregard the grant, and withhold title to lands which, under the terms of the grant, were subject thereto, and became the property of said company prior to the forfeiture of its charter. XVII–302

The confirmation by the third section of the act of March 2, 1889, forfeiting certain lands granted to aid in the construction of railroads, so far as it may embrace lands included in approved selections made by the State of Michigan on account of the canal grant of July 3, 1866, is dependent upon whether such lands were, on May 1, 1888, in the actual occupancy of a *bona fide* preëmption or homestead claimant; if so, the preëmption or homestead claim is confirmed without regard to such previously approved State selection, but proof of qualification and compliance with law on the part of such homestead or preëmption claimant must be shown in the usual manner. XXX–160

In the absence of some specific provision to the contrary in legislation respecting the public lands, the administration thereof is wholly within the jurisdiction of the land department, and the determination of rights under the forfeiture act of March 2, 1889, falls within that jurisdiction. XXX–160

The suit instituted by the United States in December, 1890, in the circuit court of the United States for the western district of Michigan, against the Lake Superior Ship Canal, Railway and Iron Company, did not operate to divest the land department of jurisdiction, or require a suspension of proceedings before the land department upon a claim filed by a preëmptor invoking the confirmatory provisions of said forfeiture act, where such preëmptor was not made a party to said suit until long after the filing of his claim in the land department. XXX–160

The proceedings by a homestead or preëmption claimant for the purpose of obtaining proper recognition of his claim under the confirmatory provisions of the forfeiture act of March 2, 1889, are essentially of the same nature as those governing the submission of final proof in ordinary homestead and preëmption cases, and rules of practice 5 to 16, inclusive, respecting notice and hearings in contest cases, do not apply thereto. XXX–160

Railroad Grant—Continued.

XVI. FORFEITURE—Continued.

The presence of rival preëmption claimants on May 1, 1888, each coming within the confirmatory provisions of the forfeiture act, will not operate to the advantage of a claimant under the canal selection. XXX–160

The preference accorded by said forfeiture act to preëmption and homestead claimants of the class therein described, is in no respect affected by the confirmatory provisions of either the act of March 3, 1887, or March 2, 1896, where the same are invoked by a claimant under a canal selection, because the earlier act is confined to certifications or patents "to or for the use or benefit of any company claiming by, through, or under grant from the United States to aid in the construction of a railroad," and the latter does not in terms include canal selections or by its language evidence a purpose to repeal such preference. XXX–160

XVII. CERTIFICATION AND PATENT. See *Patent.*

The general rule applicable to grants to States for railroad purposes in respect of title by patent or certification is found in section 2449, R. S. II–496

The certification of land under a, in accordance with the provisions of the act of August 3, 1854, is of no operative effect if the land in fact was excepted from the grant. XXIII–343

After certification it is the duty of the land department to issue the patents; when issued, they take effect by relation as of date of the certification and cut off intervening claims. II–497

Where title (to granted or indemnity lands in Minnesota) passed by certification all control of the executive department over the title thereafter ceased. II–497, 498

Certification of certain lands to the State of Minnesota under act of July 13, 1866, perfected the title in the State, and patent was not necessary for that purpose. II–492

The tract in question was within the terms of the act of 1856 (grant to Iowa), and when it was selected and the selection approved and certified by the Commissioner of the General Land Office the title became perfect in the State. II–497

By the certification of lands under the grant of June 3, 1856, they are as fully separated from the public domain and removed from departmental control as though patent had issued therefor. XXIII–310

Title does not pass by certification under the grant of March 3, 1865. (Reversed, 2 L. D., 498.) I–366

Patent required to pass title, under the grant of July 4, 1866, to the State of Minnesota. (Reversed, 2 L. D., 492.) I–351

Railroad Grant—Continued.

XVII. CERTIFICATION AND PATENT—Continued.

Patents must issue in the name of the company to whom the grant is made, without respect to the fact that a portion of the road is now owned by another company. XII–116

Under the grant to the Northern Pacific Railroad Company patents should issue to that Company and not to a grantee thereof. XXIV–138

Directions given in the matter of the issuance of patents on account of the grants made by the acts of July 1, 1862, and July 2, 1864, to aid in the construction of the Central Pacific railroad, and the grant made by the act of July 25, 1866, to aid in the construction of the California and Oregon railroad. XXIX–589

Directions given that hereafter patents shall issue to the Union Pacific Land Company, as the successor in interest of the Kansas Pacific Railway Company, for any lands which the latter company is entitled to under congressional grants to aid in the construction of the Kansas Pacific railway. XXIX–94

Directions given that hereafter patents shall issue to the "Union Pacific Railroad Company," as the successor in interest of the Union Pacific Railway Company, for any lands which the latter company was entitled to under the grants of July 1, 1862, and July 2, 1864, on account of the construction of the main line of the Union Pacific railroad. XXIX–26

Directions given for the recognition of the Northern Pacific Railway Company as the successor in interest of the Northern Pacific Railroad Company, in the approval of lists and issuance of patents on account of the grant to the latter company. XXIX–387

Railroad Lands.

I. GENERALLY.
II. ACT OF MARCH 3, 1887.
III. ACT OF MARCH 2, 1889.
IV. ACT OF SEPTEMBER 29, 1890.
V. ACT OF MARCH 2, 1896.

I. GENERALLY.

Certain lands in Washington Territory withdrawn for the Northern Pacific restored to entry. V–193

Notice of the restoration of all lands withdrawn on account of the Northern Pacific east of the terminal line at Duluth. XXV–48

Directions given for the suspension from entry and patent of lands remaining undisposed of in the odd-numbered sections within that part of the formerly recognized limits of the Northern Pacific grant lying east of Duluth. XXVI–265

Railroad Lands—Continued.

I. GENERALLY—Continued.

Directions given for the suspension from entry and patent of lands falling within the purview of the departmental decision in the case of Spaulding *v.* Northern Pacific R. R. Co., 21 L. D. 57. XXV–255

Circular of August 5, 1896, under the act of June 3, 1896, relative to settlers on Northern Pacific indemnity lands. XXV–256

Within New Mexico formerly granted to the Atlantic and Pacific Railroad Company restored to public domain and opened to entry at double minimum. V–269

The forfeited lands in conflicting limits (Atlantic and Pacific and Southern Pacific) withheld from entry pending adjustment. V–269

Plan of restoration suggested in the case of the forfeited lands within the common limits of the Atlantic and Pacific and Southern Pacific. VI–349

Unpatented lands within the granted limits of the Atlantic and Pacific and the granted and indemnity limits of the Southern Pacific restored to settlement and entry. VI–816

Directions given for the restoration of lands withdrawn for the benefit of the Southern Pacific lying within the primary limits of the grant to said company and indemnity limits of the Atlantic and Pacific. XVI–317

Order of July 18, 1894, restoring lands within the conflicting limits of the Southern Pacific and Atlantic and Pacific. XIX–45

The order of November 22, 1897, suspending action relative to the right of the Southern Pacific company to make indemnity selections within the forfeited primary limits of the Atlantic and Pacific grant, revoked, and directions given with respect to the disposition of lands in said limits. XXVI–48

The departmental order of January 18, 1898, 26 L. D., 48, with respect to the restoration of lands within the forfeited primary limits of the Atlantic and Pacific grant, modified. XXVI–97

Order of April 13, 1898, restoring to the public domain lands lying within the overlapping limits of the Southern Pacific and the forfeited portion of the Atlantic and Pacific. XXVI–697

Instructions of January 13, 1896, as to the disposition of lands within the overlap of the grants of 1864 and 1870 to the Northern Pacific, and covered by the forfeiture act of 1890. XXII–14

The departmental order of October 10, 1887, restoring to entry the lands formerly withdrawn for the Marquette, Houghton and Ontonagon Railroad Company made provision for receiving applications to enter lands covered by pending unapproved selections, subject to the claim of the company. XIII–56

Railroad Lands—Continued.

I. GENERALLY—Continued.

Under the adjustment made necessary by the act of forfeiture of January 31, 1885, the lands lying within the quadrant formed by the limit lines north of Forest Grove must be restored to the public domain. V–549

Circular provisions of April 30, 1887, as to settlers within the grant to the State of Kansas to aid in the construction of the Northern Kansas railroad. V–627

Unearned lands relinquished by the State (Iowa) restored to the public domain. VI–47, 162

Restored to the public domain as unearned under the grant. VI–47, 162

Certain unpatented selections (Burlington and Missouri River in Nebraska) canceled and lands restored to the public domain. VI–589

Certain, under former withdrawals for the Union Pacific at Denver restored December 7, 1887. VI–385

Former directions given in the matter of the restoration and disposition of lands withdrawn for the Chicago, St. Paul, Minneapolis and Omaha grant, and not taken thereunder, modified. (See 11 L. D., 607.) XII–259

Restoration of lands embraced in the Bay de Noquet and Marquette grant and relinquished to the government. XV–312

Order restoring lands certified for the Bay de Noquet grant provided that applications to enter such land filed prior thereto should confer no right. XVI–332

The right of way and station grounds of the Chicago, Milwaukee and St. Paul Company forfeited under the act of March 2, 1889, restored to the public domain. XX–121

Applications for indemnity lands restored under the rule of May 23, 1887. Circular of September 6, 1887. VI–131

Proceedings directed for the vacation of certain patents erroneously issued to the Southern Pacific for lands excepted from its grant by conflict with the prior grant to the Atlantic and Pacific. VI–816

Suit advised to vacate patents issued to the Union Pacific for lands south of the terminus of the Denver Pacific at Denver and west of the terminus of the Kansas Pacific at the same place. VI–385, 581

Land within the limits of a grant, but excepted therefrom, is open to entry without restoration notice. IX–213

On the judicial vacation of a patent issued under a railroad grant, the Secretary of the Interior may lawfully fix a day when the lands embraced in such decree shall be open to entry. XXIII–407

Railroad Lands—Continued.

I. GENERALLY—Continued.

A decision of the supreme court of the United States that annuls a patent for lands issued to a railroad company, and restores the title to the government, renders such lands subject to settlement, in the absence of any prohibition; but in such case it is competent for the land department to determine when said lands shall be opened to entry, and make due provision therefor. XXVI-350

A decision of the Department directing that a tract of land, that had been embraced in a railroad indemnity selection, should be held "subject to entry by the first legal applicant" operates to restore such tract to the public domain as effectually as though restored to settlement and entry. XXVI-538

Circular of April 30, 1886, under the act of January 13, 1881, with respect to settlement rights on lands restored to settlement and entry. V-165

The right of purchase under the act of January 13, 1881, must be exercised within three months after restoration. IX-74

The right of purchase under the act of January 13, 1881, extends only to lands that have been withdrawn and subsequently restored. VI-750

Applicants for the right of purchase under the act of 1881 must show under oath the facts of settlement, improvement, and requisite qualifications. VI-750

Land excepted from a railroad grant and consequently not withdrawn for its benefit not subject to purchase under the act of January 13, 1881. VIII-344; XVIII-528

An application to purchase under the act of January 13, 1881, confers no rights upon the applicant if the land was not in fact withdrawn for the benefit of the railroad company. XVII-391

Right of purchase conferred by the act of January 13, 1881, can only be exercised by an actual settler and does not extend to lands excepted from a withdrawal. X-437; XVII-95

The right of purchase under the act of January 13, 1881, can not be exercised by one who is qualified to take the land under the timber-culture law where the land is subject to such appropriation. XVI-3

Purchaser under the act of January 13, 1881, must show actual settlement and that he can not acquire title under the preëmption, homestead, or timber-culture law. VIII-344

One who settles on, with permission of the company and intent to acquire title therefrom may purchase under the act of January 13, 1881, on failure of the company's title, on due application, if qualified. XV-193; XVIII-37

Railroad Lands—Continued.

I. GENERALLY—Continued.

Applicant for the preference right of purchase under section 2, act of January 31, 1885, must show that he is an actual settler. VI–677

An indemnity selection, made for the protection of one whose claim under the public land laws has been rejected on account of the railroad grant, and who is consequently seeking title through the company, operates to reserve the land, while subsisting, from other disposition, and if finally canceled, the occupant of the land under the company's license is entitled to the right of purchase under the act of January 13, 1881, if otherwise within its terms. XXIII–468

Preference right to restored lands under the act of January 31, 1885, accorded to settler. IV–15

One temporarily occupying land as the employé of another is not an actual settler under the act of January 31, 1885. VI–677

Right of an actual settler to enter lands embraced within the forfeiture act of January 31, 1885, not defeated by his temporary absence from the land at the passage of the act or an informal agreement to sell the lands if the grant was not forfeited. XII–378

Purchasers of certain lands in the vicinity of Denver authorized by the act of August 13, 1888, to enter said lands at government price. X–437

The act of August 13, 1888, is applicable only to land theretofore withdrawn by the executive department. XVII–95, 315

Circular of November 1, 1890, under the act of August 29, 1890, for the relief of settlers on. XI–434

Circular of November 7, 1890, under the act of October 1, 1890, for the relief of settlers on Northern Pacific indemnity. XI–435

One who, under the act of October 1, 1890, transfers his settlement right and selects in lieu thereof a tract to which another holds a superior claim, must submit to an order of cancellation on proof of the prior claim. XX–72

A preëmption entry can not be allowed under section 2, act of October 1, 1890, except on proof of continuous residence on the land so entered for a period of not less than three months prior thereto. XXV–367

In the absence of a filing or entry allowed for lands in the second indemnity belt of the Northern Pacific grant there is no claim subject to transfer under section 2, act of October 1, 1890. XXI–514

An entry made in pursuance of section 1, act of October 1, 1890, is not invalidated by an agreement to convey the land covered thereby, made prior to the consummation of the transfer authorized by said act. XXII–375

Railroad Lands—Continued.

I. GENERALLY—Continued.

Instructions under the act of August 5, 1892, providing for the relief of certain settlers on, in the States of North Dakota and South Dakota. XV–344

Instructions under the act of August 5, 1892, providing for the relief of settlers within the limits of the St. Paul, Minneapolis, and Manitoba grant in the Dakotas. XV–536

Purchasers in good faith, prior to January 1, 1891, of indemnity lands from the Northern Pacific Railroad Company that were subsequently held to fall within the grant to the St. Paul, Minneapolis and Manitoba Railway Company in the States of North Dakota and South Dakota, are within the remedial provisions of the act of August 5, 1892, and may have their titles perfected thereunder in the absence of adverse claims. XVIII–459

The operation of the remedial act of August 5, 1892, as to an entry that falls within the terms of said act at the date of its passage, is not defeated by a subsequent relinquishment of the entry. XXIII–586

Order of restoration that expressly prohibits settlement prior to the formal opening of such lands thereto precludes the consideration of settlement (made in violation of said order) in determining the priorities of conflicting applicants for the same tract. XVI–302

Action looking for the recovery of title to lands erroneously certified should not be taken, where patents have issued on the claims held to have excepted such lands from the grant; the parties in such a case may be left to assert their rights in the courts. XXV–440

The right to reimbursement under the act of March 3, 1887 (24 Stat., 550), can not be recognized if the title conveyed by the government is paramount to the claim of the railroad company. XXIV–64

II. ACT OF MARCH 3, 1887. See *Wagon Road Grant.*

Opinion of Attorney-General Garland on the proper construction of sections 3, 4, and 5. VI–272

Circular of November 22, 1887, and modification thereof. VI–276, 544

Circular instructions of February 13, 1889. VIII–348

Provisions of the act with respect to the preferred rights of settlers and purchasers reviewed by sections. XXIX–504

Procedure preliminary to suit under. X–610

Proceedings to recover title under the act of 1887 taken on due application. XI–603

Railroad Lands—Continued.

II. ACT OF MARCH 3, 1887—Continued.

On adjustment of, demand to be made under, for reconveyance of any lands improperly passed under the grant. VI–54

Demand for reconveyance under the, will not be made until after notice to the company to show cause why proceedings should not be instituted under said act. VI–544

In proceedings for the recovery of title under, the demand for reconveyance is a statutory requirement to be made only by direction of the Department. XII–210; XIV–9

The demand for reconveyance under the act of 1887 should be served personally or by registered letter upon the officers of the company or some one authorized to acknowledge service. XII–210

The demand preliminary to judicial proceedings for the recovery of title may be made upon the present holders of the land and parties apparently having an interest therein when the original company has ceased to exist and has disposed of the land. XIV–129

Demand for reconveyance under, should not include lands that are also embraced within entries that have passed to patent; the parties may be left to an assertion of their rights in the courts. XIII–560

The act of, confers no new authority in the matter of bringing suit to recover title, but makes that mandatory which before was discretionary. XIV–132

The act of, is mandatory upon the Secretary of the Interior to demand reconveyance if the grant is unadjusted and lands have been erroneously certified or patented IX–649 XI–588, 592; XII–347; XIII–559

It is the duty of the Secretary of the Interior to readjudicate cases whenever it appears that the preëmption or homestead entry of a *bona fide* settler has been erroneously canceled on account of a railroad grant. VIII–318, 382

Decision of the General Land Office on *ex parte* proceedings, holding that the land is subject to the grant, does not preclude departmental action under said act. XI–226

The act is remedial and should be construed liberally in favor of the *bona fide* settler. VIII–324

Plea of *res judicata* can not be interposed to relieve the company from proceedings under the act. VIII–318

The Department has authority to institute proceedings for the recovery of title to lands erroneously certified whether such lands are in the hands of the original grantee or have passed to third parties. XIV–129

The Department can not consider the fact that the lands have passed into the hands of a *bona fide* purchaser in directing suit under the act. IX–221; X–54

Railroad Lands—Continued.

II. Act of March 3, 1887—Continued.

The acts of March 3, 1887, and March 2, 1896, fixing the liability to make payment for lands erroneously patented and sold to *bona fide* purchasers, do not include those who, after patents are erroneously issued and the lands included therein are sold to *bona fide* purchasers, and after the title of such purchasers has been confirmed, become purchasers at a foreclosure sale of that portion of the grant not theretofore sold. XXIX–38

It is no defense to an action under, that the patent or certification was in accordance with existing rulings of the Department if such rulings are in conflict with the decision of the supreme court. IX–649; XII–348; XV–121; XVIII–270; XXI–162

The act directs adjus ment in accordance with the decisions of the United States supreme court, but constitutes the Secretary the judge to determine in each case whether a demand for reconveyance should be made; and where the particular question involved has not been passed upon by said court, the action of the Secretary can not be delayed therefor. XVIII–429

The fact that a railroad grant has been adjusted will not defeat the right of the government to recover where an excess on account of the grant has been erroneously certified. XXI–49

A rule to show cause why proceedings should not be instituted for the recovery of title to lands erroneously certified, will not be dissolved on a disclaimer of interest filed by a successor to the benefits of the grant who has pending selections thereunder. XVIII–270.

The necessity for judicial proceedings to recover title where lands in excess of a grant have been certified is not obviated by matters of defense that may be set up against such action. XIV–121; XXI–46

A judicial decree awarding possession to a purchaser from the company will not prevent the Department from taking jurisdiction under said act. VIII–382

Proceedings for the recovery of title under the act not authorized where, long prior to said act, the grant had been declared by competent authority to be adjusted. X–610

Departmental action for the recovery of title to a tract will not be taken where the grant has been finally adjusted and the surplus lands restored to the public domain. XVII–437

The final adjustment of a railroad grant, prior to the act, and in accordance with existing departmental construction, will not be disturbed with a view to recovering title to lands that under later rulings should have been excluded from the grant. XVII–589

Railroad Lands—Continued.

II. Act of March 3, 1887—Continued.

In order to sustain a suit under said act it is necessary to show that the land has been erroneously certified or patented under the grant. VIII–570

Suit advised for the recovery of unearned lands held by the State of Iowa for the benefit of the Sioux City and St. Paul Railroad. VI–481

Action directed under the act, for the recovery of title to lands improperly patented to the Burlington and Missouri River Railroad in Nebraska. VI–589

Proceedings advised for the recovery of lands patented to the Oregon and California company lying within the conflicting primary limits of the grant to said company and that to the Northern Pacific east of Portland. XIV–192

Directions given for a demand under the act on the Grand Rapids and Indiana Railroad Company, for the reconveyance of lands erroneously certified thereto. XVII–420

The act authorizes proceedings to set aside an erroneous certification where at the date thereof the land was covered by a settlement claim that excepted it from the confirmatory act of March 3, 1871 (Des Moines river lands). IX–637

Proceedings for the recovery of title should be instituted under the act in the case of certified lands opposite the uncompleted portion of the Marquette, Houghton and Ontonagon railroad. X–29

A certification or patent of land excepted from the grant is erroneous and warrants proceedings for the recovery of title. X–54, 166, 568, 575; XIV–9, 364, 656

An expired preëmption filing of record when the grant becomes effective (by definite location or selection) does not warrant proceedings for the recovery of title under the act. XIII–560, 637

Suit to set aside patent advised where issued for lands excepted by reason of preëmption claim existing at withdrawal on general route and definite location (Central Pacific). X–466

Covered by homestead entries at date of definite location are "erroneously" certified and subject to recovery under the act. IX–649

Erroneous certification to a railroad company of land previously purchased under the graduation act calls for proceedings under the act of 1887 to set aside such certification. XII–280

Certification of lands selected in lieu of indemnity lands relinquished under the act of June 22, 1874, is erroneous, and proceedings for the recovery of title should be instituted. X–50, 609; XV–62; XVII–429

Taken as indemnity under the act of June 22, 1874, in the absence of legal basis, subject to recovery under the act of 1887. IX–649

Railroad Lands—Continued.

II. ACT OF MARCH 3, 1887—Continued.

An application to perfect title under said act will not defeat the right of the applicant to subsequently abandon such application, and assert a claim to the land as a homestead settler. XXVI–351

The act entitles a settler to perfect entry for the entire tract originally applied for, notwithstanding the issuance of patent to him for a part of said tract. VIII–382; XXII–429

The Department has jurisdiction to entertain an application for the reinstatement of an entry under said act if there has been no formal adjustment of the grant. XI–358

The rights of the persons for whom relief is provided in section 3, act of March 3, 1887, and classified therein, must be considered in the order stated in said section. XVII–353

Section 3 of said act does not contemplate the recognition of entries made, or claims initiated, after patent has been issued under the grant and the land has been sold to a *bona fide* purchaser, as against the right of such purchaser. XXVI–271

Section 3 makes it the duty of the Secretary of the Interior to reinstate the settler in all his rights to lands upon which he may have settled and for which his application may have been erroneously rejected if the settler has not abandoned the land and located another claim. XII–272

A homestead applicant is not entitled to a reinstatement of his claim under section 3 if it appears that he in fact never actually resided on the land involved. XXVI–228

The relief provided by section 3 extends to the reinstatement of an application to enter erroneously rejected on account of a railroad grant, but is not applicable if the application to enter is properly rejected. XV–91

If part of an entry has been erroneously canceled on account of a railroad grant, it should, under this act, be reinstated and patent issued thereon if the settler has shown due compliance with law. VIII–318

The provisions of section 3 warrant the reinstatement of an entry erroneously canceled on account of a railroad grant, though the judgment of cancellation was rendered in accordance with the ruling of the Department then in force. XVII–265

Section 3 authorizes readjudication where an application to file or enter has been erroneously rejected by the local office. VIII–382

The right to reinstatement conferred upon the settler is superior to that of a *bona fide* purchaser from the company. VIII–382

The right to reinstatement under said act is defeated by a voluntary abandonment of the claim before the grant attached. VIII–588

Railroad Lands—Continued.

II. Act of March 3, 1887—Continued.

An applicant for the right of reinstatement under said act will not be heard to deny that he voluntarily abandoned his entry where he has sold and transferred for a valuable consideration "all his estate, title, and interest" to the land covered thereby. XI–358

A relinquishment executed on notice that the entry had been suspended is not such a "voluntary" abandonment as will bar reinstatement under the act. VIII–324

"*Bona fide* purchasers of unclaimed lands," referred to in section 3, defined. VI–272

Plea of *res judicata* will not bar reinstatement under section 3, if the entry was erroneously canceled on account of a railroad grant. X–307; XII–272

Abandonment of land under a decision of the local office is not the "voluntary abandonment" that precludes reinstatement of the entry under section 3. X–264, 307

Application under the act for reinstatement will not be refused because not in accordance with the regulations of February 13, 1889, when made prior to the formulation of said regulations. XI–359

Section 4 confers a preference right upon purchasers in good faith from the company. VIII–570

An application for a patent under section 4, to lands erroneously certified on account of a railroad grant must be denied, where the want of good faith, both on the part of the original purchaser and the subsequent transferees, is apparent. XXIII–288

Section 4 was not intended to protect a speculative purchase made with knowledge of the defect in the title of the railroad company. XXV–117

The right of a purchaser from a railroad company to perfect title under section 4 may be exercised without regard to whether his purchase was made before or after the passage of said act, if it was made in good faith, and before the land was held to be excepted from the grant. XXIII–108

The act of February 12, 1896, amendatory of section 4, has no application in the matter of issuing patents to *bona fide* purchasers, or making demand of the company, where the contracts in question are fully completed prior to the passage of said act. XXIX–35

The right to receive a patent under section 4 extends to purchasers holding under contracts of purchase, whether such contracts are fully or only partially performed, if rights thereunder are acquired in good faith. XXVI–407

Railroad Lands—Continued.

II. Act of March 3, 1887—Continued.

The right to receive patent conferred by section 4, on purchasers of railroad lands, can not be recognized, where the contract of purchase has been abrogated by a subsequent agreement, made prior to the application for the exercise of such right. XXVI–350

The right to receive a patent under section 4 by one claiming under a contract to purchase is not defeated by a supplemental contract between such purchaser and the company, made prior to the application for patent, where the intent of said supplemental contract is merely to postpone the time for making the remaining annual payments, and to prescribe the manner of adjusting the rights and obligations of the parties under the original contract, in the event of the failure of the company's title by reason of a decision in a suit then pending, but not commenced until after the original contract was entered into, if the adjustment so contemplated has not been made. XXIX–479

The right of a purchaser from a railroad company to a patent under section 4 is not barred by the fact that at the date of his purchase the land was settled upon and occupied by another, and that such fact was known to the purchaser, where, at the time of such settlement and purchase, the land was included in an outstanding patent, issued many years prior thereto, for the use and benefit of the company. XXIX–504

The good faith of a purchaser who is asking for confirmatory patent under section 4 is not affected by the fact that there were settlers on the land at the time of his purchase who were attempting to claim the same under the homestead law, and that the purchaser knew of their presence there, where the lands at such time were not subject to homestead settlement or entry, but were included in outstanding patents, issued for the use and benefit of the railroad company, and the defect in the company's title as ultimately determined by the supreme court was in no respect affected by the presence or absence of settlers or settlement claims. XXX–283

The right to a patent conferred by section 4 upon purchasers who are without knowledge of the failure of the company's title, is a property right that vests in the *bona fide* assignee of such a purchaser, and entitles said assignee to the benefit of said act. XXIX–294

No right to a confirmatory patent under section 4 can be based on a contract of purchase that has been canceled by the company for failure to comply with the terms thereof. XXIX–666

Railroad Lands—Continued.

II. Act of March 3, 1887—Continued.

A purchase in good faith of patented railroad land, based on a contract entered into after the issuance of patent, entitles the purchaser to a patent under section 4, if it subsequently appears that the land was erroneously patented under the grant, and the patent is set aside. XXVI–271

A purchase of land from a railroad company must be held to be in good faith, and entitle the purchaser to a patent under section 4 if the title thereto is thereafter declared to be in the United States on account of the company having received, exclusive of said tract, an amount of land in excess of its grant, where, prior to said purchase, the land had been earned by construction of the road, and had been patented to the State, and where at the time of such purchase the State is holding such title. XXVI–407

On the partition of lands between the Chicago, Milwaukee and St. Paul Ry. Co., and the Sioux City and St. Paul Ry. Co., the two companies agreed to a mutual exchange of deeds conveying the right of way where the line of either road crossed the lands awarded to the other; and title so acquired by the Chicago, Milwaukee and St. Paul Company, prior to any action taken by the Government for the recovery of title, gives said company the status of a purchaser in good faith. XXIX–294

A remote purchaser in good faith of lands erroneously certified on account of a railroad grant, who buys without any knowledge of defect in the title thereto, is entitled to patent under section 4, irrespective of any question as to the good faith of the immediate purchaser from the company. XXVII–707

Under the grant of May 12, 1864, the company earned by construction title to certain lands that were patented to the State, but not to the company, subsequently said company set apart a right of way for its road across said lands, and sold its road, together with said right of way, and thereafter the title to said lands, so earned, was recovered by the United States in a suit to quiet title to lands erroneously patented to the State; *held*, that under section 4, act of March 3, 1887, the purchaser of said railroad and right of way is entitled to a patent for the lands embraced in said right of way. XXVII–717

In determining whether an applicant for patent under section 4 is a purchaser in good faith, the Department may properly consider certified copies of deeds tendered in evidence, even if said deeds were irregularly placed of record, and hence not conclusive as articles of conveyance. XXVII–707

Railroad Lands—Continued.

II. Act of March 3, 1887—Continued.

Lands falling outside the limits of a grant on the establishment of the end lines of the road, but certified to the use thereof, and sold by the company to purchasers in good faith, are of the class of lands the purchase of which is confirmed by section 4. XIX–148

The right to issue patent under section 4 does not arise until the land shall have been legally determined to belong to the United States. VI–272

A patent containing proper recitals and descriptions, may issue under section 4 of said act irrespective of the fact that the acreage embraced therein is less than a legal subdivision. XXIX–294

When a company has conveyed land improperly patented to it, and received payment therefor, the right of entry by the company's grantee, under section 4 of said act, will not be recognized while the patent to said land, in the name of the company, is outstanding. XX–505

The right to perfect title under section 4 given to the *bona fide* purchaser from a railroad company extends only to cases where the land was erroneously certified or patented to the company. IX–199

A congressional forfeiture of, for failure to construct the road, is also, in effect, a declaration by Congress that certified lands so forfeited were "erroneously certified," and the Department will not question such declaration in construing the provisions of section 4. XXIII–310

A forfeiture of the unearned lands within a grant requires an adjustment of the grant in order to determine what lands were restored to the public domain by the act of forfeiture, and the determination of such matter is an "adjustment" within the meaning of section 4. XXIII–310

One who has contracted to sell land purchased from a railroad company, to which title subsequently fails, is a proper party to perfect title under section 4. XIV–18

The right of a purchaser to perfect title under section 4 is intended to cover cases where the lands were unearned and erroneously patented or certified. XIV–18

The right to perfect title under section 4 is not defeated by the fact that the purchaser is the president of the company and trustee for the bond-owners if there is no evidence of bad faith on the part of said purchaser as against the company or said bond-owners. XIV–18

Railroad Lands—Continued.

II. ACT OF MARCH 3, 1887—Continued.

A purchase of railroad lands by one who is at such a time a director in the railroad company, trustee for the bondholders in the mortgage of the railroad lands, and party defendant as such trustee, in a pending suit instituted by the United States to recover title to the lands, is not a purchase in "good faith," and no right to a confirmatory patent under section 4 can be predicated on such purchase. XXIX–666

A corporation organized and existing under the laws of a State is in contemplation of law a citizen of the United States, and as such entitled to invoke the confirmatory provisions of section 4. XIX–148; XXIX–294

The grantee of a company to which land has been improperly patented may reconvey title to the company, and the company to the government, and so enable the Department to issue patent to said grantee under section 4. XX–505

The agreement of a transferee of the Mobile and Girard R. R. Co. to accept under section 8, act of September 29, 1890, a *pro rata* share of the lands earned by said company, and the consummation of such agreement, do not operate as a waiver of the right of said transferee to subsequently apply for relief under section 4, as to lands purchased from said company but not secured through said *pro rata* adjustment. XXIII–288

The purchasers of the capital stock of a company, that is applying for patent under said section 4, are not purchasers of the land within the meaning of the statute. XXV–117

A timber-culture entry of a tract made by a *bona fide* purchaser thereof under section 4 can not be held as an abandonment of his claim under said act; it appearing that such entry was only intended to be utilized in the event of failure to secure title through his purchase. XXIX–336

Right of purchase under section 5 should not be passed upon in the absence of an application. XXII–669

Purchasers under section 5 are not required to establish and maintain residence on the land included within their purchase. XXI–138

The proof required of a purchaser from a railroad company who perfects title under section 5 may be made by one acting under a special power of attorney. XXI–293

Method of procedure and proof required under application for the right of purchase as provided in section 5. VIII–27, 348

Application to purchase under section 5 must be presented in accordance with departmental regulations. XI–535

Railroad Lands—Continued.

II. ACT OF MARCH 3, 1887—Continued.

On publication of notice of intention to purchase under section 5, an adverse claimant is entitled to special notice. XV–174

Application to purchase under section 5 made by one claiming under a railroad company can not be entertained until it has been finally determined that the land is in fact excepted from the grant. XI–629

It is not necessary, on the part of a purchaser from a railroad company, to invoke the protective provisions of section 5, until such time as it has been authoritatively determined that the title of the railroad company has failed. XXIX–633

An application for the right of purchase under section 5 may be entertained at any time after it is ascertained that the land involved is excepted from the grant, and without waiting for the final adjustment of the entire grant. XXIII–508

The right of purchase from the government under section 5 is limited to conditions presented at the time of, or prior to the final adjustment of the grant, and hence does not extend to a purchase from a railroad company after such adjustment and the restoration of the land to settlement and entry. XXV–151

An application to purchase under section 5 lands erroneously patented to a railroad company can not be entertained until a reconveyance of title has been secured. XI–590, 603

Section 5 of said act is not repealed by the act of March 2, 1889. (25 Stat., 854.) XIX–9; XXII–558

Lands lying within railroad indemnity limits, not required in the final adjustment of the grant, nor selected on behalf of the same, but sold as a part of said grant to purchasers in good faith, are of the character subject to purchase under section 5. XIX–136

Land subject to indemnity selection, and sold to a purchaser in good faith, as a part of the grant, may be purchased under section 5, though no selection of the land was made by the company. XXIII–508; XXIV–42

The right of purchase under section 5 extends to indemnity lands as well as those within the granted limits. VI–272; XXII–587; XXIII–508; XXIV–42

Limitations of the right of purchase under section 5 specified. VI–272

The right of purchase under section 5 is not defeated by an adverse application to enter made after the passage of said act, nor by an application to enter pending at the passage of said act under which no settlement right is alleged. XIX–272

Railroad Lands—Continued.

II. Act of March 3, 1887—Continued.

The exceptions to the right of purchase conferred by section 5, as found in the first proviso thereto, are in favor of occupants, and in the second proviso in favor of persons who had made settlement. XIX–524

The right of purchase under section 5 is not defeated by a prior adverse application to enter under which no settlement right is asserted. XXIV–42

A claim resting upon an application to enter is not protected under either of the provisos to section 5, as the terms thereof provide only for the protection of settlement rights. XVII–307; XX–63; XXI–26, 557

The right of purchase under section 5 is not defeated under the first proviso to said section, if, at the date of the sale by the railroad company, the land was not in the *bona fide* occupation of adverse claimants under the preëmption or homestead laws, nor under the second proviso by an application to enter under the homestead law on behalf of one who does not allege a settlement right. XVII–314

Right of a grantee of a railroad company to purchase under section 5, not defeated by an application to enter pending at the passage of said act, but subsequently abandoned. XVI–66

The right of a purchaser from a railroad company to perfect title under section 5, where the title of the company fails, takes precedence over a subsequent adverse timber culture application. XXIII–543

The successful contestant of an entry acquires no preference right that can prevail as against the right of a *bona fide* purchaser under section 5. XXIII–508

A settler who successfully contests the adverse claim of a railroad company by showing that the land was, in fact, excepted from the grant does not thereby acquire a right of entry as against the privilege of a prior *bona fide* purchaser from the company, who is in open possession of the land, to perfect title under section 5. XXIII–180

A settlement claim acquired after the passage of said act, and subsequent to the sale of the land by the railroad company, will not defeat the right of the purchaser, or his transferee, to perfect title under the provisions of section 5 of said act. XX–227, 278; XXII–32, 558; XXIII–216; XXIX–633

A settlement claim acquired with full knowledge of an adverse right, asserted under a purchase from a railroad company, will not defeat the right of purchase under section 5. XXII–549, 682

Railroad Lands—Continued.

II. Act of March 3, 1887—Continued.

One knowing that land is claimed by a railroad company under its grant, and having constructive notice of the sale thereof, as shown by a recorded deed, can not thereafter initiate any right to such land which will defeat the right of the purchaser from the company to perfect title under section 5. XXIX–633

A settlement right acquired after December 1, 1882, and prior to the passage of the, defeats the right of purchase under section 5. XXII–93

The second proviso to section 5 applies only to lands settled upon in good faith after December 1, 1882, and prior to the passage of said act, and an application to enter filed within said period will not except the land from the right of purchase conferred upon transferees by said section. XVI–273

In holding that the right of purchase from the government under section 5 is not restricted to cases in which the purchase from the company was made prior to the passage of said act, but that the protection extended to settlers in the second proviso to said section is limited to settlement made before the passage of said act, the Department recognizes the remedial purpose of said section, and the rule of construction that the proviso, being a limitation of the remedy, must necessarily receive a strict construction. XXV–194

The second proviso in section 5 applies only to lands which, at the passage of the act, had been settled upon after December 1, 1882, by parties claiming in good faith a right to enter the same under the settlement laws in ignorance of the rights or equities of others. XI–607; XIV–237; XIX–9; XXII–587; XXV–77

The right of the purchaser under section 5, is defeated by the settlement of another made after December 1, 1882, whether the purchase was made before or after said date. VI–750

A settler who is claiming the benefit of the second proviso to section 5 is not entitled to plead want of notice as to adverse claims through the company, where at the time of his settlement he was apprised of the company's selection and the record at such time disclosed a conveyance of the land by the company. XXV–194

The existence of a settlement right acquired after December 1, 1882, defeats the right of a purchaser from the company. IX–199; XIV–35

The right of a settler to perfect title under the proviso to section 5 defeats the claim of a purchaser from the company under the body of said section. XIV–554

Railroad Lands—Continued.

II. Act of March 3, 1887—Continued.

A settler who enters into possession of a tract under a claim through a railroad company, but subsequently, and after December 1, 1882, and prior to the passage of the act of 1887, renounces such claim and asserts a right under the settlement laws, is entitled to perfect his claim under the second proviso to section 5 of said act, as against an adverse applicant under the body of said section, through whom the settler first derived possession. XVII–93

Settlement on land withdrawn for the benefit of a railroad company, in violation of an order expressly prohibiting such settlement until the formal opening of said lands thereto, confers no right that can be asserted as against the right of purchase under the body of section 5. XVIII–176

The right of purchase under section 5, is not defeated by a settlement claim acquired by a willful trespass on the possessory rights of the applicant. XVIII–528

Settlement upon, and entry of lands covered by an existing railroad indemnity withdrawal will not operate to defeat the right of a prior purchaser from the railroad company to perfect title under section 5. XVIII–502

The right of a purchaser from a railroad company to perfect title under section 5, for the protection of his grantees, is not defeated by an inchoate claim under a warrant location, where the locator by his laches justified said purchaser and his grantees in the belief that the claim under the location had been abandoned. XXI–374

Section 5 does not confer upon a purchaser from a railroad company, where the title of the company fails, the right to purchase from the government land known to be valuable for its mineral. XXIV–172

The right of purchase under section 5, will not be defeated by a mineral claim, unless it is made to appear as a present fact that the land is more valuable for the mineral therein than for agricultural purposes. XXI–507

The right of purchase under section 5, is limited to "the numbered sections prescribed in the grant," and therefore can not be exercised to secure title to even-numbered sections selected under the indemnity provisions of the act of June 22, 1874. XXIII–387

The provisions of the act of June 22, 1874, and section 5 are remedial in character, and hence should receive a liberal construction, and should also be construed *in pari materia* together with the original granting act in case of an application to purchase under said section 5. It must therefore be held that lands in even-numbered sections selected under the act of 1874 are from the time of such selection the "numbered sections" of the grant, as such phrase is used in said section 5, and may be purchased thereunder if said indemnity selection proves invalid. XXV–77

Railroad Lands—Continued.

II. Act of March 3, 1887—Continued.

The right to perfect title under section 5, may be properly accorded to one who appears to have bought the land in question from a railroad company and paid the agreed price therefor, even though no deed has been executed by the company. XXI–507

That a deed of the land purchased from a railroad company is not delivered until after the passage of said act does not defeat the right of such purchaser, or his assignee, to perfect title under section 5 thereof if the sale by the company was in fact made prior to the passage of said act. XIX–9

The right of one holding under a contract of purchase from a railroad company to perfect title under section 5 is not affected by the fact that said contract is neither acknowledged nor recorded; nor can the subsequent purchase of a tax title to said land by the applicant be regarded as such an abandonment of his contract as would defeat his right of purchase under said act. XXII–216

The right of a qualified transferee to purchase under section 5 is not affected by the fact that his purchase was made after the passage of said act if the land was originally purchased in good faith from the company. XVII–307; XX–227; XXI–557

In the exercise of the right to perfect title under section 5 it is not material whether the purchase from the company was made before or after the passage of the act, if made in good faith, believing the title to be good, and before the land was held to be excepted from the grant. XXII–238, 549; XXVI–252

The right of purchase under section 5 can not be exercised by one who has rescinded and surrendered his contract of purchase made with the railroad company. XIX–508

There is no right of purchase under section 5 on the part of one who has assigned to the railroad company the contract of purchase under which he claims, and surrendered possession thereof in accordance with such assignment. XXIX–677

The right of purchase accorded by section 5 is not lost by surrender to the railroad company of the contract of purchase, for the purpose of securing a return of the purchase money, where there was in fact no assignment, and no intention to make an assignment, to the company, of the purchaser's interest in the land, and where he continues to assert his claim thereto. XXX–388

Right of purchase under section 5 not limited to immediate purchaser from the company, but extends to any *bona fide* purchaser of the land who is qualified in the matter of citizenship; the qualifications of his grantor or intervening purchasers are not material. XI–229; XVI–273

Railroad Lands—Continued.

II. Act of March 3, 1887—Continued.

A covenant in the deed under which a transferee holds to the effect that "any and all additional title . . . . which may inure to the said first party, by reason of any acts of Congress or decisions of the Interior Department of the United States government, shall inure to the said second party" will not be held to defeat his right to perfect title under section 5 as a *bona fide* purchaser. XXI–575

The right of purchase under section 5 can not be recognized if the *bona fide* character of the conveyance, under which the applicant claims, is not established. XXIV–482

The right of a purchaser from a railroad company to acquire title under the provisions of section 5 is not in any degree dependent upon the good faith of the company in making the sale. The question of good faith in the transaction relates solely to the purchaser's connection therewith. XXIII–301

The fact that a railroad company may have known of the existence of a settlement claim that covered a tract of land at the date of its sale by the company is not material in determining the right of purchase under section 5, if the purchaser was not at such time apprised of said claim. XXVI–252

A purchaser from a railroad company of land certified on account of its indemnity grant, but in the actual possession of a settler, and embraced in his pending application to enter at the time of such certification, takes with notice of such possession and of the rights of the settler in the premises. XXIX–434

A transferee claiming the right to perfect title under the terms of section 5 must show that the purchase from the company was made in good faith. XX–227

Right of purchase under section 5, is not dependent upon the qualifications of the immediate grantor of the company, but may be exercised by any subsequent *bona fide* purchaser who possesses the requisite qualifications. XVI–273; XVII–307

One who purchases with notice of a pending homestead claim is not himself a *bona fide* purchaser in contemplation of section 5, of said act, but if his grantor holds under a *bona fide* purchase, made prior to said homestead claim, such purchaser succeeds to the right of his grantor and may perfect title under said section. XXVI–228

The fact that a purchaser had not, at the date of his purchase, filed his declaration of intention to become a citizen, will not defeat his right to perfect title under section 5, where it appears that prior to the date of his application under said section such declaration was duly filed. XX–142

Railroad Lands—Continued.

II. Act of March 3, 1887—Continued.

A married woman, an alien by birth, whose husband has declared his intention to become a citizen, occupies the status of one who has filed his declaration of intention, and, in respect to citizenship, is qualified to perfect title under section 5. XVIII–528

A corporation organized under the laws of a State or of the United States, that has purchased in good faith lands sold as part of a railroad grant, is entitled as a "citizen" to perfect its title to said land under section 5. (See 19 L. D., 140.)

XIX–141; XXII–587; XXVI–503

The right of purchase under section 5 is intended for the relief of *bona fide* purchasers from a railroad company where the title of the company fails by reason of the land being excepted from the grant. XII–247; XXII–587; XXIII–508

Lands within the common granted limits of the Chicago, St. Paul, Minneapolis and Omaha railway and Wisconsin Central railroad restored to the public domain on the adjustment of the former grant, and under the ruling then followed that said lands were excepted from the latter grant by the indemnity withdrawal on behalf of the Omaha company, and sold as a part of the grant to said company prior to said adjustment, may be purchased from the government under section 5, the right of the Central company having been forfeited by the act of September 29, 1890. XXII–558

The privilege of purchase under said act extends only to cases where the right of the settler and *bona fide* purchaser from the company has been defeated through an erroneous disposition of the land. XIV–35

The speculative value of the land will not be considered in determining the *bona fides* of the purchaser, especially where such point is raised by a stranger to the original transaction. XXIII–216

The fact that a purchaser from a railroad company does not, prior to his purchase, examine the records of the land department in order to ascertain the character of the company's title, is not sufficient to defeat his right of purchase, under section 57 as a "*bona fide* purchaser." XXIII–301,508

Any *bona fide* purchaser from the company, or one taking thereunder, who has transferred the land, may perfect title under section 5 where the claim of the company fails. XIV–237

Railroad Lands—Continued.

II. Act of March 3, 1887—Continued.

On application to perfect title, under section 5, to land excepted from a railroad grant by preëmption filings, the good faith of the applicant's purchase from the company is not impugned by the fact that prior to said purchase he had been register of the land district in which the lands were situated, and must therefore have known that said lands were excepted from the grant by said filings, where it appears that during said period the Department did not recognize a filing as sufficient to work an exception. XXIII–216

The status of an applicant is not affected by the fact that prior to his purchase from the company he had been receiver of the land district within which the land is situated. XXIV–409

The right to perfect title under the first clause of section 5 is intended for those who have in good faith paid their money for a title believed by them to be good, and the fact that such purchaser holds under a quitclaim deed will not exclude him from the benefits of said section. XIV–498; XXIII–216; XXIV–409

The purpose of section 5 was to protect all persons who had parted with a valuable consideration, whether in money or other property, in payment for lands to which the company could give no valid title. XXIII–301; XXIV–409

The good faith of a purchaser from a railroad company is not affected by the fact that he is a stockholder therein, nor by the further fact that he gave preferred stock of the company in exchange for the land. XXIII–508

The sale of the standing timber on land by a railroad company is a sale of an interest in the land, and the purchaser of such interest (the substantial value of the fee) is entitled thereby to acquire the entire title to such land by paying the government price therefor, as provided by section 5. XVIII–176; XIX–141; XX–142, 227

Directions given for the disposition of applications to purchase lands formerly withdrawn for the Chicago, Minneapolis and Omaha Railway Company. XI–607

Patent may issue under section 5 for tracts purchased without respect to the acreage embraced therein, even though it be less than a legal subdivision; but if a survey is necessary, the expense must be borne by the applicant. XVI–273; XXIV–410

The erroneous denial of an asserted right of purchase under section 5, and recognition of intervening adverse claims, will not preclude subsequent supervisory action on behalf of the applicant if the lands involved are yet within the jurisdiction of the Department. XXII–459.

Railroad Lands—Continued.

III. Act of March 2, 1889.

The lands declared forfeited by said act and restored thereby to the public domain, became subject to entry immediately upon the passage of said act. XIX–170

Declaring forfeited certain lands granted to Michigan and resuming title thereto operates to vacate a former certification of said lands and restores them to the public domain, subject to the first legal application therefor. XVI–368

Does not confirm entries of land included within the actual adverse occupation of a *bona fide* preëmptor on May 1, 1888. XIII–673

The confirmation of a cash entry, as provided for in said act, is not defeated by the occupancy of a preëmption claimant who was an alien at date of settlement, and did not declare his intention to become a citizen until after May 1, 1888. XXII–360

Instructions with respect to cash entries of odd-numbered sections within the limits of the Ontonagon and Brulé railroad grant; December 30, 1889. XIII–423

A settlement on land included within the forfeiture act of March 2, 1889, and existing at the date of said act becomes a lawful claim, and as such is excepted from the operation of the act repealing the preëmption law. XV–482

The act of, confers a superior right upon preëmption and homestead claims, irrespective of any fact whatever, save that the claim must be a *bona fide* one, it must subsist on the first day of May, 1888, and it must arise out of actual occupation of the land under color of the law. XVIII–403; XIX–110

In the adjustment of conflicting settlement claims for lands restored by, acts of settlement performed before such restoration may be properly considered in determining priorities. XVIII–392

A settlement on, restored to the public domain by the forfeiture act of, after the passage of said act, and prior to the time when such lands were opened to entry, is protected as against the intervening entry of another, if the right of such settler is asserted within the statutory period. XXVI–288

On the opening of railroad lands forfeited by said act, existing settlement rights take precedence over applications to enter filed at the hour of opening; and as between settlers on said lands priority of settlement may be considered. XXVII–569

IV. Act of September 29, 1890.

Instructions under the forfeiture act of. XI–625

Circular under the act of, with special instructions as to the Sioux City and St. Paul, the Northern Pacific, and Gulf and Ship Island roads. XII–3

Railroad Lands—Continued.

IV. ACT OF SEPTEMBER 29, 1890—Continued.

Circular under the act of January 23, 1896, amending section 3. XXII–204

The lands opposite the unconstructed portion of the Northern Pacific road from Wallula to Portland, forfeited by act of, and within the limits of The Dalles wagon road, will not be suspended from entry pending judicial action that may be taken on behalf of said wagon road. XVI–459

Directions given for the disposition of applications to enter, pending at the passage of the forfeiture act of (Wisconsin Central). XII–188

Notice of intention to purchase under section 3, must be filed in the local office by applicants within sixty days after publication of the regulation of March 31, 1891. XII–308

Under the treaty of June 9, 1855, the Department is authorized to withdraw from entry such lands as may be necessary to protect the Indians in the enjoyment of their ancient fishing privileges, and lands so withdrawn, falling within the limits of the forfeiture act, are not subject to purchase thereunder. XX–284

Bona fide purchasers of, certified in advance of construction take a good title where such sale is authorized by the grant, and the title to such lands thus held is not affected by the forfeiture act of. XII–258

The right of purchase accorded to settlers on forfeited, by the act of, can not be exercised by one who has not theretofore settled on such land and has no interest therein except as the tenant of another. XV–168

Forfeited by the, is subject to school indemnity selection. XXIII–423

Restored by the forfeiture act of, are not subject to entry under the timber and stone act. XV–292

Section 2 should not be construed as limiting the disposition of the forfeited lands to the homestead law alone, and consequently prohibiting a timber-culture entry of said lands. Departmental circular of December 24, 1890, should be modified in accordance with this view. XIX–575

Are by the forfeiture act of, taken out of the operation of the preemption law, and settlers on such lands are required by the amendatory act of February, 1891, to assert their homestead claims within six months after issuance of instructions. XVI–50

The forfeiture of, declared by the act of, was complete on the passage of said act, and opened to settlement immediately the lands designated therein. XVII–345; XXIII–58, 346

Railroad Lands—Continued.

IV. Act of September 29, 1890—Continued.

A settlement on, after the passage of the forfeiture act, and prior to the time when the lands were open to entry, is protected as against the intervening entry of another, if asserted within three months from the time when said land is subject to entry. XVII–345

The preferred right of entry accorded by section 2 to actual settlers in good faith on railroad lands forfeited by said act defeats the right of a subsequent settler to purchase said lands under section 3 of said act. XIX–571

Priority of settlement and possession at the date of the passage of the, determines the rights of conflicting claimants under sections 2 and 3 of said act. XXI–340, 349

A settler on lands forfeited by said act whose settlement was made prior to the passage of said act, and within an unimproved inclosure, including a large body of other lands, maintained by adverse claimants, has a preferred right under section 2 of said act, as against the right of purchase under section 3 thereof, on the part of said claimants holding under the railroad company. XX–242

The rights of an actual settler on railroad lands at the date of the forfeiture act of, relate back, under the provisions of section 2 of said act, to the date of his actual settlement on the land. XVII–385

The preferred right to make a homestead entry of forfeited, is conferred by section 2 upon settlers in good faith on such lands at the date of the passage of said act. XXII–392

A homestead entry made under section 2 can not be commuted until after a period of fourteen months' residence and cultivation from the date of entry, if such entry is made subsequently to the passage of the act of March 3, 1891, amending section 2301, R. S. XIX–114

An actual settler on lands embraced within the forfeiture act at the date of the passage of said act is entitled to a preferred right of homestead entry, and if he dies without having made such entry, the right survives to his widow, who was also at such time residing on said land. XXV–522

An applicant for the preferred right under section 2, who fails to appeal from the rejection of his application, loses whatever rights he may have been entitled to under said act; and it therefore follows that the heir of such an applicant can have no rights in the premises. XX–459

An Indian half-breed may exercise the homestead right conferred by the act of July 4, 1884, on railroad lands forfeited and restored to entry by said act. XX–300

Railroad Lands—Continued.

IV. Act of September 29, 1890—Continued.

A settler on, forfeited by the act of, is entitled under section 2 of said act, as amended by act of February 18, 1891, to a preferred right of entry for six months from the promulgation of instructions relative to the restoration of said lands. XV–297

The preferred right to enter forfeited railroad lands, accorded under section 2, as amended by the act of February 18, 1891, begins to run from the date when instructions are issued authorizing applications to be made for such lands. XXV–420

The preferred right accorded settlers by section 2 not defeated through the settler's improvements being, through mistake, not on the land claimed, nor by the intervening claim of another who makes no inquiry in the vicinity of the land as to its actual status. XV–410

A person claiming a preferred right of entry under section 2 must show actual settlement at the date of the passage of said act, and qualification at such time to make homestead entry. XVIII–489

The preferred right of entry accorded by section 2 to "actual settlers" at the date of the passage of said act is dependent upon acts of settlement followed by the establishment and maintenance of residence in good faith. XVIII–490; XIX–217

An allegation of settlement with a view to purchasing from a railroad company, made on behalf of an applicant, is disproved by the fact that the alleged settler entered the tract involved under the timber-culture law. XXI–135

The right of an actual settler as against another to make homestead entry of land under section 2 is limited to the land in the technical quarter section on which his improvements are situated. XVI–248

Where a settler makes homestead entry under section 2 and thereafter, through mistake, relinquishes said entry, and purchases the land under section 3 of said act when in fact not entitled to make such purchase, the entry may be reinstated with the right to treat said purchase as a commutation thereof, or perfect said entry in the regular manner. XXV–522

The right of purchase conferred by section 3 is in contemplation of law a preëmption right. XXII–131

The right to purchase lands forfeited by the, and the acts amendatory thereof, is secured to persons thereto entitled between the dates of September 29, 1890, and January 1, 1897, and no adverse claim can attach between said dates. XXIII–415

The act of June 25, 1892, amending the forfeiture act of, extends the period within which "actual residents" under section 3 of said act are entitled to the right of purchase until September 29, 1893. XV–298

Railroad Lands—Continued.

IV. ACT OF SEPTEMBER 29, 1890—Continued.

The right of purchase under section 3 can not be exercised if not asserted within the statutory period. XXII–127

The time within which the right of purchase under section 3, act of September 29, 1890, and the acts amendatory thereof, may be exercised is fixed by statute and can not be extended by the land department. XXIX–436

The period within which the right to purchase railroad lands forfeited by the act of September 29, 1890, could be exercised under the third section of said act, as extended by the act of December 12, 1893, expired January 1, 1897, and by failure to exercise the right of purchase within that period, rights under a homestead entry of record at that date attached absolutely as against such right of purchase; and nothing in the act of February 18, 1897, reviving and extending the right of purchase accorded by said section, can be so construed as to in anywise interfere with any adverse claim which may have attached prior thereto. XXX–492

The right of purchase granted by section 3 to persons who settled with the intent to purchase from the company is a personal right, and not transferable. XXII–255

The right of purchase from the government accorded by section 3 to those "who may have settled said land with *bona fide* intent to secure title thereto by purchase from the State or corporation" can not be exercised by one who had not established his residence on such lands prior to the date of said act. XVII–498; XIX–486

Persons who at the date of the passage of said act were not in possession of lands opened to entry thereby, or had not settled thereon, secured no rights under section 3. XIX–217

The possession of land lying within the overlapping limits of The Dalles Military Wagon Road Company and the Northern Pacific Railroad Company, and covered by the forfeiture act, acquired with a view to purchasing said land from the wagon road company, does not entitle the holder to perfect title thereto under the second clause of section 3. XXII–442

The use of a tract for grazing purposes, in connection with adjacent land upon which the applicant resides, does not give him the preferred right to purchase said tract as a settler under section 3. XVII–542

Under the amendatory act of January 23, 1896, residence is not required to be shown in support of an application to purchase under section 3, if the land has been cultivated and otherwise improved. XXII–386; XXIII–26

Railroad Lands—Continued.

IV. ACT OF SEPTEMBER 29, 1890—Continued.

The amendment of section 3, by the act of January 23, 1896, whereby actual residence as a prerequisite to the right of purchase is not required if the lands have been fenced or improved, can not operate to divest the right of an intervening homesteader acquired under the original act. XXVI–251, 633

The amendatory act of January 23, 1896, does not authorize an entry where the land is within a large enclosure constructed and maintained by several persons for their use in common, and the only improvements are of a temporary character. XXVII–337

Lands contiguous to a homestead entry are not subject to purchase by the homesteader as a settler, as he is not entitled to claim settlement at the same time under both the homestead law and said act. XXII–60

By the terms of the amendatory act of January 23, 1896, the right of purchase under section 3, conferred upon persons who settled with intent to buy from the company, is not defeated by the non-contiguity of the tracts applied for. XXII–290

The right of purchase accorded by section 3 to persons holding under a deed, written contract, or license from a railroad company, is limited to those whose evidence of title was executed prior to January 1, 1888. XXI–193

The right of purchase under section 3, accorded to persons in "possession," is limited to those holding under deed, written contract with, or license from the railroad company. XIX–486

The provisions of section 3, according a preference right of entry to persons who are in possession under "license" from a railroad company, extends to one who takes possession of, and improves such lands under the circular invitation of the company, and in accordance with said circular applies to purchase said lands. XVIII–337, 575

The records of the Department disclose the fact that the Southern Pacific Railroad Company issued a circular inviting settlement upon its lands, and judicial notice of such fact may be taken in the disposition of cases involving the rights of alleged licensees thereunder. XXII–229

The mere possession of railroad land can not be regarded as occupancy under a license within the meaning of said act. XXI–193

Settlement on, without an application to purchase from the company prior to January 1, 1888, can not be regarded as giving the status of "licensee," under section 3, to one who alleges that such settlement was induced by a circular letter of the company. XXI–392; XXII–117

Railroad Lands—Continued.

IV. Act of September 29, 1890—Continued.

One claiming under an alleged license, on the ground that an application to purchase the land from the company had been made, must also show, to make his claim good, the acceptance of said application. XXI–193

Neither the circular issued by the company inviting settlement, nor the application of the settler thereunder, taken alone, constitutes a license; but the two, when taken together, establish the right of the settler as a licensee. XXII–229

The preferred right of purchase accorded by section 3 to persons in possession under "license" can not properly be asserted by one who has not applied to purchase from the company, or who does not show any authority from the company to take possession of the land. XVIII–571

The right of a licensee under section 3 is assignable, and may be exercised by an assignee who is in possession of the land by an agent. XVIII–337

An application for the right of purchase on behalf of a partnership firm, made in accordance with the circular notice of a railroad company, may be properly the subject of assignment to one of the members of said firm, through agreement of the parties, and thus confer upon such assignee the status of a licensee. XXII–138

The provisions of said forfeiture act do not authorize an executor to exercise the right of purchase. XIX–42

A devisee is not entitled to purchase under section 3, if he is in possession, under a purchase in his own right, of the full amount of lands allowed to any one person under said act. XIX–42

The right to purchase under section 3, by persons holding under license from a railroad company, is inheritable, and may be exercised by an administrator for the benefit of the estate. XIX–449; XX–313

The right of purchase accorded a licensee by section 3, is transferable and inheritable, and may be exercised on behalf of the heirs of licensee. XXII–229

Joint possession of railroad land included within a common inclosure does not confer a right of purchase under section 3 if such possession is without license from the railroad company. XIX–542

The right of purchase accorded a licensee under section 3 is not affected by an expired lease of the occupant's right under which no adverse claim is asserted. XXI–515

No right is acquired by a contest against an entry of lands reserved on account of a railroad grant, that will defeat the right of the entryman, who is in possession as a licensee, to purchase the land under the provisions of section 3, and the amendatory act of January 23, 1896. XXIV–406

Railroad Lands—Continued.

IV. ACT OF SEPTEMBER 29, 1890—Continued.

The tenant of a licensee has no right as a settler that can be set up to defeat the possession of the licensee. XXII–229

Persons qualified to purchase from the United States, under the provisions of section 3, may take a technical half section, when so platted, even though such half section contains more than 320 acres. If the land lies in different sections, or is made up of different quarter sections or lots, the acreage must then approximate, as nearly as may be, the quantity named in the act. XVII–450

The allowance of a graduation cash entry, and the acceptance and subsequent retention by the government of the purchase money paid thereon, constitute a sale of the land within the meaning of section 8, the provisions of which not only expressly recognized the validity of such sale, but operated to confirm the title of the claimants thereunder. XXX–410

V. ACT OF MARCH 2, 1896.

By the provisions of section 1, the title to lands erroneously patented on account of a railroad grant, and sold by the company, is confirmed in the purchaser, on satisfactory showing as to the *bona fide* character of such sale and purchase. XXVII–552

Where the title of a purchaser of lands excepted from a railroad grant is confirmed by the, demand should be made upon the company for the minimum government price of the land, with a view to judicial proceedings for the recovery of the value thereof as contemplated by said act. XXIII–445

Where the title to lands is held confirmed under section 1, and a demand is made upon the company for the value of said lands, the minimum government price thereof will be treated, for the purposes of such demand, as the value of the lands. XXVII–552; XXIX–237

If it appears, on answer to a demand for reconveyance of lands excepted from a railroad grant, that the title of a purchaser thereof is confirmed by, proceedings should then be instituted for the recovery of the value of the land. XXIII–569

Under the provisions of said act the title to lands erroneously patented on account of a railroad grant, and sold to a *bona fide* purchaser, is confirmed. The government in such case must proceed against the company for the recovery of the value of the lands as directed by said act. XXV–469

Railroad Lands—Continued.

V. ACT OF MARCH 2, 1896—Continued.

Under said act it is the duty of the Secretary of the Interior to investigate the claims of all persons who assert that they are *bona fide* purchasers of lands erroneously patented or certified under a railroad grant, and who present their claims under said statute prior to the institution of suit to cancel the erroneous patent or certification. XXIX–9

The act of, prohibits the annulment of a patent erroneously issued on account of a railroad grant where the lands covered thereby are held by a *bona fide* purchaser, and confirms the right and title held by such purchaser under the erroneous patent, and thereby avoids the necessity for the issuance of another patent as required by the adjustment act of March 3, 1887. XXVI–489

The word "purchaser" as used in the act of, includes one who under a subsisting contract of purchase, made in good faith, holds lands erroneously patented or certified on account of a railroad grant, and title is confirmed in such a purchaser, by said act, even though he may not have made all the payments called for under said contract of purchase. XXVI–489

The distribution, under a plan of reorganization, of lands erroneously patented on account of a railroad among the holders of mortgage bonds, issued by the company receiving the benefit of the grant, brings the parties receiving such title within the confirmatory provisions of the act of. XXVI–494

A demand under the act of, for payment of the government price of lands erroneously patented on account of a railroad grant and thereafter disposed of to *bona fide* purchasers, should not be made on a railroad company as the successor in interest to the company receiving the benefit of the grant, if it appears that, as such successor, said company received no benefit from the sale of the lands erroneously patented. XXVI–494

Where title to lands erroneously certified or patented to or for a railroad company is adjudged to have been confirmed in a purchaser by the act, demand for the value of such lands should be made of the company for whose specific benefit they were certified or patented. XXX–197

If an application for confirmation under the act of, embraces land which was covered by a homestead or preëmption entry that has been erroneously cancelled on account of the railroad grant, such entryman should be notified and given opportunity to apply for reinstatment under section 3, act of March 3, 1887.

XXVI–489; XXVII–552

Railroad Lands—Continued.

V. ACT OF MARCH 2, 1896—Continued.

If in the adjustment of a railroad grant it appears that homestead or preëmption claims have been erroneously cancelled for conflict with the grant, the claimant should be notified and given opportunity to make application for reinstatement under the third section of the act of March 3, 1887, and to submit a showing in support thereof; and the title of any purchaser through the railroad company to any of the land embraced in such homestead or preëmption claim will not be declared confirmed by the act of, until after due opportunity to the claimant to make such application and showing. XXX–197

On application for confirmation of the title held by an alleged *bona fide* purchaser, as provided for in said act of, the railroad company, or its successor in interest, should be advised of said application, and allowed opportunity to show cause why title should not be confirmed in the applicant. XXVI–489

Under the provisions of section 1, suit will not lie to vacate patents issued under the act of June 22, 1874, in lieu of lands lost or relinquished in consequence of the failure of the government to withdraw said lands from sale or entry. XXVI–705

The confirmatory operation of said act, for the benefit of a *bona fide* purchaser of patented railroad lands, is not affected by the fact that said lands are included within a timber-land reservation, where, prior to the establishment of said reservation, the lands had been patented to the company. XXVIII–270

Receiver. See *Land Department.*

Records. See *Evidence.*

The control of the records, books, and papers of the General Land Office is intrusted to the discretion of the Commissioner, and the Department will not interfere in such matter where no abuse of such discretion is shown XXX–415

Papers belonging to the permanent files of the General Land Office may not be returned to the parties filing the same. V–258

An attorney in good standing before the land department, prior to filing his appearance in a case, but preliminary thereto, is entitled to inspect the record and all papers on which action has been taken affecting the right of the parties. V–400

An attorney in good standing before the land department is entitled to inspect reports of a special agent on which final action has been taken by the General Land Office adverse to the interests of his client. XXIV–379

A stranger may not inspect the papers in a case in the General Land Office except as the attorney of record. II–222

Records—Continued.

Where the documents in evidence in the General Land Office are original and properly belong elsewhere, especially when they are not yet properly before the Commissioner, they may be withdrawn after copies are made. II–651

The proper examination or use of the plats and other public records in the local offices is not prohibited by law and should not be denied except where it will interfere unnecessarily with the public business. II–197, 656; III–174

In the local land offices, should be treated as open to inspection on the part of the public, subject only to the restriction that such examination shall not interfere with the orderly despatch of public business. XXVII–625

Registers and receivers of other than consolidated offices may not furnish abstracts from the records for private use and charge therefore except in the case of plats and diagrams. II–655

Circular with respect to exemplification of. XI–386

A request for information as to the cost of certified copies of specified papers in the General Land Office, is entitled to a response, with such information as may of necessity be required to form the basis for a request for an exemplification of the. XXIV–415

May be corrected where, through negligence of the local office, it does not show the facts. XV–31

An omission of the records in the local office to show the filing of an application to enter may be supplied by affidavits. XVII–53, 279

Parol evidence may be accepted to show facts that should have appeared of, but were omitted therefrom by the local office. XXII–630

An affidavit made to supply certain alleged omissions of matter from the, which should appear therein, if it exists in fact, will not be stricken from the files, on motion therefor, if the facts, as alleged in said affidavit, are not denied. XXV–420

Report of local officers as to their official acts should be received as correct in the absence of any charge or evidence to the contrary. XV–184

Question as to correctness of, is too late when raised for the first time on review. XIX–473

In no case should notations on the official tract-books be expunged or erased. If a notation is made that is afterwards found to be erroneous, the record should be corrected by another entry thereon showing the error. XVI–409

To cure a defect in official proceedings a former local officer, whose term of office has expired, may append his signature to a jurat accompanying evidence that was submitted before him while holding said office. XVII–96

Records—Continued.

In the absence of an official, showing the purchase of a tract, there is no basis for a patent. XX–830

Register. See *Land Department.*

Rehearing. See *Practice.*

Reinstatement. See *Application; Entry; Railroad Lands.*

Relation.

The doctrine of, can only be invoked to preserve a right, not to create one. IV–117; VI–100; X–464

Reliction. See *Public Land.*

Relinquishment. See *Application*, subtitle No. X; *Indian Lands; Railroad Grant*, subtitles XII and XIII.

When filed, is equivalent to cancellation under the act of May 14, 1880. I–122

When filed, operates *eo instanti* to release the land from the entry. III–343; IV–123, 188, 196, 506; VII–561; X–139; XVIII–589

Takes effect when it is filed in the local office and operates *eo instanti* to release the land from the effect of the filing or entry. The subsequent notation of the relinquishment on the records of the General Land Office is merely a clerical act. XXIII–492

Takes effect immediately on filing notwithstanding a pending contest and opens the land to the entry of the first legal applicant, which is subject, however, to the preferred right of the successful contestant. II–266, 283, 313, 619

Of part of an entry relieves the land covered thereby from reservation, but does not affect the remainder. XXII–128

Should be received when presented and entry canceled. V–451

Should not be accepted and acted upon during the pendency of a departmental order suspending the entry involved. XVIII–226

After relinquishment the land is subject to the first legal application. III–320

On cancellation after, the land covered thereby is open to entry by the original entryman, if qualified, the same as by any other applicant. XIII–638

Filed during the appeal of an adverse applicant leaves the land open to the first legal applicant, subject to the final disposition of the pending appeal. XIII–590

Takes effect of the date when filed, though action thereon may be delayed pending proof required as to the identity of the party executing the same. VI–579

Relinquishment—Continued.

Sent to the local office during a vacancy in the office of the register is not filed in contemplation of law, and if returned to the entryman before the vacancy is filed no action can be taken thereon. XIV–133

Held for examination and found valid relates back to date of its filing, and the application with it is the first legal application. II–324

Can not be made of a fraudulent entry. (See 2 L. D., 316.) II–92

Is effective whether the entry is valid or invalid and operates at once to open the land. II–316; IV–449

The summary action authorized by the first section of the act of May 14, 1880, not to be taken where there is a pending adverse right. I–156

Effectually divests the entryman of all claims under the entry. III–468; IV–29, 587; VIII–606

Filed by the entryman terminates his rights in a pending contest with an adverse claimant. XI–251; XXI–95

One who applies to relinquish and take another tract on the ground of mistake in the first entry is estopped from claiming any right thereunder as against another who, with knowledge of such facts, settles on said land and files therefor. X–279

Executed during the sickness of the entryman, when he could not go upon the land, subsequently returned and retained by him, does not call for cancellation. XIII–63

The husband is not required to join in the execution of, where the wife relinquishes an entry made by her previous to marriage. XIII–548

Of homestead entry not defeated by the protest of the entryman's wife. XI–352

No objection to action upon, that it was filed without the knowledge or consent of the entryman's attorney. XV–307

Ineffectual so far as releasing the land until filed. III–224; VI–246; IX–445; XV–182; XVIII–589

Made by the entryman after he has parted with his interest in the land is null and void. VI–512; VIII–641; XIII–37

Will not defeat the right of a prior purchaser holding under sale of the final certificate. IX–97

By an entryman who has transferred all his interests in the land covered by his entry can not defeat the rights of his transferees. XXI–12

Made by the entryman after mortgaging the land will not defeat the right of the mortgagee to show that the entryman was entitled to patent. VIII–618

Relinquishment—Continued.

Of a desert entry, theretofore assigned under departmental regulations, will not defeat the right of the assignee; nor can the holder thereof plead want of notice of the assignment. XVIII–226

Will not be accepted where the right of a transferee would be defeated thereby. XIV–224, 644

Of a final entry may be accepted without requiring the entryman to show that he has not transferred the land where no interest of a transferee is asserted and the record discloses no fraudulent intent. XIV–82

The rule that one who has parted with his interest in land will not be permitted to relinquish is for the protection of the transferee and should not prevent action on a relinquishment where it is asked by the transferee, who also urges non-compliance with law as against the existing entry. XII–100

The rule that a, executed after final proof and after sale of the land, is invalid, can not be invoked on behalf of one who fails to show, under oath, any interest in the land, or that the entryman in fact had complied with the law. XXIII–28

Transmitted by mail is to be regarded as filed at the moment it was received at the local office (9 a. m.), though the letter transmitting it was not opened for some time afterwards; timber-culture application accompanying it is to be similarly regarded. II–326

Executed by a minor may be rescinded by him on reaching majority where no fraud appears and the relinquishment is against his interest. XV–162

Entry canceled on, will not be reinstated to protect a transferee who alleges fraud in the absence of evidence connecting the intervening entryman therewith. XVI–140

The failure of a contestant to pay to the claimant an alleged contract consideration for his relinquishment, duly filed, will not be considered. II–621

A charge of fraud in procuring, will not be inquired into as between a contestant who files the same and another party having possession of a prior one where on the contestant's charge and the evidence thereunder the entry should be canceled. XVI–288

An entryman who executes a, and delivers the same to a creditor to secure the payment of a debt, is not entitled to reinstatement, where it appears that said, was filed on account of the non-payment of the debt and the rights of third parties have intervened XXII–398

The consideration that may have passed between the parties on the execution of a, is not a matter for departmental inquiry, except as an incident, in connection with other facts, tending to show that the entryman was fraudulently deprived of his land. XXII–150

Relinquishment—Continued.

The voluntary maker of a, must abide the consequences of the act. III–181

Must be intentionally and voluntarily made: one obtained through misrepresentation, deceit, or duress is void. II–135; III–376; IV–281; VIII–192; XXV–197

Executed for the benefit of one holding a confidential and fiduciary relation to the entryman can not be recognized as of any validity in the presence of a just and equitable adverse claim. XXIV–177

Under a, executed without consideration, and for the benefit of one holding a fiduciary relation to the entryman, it is incumbent upon the party presenting the same to show that no advantage was taken of the entryman, if the good faith of the transaction is called in question by him. XXV–197

A party who seeks to invalidate a, on the ground that it was obtained from him while in a state of intoxication, must establish the fact that he was at such time deprived of the use of his reason and understanding through his intoxicated condition. XX–195

Executed by the entryman while so intoxicated as to not comprehend the character of the instrument is ineffective. II–325; XIV–133; XVI–25

Obtained while the entryman is so intoxicated as to be unfit for the transaction of business should not defeat the right of a deserted wife to enter the land involved. XV–555

An entry must be reinstated where the cancellation thereof is due to a, procured from the entryman while in a condition of insanity. XIX–6

On presentation of, in due form the local office is warranted in canceling the entry in the absence of information that the instrument was executed by one of unsound mind. XIII–541

In ascertaining the validity of a, the Department may, in proceedings of its own, determine whether the person executing the same was of sound mind. XII–690

When procured from a person of unsound mind, by one who is aware of the mental unsoundness of the entryman, the entry must be reinstated; and the intervening entry of a third party, in such case, is made subject to the right of the Department to investigate the circumstances under which the relinquishment was obtained, and determine the good faith of such party in connection therewith. XXVI–168

Executed by one of unsound mind prior to a judicial determination of his legal status is not void, but voidable by himself, his heirs, or devisees. XII–690

Relinquishment—Continued.

To warrant the vacation of action based on a, executed by one of unsound mind, some fraud, actual or constructive, must be charged and proven and a return of the purchase money tendered. XII–690

Executed by the guardian of an insane entryman, under the direction of a probate court, is unauthorized by law and invalid. XXIV–494

Not voluntary when made because of conflict and to avoid a contest. I–45

Executed for use only in the event of certain contingencies and left in the possession of the entryman's agent is of no legal effect. IX–609

Failure of local officers to promptly act upon, will not prejudice the rights of a subsequent applicant for the land involved. X–673

Failure of the local office to act upon will not defeat equities arising thereunder. XI–592

Failure of local officers to properly note of record their action upon a, will not defeat the right of another under a subsequent entry of the land embraced within said relinquishment. XV–21

Refusal of local office to act upon, should be followed up by appeal to preserve rights claimed thereunder. IV–532

That conforms to the requirements of the act of May 14, 1880, should be filed on presentation and the entry canceled. XX–365

Irregularities attending the execution of a, will not affect its validity if it expresses the will and purpose of the party making the same at the time when it is executed and filed. XVII–396

It is not essential to the validity of a, that it shall be executed in writing on the receiver's duplicate receipt; it is sufficient if the proof offered satisfies the local officers that the entry is in fact relinquished. XXVIII–448

Improperly rejected on account of form in the matter of acknowledgment. III–546

Framed in terms of absolute and unconditional surrender of all rights claimed thereunder is not limited in its operation by a statement therein that it is made for the purpose of making a new entry in lieu of the one relinquished. XI–344

Is not effected by an informal paper executed and held for the purpose of securing the payment of a note. XI–597

The fact of, may be accepted as established, though the record may fail to show such action, where abandonment of the land is shown, and where, from the action of the local office, it would appear that the entry was regarded as having been extinguished by release. XXI–169

Relinquishment—Continued.

An instrument executed by a homestead entryman purporting to waive all claim to any mineral land embraced within his entry, but which does not in terms surrender any specific legal subdivision, and was evidently not intended as an abandonment of any specific tract, should not be regared as a XXIII–353

It is not requisite to the validity of a, under the act of May 14, 1880, that the signature of the entryman should be acknowledged before an officer. XVII–396

No third party can acquire any standing as a contestant, intervener, or otherwise in a controversy about the validity of a relinquishment. XVII–396

Execution of, is not in itself sufficient to warrant the cancellation of an entry, but may be considered in determining the good faith of the entryman. XVI–6

One executing, can not direct who shall receive the benefit thereof, but the naming of an intended beneficiary does not invalidate the instrument. XVIII–638

Of an entry is for the benefit of the United States only, and the issue in such case is between the government and the entryman. XVII–396

The purchaser of, does not secure a preferred right of entry. XV–441; XVII–180

Purchaser of, acquires no right to the land as against the United States. II–133; VI–246; VII–560; IX–269; XV–181

In the hands of a purchaser can not be made the basis of a contest by such purchaser. XIII–495; XVIII–144, 358

It is competent for the Department to investigate the circumstances attending the execution and filing of. V–365

The purchase of an outstanding, and filing thereof, by the contestant, during the pendency of the hearing does not necessarily affect the good faith of his contest. XIX–509

Of the preferred right of entry when purchased may be filed without specific authority from the contestant. V–294

Of the contestant's preferred right of entry leaves the land open to the first legal applicant. (See *Contestant*, sub-title No. II.) V–293

Of land covered by a preëmption filing is a waiver of claim under the filing, and thereupon another's settlement made prior to the relinquishment takes effect. II–620

Right of settler on land covered by the entry of another attaches at once on filing, and defeats an application to enter filed by a third party immediately after relinquishment. XIII–192; XVI–386

A timber-culture entryman who files a, and applies to enter the land under the homestead law can not thereby defeat the adverse right of a settler who is then residing upon the land. XIII–148

Relinquishment—Continued.

Of a timber-culture entry, accompanied by a homestead application of the entryman, does not defeat the adverse right of a settler then on the land. XIV–439

As between a party claiming under, and another asserting a prior settlement right, the claim of the latter must be recognized. XV–542

Accompanied by an application to enter cuts out a settler on the land. IV–123; V–149

Accompanied by declaratory statement defeats simultaneous application to contest. IV–363; X–139

Accompanied with an application to enter, filed simultaneously with an affidavit of contest, defeats the right of the contestant. XIV–144

As between one claiming under, and another applying to contest, the judgment of the register at the time as to the matter of priority will be accepted in the absence of a clear showing of error therein. XIII–541

Of entryman offered with application under a different law should be received and application allowed subject to adverse claims. V–451

On relinquishment of a homestead entry the settlement of a prior settler applying for homestead entry seven days after the relinquishment takes effect under seetion 3, act of May 14, 1880. II–117

Filed with an application to enter, returned because the deposit for fees and commissions was insufficient, should perhaps not have been returned with the application, but should have been made of record, so as to open the land to entry. II–278

Filing of, will not disturb acquired adverse rights. IV–505

May not be attacked for want of genuineness by a party who does not establish the whereabouts and identity of the entryman. III–593

Filed by a contestant will secure the right of entry though the contest may fail on the grounds alleged in the affidavit of contest. V–5

Executed but not filed is not proof of abandonment of a homestead. II–28

For value about a month after entry (timber culture) is proof of fraudulent inception of the entry. II–92

Of a desert entry by one holding under an invalid assignment will not relieve the land from its previous state of appropriation. XXII–369

Of desert entry should be followed by immediate cancellation and the land opened to entry without further action. V–708; VI–1; VII–227; VIII–371, 605; X–673; XIII–638; XIV–123

Relinquishment—Continued.

Of timber-culture entry must be signed by the heirs in case of entryman's death. I–121, 136, 149

Of a timber-culture entry by the executor and sole devisee warrants cancellation where it appears that compliance with the law can not be shown within the life of the entry. VII–383

Of timber-culture entry exhausts the right of the entryman, and he can not be permitted to enter a second tract. I–125

Of homestead entry may be executed by administrator, under direction of the court, on the finding of fact that no heirs exist qualified to succeed to the rights of the deceased. VI–672

The only persons entitled to call in question the legality of a, executed by an heir of the entryman are such other heirs of the deceased as may be qualified to consummate the entry. XXII–415

A relinquishment of a homestead entry executed by one claiming the status of sole heir of the deceased entryman will not be accepted where it appears that said heir is a minor and that under the law of his domicile he is not competent to execute such an instrument. XXX–37

By an administrator estops the widow of a homesteader from asserting a claim as such where for a term of years she acquiesces in his action and valuable adverse rights intervene. XV–262

No warrant of law authorizing the administrator of a deceased homesteader's estate to file. XV–264; XXVII–611; XXIX–565

In Kansas the father and mother inherit jointly the estate of a son who dies intestate, leaving no wife nor issue, and it therefore follows in the case of a timber-culture entryman who thus dies, having an entry in said State, that if the father subsequently dies before the entry is carried to patent a valid relinquishment requires the joint action of the mother and the heirs of the deceased father. XXIII–297

Executed and given to another to file constitutes a special agency that expires with the death of the principal. XVIII–301

Executed by entryman's father as agent and left with him for subsequent filing, but not filed until after the entryman's death; the law casts the homestead right on the widow, who was entitled to the land unless she actually or constructively ratified the relinquishment. II–138

Of a homestead entry not presented during the lifetime of the entryman should not be accepted against the protest of the widow. XV–506

There is no authority under the law for the wife of the entryman to file a, binding her husband, where it does not appear that the same is done with his consent. XIX–515

Of a donation claim operates to restore the land to the public domain. XV–511

Relinquishment—Continued.

Of Indian allotment may not be made except under direction of the Department. XII–162

Of a timber or stone claim prior to final proof confers no right on the party obtaining and filing it. II–333

Filed pending contest and as the result thereof inures to the benefit of the contestant. I–145; III–225; IV–127, 587; VIII–400; XIV–306

Does not inure to the benefit of a contestant unless it be found that it was the result of the contest. VIII–357; XI–210; XIII–541

Filed after the initiation of a contest does not inure to the benefit of the contestant where it is found that it was not filed as the result of the contest. XVII–184

Can not be held to be the result of a contest, where, at the date of its execution, notice had not issued on said contest, and the entryman in good faith had cured any default on his part that may have existed prior thereto. XXV–359

Can not be held the result of a contest where it is made and filed without actual knowledge of said contest, and the principal charge therein is not sustained by the evidence submitted. XXVIII–187

Filed during the pendency of a contest, but not the result thereof, does not inure to the benefit of the contestant. XXI–333

A contestant is not entitled to the benefit of a, filed during the pendency of charges of such character, and so presented that it must be held that it was not the result of the contest. XXII–71

If filed pending contest before local office and before the testimony is closed, it inures to the benefit of the contestant. I–103, 155

When filed before the final disposition of a contest it should be treated as proof of abandonment and the case closed. I–156

Filed pending and as the result of a contest (before the local officers) clears the record, and no further evidence in the contestant's behalf is required. II–265, 311, 318, 619

Filed during the pendency of a contest and as the result thereof inures to the benefit of the contestant and excludes all rights under the subsequent application of another to proceed against the entry in question. XIV–420

Made after initiation of contest, but before notice and without knowledge thereof, and subsequently filed by the purchaser on being officially informed that said contest has been finally closed, does not inure to the benefit thereof though in fact pending when the relinquishment is filed. XII–626

Where filed during appeal in a contest case, the land is open to the first legal applicant. XX–147

Filed during the pendency of an invalid contest and independently thereof leaves the land open to the first legal applicant. XII–492

Relinquishment—Continued.

Filed pending contest is presumptively the result thereof, though such presumption may be overcome. II–283; VII–442; IX–440, 461; XI–210; XIII–196, 495

Inures to the benefit of the contestant if the result of the contest though the charge as laid therein may be insufficient. X–105; XIX–8

Filed prior to day of trial in a pending contest (for illegal inception) may be taken as an admission of the charge. II–291

Filed with notice of pending application and contest is in aid of the latter. IV–455

Does not inure to the benefit of a contest that is initiated for the purpose of fraudulently defeating rights acquired in good faith under said relinquishment. XIV–383

Filed is in aid of pending suit charging sale thereof. IV–522

May inure to the benefit of second contestant if the first contest is shown to be fraudulent. IV–504

Filed after the final dismissal of a contest does not inure to the benefit of the contestant. II–282; VI–236; XXIV–428

Made after affidavit of contest is filed but before notice issued thereon, and without knowledge of said contest, does not inure to the benefit thereof. VII–46

Not the result of a contest when made before and filed after the proper dismissal thereof. IV–413

Obtained and filed by stranger to contest and subsequent thereto of no avail to contestant. I–103

Executed after a hearing on a contest, and award of preference right thereunder to the contestant, can not operate to defeat or impair the right so recognized. XXI–474

Filed pending contest does not defeat the right of the contestant to be heard on the charge as laid. IV–505; VIII–357; IX–269, 440, 461; X–256, 302, 398; XI–65; XIII–34, 196; XV–320; XVI–329; XVIII–92, 108; XIX–175; XX–334

Has no effect on the right of the contestant if its aid is not invoked by him. IX–440

Does not defeat the right of a contestant if the cancellation is the result of the contest. XIII–437; XVI–514

Filed after the initiation of a contest, and independently thereof, will not defeat the preferred right of the contestant, if the facts shown at the hearing require the cancellation of the entry on the ground charged. XXIX–171

The right of a contestant, who establishes the truth of his charge, not defeated by, and the intervening entry of a third party, where the cancellation is the result of the contestant's action. XX–179

Right to proceed against an entry not defeated by subsequent relinquishment and the intervening filing of another. XI–525

Relinquishment—Continued.

The ruling that does not permit a, filed after initiation of contest, but prior to notice, to defeat the right of a contestant, is not applicable to a second contest filed subject to the disposition of the pending suit. XX–365

Filed during a contest leaves the land open to entry by the first legal applicant, subject only to the preferred right of contestant: and other contests then pending against said entry abate on the cancellation thereof. XX–3

Filed pending proceedings by the government takes effect at once, and the land is thereafter open to the first legal applicant, subject only to valid adverse claims. XXVI–337

Filed by a contestant can not defeat the right of an intervener to be heard who sets up fraud and collusion as against the contest. XIII–24

If an entry is relinquished pending attack by several parties alleging priority of settlement, the question of priority should be determined before allowing either of the parties contestant to make entry of the land involved. XXVI–177

Repayment.

Circular instructions of January 22, 1901. XXX–430

The First Comptroller may refuse to pass an account for, if he is of the opinion that the proof required by law has not been made, though the proof submitted may be deemed sufficient by the Department. XIX–286

Proof of loyalty required in claims for, arising prior to April 13, 1861. XIX–286

Right to, not recognized in the absence of express statutory authority. V–114, 316; VII–295; VIII–102, 462; IX–49, 62; X–12; XXV–111

Laws providing for, applicable where the consideration is carried into the Treasury as cash. I–533

Right to, not saved because payment was made under protest. II–688; III–555

The statute does not authorize the return of the purchase price on the ground alone that the entryman might have secured patent without such payment. XXIX–188

An unearned cancellation fee should not be returned to any one except the depositor, in the absence of due authority shown to receive the same and receipt therefor. XXIX–245

On application for, under an entry canceled for fraud, the applicant will not be permitted to go back of the judgment of cancellation and show that in fact there was no fraud. XXIV–493; XXVII–59

A final decision under which a desert-land entry is canceled, on account of the non-desert character of the land, can not be impeached collaterally on application for. XXIV–536

Repayment—Continued.

If an entry on the proofs presented is properly allowed, and on subsequent investigation is canceled, the fact that such cancellation is erroneous, under a changed construction of the law, will not justify. XXV–210

The statutory provisions regulating, do not include the erroneous cancellation of an entry among the cases where a return of the purchase money may be made. XXVI–419

Of an alleged excess paid on the purchase of an isolated tract can not be allowed, where the bid and payment are voluntary, and for the protection of any interest of the purchaser. XXIX–320

There is no statutory authority for, where the entry fails through no fault or error on the part of the government. IV–262; XIII–359

The provisions of 2362, R. S., and of the act of June 16, 1880, with respect to, contemplate relief only in cases where, for some reason not within the entryman's control, title to the land can not be passed by the government. XXIV–575

Is not authorized where the entry is of land subject thereto and might have been confirmed if the entryman had complied with the law. XXI–5

Where it appears that money has been received by the government through error or mistake it should be returned. III–69

Should be allowed if "from any cause" the entry was erroneously allowed and no fraud appears. I–526, 532

In case of an entry that is "erroneously allowed" for land not subject thereto, and canceled for that reason, may be granted without inquiry as to the truth or falsity of the final proof. XXIII–137

An entry is not "erroneously allowed" within contemplation of the statute where the alleged defect is not of such character as to necessarily defeat confirmation of the entry, and might have been cured on compliance with the requirements of the General Land Office. XXVIII–551

Only allowed where title can not be given. IV–187, 293; VIII–462

Allowed where entry can not be confirmed in its entirety. V–527

Construction of the phrase "erroneously allowed" in the act of June 16, 1880. II–694; VII–509

Entry is not "erroneously allowed" if obtained by false testimony. IX–103

The right to, does not exist where the entry is properly allowed on the proofs presented, but is subsequently canceled on the ascertainment that it was procured on the false and misleading representations of the entryman. XXV–30; XXVI–3; XXVIII–422

Repayment—Continued.

Where a patent issues on an entry erroneously allowed, and the patentee, under a suit to quiet title is adjudged to hold the title in trust for another and required to convey the land to the successful party in such proceeding, and so does, and thereafter applies for repayment, the land department is without jurisdiction to cancel of record the entry so allowed, but may properly regard it as no longer a subsisting entry of the applicant requiring cancellation. XXVIII–133

A homestead entry commuted for town-site purposes on proof which discloses the fact that at the date the original entry was made it was the intention of the entryman to take the land for such purposes, is "erroneously allowed" within the terms of the statute providing for. XXVII–580

The fact that the acts of the entryman contributed to or caused the erroneous entry ought not, under the statute, to deprive him of the remedy where he has acted in good faith. III–520; VII–509

An entry allowed by the local office on testimony afterwards rejected as insufficient by the General Land Office or the Department is an entry "erroneously allowed," for which repayment may be accorded in the absence of bad faith.

VIII–423; XIV–514; XVII–489; XX–374; XXVI–284

If the land entered is not of the character contemplated by the law under which the entry is made, but is expressly represented by the entryman to be of such character, and the allowance of the entry is procured by such representation, the entry in such case is wrongfully procured and not "erroneously allowed" within the meaning of the repayment law. XXV–111

May be accorded in case of a homestead entry "erroneously allowed" of Alabama lands reported "valuable for coal" prior to the act of 1883 and not subsequently offered. IX–643

An entry made on the relinquishment of a prior entry, under the mistaken belief of the local office and the entryman in the *bona fide* character of said relinquishment, when in fact it was fraudulent, is "erroneously allowed," and the entryman is accordingly entitled to repayment of the fees and commissions paid thereon. XXII–615

A timber-land entry made on proof prematurely submitted is an entry "erroneously allowed." IX–611

An entry made during the pendency of an appeal involving the land is "erroneously allowed," and the purchase money should be repaid, if the entry in question can not be confirmed. XXIII–414

May be accorded under a timber-land entry "erroneously allowed" without requiring the claimant to proceed with his application as against an intervening claim. IX–611

Repayment—Continued.

Upon application for repayment the land must be relinquished; the land department will not act on a conditional relinquishment, nor without full compliance by the applicant with the terms of the act. II–429

On application for the return of purchase money by a patentee who was required to purchase under section 5, act of March 3, 1887, when in fact the land passed by the railroad grant under which he held, the applicant should surrender the patent, but should not be required to execute a deed of relinquishment. XXIV–256

Relinquishment accompanying an application for, does not defeat the right of. X–34

Right of, not impaired by relinquishment filed under the advice of the General Land Office. VIII–423

The fact that an entry may have been "erroneously allowed" is no ground for, if said entry could have been confirmed if the entryman had not voluntarily relinquished the same. XXVII–194

The fact that the United States has no title to a tract of land embraced within an entry at the date of its allowance and subsequent relinquishment, does not warrant, where the relinquishment is solely due to the entryman's intention to abandon the land, and relinquish all rights under the entry, and not to any knowledge or belief on his part that the entry could not be confirmed. XXVII–600

One who submits final proof and secures patent on part of the land embraced in his entry, and relinquishes the remainder, and then applies for return of the money paid on the relinquished tract, will not be heard to say that his entry was "erroneously allowed." XXVIII–17

Where an entry has been erroneously allowed in part, or has been canceled in part for conflict, the entryman may relinquish the entry in its entirety, or retain and perfect his entry as to that part left intact. But a relinquishment of a specific part, in such case, is equivalent to a declaration of an intention by the entryman to avail himself of the benefit of his entry as to the remainder, and if such part is subsequently canceled for non-compliance with law, he is not entitled to repayment therefor. XXVIII–422

The right to, does not exist where an entry is voluntarily relinquished and canceled for such reason only. XXVII–363

Where one who on filing application furnished proof of desert-land character, relinquished the tract voluntarily, and asked repayment on the ground that it was not desert land, he is estopped by his poofs from denying its character; repayment denied. II–693

Repayment—Continued.

Should not be denied on the ground that the entry was "voluntarily relinquished" when the relinquishment was accepted "without prejudice" under a decision that the government could not give title to the land entered. VI–334

Not allowed on voluntary relinquishment where the entry is not erroneously allowed and is susceptible of confirmation.
I–40, 529, 531; II–692; V–527

The purpose of the act of June 16, 1880, in requiring the relinquishment of all claim under the entry, and the cancellation thereof, prior to the allowance of, is to prevent any assertion of right under such entry after repayment; and such purpose is fully satisfied where the applicant, who has received patent for the land, in obedience to a judicial decree executes a deed for the land to another, who by such decree is adjudged to be entitled to receive the government title. XXVI–328

Not allowed in case of patent prior to deed of relinquishment duly recorded in the proper office of registration where the land is situated. IV–293

Not allowed for entry relinquished on account of untillable character of land where the entry is made without actual knowledge of the character of the land. IV–133

Of the fees and commissions paid on an entry will not be allowed where the entry is relinquished on account of the undesirable character of the land and a second entry made. XXIV–255

The only person qualified to apply for, is the one in whom the title to the land is vested at the date of the cancellation of the entry, or the heirs of such party. XIV–101

On application for, by an entryman he must show that the land is free from incumbrance. XXIV–246

A transferee who applies for, must show, among other things, that the land covered by the entry in question is not incumbered.
XXI–20

The right of assignees to, under section 2, act of June 16, 1880, is restricted to assignees of the land, and does not extend to persons holding an assignment of the claim for the money paid on the entry. XXI–366; XXIV–246; XXX–53

A purchaser of the land subsequent to the cancellation of the entry acquires no right to a repayment of the purchase money paid by the entryman. XIV–140; XX–75; XXIV–246; XXVII–59; XXX–4

The transferee holding the present interest in the land to which title has failed is the party entitled to. VIII–636

A mortagee, whose claim is a mere lien on the land, is not an assignee of the entryman and as such entitled to.
XI–283; XV–392; XXIV–246

Repayment—Continued.

An application for, made by a mortgagee of the land, who also holds an alleged assignment of the right to repayment, does not present a case wherein the status of the applicant, as an assignee, must be determined, if the duplicate receipt is not surrendered and all claims to the land properly relinquished. XXIV–496

The assignee of a mortgage is entitled to, where an entry is erroneously allowed and prior to its cancellation the land is mortgaged and the mortgage assigned, and after cancellation the mortgage is foreclosed and a sheriff's deed secured; but the assignee in such case should relinquish all claim to the land before repayment is allowed. XXVIII–201

In the case of a mortgage executed prior to the cancellation of the entry covering the land, and a deed made to the mortagee after such cancellation, for the purpose of giving additional effect to the mortgage, the holder of such conveyances may be regarded as an assignee within the meaning of the act of June 16 1880, and as such entitled to. XXVI–425

Where an entry is erroneously allowed, but before its cancellation the land is mortgaged, and the mortgagee receives a deed therefor under foreclosure proceedings initiated subsequent to such cancellation, he is an assignee within the meaning of the act of June 16, 1880, and as such entitled to repayment. XXX–136

The purchaser of lands at a tax sale, at a time when the legal title thereto is in the United States, does not occupy the status of an assignee of the entryman under the statutory provisions with respect to. XXIII–555

A person holding under a deed executed prior to the submission of final proof and the issuance of final receipt has no standing as an assignee under the statute providing for. XXV–89

An entryman who applies for, and alleges that he has sold the land, that the sale was made under warranty deed, and that the warranty has been made good, should furnish evidence that he has made good his warranty, and also obtain a release from his grantee of all interest under the entry involved. XVII–140

Fees paid on homestead or timber-culture entries canceled for conflict or because they have been erroneously allowed and can not be confirmed will no longer be credited upon new entries, but will be repaid on proper application, as prescribed in office circular of August 6, 1880. II–661; X–469

Application for, should be made when second entry is allowed, instead of asking credit on second entry for fees paid on first. VIII–239

Repayment—Continued.

Of the fees and commissions paid on the first entry will not be granted, where a second is allowed, in the absence of such error on the part of the government in allowing said entry as would defeat its confirmation. XX–551; XXI–209

Of fees and commissions allowed where entry was canceled because it was made on land which was occupied and improved by another. II–117

Where the entry was a second entry and illegally made, but at date thereof the local officers were ignorant of the prior entry, repayment of fees and commissions is refused. II–682

Of fees and commissions allowed where entry could not be amended because of intervening adverse rights. II–255

Of fees and commissions may be allowed where the entryman, to avoid conflict resulting from an error in the local office, in good faith relinquishes his entry and takes another tract. XIX–243

Where the local office recommends the cancellation of an entry on a contest involving priority of right, and the entryman thereupon applies for repayment, accompanying his application with a relinquishment, his entry may be treated as "canceled for conflict," within the meaning of the statute, if the recommendation of the local office is subsequently approved. XXVII–616

An entry that on contest is canceled on account of the superior right of a *bona fide* settler is "canceled for conflict" within the meaning of the repayment act of June 16, 1880. XXVIII–21

A homestead entry, made for land covered by a preëmption declaratory statement, and subsequently canceled on the allowance of the preëmption entry, is "canceled for conflict" within the meaning of the repayment act of June 16, 1880. XXX–255

Allowed for fees and commissions charged on additional homestead entries made under the act of March 3, 1879. I–525

Under section 1, act of June 16, 1880, fees and commissions paid by one who in good faith purchases certificates of soldiers' additional rights, and locates the same, may be repaid, where the entries so made are thereafter canceled on the ground that they were based on spurious and forged papers. XXI–248

Of fees improperly collected for taking testimony should be made to the principal and not to the attorney. III–125

Fees improperly received for taking testimony to be returned to the person paying the same. III–160

Fees received by the local office since August 4, 1886, for reducing to writing testimony in support of an entry may be repaid. XIV–645

Repayment—Continued.

Of the one dollar deposited for notice of cancellation will not be granted on the ground that the fee was unearned where the record shows that the contestant must have received notice of cancellation. XIX–517

Of final proof fees improperly collected and paid into the Treasury can not be allowed. IX–60

Of half the fees paid by a railroad company on list of selections where certified for the joint benefit of two companies denied. III–410

The filing fee paid on a preëmption declaratory statement may be properly repaid under section 2, act of June 16, 1880, where the entry can not be confirmed, and the application is in other respects entitled to favorable action. XX–160

Of the filing fee paid on a canceled reservoir declaratory statement can not be allowed if such declaratory statement was not erroneously received, even if such filing be considered an "entry" within the meaning of the act of June 16, 1880. XXIX–400

A reservoir declaratory statement is not an entry within the meaning of the repayment act; hence the fees paid on such statement can not be repaid if it is subsequently canceled for conflict with a prior entry. XXIX–660

Where selections were made by the railroad company (North and South Alabama) under act of June 22, 1874, but rejected because the odd sections whereon based were disposed of before definite location, repayment of fees and commissions may be made. II–681

Not allowed for alleged double minimum excess paid for land in railroad limits where the price is enhanced prior to the claimant's settlement. I–524

Where the local officers erroneously sold double minimum land at the minimum price and on demand the purchaser declined to pay the additional price since entry was erroneously allowed and can not be confirmed, he may have repayment on compliance with circular requirements. II–679

Certain lands were withdrawn for a railroad (Central Pacific), but were excepted from the grant, and prior to restoration were embraced by another grant (Southern Pacific), but were excepted from it also; the odd sections were ordered to be sold at minimum and the even sections at double minimum, and the applicant bought at the double minimum price; he can not have repayment. II–679,680

Of alleged double minimum excess on canceled cash entries made under the act of June 8, 1872, on the ground that the Secretary of the Interior, in fixing the price of the land, erroneously supposed it to be within the limits of a railroad grant, can not be allowed, it not conclusively appearing that the Secretary was controlled by the reason alleged. XXI–118; XXIII–151; XXX–297

Repayment—Continued.

An entryman who transfers a commuted homestead entry, under the act of October 1, 1890, from single minimum land to land held at double minimum, is properly required to pay the additional $1.25 per acre, and consequently is not entitled to. XXI–427

There is no provision for the repayment of the excess where the lands reduced by section 3, act of June 15, 1880, were subsequently sold at double minimum price. II–677; XX–216; XXVII–147

The act of June 16, 1880, does not authorize the Secretary of the Interior to draw his warrant upon the Treasury for double minimum excess erroneously charged for lands reduced in price by section 3, act of June 15, 1880; but where the consideration received by the government is in the form of surveyor general's scrip, that yet remains in the custody of the Department, the error may be corrected by a return of scrip equal in amount to the excess. XXVIII–248

Of the purchase price paid on a cash entry made under the act of June 15, 1880, by one claiming the status of a transferee, must be denied, where such entry is canceled because the "instrument in writing," by which the alleged transfer was made, is not "*bona fide*." XXIX–686

Of the excess over minimum paid for railroad lands which lie within the exterior limits of a grant (Northern Pacific), but which do not pass by it because they form part of a reservation (Bitter Root Valley), is not within the intention of the relief provided by the act of June 16, 1880. II–675

Where lands are purchased at double minimum while within the granted limits as fixed by the general route, and are afterwards left outside of said limits by the definite location, repayment of excess may be made. II–676

In case of double minimum excess paid for land subsequently found not to be within the limits of a railroad grant the excess may be repaid without waiting for the approval of the entry for patent. VI–383

There is no statutory authority for the return of the excess, where lands may have been improperly sold as double minimum, except in cases where the lands have been afterwards found not to be within the limits of a railroad grant. XXVIII–456

There is no authority for, of double minimum excess erroneously charged for lands within the limits of a railroad grant. V–316; XXVII–296

There is no statutory authority for the return of a double minimum excess in fees and commissions erroneously required on a homestead entry of lands in fact single minimum, where such money has been covered into the United States Treasury. XXIV–159

Repayment—Continued.

There is no authority for, of double minimum excess, erroneously charged for land settled upon by the entryman prior to withdrawal under a railroad grant. XIX–580

Allowed in case double minimum price has been paid for land afterwards found not to be within the limits of a railroad grant. V–437; VII–29

An application for, of double minimum excess is properly allowable, if the land purchased is found not to be within the limits of a railroad grant, though it may have been within the limits of an unrevoked withdrawal at the date of purchase. XXVII–452

Alleged double minimum excess can not be repaid under the last clause of section 2, act of June 16, 1880, unless it be shown that the land is not within the limits of a railroad grant. XIII–572

An even-numbered section lying within the common granted limits of two railroad grants remains at double minimum though one of such grants may have been forfeited, and an application for, on the ground of double minimum excess must be accordingly denied. XXIV–9

On application for, of alleged double minimum excess it is held that the even-numbered sections within the primary limits of the grant for the Southern Pacific branch line, and the forfeited grant for the Atlantic and Pacific, are properly rated at double minimum, although within such conflicting limits the prior grant to the Atlantic and Pacific operated to defeat the grant to the Southern Pacific. XXIX–639

Of alleged double minimum excess not allowed where land within the limits of a railroad grant is properly sold at that price, even though the grant, including the limits in question, is subsequently forfeited. XII–316

A claim for, of double minimum excess can not be allowed if the land at date of entry was properly rated at double minimum, though the road opposite said land was not constructed and the grant therefor was afterwards forfeited. XXV–308

Of an alleged double minimum excess can not be allowed where the land was properly held at that price at the date of its sale. XIX–458; XXV–309

May be allowed of double minimum excess erroneously charged for land reduced in price by the act of March 2, 1889. VIII–583

Not allowed on claim of excess where double minimum price was paid for lands within the Texas Pacific grant prior to the act of March 2, 1889. VIII–530

No authority for, of excess over single minimum in case of an entry within the forfeited limits of the Texas Pacific grant made prior to March 2, 1889. XIV–8

Repayment—Continued.

Not authorized of the excess over $1.25 per acre paid on a desert entry within railroad limits though the land was held at single minimum at date of initial entry. XII–632

Though not allowed for excess over single minimum rate when the land was properly held double minimum at date of initial desert entry, but was subsequently reduced in price by statute, credit for such excess may be given on completion of the entry. IX–429

There is no authority for, of double minimum excess erroneously required under a desert-land entry of an even section within the limits of a railroad grant. XVII–339; XXII–314

An entry of desert land within railroad limits at double minimum price is not an entry "erroneously allowed" on which repayment of the first installment of the purchase price can be made, where the entry in canceled for non-compliance with law. XXII–604

Not allowed for double minimum excess erroneously required on desert entry; credit therefor may be given on final payment. XVI–170

Where a desert-land applicant failed for three years to comply with the requirements of the law (alleging inability to obtain water) and relinquished voluntarily, repayment of the purchase money is denied. II–691

Of the first installment on a desert-land entry, paid at the time of filing the declaratory statement, must be denied, where said payment and declaratory statement are properly accepted, and the subsequent cancellation of the entry is due to the entryman's non-compliance with the requirements of the desert-land law. XXIX–438

Repayment of the first installment of the purchase money paid on a desert-land entry will be allowed where the entry did not conform to the statutory requirement in the matter of compactness and was for that reason erroneously allowed and could not have been confirmed. XXX–355

The right of, can not be recognized on the cancellation of a desert-land entry for failure to submit final proof within the statutory period, when it appears that the entry was not erroneously allowed. XXVI–283

A desert-land entryman who fails to reclaim part of the land embraced within his entry, and thereupon relinquishes such tract, in not entitled to, of the money paid on the tract so relinquished. XXIV–542

If a preëmption claimant for offered land fails to assert his right of purchase within the statutory period, an intervening desert-land entry will defeat said right; and if the entryman thereafter voluntarily relinquishes his entry, he is not entitled to, on the ground that his entry was canceled "for conflict." XXIV–575

Repayment—Continued.

A desert entry of land embraced within a prior preëmption filing is not an entry "erroneously allowed" within the meaning of the repayment act, though an entry so made is subject to the subsequent assertion of the preëmptor's right. XXIV–575

Of the purchase price of the land can not be allowed a desert entryman who fails to furnish supplemental proof of reclamation, properly called for by the local office, and abandons his claim to the land. XXIV–308

Of the money paid on a desert-land entry can not be made where such entry is properly allowed on the proofs presented, but, on subsequent proceedings, is canceled on account of the non-desert character of the land. XXIV–536; XXV–110

The right of, does not exist where a desert entry, on the proof presented, is properly allowed and its subsequent cancellation is due to the discovery that through mistake, not the fault of the government, the entry in fact covers land not reclaimed or intended to be entered. XXVII–272, 448

Where an entry, not "erroneously allowed," is canceled for failure to effect reclamation within the statutory period, the entryman is not entitled to, on a showing that he did not reclaim the land because he believed it might be held subject to a railroad grant. XXVIII–22

If the greater portion of a legal subdivision included in a desert-land entry, made prior to survey, is found, upon survey, to be within an alternate odd-numbered section which had passed to a railroad company under its grant before the entry was allowed, and had therefore ceased to be public land, said entry was "erroneously allowed and can not be confirmed," and the entryman is entitled to repayment. XXX–362

Excepting instances of cancellation for conflict, the criterion by which to determine whether repayment is authorized by section two, act of June 16, 1880, is not, What was the reason for the cancellation of the entry? but, Was the entry erroneously allowed and not susceptible of confirmation? XXX–362

Where an entry was erroneously allowed, and could not have been confirmed, the reason which led the entryman to relinquish his entry is of no moment and can not affect the right of repayment given to him by the express terms of the statute. XXX–355

Can not be allowed in the case of a desert entry canceled because made for speculative purposes and for land not desert in character. XI–313

Of the first installment paid under a desert entry not allowed in the absence of due showing that the failure to perfect entry was not the fault of the entryman. IX–670; X–12

Repayment—Continued.

Of the first installment paid on a desert-land entry can not be made where the declaratory statement is canceled on account of its fraudulent character. XXVI–673

Can not be allowed to a desert entryman who fails to secure a permanent water supply in the absence of diligence shown in such matter. XII–78; XIII–396; XIX–505; XXVII–589

Allowed where a tract forming a part of a desert entry is relinquished because non-irrigable, the entry having been made in good faith and prior to survey. VI–665

Desert-land entry allowed on insufficient evidence of reclamation is an entry "erroneously allowed," and if subsequently relinquished on account of inability to show reclamation repayment may be allowed in the absence of bad faith. VIII–491

A desert-land entry made in good faith under the general act of 1877 by one who has theretofore had the benefit of the special act of 1875 is an entry "erroneously allowed," and repayment of the money paid thereon may be properly allowed. XXIII–61

Where a desert-land declaration is filed under the Lassen county act of 1875, and, prior to the expiration of such filing, a declaration for the same land is filed and accepted under the general act of 1877, the latter declaration is not "erroneously allowed" within the intent and meaning of the repayment act. XXIX–145

A desert entry of land subject thereto under the terms of the desert-land law is not "erroneously allowed," though the land, on account of its proximity to a military reservation, may have been excluded from settlement and location under the act of March 3, 1853, extending the preëmption law to the State of California. XXVII–363

Can not be allowed for the excess over single minimum paid on a desert entry within railroad limits though the land was held at said rate at the date of initial entry. IX–49

Where the entry (commuted homestead) was canceled for laches or fraud of the entryman, exhibited in his final proofs, repayment of purchase money is denied. II–686

Will not be allowed if the entry is canceled on account of its fraudulent character or because it was secured through false testimony. I–528, 535; II–598; V–319; VIII–322; IX–103; X–553; XII–130, 607

One who procures an entry through false testimony is not entitled to, and a transferee under such an entry has no better right than the entryman. VIII–140

No right of, exists where a preëmption entry is canceled on account of the preëmptor having prior thereto exercised his preëmption right, and the record shows that he swore falsely, in support of his second entry, that he had never had the benefit of the preëmption law. XXV–29

Repayment—Continued.

Where hearing was ordered on allegations impeaching the good faith of the entryman, and on default by him the entry was canceled on the evidence, repayment is refused. II–690

Not allowed where a false oath is made as to the matters required in section 2262, R. S., as forfeiture of the purchase money is a statutory result. II–683, 685; IX–160

Will be denied if the entry was procured by false testimony; and the "conviction of the entryman before a jury on a charge of perjury" is not required to give the Department jurisdiction to determine the character of the testimony. XV–26

Of the purchase price paid for coal land is not authorized where the entry is canceled on account of fraudulent character. XV–146

Will not be allowed on a canceled mineral entry that was secured through fraudulently suppressing the fact that said entry was for the benefit of a foreign corporation. XX–379

Of the purchase price paid on a mineral entry can not be allowed, where the entry is canceled for failure to supply supplemental proof, and it is not made to appear that the entry could not have been confirmed. XXIX–188

Where a preëmptor had made final proof and (it transpiring that he had also made a homestead claim during the life of his preëmption) afterwards relinquished it, since the entry was not canceled through fault of the government, repayment of purchase money is denied. II–684

May be allowed if the entry is canceled for the insufficiency of the proof where there was no fraud or concealment and the local officers held the proof sufficient. III–518; VII–474, 509; IX–259

In the absence of fraud, may be allowed where an entry is canceled for failure to comply with the law as to residence. VI–694

May be allowed when it is impracticable for the claimant to comply with an order requiring new final proof, and good faith is apparent. X–34

Can not be allowed under a homestead entry that is canceled for failure to comply with the law. XII–528

Can not be allowed under a homestead entry that is canceled for failure to submit final proof within the statutory period. XII–535

May be allowed where commutation proof made in good faith is found insufficient in the matter of residence and the entryman, not being able to show further compliance, relinquishes his claim to the land. VIII–162, 423

Right of, recognized where the entry was allowed on final proof irregularly submitted and the entryman can not make new proof as required. VIII–636

Repayment—Continued.

Can not be allowed to one who voluntarily commutes his entry and then claims that his final proof shows that he was entitled to patent without payment. VII–295

Not authorized by the fact that the homesteader is entitled to take the land under section 2291, R. S., if he elects to make cash entry. IX–261

Not allowed to one whose commuted homestead entry is suspended for further proof, and who thereupon seeks to recover the purchase price, with the privilege of thereafter submitting new proof under section 2291, R. S. XII–623

With the right to thereafter submit ordinary homestead proof, can not be allowed to one whose commutation proof is found insufficient, but whose entry is not canceled. VIII–84

Allowed where through mistake the settlement and improvements of the entryman were not on the land covered by the entry and it was accordingly canceled. VIII–188

Will not be allowed where a timber-land entry is canceled because the land is not subject thereto and the entry was made without personal knowledge of the land. VII–10

May be allowed on cancellation of timber entry because the land is not subject to such appropriation where fraud does not appear. VII–40

Allowed where a timber-land entry made in good faith is canceled on the ground that the land is not of the character subject to such appropriation. XII–431

An entry under the act of June 3, 1878, of land subsequently found fit for cultivation on the removal of the timber, and canceled for such reason, will not, in view of the late construction of said act, be held fraudulent in character on application for, where it appears to have been made with no intention of fraud on the part of the entryman. XXII–337

May be allowed for a timber-land entry made on proof prematurely submitted. IX–611

Not allowed because the character of the land does not suit the entryman and he therefore desires to secure a return of the purchase price. I–40

Where a person was misled as to the character of the land by a private survey and relinquished his claim, as responsibility for the mistake does not rest on the government, repayment is denied. II–694

On cancellation of timber-culture entry because the land was not subject thereto not allowed, the entryman without personal knowledge having made oath that the land was devoid of timber. VI–398

Repayment—Continued.

May be allowed on cancellation of timber-culture entry, if the entry was made in good faith, though the land was not "devoid of timber." VI–656

Return of surveyor-general's scrip, paid on the commutation of a timber-culture entry, can not be allowed on the ground that the entryman might have perfected title without commutation. XXV–160

No authority for return of purchase money paid on commutation of timber-culture entry and allowance of new proof under the act of March 3, 1893. XXI–287

Allowed where illegal entry was made through ignorance without fraud or bad faith on the part of the entryman. III–520

The act of June 16, 1880, does not contemplate repayment where the entry (indemnity scrip location) was founded in fraud (delivery of scrip to one whose claim was without right) even though the assignee was ignorant of the fraud. II–429

May be allowed of money paid for land in excess of the area actually embraced within the entry. VII–32

Must be denied where the entry is made with full notice of the rights of a prior settler and is voluntarily relinquished on account of the conflict. IV–262

There is no authority for repayment of moneys deposited under section 2356, R. S., in excess of the cost of the land purchased at private entry. II–659

Of interest on deferred payments under an Osage entry not authorized by statute. XIV–204

Can not be allowed of money deposited to cover the cost of office work on the survey of a mineral claim though the deposit is not expended. VII–102

May be allowed on cancellation of an entry made in good faith for a tract of swamp land. X–39

No claim for, where one purchases land from the State, claimed by it as swamp, and it subsequently appears that such land did not pass under the swamp grant. X–393

May be allowed in case of graduation entry erroneously allowed for land that passed under the swamp grant. VIII–621

Not entitled to, on failure to comply with terms of purchase of Indian trust land under the act of July 5, 1876. I–529

And reimbursement provided by act of March 3, 1887, in case of settlers and purchasers within the limit of the grant to the Northern Kansas railroad. V–627

Will not be allowed of money deposited with the receiver as agent of the applicant. VIII–77

Repayment—Continued.

The payment of the purchase price of land to the receiver before the acceptance of final proof is at the risk of the purchaser, and if said proof is rejected and the receiver fails to account for the money so paid, the right to, from the government can not be recognized. XXIII–282

No authority to return purchase money paid to the receiver before the local office is ready to act on the application for the land. XXII–322

Not authorized where the purchase price of land has been twice paid. V–114

No statutory authority for, where the receiver fails to account for the purchase price of land and the entryman pays therefor a second time. XIV–236

Where entry has been made by scrip assigned by a fraudulent holder, repayment will not be made to the assignee entryman notwithstanding his ignorance of the fraud, and especially where he was not the legal representative of the confirmee. II–429

No authority for, to one holding under a patent rightfully issued, but claiming such right by virtue of another title derived through a different source. VII–99

Not allowed to one who as assignee under a graduation entry made cash payments in lieu of settlement and cultivation. VIII–134

Of the bonus voluntarily paid for an entry where two or more applications were simultaneously made and the preferred right of entry was put up at auction is denied. II–687, 688, 689; III–555

The right to, recognized where the privilege of contesting an entry was successfully bid for, but the contest dismissed on account of a prior suit of record. III–67

Denied to an assignee of a canceled warrant location made under fictitious name. III–458

The failure of the Chicago, Milwaukee and St. Paul Railroad Company to build its road within the time stipulated forfeited its right of way by its own default, and it is not entitled to repayment of the money advanced therefor. XXI–324

Money paid to the Secretary of the Interior by a railroad company to secure a right of way across an Indian reservation, under an agreement which could not be carried into execution without the ratification of Congress, should be returned when Congress subsequently provides for a preferred right of purchase on behalf of the company on the performance of certain conditions, and such right is thereafter forfeited on account of the failure to perform said conditions. XXVI–290

A decision denying the right of, and long acquiesced in will not be reopened. VIII–134

Repayment—Continued.

Application for, pending appeal from order of cancellation is a waiver of the appeal. v–409; ix–643; xi–624

Where transfer of payment is denied, and the applicant fails to appeal, his rights in the premises are lost by such failure, and can not be recovered through a subsequent application for repayment. xxi–5

The statutes providing for, contemplate only the return of money actually paid, and where land is paid for in part by cash and in part by a military bounty land warrant the Secretary of the Interior has no authority, in allowing, to draw his warrant upon the Treasury for a sum larger than the cash payment made by the entryman. xxiv–539

While there is no statutory authority by which the Secretary of the Interior may set off a demand of the United States against the claim of an individual for, the Department will not certify such a claim to the Treasury with knowledge of a probable valid demand of the government against the claimant, without an ascertainment of the existence and extent of such demand. xxviii–163

The return of purchase money, in case of an entry erroneously allowed and canceled, may be made on the application of one who shows a partial interest, according to the proportion of his interest. xxiv–249

The provisions of section 7, act of March 3, 1891, do not in terms nor by implication have any application to the matter of. xxiv–493

Reservation.

I. Generally.
II. Indian.
III. Military.
IV. Forest Land.

I. Generally. See *Railroad-Grant*, sub-title No. v; *Reservoir Lands; Settlement.*

Authority of President to create, and provisions of law relative thereto. i–702

The President is vested with general authority in the matter of reserving land for public uses. vi–18, 317; x–513

No specific statutory authority exists empowering the President to reserve public land; but the right to reserve such lands for public uses is recognized and maintained by the courts. xiii–426, 607, 628

The President, in setting apart land, is regarded as acting under authority of Congress. i–30

Reservation—Continued.

I. GENERALLY—Continued.

The power of the President to create, extends to any unappropriated public land. I–30, 553

Executive order of President declaring a, will be held constitutional until otherwise judicially decided. XXII–197

Of lands declared by executive proclamation, subject to congressional action and subsequently ratified by Congress, is operative from the date of the proclamation. XXII–196

Land set apart by executive authority for public use is not subject to disposition under the public land laws during the existence of the reservation. VI–317

The Commissioner of the Land Office is vested with discretionary authority, and the withdrawal made by him of land supposed to be included within a claim is legal if not disapproved by the Secretary. III–55

The power to reserve land for "public purposes," authorizes a withdrawal for a court-house site. XXIX–336

A question as to the reservation and appropriation of public land, there being power to so reserve or appropriate it, is one of fact rather than of mere form. XXX–611

An order suspending public land from disposal to prevent the fraudulent entry thereof is within the authority of the Commissioner of the General Land Office. XII–326

For public school purposes in Alaska, may be properly made by the government in the absence of express statutory authority. XVIII–288

The mere occupancy of land in Alaska for the purpose of trade and manufacture will not confer any right upon the occupant, as against the government, that will prevent a, of the land for naval purposes. XXV–212

Made by competent authority reserves the land from appropriation under the public land laws. VI–585

Lands which for a long period of time have been with the knowledge and acquiescence of the government included in the site of a reservoir used as a feeder of a canal in the maintenance and operation of which the government is interested, are not "unappropriated public lands" and are therefore not subject to soldiers' additional homestead entry. XXX–186

May be effected through a proclamation or an executive order. XIII–426

Created by executive order excludes the land from entry. XIII–628

The executive will in creating, is not to be defeated through a failure of the surveyor to properly locate the boundaries. XIII–628

Reservation—Continued.

I. GENERALLY—Continued.

Failure of the local office, in noting an order of, to include a tract actually embraced in said order, will not defeat the reservation as to said tract, and a homestead entry, subsequently allowed therefor, must be canceled. XX–372

Created by executive order is binding upon all departments of the government and citizens of the United States. XIII–628

Created by executive order for a public purpose and embracing land covered by a *prima facie* valid entry will take effect thereon if the entry is subsequently canceled. V–49; X–144; XV–2

For a public purpose should be distinguished from a, for the benefit of a railroad grant. V–49

An order of withdrawal, made for a public purpose, takes effect on the date of its issue regardless of the time it may reach the local office. XXI–134

Of land for special purposes made to the end that the government may enforce them. I–368

The legal appropriation of land for any purpose severs it from the public lands, and it is not thereafter subject to other disposition. I–339, 393; XXX–276

A departmental letter to the Commissioner of the General Land Office directing him to withdraw at some future time, when surveyed, a sufficient quantity of land to serve a special purpose is not in and of itself a withdrawal. XXI–2

Where a telegraphic order of the General Land Office to the surveyor-general of a State directs the survey of certain lands for a specific purpose, and notice thereof is not given the local office, said order should not be treated as a withdrawal as against the rights of settlers acquired without knowledge thereof. XXI–24

Land withdrawn for the benefit of designated claimants is not subject to appropriation by others. X–144

No part of lands withdrawn for the location of a reservation subject to settlement until after survey. III–219

May not under order of President include land covered by an existing homestead entry. I–30, 451

An executive order creating a, is inoperative as to land embraced within a preëmption entry on which final certificate has issued. XVII–317

An executive order, reserving land for light-house purposes, will not take effect upon land embraced within a donation claim under which due compliance with the law has been shown prior to the issuance of said order. XIX–470

Land embraced within a preëmption filing may be set apart at any time prior to final proof and payment. I–30, 450, 451

Reservation—Continued.

I. GENERALLY—Continued.

Claims initiated prior to order of, should be protected if compatible with public interests. I–451

Compensation recommended where settler's claim was appropriated to government use. I–307

Are created by law or order and not by mere markings on the official plats, whether of saline, swamp, mineral, or timbered lands; qualified claimants have the right to claim them and to show that they are not of the character indicated. II–847

The failure of the plats to show the saline character of a tract does not subject it to entry; it is reserved by the law and not by markings on the plats. II–851

Of section 33 in each township for public buildings, contained in the proclamation opening the Cherokee Outlet, was applicable only to lands which had not been "otherwise reserved or disposed of," and therefore did not include the lands in the "saline reserve" that were specifically withheld from disposition by a prior declaration in said proclamation. By the proclamation of July 27, 1898, the lands so reserved were restored to the public domain for disposal, subject to the policy of the government in its disposition of saline lands. XXIX–533

The lands restored to the public domain by proclamation of July 27, 1898, should be treated as presumptively of saline character, but should it be ascertained that any of them are not saline, disposition thereof can be made under the laws relating to public lands in the Cherokee Outlet. XXIX–533

A tract of land is not reserved by an inadvertent notation of its disposition on the tract-book and plat in the local office. XIV–50

Inadvertent notation of warrant location on local office records does not constitute a reservation of the land. V–202

No mere *de facto* reservation or appropriation can defeat the rights of qualified claimants to the public land. II–849

Effected by an entry is not defeated by the failure of the district officers to properly note the same of record. XIV–242

Effected by an application to locate a warrant upon a specific tract not defeated by loss of the warrant and fees in the General Land Office though as the result of such loss no record of the location is made in the local office. XIV–278

An order of the General Land Office directing the location of a military bounty land warrant upon a specific tract operates to reserve such tract from other disposition, even though such order is not entered of record in the local office. XVI–296

Reservation—Continued.

I. GENERALLY—Continued.

An order of the Secretary of the Interior directing the reservation of a tract of public land for school purposes, while subsisting, effectually precludes the allowance of a homestead entry of the land so reserved. XXIX–563

Pendency of a departmental order excluding land from disposition until the final adjudication of a pending claim therefor, removes the land from the jurisdiction of the local office. XXI–71

Created by executive order exists until formal order of revocation though the purpose of the withdrawal may have ceased to exist. V–432

Lands constituting government reservations are not subject to pre-emption or homestead claims, and upon relinquishment are regarded as a distinct class of public lands; it has been customary, when Congress intended to open them to entry, to express such intention plainly; otherwise they are subject only to appraisal and sale. II–604

The theory of the appraisal before sale of these lands is that time enhances their value by the increase of population around them. II–610

When brought into market the Commissioner of the General Land Office shall fix the price of. V–270

The order of March 10, 1863, did not restore to the public domain any of the lands previously reserved at Port Angeles for town-site and other purposes. XII–284

Of one acre at Guthrie, Oklahoma, for government use is not defeated though not located in exact accordance with the proclamation of the President. XIII–249

Consent of the Department given for the erection of a post-office building on the "government acre" at Kingfisher, Okla., by the citizens of said place. XXI–69

The Department will not consent to the erection of buildings on land reserved for government use, when such improvements may form the basis of a demand against the United States. XX–465

Under consideration in section 2364, R. S., does not include even-numbered sections increased in price on account of a railroad grant. V–270

Of alternate sections from a grant to a State for railroad or canal purposes; effect of. X–396

Unlawful settlement on abandoned reservations (military) is trespass. II–822

Claim of occupant in Hot Springs must be presented under the act of March 3, 1877. III–464

Of certain lands in Alaska recommended. XIII–426

Reservation—Continued.

I. GENERALLY—Continued.

In the absence of express statutory authority the Architect of the Capitol has no right to permit the erection of a terminal railway station on the Capitol grounds. XXV–254

II. INDIAN. See *Indian Lands; Railroad Grant*, sub-title No. X.

As affected by order of the President withdrawing land for the use of Indians. V–432

Withdrawal for the purposes of a contemplated Indian reservation is within the scope of executive authority, and effectually excludes the land from other appropriation. XVII–420

Permanent Indian, defined, as well as "common Indian title," and the distinction noted. I–101; V–138, 343; XVI–229

It is not necessary to constitute a, that a treaty or act of Congress shall specifically describe the lands that are reserved. It is sufficient for such purpose if the lands occupied by the Indians are recognized by the officials of the government as reserved Indian lands. XXII–388

Of specific lands for the residence of an Indian tribe, provided for in a treaty in which it is declared that the terms shall be binding upon the parties when ratified by the Senate and the President of the United States, is operative from the date of signing the treaty, and not from the date of its ratification. XXII–170

An entry of record excepts the lands covered thereby from the effect of an executive order reserving land for the benefit of Indian claimants under the homestead law; but such order becomes effective on the cancellation of the entry. V–49; X–144; XV–2

Executive order for the establishment of Indian, does not take effect upon land covered by a homestead entry. XIV–589

The use and occupancy of unsurveyed public land for the purposes of a trading post will not except such land from a subsequent executive order creating an Indian reservation. XII–205

Of land by executive order for the use of Indians excludes the acquisition of settlement rights thereto. XII–437

A departmental order withdrawing lands from entry by white men precludes such disposal of said lands while in effect. XV–541

A general order opening an Indian reservation does not confer upon claimants under the settlement laws any right to settle upon or enter lands that are excluded from such appropriation by reason of Indian occupancy. XVI–15

An executive order creating a, for Indian purposes and excluding therefrom the major part of a settlement claim asserted on lands subject to Indian occupancy does not operate to confer settlement rights that could not otherwise be obtained. XIII–269

Reservation—Continued.

II. INDIAN—Continued.

Klamath River, California, has been maintained since passage of act of April 8, 1864; when selections for the Indians within it are made the question of restoring the remaining lands to the public domain will be considered. II–460

Lands in the Klamath Indian, were not restored to the public domain by the act of April 8, 1864, but reserved for disposition in accordance with the special provisions of said act. XIII–733

Tracts included within the executive withdrawal of lands for the protection of the Yakima Indians in their fishing privileges not necessary thereto, should be released. XVIII–38, 604

Fort Berthold, Montana and Dakota, made by executive order May 12, 1870; the greater part fell into a prior withdrawal for the Northern Pacific railroad by executive order of July 13, 1883, restoring it to the public domain; no rights by settlement were acquired in it. II–520

The authority of the Secretary to withdraw lands for the use of Indians may be exercised within the limits of the withdrawal on the general route of the Northern Pacific. XX–332; XXVI–422

Crow Indian, Montana. The Indian title was confirmed, not acquired, by the treaty of 1868; the Northern Pacific railroad may not take materials for construction from it because it was not public land at date of grant. II–520

For Indian purposes created by treaty of April 18, 1855, was of lands in "the Bitter Root Valley above the Lo Lo Fork." XIX–532

Bitter Root Valley, Montana, above the Lo Lo Fork, did not pass to the Northern Pacific railroad, under act of June 15, 1872, but fifteen townships were to be sold at minimum price; the price of the remainder should be fixed at double minimum. II–675

The provision in the agreement of July 7, 1883, for the protection of "all other Indians living on Columbia reservation" extends to Indians then living on said reservation and not represented in said agreement. XVI–15

Ute (Uncompahgre and White River), Colorado, opened by act of July 28, 1882, with saving of rights of settlers in the ten mile strip west of the one hundred and seventh meridian, which had been mistakenly surveyed and settled on; the act legalized the illegal occupation, nothing more; it did not save any rights or affect the price of the lands. II–730

Lands containing gilsonite, asphaltum, elaterite, and like substances, situated in the Uncompahgre Ute, have been, since the date of the executive order creating said reservation, and still are, excepted from the operation of the mining laws. XXIX–456

Reservation—Continued.

II. INDIAN—Continued.

Fond du Lac, Minnesota; Indians may not cut timber on it except to improve the land, and only after approval of their selections. II–821

The direction of the Secretary of the Interior that a boundary line of an Indian, as theretofore surveyed, should be retraced and marked on the ground, is a final adjudication as to the correctness of said line that should not be disturbed by his successor in office. XXII–301

The change of the boundaries of the Fond du Lac Indian, by executive order, to correct an error of description therein, did not affect the validity of said reservation as finally established, although originally created under an act that described the boundaries thereof. XIX–320

The Secretary of the Interior is without authority to grant an application for a permit to change the channel of a river, the boundary of lands reserved by executive order, where such action is not required for the care and disposal of the public lands or for the protection of the Indians. XXI–144

The approved boundary line of an Indian, will not, after a lapse of years, be changed, where such action will operate to disturb vested rights acquired in good faith under the previous executive action of the Department. XXII–301

Where a boundary line of a, that has been long accepted by the parties in interest is attacked and a different line alleged to be the true one, and there is room for doubt as to which is the true line, the doubt should be resolved in favor of the established line. XXII–301

Right of way only granted as an easement to railroad company through Red Cliff Indian reservation. III–591

Report of special agents on adjustment of settlers' claims on Sioux Indian reservation. III–288

Lands in former Sioux Indian reservation released from suspension. III–598

Lands within the Crow Indian, released under treaty made before but not ratified until after definite location of the railroad were excepted from the grant. III–158

Lands embraced within the Crow Indian, and subsequently included within the boundaries of the Yellowstone National Park were appropriated for the purposes of said park as of the date of said act, subject only to the right of the Indians, and when said right was extinguished the lands became a part of the park. XVII–261

Sixteenth article of treaty of April 29, 1868, did not reserve the land described therein as "north of the North Platte River and east of the Big Horn Mountains." V–343

Reservation—Continued.

II. INDIAN—Continued.

Agricultural lands formerly within the Sioux Indian, and opened to settlement under the act of March 2, 1889, subject to disposition only under the homestead law. XI–231

The act of March 2, 1889, gave to persons who had in good faith settled on the Crow Creek and Winnebago reservation between the dates specified a preference right to reënter upon their claims. XIII–657

Santee Sioux, not opened to entry prior to the receipt of Indian allotments. V 311

Allotments under the act of March 3, 1863, were protected in the executive order opening the Santee Sioux reservation to settlement and entry. V–447

For the use of the Navajo Indians by order of April 24, 1886, excludes preëmption. VII–334

Compensation provided for settlers on Navajo. VII–334

No statutory authority for certain right of way privileges claimed through the Puyallup Indian reservation. VII–450

The construction of the treaty of December 26, 1854, adopted by the executive, with the assent of the Indians, in the matter of the Puyallup additional reservation, having been recognized by congressional action, should be accepted as conclusive. X–513

The Puyallup additional, created by executive order of January 20, 1857, was within the scope of the authority conferred upon the President by the sixth article of the treaty. X–513

The authority of the executive in making the treaty of December 26, 1854, carried with it the right to reserve the lands therein set apart for the use of the Indians and empowered the President to make such additional reservations as might be necessary. X–513

For the use of Indians not limited by the act of September 27, 1850, and amendatory acts relative to public lands in Oregon. X–513

Under treaty and constitutional authority the President is duly authorized to direct a, for the protection of the Zuni Indians in their occupancy. XIII–628

Entry erroneously allowed for land covered by Indian, may be held intact on the release of the land. XI–231

Under an order directing the, of a tract of land for the benefit of an Indian, with a view to his subsequent entry thereof, there is no right conferred upon the Indian by which his relinquishment will serve to release the land from. XXV–95

Reservation—Continued.

II. INDIAN—Continued.

The authority to remove property, wrongfully brought upon an Indian, or the presence of which upon a, is detrimental to the peace and welfare of the Indians, necessarily follows from the authority to remove persons under like circumstances, and from the general power of management of Indian affairs committed to the Commissioner of Indian Affairs, acting under the direction of the Secretary of the Interior. XXIX-1

Whether a person is in an Indian country "without authority" of law, or whether his "presence within the limits of the reservation" is "detrimental to the peace and welfare of the Indians," must be determined by the Commissioner of Indian Affairs, acting under the direction of the Secretary of the Interior; but if so found, the offender may be summarily removed from any tribal reservation. XXIX-1

A telephone company that, without statutory authority, enters upon and constructs a telephone line across an Indian, may be dealt with as a trespasser for such unlawful invasion. XXIX-1

III. MILITARY.

Of land for military purposes excludes it from the operation of public land laws. VI-19

The establishment and occupancy of a cantonment by military authority excludes from entry, prior to the formal order of reservation, the land thus appropriated. V-376; XIX-48

A settlement of lands in Florida in violation of the provisions of the act of March 3, 1807, prohibiting such appropriation of said lands, confers no right; and where the lands embraced in such settlement are appropriated by military authority, and the settler ejected prior to the enactment of April 22, 1826, the provisions of said act are not applicable. XIX-48

Of land for military purposes, directed by the War Department, precludes the allowance of an entry therefor while occupied under such authority. IX-600

For military purposes made by executive order excludes the land from homestead entry. XIII-607

The occupation and improvement of land with a view to preëmption does not except it from a subsequent, for military purposes. XV-487

It is within the scope of executive authority to reduce the area of a military, created by executive order, so as to exclude lands on which improvements had been made prior to the establishment of said reservation. XXIII-185

Reservation—Continued.

III. MILITARY—Continued.

An executive order creating a military, is not effective as to land embraced within a donation claim on which final certificate has issued. XXI–273

Made by order of commanding general, subsequently approved by the President, takes effect by relation as of the date of said order. VI–657

Created by an order of the President approving a report recommending the establishment of a. (Camp Verde.) XVII–557

Council Grove military timber reserve, established prior to the opening of the Creek lands, though falling within the limits of the lands opened by the President's proclamation, was noted on the maps of official and public survey as excepted from settlement, and therefore reserved by competent authority. XXII–147

The President of the United States, in the exercise of his general authority, may, under the provisions of the joint resolution of July 7, 1898, reserve for military purposes public lands in the Hawaiian Islands. XXIX–32

For military purposes made in violation of law does not take the land out of the class of public lands so as to require their disposal by special enactment. VI–16

The provision in section 13, act of March 3, 1863, creating the Territory of Idaho, that "all laws of the United States which are not locally inapplicable shall have the same force and effect within said Territory of Idaho as elsewhere in the United States," was intended to give effect only to *general* laws, and did not carry into effect the *special* limitation in the act of February 14, 1853, by which the authority of the executive to establish reservations was restricted to not exceeding 640 acres at any one place. XXVII–505

Created for penitentiary purposes would not, in the absence of express words indicating such intent, be held to have been abrogated by an act relieving the land from a prior military reservation. VII–133

An order setting apart lands for penitentiary purposes would not operate to relieve said lands from a prior military reservation; but such second appropriation made under the concurrent authority of two departments and for a purpose not inconsistent with the first would be conclusive as against any other appropriation of the land. VII–133

The statutory limitation of February 14, 1853, as to the amount of land that may be withdrawn for a military, only applicable within the territorial limits of Oregon. VI–46; IX–67, 104

Reservation—Continued.

III. MILITARY—Continued.

Action of the War Department in fixing boundary line of military, conclusive, being the final act of the executive. I–168

The approval of a military, by the Secretary of War, as theretofore defined by the military authorities, is the legal equivalent of the President's order to the same effect. XXIX–261

Right to acquire lands within former limits of Fort Lyon under the homestead, preëmption, or timber-culture law confined to those who had made entries or filings prior to the act of July 5, 1884. IX–67

Land within the former limits of Fort Lyon not entered or settled upon prior to the act of July 5, 1884, must be disposed of under said act. IX–67

Created at Fort Cœur d'Alêne by the order of August 25, 1879, was not continued in force by the failure of the General Land Office to officially notify the local office of the executive order of April 22, 1880, modifying the boundaries thereof. XII–468

Lands formerly included within Fort Reynolds military, not subject to homestead, but must be sold at public sale. XV–151

The act of June 19, 1874, providing the method in which the lands formerly within the Fort Reynolds military, should be disposed of did not amount to a sale or disposition of said lands, and hence did not bring them within the exception of lands "sold or otherwise disposed of," contained in the grant of school lands in the State of Colorado. XXX–310

Purchasers of lands within the former reservation of Fort Larned are required to show compliance with the preëmption law in matters of settlement and residence. VI–600

Disposition of lands formerly included within Fort Sanders military. VII–403, 430, 548

The act of June 9, 1874, reducing the area of Fort Sanders military, legalized settlements made while the land was not subject thereto, but did not confer a new grant upon the Union Pacific or confirm to it lands theretofore excluded from its grant. VII–430

An actual occupant of land within Fort Sanders military, on January 1, 1890, has a preferred right under the act of July 10, 1890, to enter a quarter section including his improvements. XV–93

The preference right to make one entry of land formerly embraced in Fort Sanders military, accorded by the proviso to the act of July 10, 1890, is limited to "actual occupants thereon" January 1, 1890, and it therefore follows that the right to make a desert entry under said proviso can not be exercised by one who was not residing on the land applied for at said date. XXII–287

Reservation—Continued.

III. MILITARY—Continued.

The preferred right accorded to "actual occupants" of the lands formerly embraced in Fort Sanders military, is limited to one entry by persons who have established residence on the land involved, and it accordingly follows that such right can not be exercised by a married woman whose husband perfects a claim for another tract under the same statute. XXII–97

The act of July 10, 1890, providing for the disposal of certain abandoned military, in Wyoming, repeals the provisions in the act of July 5, 1884, which confers upon the purchaser of improvements a preferred right to purchase the land. XIV–622

The lands formerly embraced in Fort Assiniboine military, and subsequently excluded therefrom, and also included within the Indian lands ceded May 1, 1888, are not disposable under the third section of said act, but under the act of July 5, 1884, as part of an abandoned military. XX–416

Fort Brooke, Florida, duly relinquished to the Secretary of the Interior on January 4, 1883, and plat of same sent by the Commissioner to the local office; said plat, without accompanying instructions, did not open the land to settlers; under the law, the tract, reduced to 148.11 acres, must be ordered into market for appraisal and sale and was not subject to settlement claims. II–603, 606

On the abandonment of the White River military, the land covered thereby became subject to disposal under the act of June 15, 1880, and not under the law providing for the sale of abandoned military reservations. VII–191

Fort Abercrombie, Minnesota, opened by the act of July 15, 1882; held that under the act one who had cultivated and improved part of a forty-acre tract since 1871, though never actually residing on it, was entitled as against one who had begun settlement and residence in 1881 with notice of the prior occupation. II–206

Fort Seward military, abolished by act of June 10, 1880, and lands opened for sale and entry. VI–657

The act of February 13, 1891, directing the disposition of Fort Ellis military, protects only such settlement rights as were recognized by the act of July 5, 1884. XII–288

The act of February 13, 1891, providing for the disposal of Fort Ellis abandoned military, protects the rights of settlers who, prior to the establishment thereof, had settled thereon in good faith and were ejected by the military and returned on the abandonment of the reservation. XVI–438

The provision in section 2 of the act of February 13, 1891, for the reversion of the lands granted by said section in the event of nonuse, is a condition subsequent, and can be taken advantage of only by the grantor. XXX–543

Reservation—Continued.

III. MILITARY—Continued.

A homestead application for surveyed lands in the Fort Hays military, opened to settlement and entry by the act of August 23, 1894, presented by a qualified applicant and rejected, at a time when said lands were legally subject to entry, and pending on appeal, serves to except the lands covered thereby from the subsequent grant to the State by the act of March 28, 1900. XXX–99

Land in the Fort Hays military, excepted from the grant to the State made by the act of March 28, 1900, because included in a pending homestead application, under which entry was subsequently made, upon the filing of a relinquishment by the entryman becomes public land, subject to disposition, and, prior to the acceptance of the grant by the State, entries therefor may be properly allowed. XXX–468

The act of July 5, 1884, restricted the right of entry within the old Fort Lyon military, to those who had made filing or entry prior thereto and subjected the other lands therein to public sale; and the status of said lands remained unchanged until the act of October 1, 1890, which directed their disposition under the homestead law. XIII–533

A settler on lands within the limits of the Fort Crawford military, subsequent to October 14, and prior to December 22, 1890, is not a trespasser, and will be protected as against a subsequent settler on the same land. XVIII–533

The act of February 24, 1871, restoring the lands in Fort Sabine military, for sale according to existing laws, did not contemplate any disposal of said lands inconsistent with the title previously granted to the State. XXI–357

Fort Cameron, Utah, though abandoned, is not yet restored to the public domain; timber-cutting on it is within the jurisdiction of the land department; settlement on it is trespass. II–822

Fort St. John, Louisiana, was not reserved by Congress or the executive, but, being so held by former governments, did not result in the public domain on acquisition of the country by the United States, but to special government use; it was sold August 31, 1871. II–397

Florida: historical sketch of military reservations in. II–607

Act of 1856 and section 6, act of June 12, 1858, relative to military reservations in Florida, repealed by the act of 1884. V–632

An abandoned military, in the State of Florida, placed under the control of the Secretary of the Interior prior to the act of July 5, 1884, should be disposed of under the act of August 18, 1856, unaffected by the act of August 23, 1894. XIX–477

Reservation—Continued.

III. MILITARY—Continued.

The disposition of a military, in Florida, restored to the public domain prior to the passage of the act of July 5, 1884, is governed by the act of August 18, 1856, and under said act the Commissioner may dispose of such lands at public sale or under the homestead and preëmption laws. XIX–48

The act of July 5, 1884, providing for the disposition of abandoned military, is not applicable to a, restored to the public domain prior to the passage thereof, and as section 4 of said act repeals the act of August 18, 1856, with respect to such reservations in the State of Florida, it follows that in case of a, in said State, that is restored to the public domain prior to the act of 1884, and to which no rights had arisen under the repealed statute, there was no authority for the disposal thereof until the enactment of August 23, 1894, and that said act, and the amendatory act of February 15, 1895, must now govern the disposition of said lands. XXIII–237

Boundaries of Fort Meade, modified. III–574

Recommended for Fort Custer and national cemetery. V–226

Created by executive order issued prior to the treaty of September 30, 1854, must be taken as excluding the land covered thereby from the operation of the treaty by the consent of both parties and excepting such lands from the right of purchase accorded by said treaty. XIII–679

In the disposal of lands in abandoned military, under the act of August 23, 1894, the time fixed for installment payments authorized by said act, and the interest thereon, should be uniform for all lands opened to settlement under said act. XX–303

Lands within an abandoned military, opened to disposal under the act of August 23, 1894, are subject to townsite entry under the provisions of section 2387, R. S., the lands when so entered to be paid for at the appraised value. XXIX–501

The preference right to make entry of land within an abandoned military, accorded actual settlers by the acts of August 23, 1894, and February 15, 1895, must be asserted within the statutory period; and if the settler's application to enter is rejected on account of an adverse claim he must appeal from such action, or institute contest against such claim within said period. XXVII–144

In determining whether a preferred right to enter lands within an abandoned military, is asserted within the period fixed by the act of August 23, 1894, time should not be held to run while said lands are withheld from entry under direction of the General Land Office. XXVIII–2

Reservation—Continued.

III. MILITARY—Continued.

The words "and are now residing upon any agricultural lands in said reservations" as used in the act of August 23, 1894, apply only to persons who are then actually residing upon said lands to the exclusion of a home elsewhere. XXVIII–2

A settlement on an odd-numbered section within the Fort Randall abandoned military, after the passage of the act of March 3, 1893, and an application to enter the tract, thus settled upon, filed prior to the expiration of the period accorded to the State, by said act, within which to exercise a preferred right of school indemnity selection, can not defeat the assertion of such right on the part of the State. XXVIII–569; XXX–286

Instructions of February 18, 1895, for the disposal of Fort Bridger abandoned military. XX–118

Instructions of April 9, 1895, for the disposal of Fort Bridger abandoned military. XX–304

Instructions of June 17, 1895, under act of February 15, 1895, as to abandoned military. XX–568, 569

Instructions of March 19, 1896, in the matter of the abandoned military, Fort Abraham Lincoln. XXII–456

Circular with respect to abandoned military, under the act of August 23, 1894. XIX–392

Circular under act of February 15, 1895. XX–569

Lands in abandoned military, coming within the purview of the act of August 23, 1894, were by said act opened to homestead entry as well as to settlement. XXX–90

Instructions of May 19, 1900, relative to disposal of lands in Fort Buford abandoned military. XXX–394

Instructions of August 3, 1900, relative to disposal of original portion of Fort McPherson abandoned military. XXX–213

Abandoned military, instructions approved December 24, 1896, with respect to Fort Crittenden. XXIII–567

Fort Cameron abandoned military, instructions of March 22, 1897. XXIV–269

Instructions of August 18, 1897, with respect to Fort Randall abandoned military. XXV–141

Instructions of February 21, 1898, opening Fort Randall abandoned military. XXVI–237

Instructions approved September 22, 1897, as to Fort Maginnis abandoned military. XXV–260

Instructions of May 8, 1901, relative to purchase of pasture and grazing land in Fort Fetterman military. XXX–601

Reservation—Continued.

III. MILITARY—Continued.

The act of July 5, 1884, providing for the disposition of abandoned military, is limited to reservations that were in existence at the date of its passage, or that should be thereafter created. XIX–48, 76

For military purposes can not be restored to the mass of the public domain by act of the President. XIV–210

On relinquishment of military, the land must be disposed of by Congress. VI–19

Abandoned military, can not be restored to entry and settlement by the President under the act of July 5, 1884. XIV–233

The act of July 5, 1884, for the disposal of abandoned military, does not contemplate restoration to the public domain for general disposition under the public land laws, but provides that such lands shall be disposed of in a special manner. XXVII–82

The act of July 5, 1884, is general, applying to all abandoned military reservations not encumbered by special trusts. III–297

The disposition of all abandoned military, not theretofore disposed of governed by the act of July 5, 1884. V–632

The acts of July 5, 1884, and August 23, 1894, relative to the disposition of lands in abandoned military, provide a mode for the disposal of such lands exclusive of all others, and lands thus set apart for disposition are not subject to selection as "unappropriated" public lands under the grant of July 16, 1894, to the State of Utah. XXX–301

Settlement prior to January 1, 1884, protected within abandoned military, by the act of July 5, 1884. V–632; VI–16; XVIII–605

Act of July 5, 1884, does not legalize settlements made with the full knowledge that the lands were reserved. X–489

The right to make entry within an abandoned military, accorded by the act of July 5, 1884, can not be exercised in the absence of residence established prior to said act and maintained to the date of application. XIX–205

Residence on a tract within a military, that is subsequently abandoned, acquired by one while employed as custodian of said reservation, does not confer a right of entry under the priviso to section 2, act of July 5, 1884. XXII–3

The provisions of the act of July 5, 1884, do not protect a desert entry made while the land was reserved. XIV–233

Entry within abandoned military, not authorized by the act of July 5, 1884, except on settlement prior to January 1, 1884, and continuous occupation thereafter. V–555, 632

Settlement and entry not authorized on lands within abandoned military, after being placed under the control of the Secretary of the Interior. IX–104

Reservation—Continued.

III. MILITARY—Continued.

The purpose of the second proviso to the act of May 28, 1896, was to validate and protect homestead and preëmption claims upon lands in the Fort Sully abandoned military reservation initiated by settlement prior to the date of its passage, and to this extent said act supersedes the general act of July 5, 1884, as to the disposition of lands in said reservation. XXX–140

Actual occupation prior to the establishment of, or settlement prior to January 1, 1884, with continuous occupation thereafter, must be shown to secure the right of homestead entry under the act of July 5, 1884. VII–369

The right to enter lands in abandoned military, restricted by the act of July 5, 1884, to those who have made in the manner prescribed an actual settlement thereon. XII–288

An applicant for lands within an abandoned military, can not found any right on the claims of others that were existing when the reservation was created and that have since been extinguished. XII–288

The occupation of land by permission of the military authorities does not constitute a settlement that is within the protection accorded *bona fide* settlers by the act of July 5, 1884. XV–487

No right of entry can be exercised under the act of July 5, 1884, where the lands embraced within the, are not subject to entry under the public land laws at the time of their withdrawal. XV–487

Lands within an abandoned military, transferred to the Interior Department and appraised in accordance with a special act, but undisposed of at the date of the act of July 5, 1884, may be again appraised under said act and offered at public sale. XIV–76

Lands within an abandoned military, that have been appraised the second time, and offered without a resulting sale, are not subject to private sale, until after a second offering. XXVII–696

The improvements on an abandoned military, may be sold separately under section 3, act of July 5, 1884, where the lands on which they stand are not subject to disposition under said act. XIV–2[illegible]

A preferred right to purchase the land on which improvements are situated is conferred by the act of July 5, 1884, upon the purchasers of such improvements prior to the passage of said act. XIV–52[illegible]

Pending the sale of government buildings on an abandoned military, the Department may withhold from disposition the land on which such buildings are situated. X–6[illegible]

Reservation—Continued.

III. MILITARY—Continued.

Section 5, act of July 5, 1884, providing for the disposition of abandoned military, may be properly construed in connection with the act of August 4, 1892, to warrant the allowance of a placer application for land containing building stone, in accordance with the latter act. XXIII–516

Disposition of abandoned military, not affected by the act of March 2, 1889. (See section 8 of said act.) VIII–318

Method of procedure in appraisement of military, under act of July 5, 1884. V–228

The appraisal of the improvements on an abandoned military, is a prerequisite to the sale of the land and improvements together. XXI–431

Final proof can not be submitted on a homestead entry made under the act of August 23, 1894, of lands within an abandoned military, prior to appraisal. XXIV–335

Lands within an abandoned military, subject to disposition under the act of August 23, 1894, belonging to the single minimum class, must be sold at $1.25 per acre, though appraised at a less figure. XXIII–14

An abandoned military, embracing both surveyed and unsurveyed land may be appraised so far as surveyed and advertised for sale. XVI–374

Sale of military, under the act of June 19, 1874. V–103

For military purposes acquired by purchase should be disposed of under the act of 1884 if abandoned. III–577

IV. FOREST LAND.

1. Generally.

2. Act of June 4, 1897.

1. Generally.

Circular regulations of June 30, 1897. XXIV–589

Paragraph 21 of regulations issued June 30, 1897, amended. XXVII–301

Regulations of June 30, 1897, amended. XXVI–421

Instructions of September 22, 1899, with respect to entries in Black Hills forest reserve. XXIX–190

Rules and regulations of April 4, 1900, under section 24, act of March 3, 1891, and amendments. XXX–23, 113, 590

An order of withdrawal, issued by the Commissioner of the General Land Office, for the purpose of establishing a reservation of forest lands, takes effect on the day of its date and excludes all the public lands included therein from other appropriation. XX–32

Reservation—Continued.

IV. FOREST LAND—Continued.

1. Generally—Continued.

For a proper purpose (preservation of "mammoth trees") made by the local office on the request of the surveyor-general, if unrevoked, may be considered as approved by the Department and the land included therein reserved from disposal. XI–60

The Secretary of the Interior may properly direct the withdrawal of land from disposal, in order to preserve sequoias or other large trees growing thereon. XX–327

Instructions to special agents in the matter of procuring the requisite information upon which to order the reservation of forest lands under section 24, act of March 3, 1891. XII–499

Of certain forest lands in California directed by the act of October 1, 1890, not defeated by pending application to purchase such lands under the timber and stone act. XII–58, 326

Of forest lands by the acts of September 25 and October 1, 1890, does not take effect upon lands legally entered, but applications to purchase such lands, or filings therefor, will not defeat the operation of said statutes. XII–86, 326

Directions given for the temporary withdrawal of lands for Pike's Peak Park and for proceedings under the general instructions of May 15, 1891. XIII–54

Of forest lands created by the President under section 24, act of March 3, 1891, may be restored to the public domain by the President without special authority from Congress. XIV–209

Of forest lands under the act of 1891 does not remove such lands from the control of the Department, and for carrying out the provisions authorizing the withdrawal the Department may make all necessary regulations. XV–284

Lands embraced within a temporary withdrawal by the Department with a view to creating a forest, under the act of 1891, are by such order excluded from settlement and entry pending action by the President. XVI–190

An order of the President withdrawing, is effective upon lands formerly embraced within the Ute reservation but restored to the public domain by act of June 15, 1880. XIX–383

An order withdrawing will defeat the right of a contestant who subsequently secures the cancellation of an entry made prior to the withdrawal and within the limits thereof. XVIII–523; XIX–489

The act of October 1, 1890, setting apart the forest reserve known as the "Yosemite National Park," confers no authority upon the Secretary of the Interior to permit the use of lands embraced therein as a right of way for canals or ditches for any purpose whatever. XXVIII–474

Reservation—Continued.

IV. FOREST LAND—Continued.

1. Generally—Continued.

The act of October 1, 1890, directing the establishment of the forest reserve known as the Yosemite National Park, did not affect or impair rights acquired under a mineral location duly made prior to the passage of said act, and the owner of such a claim should be permitted the necessary use, for purposes of ingress and egress, of lands reserved by said act, subject to such reasonable rules as may be made by the Secretary of the Interior. XXV–48

The right of a miner to cut timber within a forest, is restricted to the land embraced within his mining claim. XXV–48

The words "entry" and "filing" used in the proclamation of February 14, 1893, establishing the Sierra forest reserve, to describe lands excepted from such reservation, must be taken in their proper technical meaning, and as applicable only to record claims made under the general land laws, and not including a railroad indemnity selection. XXVIII–282

An applicant for the right of timber land entry within the limits of the Cascade forest reserve can not be heard to plead settlement on the land prior to the proclamation, for his timber land application operates as a waiver and abandonment of all right under his alleged settlement. XXVIII–573

The lands excepted by settlement claims from the proclamation of September 28, 1893, establishing the Cascade Range forest reserve, were limited to those upon which a valid settlement had been made, and the statutory period for filing or entry had not expired at the date of the proclamation. XXVIII–573

The act of February 28, 1899, authorizing the Secretary of the Interior to lease lands, adjacent to mineral springs within forest reserves, for hotel or sanitarium purposes, contemplates the leasing of land not wholly occupied by the hotel or sanitarium, whenever such action is necessary to the proper conduct of such hotel or sanitarium, and to make the beneficial properties of the springs available to the public. XXVIII–386

In the proclamation creating the San Gabriel forest reserve an exception was made of "all lands . . . . upon which any valid settlement has been made pursuant to law, and the statutory period within which to make entry or filing of record has not expired," and an entry, based on such a settlement, must be held to have been made in due time, where the application is filed within three months after the land is opened to entry. XXIX–298

IV. FOREST LAND—Continued.

1. *Generally*—Continued.

The departmental regulations to be issued under the act of March 2, 1899, setting apart certain lands for a national park, should provide for the preservation from injury or spoliation of all timber, mineral deposits, natural curiosities, or wonders within said park, but should declare that they do not prevent or interfere with the *bona fide* exploration, location, occupation, and purchase, according to the mineral laws of the United States, of the mineral lands lying within said park. XXVIII–492

There can be no lawful selection of lands under the third section of the act of March 2, 1899, until a proper deed has been filed and duly approved by the Department, conveying to the United States the lands in lieu of which selection is made; and such a deed does not relate back to a prior defective unapproved deed and selection made thereunder, so as to cut out intervening adverse claims. XXX–145

Lands within the limits of a forest reserve, which at the date of its establishment are covered by a lawful preëmption filing of record, are excepted from such reserve subject to claimant's continued compliance with law; but in the event of the cancellation of such filing the land at once becomes a part of the reserve. XXX–158

2. *Act of June 4, 1897.*

Regulations of June 30, 1897, and amendments. XXIV–589; XXVI–421; XXVII–301

Circular of May 9, 1899, with respect to selections in lieu of lands included in forest reserves. XXVIII–521

Circular of December 18, 1899, as to selections in lieu of land in forest reserve under the act of June 4, 1897. XXIX–391

Rules and regulations of April 4, 1900, under section 24, act of March 3, 1891. XXX–23

Paragraph 13 of rules and regulations of April 4, 1900, amended. XXX–113

Paragraph 21 of rules and regulations issued April 4, 1900, amended. XXX–590

By the act of, it was the purpose of Congress to provide a complete scheme for the control and administration of forest reserves, and by the last proviso of the amendatory act of June 6, 1900, it was intended that forest reservations then existing or thereafter to be created in the State of California should be exempted from the operation of said amendatory act only, the act of 1897 remaining in force, unchanged, as to such reservations. XXX–377

Reservation—Continued.

IV. FOREST LAND—Continued.

2. *Act of June 4, 1897*—Continued.

The act of, provides for the control and administration of all public lands set apart as forest reserves by the President, under section 24 act of March 3, 1891, but makes no grant of right of way through these reservations, and does not give the Secretary of the Interior any new or additional authority to permit the use of a right of way through them or within their boundaries, and is not applicable to reservations created by special act of Congress. XXVIII–474

The provisions made in the act of, for an exchange of land included within forest reservations, and covered by an unperfected *bona fide* claim or by patent, are applicable only to forest reservations established by executive action under section 24, act of March 3, 1891, and do not extend to reservations, or national parks, created by special acts of Congress. XXVIII–472

The act of, with respect to lieu land selections, was intended to provide for extinguishing private title to such lands only as would be a part of an established forest reservation if it were not for their private ownership. XXIX–597

The phrase "public lands adjacent thereto," as used in the act of, in making provision for the survey of forest reserves, should be construed to mean townships which actually adjoin said reserves, and such townships are to be surveyed under the supervision of the Director of the Geological Survey. XXIV–588

In the survey of forest, under act of, the phrase "public lands adjacent thereto" should be construed to mean townships, either fractional or entire, actually adjoining such reservation. XXV–140

Unsurveyed land can not be taken, under the act of, in lieu of a relinquished claim within a forest. XXVII–472

Unsurveyed as well as surveyed land, which is vacant and open to settlement, may be selected under the act of, in exchange for forest lands. XXVIII–284

While lands embraced within a forest may be excluded, because shown to be more valuable for agricultural than for forest purposes, until formally restored to the public domain, such lands are not subject to general disposition, and no rights can be acquired by the attempted entry thereof. XXIX–531

If agricultural lands are improvidently included in a forest reservation they can be eliminated therefrom only by a proclamation from the President, or by the action of Congress, and, until so eliminated, such lands will continue a part of the reservation. XXIX–593; XXX–44

Reservation—Continued.

IV. FOREST LAND—Continued.

2. Act of June 4, 1897—Continued.

The act of, in providing for an exchange of lands within forest reservations for public lands outside of said reservations does not authorize the relinquishment of mineral lands as a basis for lieu selections. XXVIII–328

The regulations of April 4, 1900, under the act of, do not in terms include or exclude mining companies or corporations, and it rests with the Secretary of the Interior to determine whether these regulations shall include or exclude such companies or corporations. XXX–462

Coal lands are mineral lands within the meaning of the act of, and as such are subject to entry, when found in forest reservations, the same as other mineral lands within such reservations. XXX–92

A company or corporation engaged in mining or in prospecting for valuable mineral deposits is a "miner" or "prospector," as the case may be, within the meaning of the act of. XXX–462

The act of, does not in itself permit any person, company or corporation to use, free of charge, stone or timber found upon a forest reservation, but confers upon the Secretary of the Interior authority to say, through regulations prescribed by him, by whom, among those named, and when and to what extent, the privilege named in the statute may be enjoyed. XXX–462

Under the exchange provisions of the act of, C., the owner of lands covered by a patent from the United States and situate within the limits of a public forest reservation, filed in the Visalia, Cal., local land office, a relinquishment to the United States of his lands in the forest reservation, accompanied by evidence of his full and unincumbered title thereto, and at the same time made selection, by appropriate application in writing, of a like area of public lands in the Visalia land district desired in exchange for the lands relinquished, accompanying the selection by an affidavit declaring the selected lands to be unoccupied and nonmineral. Shortly thereafter K. Company and others filed sworn and corroborated protests against the selection, alleging that the selected lands, at the time of their selection, were occupied by protestants under the placer mining laws and were then known to be valuable for their deposits of petroleum or mineral oil. The selection has not been carried to patent. Held:

Reservation—Continued.

IV. FOREST LAND—Continued.

2. *Act of June 4, 1897*—Continued.

1. The land department has jurisdiction and power, either on its own motion or at the instance of third parties, at any time before a patent is issued upon a selection made under the exchange provisions of said act and after appropriate notice, to institute and carry on such proceedings as may be necessary to enable it to determine whether the selected lands were at the time of their selection in the condition and of the character subject to selection.
2. Lands chiefly valuable on account of the deposits of petroleum or mineral oil found therein are mineral in character and not subject to selection under said act.
3. The protests of K. Company and others require that a hearing be ordered to determine the condition and character of the lands selected.
4. The inquiry will be directed to the conditions existing and known at the time when the selection was made, and no consideration will be given to any change subsequently occurring or to any discovery or development of mineral thereafter made.
5. The evidence bearing upon the character of the selected lands will not be restricted to the discovery or development of mineral therein and to their geological formation, but may extend to the discovery and development of mineral in adjacent lands and to their geological formation. XXX–583

The essential requirements to be complied with by a person seeking title to a tract of land in exchange for land covered by a patent in a forest reservation, are: (1) That he must relinquish to the government the tract in the forest reservation, and submit satisfactory evidence respecting the title thereto; (2) That he must make selection of the tract desired in exchange for the tract relinquished, and accompany the selection by proof showing the selected land to be of the condition and character subject to selection. XXX–550

The land department has the jurisdiction and power, either of its own motion or at the instance of third parties, at any time before patent is issued, and after appropriate notice, to institute and carry on such proceedings as may be necessary to enable it to determine whether the selected lands were of the requisite class and character and whether the selection was in other respects regular and in conformity with the requirements of the act. But the determination must relate to the time when the selector has done all that is required of him in order to perfect his right to a patent. XXX–550

Reservation—Continued.

IV. FOREST LAND—Continued.

2. Act of June 4, 1897—Continued.

Questions respecting the class and character of the selected lands are to be determined by the conditions existing at the time when all requirements necessary to obtaining title have been complied with by the selector, and no change in such conditions, subsequently occurring, can affect his rights. XXX–550

It is incumbent upon one wishing to take advantage of the offer of exchange made by the government by the act of, to submit with his selection proof that the title to relinquished lands, to which he claims full title, has passed out of the United States by some means the full legal equivalent of a patent and is vested in him, and that at the date of selection the selected lands are unoccupied and nonmineral in character. Until such proof is submitted a selector has not done that which converts the offer of exchange into a contract fully executed on his part whereby he secures a vested right in the selected lands. XXX–570

Ordinarily, as between the government and a selector, he might be permitted to perfect the selection by supplying the necessary proof at a subsequent time, but his rights would be determined as of the date the selection was thus completed. In this case no such proof has been supplied, and it is admitted by the selector that the lands attempted to be selected are now known to contain valuable deposits of mineral oil; hence these selections can not now be perfected. XXX–570

In so far as existing conditions appear from the land-office records, no showing by the selector need be made, because the officers of the government must take notice of the public records; but as to conditions the existence or nonexistence of which can not be determined by anything appearing upon these records, the required evidence must be furnished by the selector. XXX–550

The right to a patent under the act of, once vested, is, for most purposes, the equivalent of a patent issued; and when in fact issued, the patent relates back to the time when the right to it became fixed, and takes effect as of that date. XXX–550

A person making selection under the act of, who has complied with all the terms and conditions necessary to entitle him to a patent to the selected land, acquires a vested interest therein and is to be regarded as the equitable owner thereof. XXX–550

Reservation—Continued.

IV. FOREST LAND—Continued.

2. Act of June 4, 1897—Continued.

Before any selection under the exchange provisions of the act of, can be approved, whether the tract relinquished as the basis therefor is covered by an unperfected *bona fide* claim or by a patent, it must be duly determined that the land selected was, at the time of selection, of the character and condition subject thereto, and also that the tract relinquished was, at the same time, subject to the relinquishment. Such determination, however, in any case wherein the tract relinquished is covered by a final certificate, does not call for or require the issuance of a patent for such relinquished tract, but is instead, in effect, a determination that patent shall not issue upon such certificate, that the full legal title to the tract is not to pass out of the government by virtue of the certificate or of the law under which the same was issued, and that whatever right or title had previously passed from the government has been returned to it. XXX–538

By relinquishment and reconveyance to the United States, under the exchange provisions of the act of, of lands within the limits of a forest reserve, and the selection of other lands in lieu thereof, the party making such relinquishment and selection acquires a right to have the selection approved, if there is otherwise no objection thereto, of which he can not be divested by the subsequent elimination from the boundaries of the forest reserve of the lands in lieu of which the selection is made. XXX–124

By relinquishment and reconveyance to the United States, under the exchange provisions of the act of, of lands within the limits of a forest reserve, and the due selection of other lands in lieu thereof, the party making such relinquishment and selection acquires a right to have the selection approved, of which he can not be divested by a subsequent order withdrawing the selected lands "from settlement, sale, or disposal," pending a determination "whether or not they shall be permanently reserved for forest purposes." XXX–145

The right of lieu selection under the act of, is expressly restricted to "vacant land open to settlement," and hence can not be allowed. where the land applied for is embraced within an existing forest reservation, established by proclamation of the President under section 24, act of March 3, 1891. XXIX–593

It was not intended by the act of, to exclude from reservation small tracts, here and there, within the limits of a forest, because of the fact that said tracts were not covered with timber. XXIX–531

Reservation—Continued.

IV. FOREST LAND—Continued.

2. *Act of June 4, 1897*—Continued.

Land acquired under a grant made to a State, or railroad company, by act of Congress is a proper basis for lieu selections under the act of, provided that the full legal title thereto has passed out of the government, and beyond the control of the land department by a patent, or some means the full legal equivalent thereof. XXVIII–328; XXIX–594

The words "tract covered * * * by a patent," as used in the act of, embrace and include a tract to which the full legal title has passed out of the government and beyond the control of the land department by any means which is the full legal equivalent of a patent. XXVIII–284

The act of, in providing for an exchange of lands included within a forest reservation and "covered by unperfected *bona fide* claims or by patent," contains no provision authorizing the suspension of action thereunder until the survey and examination of the reserved lands provided for in said act, and in the absence of such authority the Department is not warranted in thus suspending the execution of said act. XXVIII–312

If a selection is in lieu of land covered by a patent, or patent certificate, the non-mineral affidavit may be made by any credible person having the requisite personal knowledge of the premises. In the case of a selection in lieu of an unperfected claim, the non-mineral affidavit should be made as required in the law under which the claim is held. XXIX–580

A selection under the act of, in lieu of land within a forest reservation, embraced within a patent, or patent certificate, may be made by a duly authorized attorney in fact. As to selections in lieu of unperfected claims, the right to act through another depends upon the law under which the claim is held. XXIX–580

In an exchange of lands under the act of, where title to the land relinquished has passed out of the government, or where certificate for patent thereto has issued, the selection may embrace contiguous or non-contiguous tracts, if in the same land district; but if the land relinquished is covered by an unperfected claim, to which certificate for patent has not issued, and the law under which said claim was initiated requires that land taken thereunder must be in one body, the same requirement must be observed in making the lieu selection. XXVIII–291

A relinquishment tendered under the act of, of land embraced within a forest reservation, with a view to a selection of lands in lieu thereof, should not be accepted in the absence of an accompanying application to make such selection. XXIX–575

Reservation—Continued.

IV. FOREST LAND—Continued.

2. *Act of June 4, 1897*—Continued.

A person relinquishing land in a forest reservation, with a view to making a selection in lieu thereof, under the act of, should, at the time of such relinquishment, designate the land which he desires in lieu of that relinquished, and such designation should embrace a tract or tracts equal in area to that relinquished. XXIX–578

The right of relinquishment under act of, is not limited to claims initiated or titles acquired under laws that require personal settlement and residence on the land, but includes any tract covered by any unperfected *bona fide* claim under any of the general land laws (other than the mining laws), or to which the full legal title has passed out of the government, and beyond the control of the land department, by any means which is the full legal equivalent of a patent. XXVIII–328

Before a lieu selection under the act of, can be approved, the United States must be reinvested with all the right and title to the tract relinquished, with which it had previously parted. XXVIII–284

An application to select lands under the act of, must be rejected where the lands offered as a basis for such selection are in any manner encumbered, so that the United States can not, by the acceptance of a relinquishment of the lands offered, be reinvested with all the right and title with which it had previously parted. XXX–15

Where an exchange of land is sought under the act of, the relinquishment and selection can be made only by the claimant or owner of the land within the limits of the forest reservation. XXVIII–284

The act of, makes no provision for the issuance of scrip, on the relinquishment of lands included within forest reservations. XXVIII–477

Directions given for the disposition of cases where relinquishments under the act have been presented with selections in partial satisfaction only of the claim relinquished. XXIX–578

A homestead entry covering lands within the limits of a forest reservation, of record at the date of the proclamation establishing the reservation, is effective to except the lands covered thereby from the effect of the proclamation only so long as the entryman continues to comply with the law. On the relinquishment of the entry the exception declared in the proclamation ceases to be operative and the lands at once become a part of the reservation. XXX–44

Reservation—Continued.

IV. FOREST LAND—Continued.

2. Act of June 4, 1897—Continued.

The removal of timber, in pursuance of a lawful right, from land acquired under statutory authority, does not deprive the owner of said land or the government from receiving the benefit incident to an exchange of lands as provided for in said act. XXVIII–328

The requirement of posting and publication of notice, under the circular regulations of December 18, 1899, in the case of a lieu selection under the act of, is not applicable to a selection theretofore regularly accepted and approved. XXIX–533

Permission to occupy lands within a forest reserve for church and school purposes, under the provisions of the act of, asked for on behalf of a corporation, may be granted to the petitioners as individuals, where it appears that they are settlers residing in the vicinity of said reserve. XXVIII–89

The provision of section 10 of the act of March 3, 1893, that the lands in the Cherokee Outlet "shall be disposed of to actual settlers under the homestead laws only," precludes the allowance of an application to select such lands under the exchange provisions of the act of, in lieu of lands within a forest reserve. XXX–268

There is no authority for applying the rule of approximation permitted in entries under the homestead and other laws to cases of exchange of lands under the act of; but the rule that "a slight difference in the acreage of the tract relinquished and selected will not be deemed an inequality in quantity" may be followed in proper cases arising under the exchange provisions of said act. XXX–105

Reservoir Lands. See *Arid Lands; Reservation; Right of Way; Settlement.*

Circular of July 22, 1890, under the act of June 20, 1890, authorizing the restoration of certain lands withdrawn for reservoir purposes. XI–212

Instructions of July 14, 1897, under the act of March 2, 1897, providing for the disposition of Sugar Loaf reservoir site. XXV–15

A tract within a desert entry at the passage of the act of October 2, 1888, is excepted from the general withdrawal declared by said act. XVIII–350

A withdrawal made for reservoir purposes under the arid-land act will be revoked in accordance with section 17, act of March 3, 1891, as to the lands that are finally found not to be required for the purposes of the reservation. XIII–92

Reservoir Lands—Continued.

The protection provided for settlement claims by section 17, act of March 3, 1891, as against location of, extends only to lands actually occupied at the date of such location. XIV–514

A mineral location made after the repeal of the act of October 2, 1888, and prior to the selection of a reservoir site defeats the selection as to the land in conflict. XV–418

Land excepted from the operation of the act of October 2, 1888, and subsequently entered under the timber-culture law, is not thereafter subject to a specific withdrawal under said act. XVIII–350

A preëmption settlement and filing does not withdraw the land from selection as a reservoir site, but if such selection is not finally approved the preëmption claim may be perfected. XVII–341

The act of October 2, 1888, providing for the withdrawal of arid lands did not contemplate the impairment of rights acquired prior to its passage through *bona fide* settlement and occupancy, and it therefore follows that a preëmption settlement and filing made prior to the date of said act may be carried to entry and patent subsequently thereto. XXII–520

Withdrawal of land for reservoir purposes under the act of October 2, 1888, not defeated by a preëmption settlement and filing on the land included therein. XII–438

On revocation of withdrawal for reservoir purposes a filing for lands included therein and canceled for conflict therewith may be reinstated. XIII–92

An entry after the act of October 2, 1888, of land subsequently designated as a reservoir site is invalid, but may be suspended with a view to its ultimate allowance under section 17, act of March 3, 1891, in the event that the land is not required for reservoir purposes. XVIII–4; XXII–370

Entries and filings after the act of October 2, 1888, and prior to the act of August 30, 1890, are at the claimant's risk; and the Department can afford no relief if such claims are not protected by section 17, act of March 3, 1891. XVIII–352

Settlement claims valid but for the withdrawal authorized by the arid land act of 1888 are protected by the amendatory acts of August 30, 1890, and March 3, 1891, in so far as the lands are not actually required for the purposes of said withdrawal. XXI–203

The act of August 30, 1890, repealed the act of October 2, 1888, in so far as said act operated to create a general withdrawal of lands susceptible of irrigation; hence a homestead entry of lands so released from such withdrawal, made at a time when they are subject to entry, though subsequently included within the limits of a reservoir site, may be carried to patent irrespective of the provisions of the act of March 3, 1891. XXVI–648

Reservoir Lands—Continued.

A preëmption filing made subject to a withdrawal under the arid land act of October 2, 1888, that is awaiting action by Congress, may be suspended until such action is taken. XXIII–483

A mineral entry based on a location made after the withdrawal of the land for a reservoir site under the act of October 2, 1888, confers no right; but such entry may be suspended, and if it subsequently appears that the land is not required for reservoir purposes, the entry may then pass to patent. XXVIII–172

Under the act of March 3, 1891, the Secretary of the Interior has authority to release from reservation any portion of the lands selected for a reservoir site under the act of October 2, 1888, and the acts amendatory thereof, if it is made to appear that such land is not actually necessary for the purpose for which said reservation was made. XXVIII–194

The water reserve lands restored to the public domain by the act of June 20, 1890, were by the express terms of said act, made subject to "homestead entry only," and hence are not open to sale under the timber and stone act, or under the statutes providing for the sale of isolated tracts. XXIX–153

Residence. See *Abandonment; Settlement.*

I. GENERALLY.
II. HOMESTEAD.
III. COMMUTED HOMESTEAD.
IV. PREËMPTION.
V. OSAGE LAND.
VI. LEAVE OF ABSENCE.

I. GENERALLY.

To establish, there must be, concurrent with the act of settlement, an intent to make the land a home to the exclusion of one elsewhere. IV–412; V–179; IX–340; XI–450; XVI–22

Established from the moment that the settler goes upon the land with the intention of making his home there. II–161; IV–330; V–239; VI–121, 258; VIII–248

Begins with the first act of settlement where such act is followed by an actual inhabitancy of the land in good faith. VII–410

The law requires that, must be established within a reasonable time after settlement where there is an adverse claim, and what is a reasonable time must depend upon the facts in each case. XXV–334

The place of one's domicile determines the place of his residence. IV–200, 330

Residence—Continued.

I. GENERALLY—Continued.

A contract made by a homesteader through which he secures the cultivation of the land by a party who lives on the land with him for such purpose, and is paid for such service out of the crops so raised, is not inconsistent with the maintenance of. XXII–298

Of a married man held to be where his family resides, in the absence of proof to the contrary.
I–89; IV–394; VII–35; VIII–615, 629; IX–546

The fact that the wife continues to reside at the former home raises a presumption against the *bona fides* of the residence alleged; but such presumption may be overcome. VI–577

The validity of a settler's is not affected by the fact that his wife refuses to live on the land. XVII–337; XXI–113

Failure of the wife to reside on the land until after notice of contest does not impeach the good faith of the claimant where it is apparent that her final removal to the land is in compliance with a previous *bona fide* intention of the claimant to make his home on the land. XI–543; XII–472

The land is the entryman's home, if he established residence on it, so long as his family occupy it. II–82; III–21; VII–35

Only the wife shall be heard to prove change of residence by showing that her husband deserted her. II–81

In determining, by the presence of the "family," children, whether legitimate or otherwise, should be held as members thereof if they remain with the parent and under his care. IX–52

Can not be established through the acts of another. II–146; XI–602

Occupation through a tenant is not the maintenance or establishment of residence requisite under the public land law.
IV–412; XII–57; XVII–561

Maintained as the employe of another who asserts a possessory right to the land confers no rights under the settlement laws. X–276

As the tenant of another confers no rights under the public land laws. III–257

Neither acquired nor maintained without inhabitancy of the land, either actual or constructive, and that to the exclusion of a home elsewhere. IV–301, 412; VI–422;
VII–267; IX–175; X–240, 326, 339, 388

Must be acquired in the first instance by actual presence on the land, but continuous presence thereafter is not essential to the continuity of such residence. I–63; VII–144; XII–497

And presence on land not convertible terms. VII–144; IX–266

In acquiring, the former residence of the settler must be abandoned.
V–179

Residence—Continued.

I. GENERALLY—Continued.

Keeping a house in town to which the family return from time to time not in itself proof of bad faith. III–21

Once established, can only be changed when the act and intent of the settler unite to effect such change. V–6, 179

Where sufficiently shown, warrants the conclusion that the land was taken for a permanent home in the absence of evidence to the contrary. VII–127

The acts of a settler looking toward the establishment of a permanent home on the land may be properly considered in determining the good faith of his. XXVI–384

Not acquired by one who goes upon public land with the fixed intention of leaving the same after colorable compliance with the law. V–273; VI–25; VIII–615

Not acquired or maintained by going upon or visiting land for the purpose of complying with the mere letter of the law. VIII–248, 285, 331; XVI–22; XX–76; XXVI–165

Must be both continuous and personal to justify a claim of good faith. IV–200

The quality of not considered in anticipation of a proposed entry. IV–389

Laws requiring improvement and residence not satisfied by occupation for business purposes. I–456

The intent to avoid the requirements of law with respect to, warrants cancellation of the entry as speculative. XVIII–55

A change of circumstances after settlement and before final proof may be such as to render the intention of the settler to leave the land after final proof entirely compatible with good faith. VIII–508; XIII–74

In determining whether the claim of, is made in good faith, the fitness of the land as a place of permanent abode, the period of inhabitancy, and the claimant's relation to the land after final proof may be considered. XI–450

Absence immediately following final proof submitted in the presence of an adverse claim indicative of bad faith. V–449

Failure to establish, can not be cured by returning to the land after the submission and rejection of fraudulent final proof. IX–527

Credit for, not allowable during a period when the land was not subject to settlement. I–37, 46, 52; XXI–106

On land not subject to settlement is ineffective, if abandoned or discontinued before the land becomes subject to settlement and not resumed until after the intervention of an adverse right. VIII–584; XVII–561

Residence—Continued.

I. GENERALLY—Continued.

Credit for, from the time it actually began may be allowed to one who procures the cancellation of a prior entry covering the land. IV–287; VIII–227

On land while it is covered by the entry of another does not secure any right against a contestant who institutes proceedings to secure the cancellation of said entry. XIX–175

The right of a contestant to settle on the land involved in the controversy dates from the time when his right of entry is recognized, and his failure to reside on said land prior to such time can not be set up by an intervening applicant. XVIII–504

Where a successful contestant, in a suit involving priority of settlement, makes entry and is granted a leave of absence, a stranger to the record in such suit is not entitled to be heard on an allegation that involves the entryman's residence on the land during the pendency of the former contest. XXIX–222

Failure in residence not excused by bringing suit in the courts for possession. III–370

Proceedings in the local courts admitted to disprove the charge of abandonment. IV–502

Upon land entered through fraud does not validate the claim. III–299

Cultivation and improvement not the equivalent of. V–351; VI–27

The cultivation of crops from year to year and the presence of valuable improvements are an indication of good faith in the claim of residence. VII–231; IX–146

Holding office and voting in another county will defeat the claim of residence. IV–62

Want of, inferred from meager improvements and voting in a different precinct. VII–143

Voting in a different precinct from that in which the land is situated does not raise a conclusive presumption against the claim of residence thereon. VIII–353; IX–139

A declaration of, at a specified place, for the purpose of voting there, precludes a subsequent claim of residence, at the same time, at another place. XVII–176

Registering and voting for several successive years in a precinct in which the land is not situated, on an oath as to actual, in such precinct, raises a conclusive presumption against a claim of, for the same period on the land. XXIV–426

One who retains, at his former home for the purpose of voting and holding office there is precluded thereby from claiming residence on his land during such period. XVIII–546

Residence—Continued.

I. GENERALLY—Continued.

Mistaken location of house outside of the claim will not defeat the good faith of the residence. IX–175

A settler who by mistake erects his house outside the boundaries of his claim, but on discovery of such mistake removes to and lives on his claim, is constructively a resident thereon from the first. XVI–248

A settler who by mistake erects his house outside the boundaries of his claim and resides therein, but subsequently removes to the claim on discovery of the mistake, does not necessarily manifest a want of good faith in continuing to use the buildings erected on the adjacent land. XIII–7

In good faith in a house supposed to be on the land claimed is constructive residence upon the land. I–439; II–46; X–83; XII–67; XIV–447; XXIV–52

Dwelling house may be partly on land not claimed and not defeat the claim of residence. III–321; IV–62

That the land on which the improvements are situated is included within the inclosure of another does not necessarily impeach the good faith of the claimant. XVII–129

May be maintained in the upper story of a building erected for other purposes. III–562

A claim based upon settlement and improvement, with residence upon a contiguous tract, relates back to the date when residence is established on said contiguous tract. XVI–12

Can not be maintained for separate tracts and under different laws at the same time. II–622; III–506; IV–26, 462; VI–792; VII–225; IX–63

One who purchases land from a State by virtue of his residence thereon is precluded thereby from claiming residence on public land during the period covered by his proof under the State law. XI–164

Being an essential in both, precludes the assertion of a homestead and preëmption claim at the same time. V–403; VI–831

Of husband and wife while they live together as such is the same, and the home of the wife is presumptively with her husband. X–30; XI–22; XVIII–116

Can be legally maintained by a married woman while not living with her husband. XIV–241

A married woman, in the absence of legal cause for separation from her husband, is not free to select or maintain a separate residence, and is therefore disqualified to make homestead entry. XXX–9

Separate, can not be maintained at the same time by husband and wife living together in such relation in a house built across the line between two settlement claims, so that each can secure a claim thereby. IX–426; X–266

Residence—Continued.

I. GENERALLY—Continued.

Separate, can not at the same time be maintained by husband and wife in a house built across the line between two settlement claims. In such a case the claimants may elect which tract they will retain. XI–207

By husband and wife in a house built across the dividing line between two claims will not secure a right of entry to each; and where one of such parties has received final certificate the claim of the other must by canceled. XIII–734

Can not be maintained by a married woman separately from her husband in a house built across the line between two settlement claims. XII–443

During the existence of the marital relation can not be maintained by a married woman separately from her husband in a house built across the line between two settlement claims held by each separately, and such residence confers no rights that can be perfected by the heirs of the wife. XII–197

A single woman, who makes a homestead entry and subsequently marries, and thereafter lives with her husband (who had filed for an adjacent tract) in a house built across the dividing line between the two claims, by such residence abandons her own entry. XVII–215

Husband and wife can not maintain separate, at the same time, and so secure title to two tracts. XV–377; XXI–430

Nature of claim or relations of parties to the land not affected by the act of June 4, 1880. I–434

Absence in winter months excused when the altitude of the land is such as to prevent residence throughout the entire year. VI–811; VII–57; IX–450

Climatic reason for failure to reside not accepted in the absence of good faith. III–533; IV–348, 393

Not acquired nor maintained by occasional visits to the land. II–74, 144, 152, 159; III–533; IV–141, 235, 301, 308, 349, 413; X–472; XI–284, 469

Temporary absences on account of exceptional circumstances may be excused, but such absences should be the exception and not the rule. XI–422

The facts which will excuse absence must be such as rendered it compulsory. II–152

When once acquired, temporary absences that indicate no intention of abandonment may be excused. III–110, 545, 564; IV–56, 62, 80, 167, 200, 260; VII–249, 345; VIII–60; IX–266; XVIII–156; XIX–210; XXVIII–485

Residence—Continued.

I. GENERALLY—Continued.

After establishment of, temporary absences not inconsistent with an honest intention to comply with the law are accounted as constructive. VI–566, 606

Where the absences aggregated more than six months, but were not over four months at any one time, and where good faith in cultivation and improvement is shown, the entry may stand. II–155

Where an excuse for absence is offered, such as poverty and sickness, and the evidence shows a mere pretence of settlement, without cultivation, improvement, or establishment of a residence, it will not avail the claimant. II–142

Temporary absences occasioned by ill health do not interrupt the continuity of. V–215; VIII–353; IX–146; XXVIII–503

The plea of ill health can not be received as an excuse for failure to maintain residence and make substantial improvements, unless good faith is shown and it is clearly apparent that such failure is due to the causes alleged. XXII–140

The physical condition and poverty of a claimant may be taken into consideration, where good faith is apparent, in determining whether there has been substantial compliance with the requirements of the homestead law. XXII–422

Temporary absences occasioned by the homesteader's physical incapacity to personally improve and cultivate the land do not impeach the good faith of his. XXII–537

After the establishment of, in good faith, temporary absences will not be held to show abandonment, but in such case the claimant must evince by his acts an honest continuing intention to maintain a permanent residence, and make the land a home to the exclusion of one elsewhere. XXII–619; XXV–147; XXVI–210; XXVIII–485

Absence is excused where the entryman shows the illness of his wife and the necessity of taking her away for treatment, together with improvement and cultivation. II–156

When once established, absences rendered necessary by the sickness of a parent may be excused. VII–170

Continuity of, not broken by a temporary absence occasioned by the fatal illness of a friend. X–526

Continuity of, not broken by temporary absences made necessary by the poverty of the claimant. II–149; VI–154, 170; IX–150; X–492; XII–102; XIII–42, 113; XXVIII–503

The plea of sickness and poverty can not be received as an excuse for failure to establish, unless good faith is shown and it is apparent the failure is due to the causes alleged. XI–497

Absences will not be excused on the plea of poverty where good faith is not apparent. III–543; VII–467

Residence—Continued.

I. GENERALLY—Continued.

Total want of, not excused by poverty. IV–186, 303

The poverty of an entryman may excuse his absence from the land after the establishment of, but does not constitute a sufficient excuse for failure to establish, within the prescribed period, where such default is charged by an intervening contestant. XXV–44

The serious illness of the entryman's wife can not be accepted as a sufficient excuse for failure to establish residence where such default is charged and proven. XVII—540

As between a settler, whose absence from the land is due to the sickness and necessities of his family, and an entryman who is not acting in good faith in the matter of complying with the law, the absence of such settler will not defeat his right as a prior settler on the land. XXVII–317

The poverty of claimant, condition of his family, and severity of climate may be properly considered in determining whether due compliance with the law has been shown. VI–567

Absences caused by ill health, insanity, and poverty held excusable and the period covered thereby treated as a part of the required period of. VI–311

After once secured, the "inhabitancy" is not impeached by absences necessary to secure means for the improvement of the land and the payment of the purchase price. VI–576; VIII–645; XVII–1, 207

Temporary absences for the purpose of earning a living not inconsistent with an honest intention to comply with the law may be held constructive. II–157; VI–245, 566; VIII–517, 639; IX–57

When once established to the exclusion of a home elsewhere and the improvements indicate good faith, temporary absences on business may be excused. XI–505; XXI–167

Temporary absences at a season of the year when but little work could be done on the land are not inconsistent with good faith in the matter of inhabitancy. VI–338

Absences during the winter season for the purpose of earning money to improve the claim may be excused. VII–360

Compulsory absence of the homesteader and his family caused by the land being flooded does not interrupt the continuity of, that has been established and maintained in good faith. XII–199

Absence of the entryman or his family from the land may be satisfactorily explained where it is obvious that the entry was made in good faith. VI–254

Abandonment should not be presumed from temporary absences where the settler's family remains on the land during such periods of absence. IX–52

Residence—Continued.

I. GENERALLY—Continued.

Abandonment not excused because the result of erroneous advice of neighbors; and rights so lost can not be recovered by a return to the land. IV–166

The charge against a young woman of failure to establish a residence is not sustained by evidence showing the building of a house (with other improvements), residence in it for two days, and going into service for the purpose of earning money to improve the land. II–162

After the establishment of, absence caused by official duties will not work a forfeiture of the settler's rights. II–74, 110, 147; III–6; VI–307, 668; VII–88; VIII–85; IX–525

A preëmptor who has established, in good faith, does not forfeit his rights thereunder by a temporary absence in the discharge of official duties; nor is the right of transmutation during such absence affected thereby. XVII–195

The rule that recognizes official duty as an excuse for temporary absence is equally applicable whether the duty is imposed by the appointing power or by election. XVII–195

If not first acquired in good faith, later absence can not be excused on the ground of official duties. IX–523

If the duties of an office are not inconsistent with presence on the land, they can not be accepted as an excuse for absence therefrom. IX–546

Engagement in public service will not be construed into an abandonment of, so long as such efforts are made to maintain improvements as manifest good faith. XXI–155

Official employment can not be accepted as an excuse for the want of, where the entry is made with a full knowledge that such employment will prevent inhabitancy of the land. XI–280

Of a postmaster presumed to be within the delivery of his office. V–155

In the case of a homesteader who holds an appointment as postmaster, the Department will not, in passing upon his compliance with law in the matter of, undertake to determine whether such residence is compatible with the statutory requirement that "every postmaster shall reside within the delivery of the office to which he is appointed." XXIX–59

The rule that a postmaster will not be heard to claim, outside of the delivery of his office, is not applicable where it appears that such officer's resignation has been received by the Post-Office Department prior to the date of his settlement. XXIII–480

Residence—Continued.

I. GENERALLY—Continued.

In determining whether the, maintained by a homesteader who holds the office of postmaster is in compliance with law, the Department will not hold that a tract of land sufficiently near the post-office to allow the postmaster to reside thereon and attend to his official duties is not within the delivery of said office as contemplated by the statute. XXII–248

Of a public official presumptively consistent with the law creating the office. V–282

Total want of, not excused by election to a public office. I–95

An official required to reside personally in a town may properly leave it for a time and establish a good residence on public land where he intends to remove his family and remain with them from time to time. II–161

Absence from the land excusable when in obedience to a judicial order. XIII–214

A plea of "judicial restraint" will not be accepted as a sufficient defense to a charge of non-compliance with the law in the matter of, and cultivation, if the homesteader had not established residence and otherwise complied with the law prior to the time when he was placed under such restraint. XXVI–416

If once established, the continuity thereof is not broken by absence caused by judicial restraint. V–6; VII–532; X–551; XV–550, 554

Continuity of, not broken by forcible ouster from the land and subsequent compulsory absence therefrom. IV–335; VIII–593; XIX–178

Failure to establish and maintain, when occasioned by duress, can not be construed as abandonment.

II–152, 572, 602; IV–378; VI–616; XXVI–616; XXVII–438

Failure to establish, will not be excused on the plea of duress when a part of the land was at date of entry and thereafter free from adverse claims. IX–22

Where partly prevented by the force and violence of occupying claimant, held sufficient. III–368

Failure to establish will not be excused on the plea of intimidation, if the alleged threats did not lead the claimant to believe that he was in bodily danger. XXII–280

Failure to maintain, may be excused where by intimidation and armed violence the settler is driven from the land and by such means prevented from returning thereto. XII–562

Not incumbent upon a settler who has been wrongfully ejected from his land to make a new settlement on that part of the claim not in dispute, pending judicial proceedings to recover possession.

VIII–593

Residence—Continued.

I. GENERALLY—Continued.

An adverse claimant will not be allowed to take advantage of his own wrongful acts in preventing the entryman from maintaining a continuous residence. XX–183

Threats of violence and an unfavorable decision of the local office accepted as excusing want of. I–43

Threats and other acts of intimidation by a violent man may excuse failure to maintain a residence which has already been established in good faith. II–602

Building and occupation (peaceable) of a house by a young man within twenty-five feet of a house built by a young woman, during her absence, both houses being built near a spring, are not in themselves acts of intimidation. II–630

Where one can show that he was guided by an unrevoked though erroneous decision of the General Land Office in not establishing a residence, he is protected. II–154

Want of, excused in case of continued suspension of plat. IV–333

The suspension of an entry, during the pendency of an investigation ordered to determine the alleged right of a prior occupant, relieves the entryman from the maintenance of, during the period of suspension. XXII–692

During suspension of the township plat a temporary absence from the land prior to final proof, but after full compliance with law in the matter of residence, will not affect the right of a settler. XII–633

And occupation is notice of the settler's claim which others are bound to recognize. IV–308

On public land, with no intention of acquiring title thereto under the settlement laws, confers no right as against the subsequent entry of such land by another. XVIII–187

No rights on public land, as against adverse claimants, are secured by, where no steps are taken within the proper time to protect the alleged settlement right. XI–300; XIII–225; XX–550

On lands within the former Crow reservation after April 17, 1885, and prior to the proclamation under the act of March 2, 1889, is a trespass, and no credit therefor can be given under an entry allowed by said act. XIII–657

II. HOMESTEAD.

Absence from land on account of military or naval service during time of war excused; act of June 16, 1898, and circular thereunder. XXVII–146

Residence under the homestead law begins from date of entry. I–94; III–506; IV–462; V–406

Residence—Continued.

II. HOMESTEAD—Continued.

Not required prior to the allowance of application to enter. X–510; XII–324; XIII–154; XIV–554; XX–295; XXIII–475; XXVI–219, 588

Homesteader can not delay establishment of, until the allowance of his application to enter if he claims priority of right by virtue of an alleged settlement. XVI–199; XIX–547; XXI–97; XXII–633

A contestant who claims the right of entry on the ground of priority of settlement must show compliance with the settlement laws and the establishment and maintenance of, in good faith. XXII–280, 310; XXIII–87; XXVI–341; XXVIII–169

Need not be established where entry was made pending the right of appeal by a former entryman until disposition of said appeal, which was taken before residence was required. (Overruled 14 L. D., 429.) VI–688

A homestead entryman is not in default in the matters of, and improvements where the land is covered by the prior uncanceled homestead entry of another who is in possession. XX–295

After a period of five years the entryman is not required to show further inhabitancy. VI–143

The law does not require, of a homesteader after the submission of final proof, if such proof upon examination is found satisfactory. XXIX–16

An applicant for the right of homestead entry who has continuously resided on the land embraced within his application for a period of five years, and applied to enter during said period, is not thereafter required to maintain, as a prerequisite to patent. XXIV–343

The failure of a settler to reside on his land, after the submission of final proof, can not be construed as an abandonment of the land if his final proof is found sufficient. XVIII–504

Required under the homestead and preëmption laws does not differ in quality, only in the length of time prescribed therefor. XV–574

Must be established under homestead entry within six months from date thereof, and failure in this requirement is considered a defect requiring explanation. VIII–566

Failure to establish, is not abandonment where the entryman dies prior to the expiration of six months from the date of entry and the heir subsequently cultivates the land. XIV–141

Abandonment not presumed from absences following entry when a period of residence longer than that required by law had preceded the entry. V–238

Leaving homestead under erroneous information, but returning thereto prior to inception of adverse right, does not constitute abandonment. III–223

Residence—Continued.

II. HOMESTEAD—Continued.

Effect of abandonment not overcome by returning to the land in the presence of an intervening adverse right. IX–546

Failure of a homesteader to establish, can not be excused on the ground that it was due to his arrest under a criminal charge and subsequent sentence thereunder. XII–239

Homesteader is excused from establishing, where the township plat is suspended for the settlement of a private claim. XV–215

Failure to establish, within six months from entry not cured by the value of the improvements where a contest is brought on the ground of such default. XI–602

The rule which allows a homesteader, who makes entry under section 2290, R. S., six months within which to establish, is not applicable to an entry under section 2294, R. S., which is dependent upon antecedent settlement and residence. XVIII–540

The law requires a homestead settler to commence residence on the land within six months from date of the entry; but the act of March 3, 1881, authorizes the Commissioner to extend this period for six months where climatic reasons have prevented the residence. II–145; III–462

Failure to establish, within six months from date of entry fatal in the presence of an intervening right. IX–523

Failure to commence, held to be excused by climatic and other reasons beyond the settler's control. III–48

If alleged in the presence of an adverse claim, before required by the statute, it must be shown in good faith. V–440

Essential requirement of homestead law dependent upon actual inhabitancy of the land to the exclusion of a home elsewhere. I–78; II–143; VIII–576, 584; X–79, 211, 294; XVI–378

Cultivation and improvements without, do not constitute compliance with the homestead law. VI–788; X–346

Cultivation of the homestead, with temporary sojourns on it, but with actual residence on an adjoining tract, is not a compliance with the law; residence on a homestead is a condition precedent to title. II–143

Upon a tract held by a possessory right of the claimant, adjacent to and included within the inclosure of the homestead claim, will not support an entry under the homestead law. X–130

Under the homestead law is not affected by the fact that the entryman's house was on a part of the land subsequently adjudged mineral and excluded from the entry. XIV–489

Residence—Continued.

II. HOMESTEAD—Continued.

The cancellation of a homestead entry, on account of an adverse right as to the particular tract on which the entryman actually lived, does not affect the sufficiency of his, as to the remainder of the tracts, if his entry was made in good faith, and embraced contiguous subdivisions open to appropriation at such time, as shown by the records of the local office. XXIX–721

It is no evidence of bad faith that the house of the homesteader is built across the line between two claims. X–88

Can not be maintained separately by husband and wife at same time living as one family in the same house, so that each may perfect an entry under the homestead law. IX–426

Alleged under the homestead law not consistent with the maintenance at the same time in another State of the residence required as prerequisite to citizenship under the naturalization laws. VII–58

A homesteader who takes title to the tract on which his house is situated by scrip location and removes to another part of the original claim can not be credited for residence on the first tract. VIII–547

A homesteader may receive credit for, during a period while the land was covered by a prior entry under which no right was asserted and which was subsequently canceled. X–276

Credit for, while the land was held under his previous timber-culture entry may be allowed a homesteader in the absence of an intervening claim. VI–512; VIII–46, 192

One who relinquishes a part of the land covered by a filing and makes homestead entry of the remainder, together with another tract, is not entitled to claim residence on the latter except from the date of entry. XII–645

One who relinquishes for a valuable consideration a preëmption claim is not thereafter entitled to credit for residence under said claim on a subsequent homestead entry of the same land. XIII–323

Credit for, under a homestead not allowed for a period during which the settler held the land under a preëmption claim that was subsequently perfected and the tract in question elminated therefrom. XVI–140

Credit for, not allowed before the entryman is a qualified settler under the public land laws. I–36

Good faith is shown by making a home on the land and improvements thereon. I–63

Want of, not excused on the plea that the land required irrigation. V–297

II. HOMESTEAD—Continued.

No one but the wife during the life of the entry may allege "desertion" in proof of abandonment. VIII–626

Failure to maintain, not excused by the institution of judicial proceedings against an adverse occupant to recover possession. IX–22

A homesteader who makes entry with knowledge of an existing adverse settlement claim asserted for a portion of the land must establish residence on some part of the entered tract in order to show due compliance with law. IX–22

The adverse occupancy of another as to a part of the land covered by a homestead entry will not excuse the entryman from the maintenance of residence during the pendency of contest proceedings over the land in conflict. IX–22

One who alleges priority of settlement, as against an adverse applicant for the right of entry, must comply with the law in the matter of settlement and maintenance of, during the pendency of such controversy. XXVIII–266

During the pendency of a contest, in which each party alleges priority of settlement, both are bound to comply with the law and maintain, upon the land. XXVIII–480

If an entryman fails to maintain the continuity of his, during the pendency of a contest involving priority of settlement, his laches can not be cured by the resumption of, prior to the institution of proceedings by the adverse settler charging said default. XXIX–54, 203

A homesteader who makes entry subject to a prior adverse soldier's declaratory statement of record, is not excused, on account of the existing adverse claim under the soldier's filing, from establishing, within six months from date of entry. XXVIII–337

Under the departmental construction of section 2297, R. S., a homestead entryman has six months from the date of his entry within which to establish actual, on the land. XXIV–522

Establishment of, within six months from entry not a statutory requirement, but a rule based on the provision in section 2297, R. S., authorizing cancellation on proof of change of residence or abandonment for more than six months. VI–567

The allowance of six months from the date of entry for the establishment of, is a privilege authorized under section 2297, R. S., and protects the entry from the inference of abandonment during said period, but there is no authority for excusing default in the matter of residence after the expiration of said period, and in the presence of an adverse claim. XXVII–131

Residence—Continued.

II. HOMESTEAD—Continued.

An absence to procure a support for the family, though covering several years, is not abandonment if the family lives on the land in the meantime. VIII–626

Required under the homestead law allows credit for military service. XIV–507

Actual service of soldier in the United States army equivalent to residence under the provisions of section 2308, R. S. I–362

Under existing legislation enlistment in the military service of the United States in the war with Spain will not excuse homestead claimants from complying with the law as to, and improvements. XXVI–672

Service in the regular army since the close of the rebellion not equivalent to. I–98; XIV–472

In the computation of the time that may be deducted, under section 2305, R. S., from the period of, required of a homesteader, it is only the time actually served that can be credited to the entryman, unless he was discharged for wounds received or disability incurred in the line of duty. V–630; XXVI–150

Length of service, not term of enlistment, determines the amount of time to be deducted from period of, if the soldier was discharged on account of disability existing before enlistment. V–674

In computing military service in lieu of, credit should not be allowed twice for a period covered by two enlistments. VIII–227

One who makes a second entry under section 2, act of March 2, 1889, is entitled to credit for military service, though allowed therefor under his former entry. XIV–604

A homesteader in making proof under a second entry allowed in accordance with section 2, act of March 2, 1889, is entitled to credit for such portion of his military service as was not applied to his first entry. XV–241

Military service not construed as, during the time of such service when no residence has been established. VI–788

Upon a soldier's entry the claimant is entitled to credit for the full period of enlistment where his resignation as an officer is accepted on a surgeon's certificate of disability. X–622

Must be shown to cover a period not included within military service. XI–368

And cultivation must be shown for not less than one year in case of entryman who has credit for four years' military service. III–582

Not required of the heirs, widow, or devisee of a deceased homesteader, but cultivation of the land must be shown for the statutory period. I–636; II–74; IV–433; VII–309; IX–31; XII–562; XIII–228; XVI–375; XXIII–158

Residence—Continued.

II. HOMESTEAD—Continued.

Not required under an entry made by guardian for the benefit of the minor orphan child of a deceased soldier. X–528

Under a homestead entry made by the heirs of a successful contestant in accordance with the act of July 26, 1892, actual residence on the land is not required, if cultivation thereof is shown for the requisite period. XXV–281

The widow of a deceased soldier or sailor, who makes homestead entry under the provisions of section 2307, R. S., must identify herself with the tract claimed by some personal act of settlement thereon indicative of her claim, but need not reside on the land. XXII–351

Widow can not, under entry in her own right, claim for, during the lifetime of her husband. I–36

A deserted wife who secures the cancellation of her husband's homestead entry, and, as the head of a family, thereafter makes a homestead entry of the land, is entitled, on final proof, to credit for her, on the land prior to the date of her husband's desertion. XXIV–557

The matter of residence on adjoining farm is not modified by the provisions of the act of May 14, 1880. V–172

Credited under the act of May 14, 1880, in case of adjoining farm entry from date of settlement. (Overruled, 13 L. D., 713.) VII–33

On the original farm prior to adjoining farm entry can not be computed as forming a part of the period required under the latter entry. I–68; X–488; XIII–713; XIV–268; XV–572; XXVII–348

The act of May 14, 1880, does not waive any requirement as to the period of, required under an adjoining farm entry, but allows credit for, on the land embraced therein prior to the entry thereof. XIII–713

Where an entryman who has made an adjoining farm entry dies more than six months after entry without having established, on the original farm, his widow may cure said default by the establishment of, prior to the initiation of any adverse claim XXV–296

On the original farm essential to the right of making adjoining farm entry. X–579

Adjoining farm entry can not be made without residence upon original tract or under new entry. III–394

Period of, abridged by section 2305, R. S., but the quality of, is unchanged thereby. V–205

Of one year required in case of additional homestead entry made under the act of March 3, 1879. I–100

Residence—Continued.

II. HOMESTEAD—Continued.

Must be established and maintained under additional entry where the original was purchased under the act of June 15, 1880. I-29

On the land entered, is required in case of an additional homestead entry, made under section 6, act of March 2, 1889. XXIX-217

Is an essential part of the compliance with the homestead law required by the act of March 3, 1883 (Alabama). XIV-268

III. COMMUTED HOMESTEAD.

A proper element to be considered in commutation proof. IV-347, 384, 478

Proof of, required as under the preëmption law. V-676

In case of commutation should be computed from date of settlement. V-94

Want of *bona fide*, in commutation will defeat right acquired by original entry. V-392

Want of, not excused on the plea of poverty in case of commutation. V-448

The fact of commutation does not in all cases defeat the plea of poverty when set up as an excuse for absences from the land. VI-170

The period of six months' residence required is to secure an assurance of good faith, but exceptions are justified where good faith is apparent and substantial compliance with the regulations appears. IV-287; VI-324, 573

A term of six months' residence after entry not essential in commutation. IV-418

A period of six months' inhabitancy immediately preceding entry required as a test of good faith, but temporary absences caused by poverty or ill health will not impair such inhabitancy. VIII-634, 639

Six months' presence on the land for the pnrpose of carrying out the letter of the departmental requirement, with the intent to discontinue inhabitancy at the end of that period, not accepted. VIII-285

Period of fourteen months required before commutation of adjoining farm entry under section 6, act of March 3, 1891. XV-571

The fourteen months required of a commuting homesteader by section 2301, R. S., as amended by section 6, act of March 3, 1891, must be computed from the date of the original entry. XVI-285

Not required after submission of satisfactory commutation proof and tender of payment. X-555

IV. PREËMPTION.

Not required pending action on application to file declaratory statement. X–616

Must be maintained during pendency of contest. I–404

The rule requiring six months' preceding entry is for the purpose of testing the claimant's good faith, and is not a statutory requirement. I–493; V–95; VI–566, 636

Period of six months required to show good faith, but where otherwise shown a literal compliance is not necessary. I–493; VII–3

Actual and continuous for six months immediately preceding final proof is not required if good faith is otherwise shown. IX–139

There is no rule of law or of the Department which requires the preëmptor's actual personal presence on the land for six months immediately preceding the offer of proof. VII–62; X–337

The preëmptor is required to show six months' continuous residence prior to final proof, but such residence is compatible with temporary absences satisfactorily explained. VII–62

A failure to follow up settlement by establishing a residence divests the person of all rights acquired by the settlement. II–574, 637

Should be upon the land at the date of making proof. IX–621

A preëmptor must reside on the tract to date of his entry; where he made homestead entry on February 11 and resided on the homestead until April 1 following date of final proof his application for entry should be rejected. II–622

Must first be established in good faith before excuses for absence will be accepted. III–107

Absence in military service permissible if actual residence has been established. VIII–570; IX–489

A claimant not necessarily required to abandon his business to acquire title under the preëmption law. III–223; VI–121

Using the land as a herding place for cattle while the settler resides elsewhere is not contemplated by the preëmption law. III–87

Removal of the dwelling house to an adjoining tract on account of annual inundations prior to final proof, but after a period of four years' residence, not indicative of bad faith. VII–259

It is not an act of abandonment for a preëmptor who is residing on the half of a quarter section and has a pending contest against an existing entry on the entire quarter to remove to the other half on the cancellation of said entry where he maintains settlement on the whole quarter. XIII–366

Pretending to occupy a shanty near his employer's claim, without stove or cooking utensils, and for seven months of cold weather occupying the house on his employer's claim, is not legal residence. II–602

IV. PREËMPTION—Continued.

One sleeping on his claim in a pen or in the open air and intending to erect a habitable dwelling so soon as his means or occupation permits maintains a satisfactory residence. II–624

Where A left the land and B made settlement and, without cultivating or establishing residence, also left it for three months, during which period A returned and thereafter complied with the law, A's right is superior. II–625

Absence occuring after settlement does not affect the right of the settler if he returns to the land prior to the intervention of any adverse claim and thereafter resides thereon in due compliance with law. XI–307

On a tract held under patent can not be extended to adjoining land by occupation and cultivation of the same. VI–356

Allowed as a preëmptor while the land was covered by the settler's timber-culture entry. I–58

Preëmptor allowed further time within the statutory period to make residence and showing thereof. III–375

Credit for, on abandoned preëmption claim not allowed on attempted transmutation. I–485

Credit allowed for previous, on transmutation of filing to homestead entry. I–355

Of preëmptor available under act of May 14, 1880, on transmutation. V–118

By the heir of preëmptor not required in order to perfect the claim of the decedent. III–345

V. OSAGE LAND. See *Indian Lands*, sub-title No. IX.

For a period of six months preceding entry not required in entries of Osage lands, but *bona fide* settlement must be shown. V–309, 581; VI–783

Six months' residence prior to final proof not required of purchaser of Osage, but actual settlement must be shown by acts that indicate an intent to take the land for a home to the exclusion of one elsewhere. XII–12

Six months' continuous, next preceding final proof not required, but after settlement is made the residence should be continuous until final proof and a home maintained on the land to the exclusion of one elsewhere. XII–290

VI. LEAVE OF ABSENCE. See *Contest*, sub-title *Homestead*.

Leave of absence granted under section 3, act of March 2, 1889. Circular of September 19, 1889. IX–433

Residence—Continued.

VI. LEAVE OF ABSENCE—Continued.

Leave of absence permissible under the act of March 2, 1889. Circular of March 8, 1889. VIII–314

The leave of absence accorded by section 3, act of March 2, 1889, does not include settlers who have no claim of record. XXVII–317

If residence is not first established, leave of absence is no protection. XXI–42[illegible]

Leave of absence accorded under section 3, act of March 2, 1889, can only be allowed on due showing that such absence is made necessary by sickness, failure of crops, or other unavoidable casualty. XI–631

Failure of a settler to get water on his land can not be regarded as a "casualty," within the meaning of the act of March 2, 1889, and hence furnishing a proper basis for a leave of absence under section 3 of said act. XX–21

Poverty and inability to earn a living on the land is not a "casualty" that entities a homesteader to leave of absence under section 3, act of March 2, 1889. XXII–716

Where entryman was absent, under act of June 4, 1880 (as to loss or failure of crops), he was constructively residing on the land. I–24, 434; II–29

Application for leave of absence, based on alleged failure of crops, does not operate to extend the time for making final proof. XIV–207

Failure to apply for leave of absence can not be excused on the ground of the claimant's ignorance of the law authorizing such action. XVIII–156

A leave of absence, regularly granted by the local office and not disapproved by the General Land Office, serves to protect the settler while in effect, and his absence thereunder does not afford any ground for a presumption against his good faith. XX–319

Where an application for leave of absence is wrongfully denied, and afterwards allowed on appeal, the applicant will be protected as to any absence during the period covered by the application. XXIII–200

An application for leave of absence will not be granted if it does not affirmatively appear that the applicant has shown good faith in residence upon and cultivation of the land up to the date of his application. XX–340

Section 3, act of March 2, 1889, does not authorize extension of time for the establishment of, but allows a leave of absence in certain cases after settlement. XIV–95

Residence—Continued.

VI. LEAVE OF ABSENCE—Continued.

When the conditions named in section 3, act of March 2, 1889, are made to appear to the local office, a leave of absence should not be denied for the reason alone that no period of personal presence on the land has intervened between the expiration of a former leave and the application for a second or subsequent leave. XXII–706; XXIII–200

A leave of absence is no protection against a contest for abandonment, where the entryman, prior to such leave, has failed to comply with the law. XXIX–54, 203

Where a homesteader is granted a leave of absence, the time of his absence shall not be deducted from the period of residence required by law, but he must show full five years' residence exclusive of the time of actual absence under his leave. XXX–21

Res Judicata. See *Jurisdiction.*

The doctrine of, necessarily applicable to proceedings before the land department to avoid confusion and uncertainty as to finality of action. IV–482; X–453

Doctrine of, is applicable as between parties litigant with respect to matters once in issue and determined by final decision of the Department. XIII–366

Identity in the thing sued for, in the cause of action in the person and parties, and in the quality of the persons must exist to make the case. III–199; IV–209, 428; VI–385; XVI–404

A final determination as to the validity of a claim, in proceedings involving such issue, may be properly adopted in a subsequent case where the same party sets up the same claim. XIX–76

Final adverse decision of the Department precludes favorable consideration of a subsequent application of the same party raising the same question. XI–463; XIX–547

Where the same matter has been actually tried or so in issue that it might have been tried it is not again admissible. II–595; VII–146

The rule of, as applied by the Department in determining whether a contest is barred by prior proceeding, does not, as against the government and third parties, place matters which might have been tried and determined upon the same footing with those which have thus been disposed of. XXVI–34

Erroneous denial of a statutory right will not preclude subsequent supervisory action on the part of the Department, the subject-matter still remaining in its jurisdiction. XXII–459

Prior to the issuance of patent, the land department may reopen a case, to correct an error in the decision thereof, and readjudicate the same, after due notice to the parties. XXIV–280

Res Judicata—Continued.

The doctrine of, will not prevent departmental action where such course is the only one by which substantial justice can be secured and the subject-matter remains within the jurisdiction of the Department. XXIII–216

The doctrine of, as between the parties to a controversy, will not prevent the government from cancelling an entry where it is apparent that it can not be perfected without perjury on the part of the entryman. XXIII–514

Final decisions of the General Land Office not conclusive as to new parties claiming before the Department. V–12

Final rejection of claim for land under a specified statute does not preclude a subsequent application for the same land under a different law. V–415; VI–309

A final decision against a right asserted under the preëmption law is no bar to a claim by the same person for the same land under a different law. V–566

Adjudication of an applicant's claim for a tract of land under one law is no bar to a subsequent application of the same party under a different law and upon a different state of facts. X–281

An adjudication that certain land was not excepted from a railroad grant by a rancho claim will not bar application by the same person for said land on the allegation that it was excluded from the grant by a preëmption claim. III–122

The final location of one of several contiguous claims does not preclude full examination in the location of the remainder, though it may result in conflict with the previous adjudication. I–213

A departmental decision that land is mineral in character does not preclude subsequent investigation on the part of the Department as to the character of such land. XI–441

Determination of rights as between settlers and a railroad company will not preclude subsequent consideration of the status of the lands under said settlement claims in determining the right of the company as against the government. IV–249; V–662

The final determination of the Secretary of the Interior as to the proper location of a boundary line of an Indian reservation should not be disturbed by his successor. XXII–301

A final decision by the Secretary of the Interior is conclusive as to departmental action therein and will not be disturbed by his successor where no new question is presented. I–232; V–34, 51, 483; VII–146; IX–363

The head of a Department can not, with certain exceptions, reverse the action of his predecessor. III–196, 537, 559, 595; IV–6, 252, 483; VIII–255; X–94; XI–504

Res Judicata—Continued.

A change in the person holding the office of Secretary of Interior does not prevent or defeat a review or departmental action if the legal title to the land still remains in the government, and the Secretary making the ruling or decision, if still in office, would be in duty bound to review or reverse his own action. XXVI–34, 177

The Secretary has authority to review the decision of a former Secretary or revoke his own if obtained through fraud or mistake. IV–120; VI–37

Final decision of the head of a Department reviewed on new facts. V–109

The Secretary, acting through an assistant, may reopen and reverse his own decision rendered by another assistant without violating the doctrine of. IX–588

Final decision of the Secretary conclusive upon subordinate officers of the land department. V–613; VI–378; X–93, 200

Final adjudication in the Department precludes further action by the General Land Office. V–613

Rule of, not applied where the issue is solely between the government and applicant. IV–249, 405; V–333

Former action of Department in administrative matter not conclusive. IV–313

The recommendation of the Commissioner that an entry should be submitted for equitable action is an administrative act, and a decision of the Secretary that such submission is not proper is a decision on an administrative question that has the effect of arresting proceedings, but leaves the decision subject to review by his successor. XXI–549

Decision that a ministerial duty has been correctly performed not necessarily conclusive. VII–286

Refusal to recommend suit to set aside patent not conclusive as to succeeding head of the Department on the presentation of new ground for such action. IV–577

Rejection of an application for survey of an island not treated as. IX–625

A decision of the Department directing a hearing on an application for survey, in which the doctrine of riparian ownership is considered and held not applicable, brings such question within the rule of, and the Department will not thereafter consider the same in the disposition of the case on the facts submitted at the hearing. XXIII–430

A decision of the General Land Office that becomes final for want of appeal is conclusive as to the rights of all parties concerned. XVIII–555

Res Judicata—Continued.

Decision of the Commissioner as to priority between two parties will not preclude his successor from passing on the final proof subsequently offered by the successful party. IV–55

A decision of the Commissioner passing upon the validity of a school selection is an adjudication binding upon his successor. XV–385

The Commissioner of the General Land Office can not review a final decision of his predecessor, though any error apparent of record may be corrected by the Department. V–51; VI–4

The Commissioner has no authority to reopen a case in which the judgment of his predecessor has become final. The Department alone has jurisdiction to act in such a case. XVII–125

After a decision in a case by the General Land Office, and the expiration of the time within which an appeal may be filed, the question involved in said case is beyond the jurisdiction of said office. XX–127

With certain exceptions, the Commissioner of the General Land Office has no authority to review or modify a final decision of his predecessor. X–200, 603

Doctrine of, does not preclude action of General Land Office on new evidence that may be submitted in pending case. VI–174

Irregularity of proceeding warrants the Commissioner of the General Land Office in reviewing the decision of his predecessor. I–363, 366

Plea of, not good where the Commissioner's decision was rendered in the absence of material facts from the record. VI–15

An opinion of the Commissioner based upon a partial and *ex parte* statement of the facts not conclusive. V–610; IX–546

An expression of opinion by the Commissioner as to the validity of an entry pending before the local office will not preclude said Commissioner or his successor from a full examination of the case when reached in regular order. XI–18

A final decision of the General Land Office, holding a tract not excepted from a railroad grant on account of a specified settlement claim, will not preclude subsequent consideration of the effect of said claim as against the grant, on the suit of another applicant for the land. XVIII–454

Approval of final proof by examiner in General Land Office is not a decision of the Commissioner that can not be reviewed by his successor. VI–379

A letter of instruction issued by the Commissioner to a local office is not an adjudication that will prevent subsequent action on the part of his successor in office. XIII–694

Res Judicata—Continued.

After the expiration of time allowed for appeal from a decision in a case it is too late for the Commissioner to take action therein on his own motion, as the case is then removed from his jurisdiction, and further action, if any, must be taken by the Department in the exercise of its supervisory authority. XIV–574

The issuance of a final certificate by the local office can not be set up by the entryman as an adjudication that precludes such office from rendering a decision on a hearing subsequently ordered by the General Land Office. XI–473

Action of the local officers under direction of the General Land Office will not preclude a different judgment on the final disposition of the case. V–174, 610

Allowance of an entry by direction of the General Land Office will not preclude departmental action with respect to determining its validity. V–49; VII–301

The fact that the validity of an entry is, so far as the General Land Office is concerned, will not preclude the consideration of such question by the Secretary of the Interior. XIX–288

Case is not, where the decision is rendered upon an incomplete record. XIII–502, 592; XV–31

Decision of the Department rendered upon an incomplete record is not. VI–179; IX–551

Doctrine of, applicable where the case falls within a particular class covered by former decision. I–504

A case is not, where the ruling was in the nature of general instructions to cover all cases of its kind and was not made on appeal. VI–487

A ruling on a question not involved in the case is not conclusive. V–322; VIII–188

Doctrine only applicable to the land actually involved, though the decision may in terms purport to settle the status of the whole section. VII–54

Doctrine not applied where the question appeared to have received but little consideration. I–174

A decision long acquiesced in will not be disturbed. III–364; VIII–134

A decision long acquiesced in will not be reconsidered on the mere allegation of error in construing the law. XI–232

Lapse of time and the rights of parties acquired in good faith under executive action justify the application of the doctrine. X–652

Authority of Secretary to set aside the approval of his predecessor on list of railroad selections questioned. I–378

Res Judicata—Continued.

Where mistake or fraud is not alleged the case will not be reopened for the purpose of making a different disposition of the land, because a different rule in relation to such claims may subsequently prevail. II–497

Acts done under a law in force are not affected by a subsequent repeal of the law. IV–476

Where a claim to lands in railroad limits is rejected under the rules it is *res judicata* between the claimant and the company though the ruling causing the rejection has since been changed. II–499, 501

An application to enter properly rejected by final decision of the Department under the rulings then in force is, and can not be reinstated with a view to action under a changed construction of the law. XIX–459; XXIII–452

A decision of the supreme court in which a departmental construction of a statute is held erroneous does not warrant the Department in vacating and reversing final decisions rendered in accordance with such construction. XXIII–455

When a decision of the Department has become final under the rules of practice, has been long acquiesced in by the losing party, the lands involved have been disposed of thereunder, and such disposition was not unlawful, a petition to reopen the case will not be entertained, though the original decision may rest on a construction of the law that no longer obtains. XXVI–383

Adjudications of the Department not disturbed on alleged error in construing the law. V–185, 243

Doctrine of, will apply notwithstanding the allegation that the decision was founded upon error of fact and law. III–21

The rule of, is not applicable to a decision denying a party the right to be heard on appeal where such decision is the result of a mistake of fact on the part of the Department. XXV–373

Plea of, not good when the tribunal had no jurisdiction over the subject decided. IV–460

Plea of, not good as against one who is not made a party to the proceedings in question by due notice thereof. XIV–278

Doctrine of, not held applicable where due notice of decision and right of appeal were not allowed. I–366; IV–279; VII–42

Plea of, will not be entertained where the decision has not been carried into execution and the case falls within the terms of the act of April 21, 1876. IV–208

Judgment having gone to patent, it is too late to invoke the act of April 21, 1876. IV–251

Plea of, not good as against the proceedings directed by the act of March 3, 1887. VIII–318; XXIV–441

Res Judicata—Continued.

That the former decision can not be executed should be considered in determining whether it is a bar to further action by the Department. IV–120

Approval of entry through verbal direction of the Secretary not, where it was presumably under subsequent consideration. IV–286

Case is not, because the tract involved had been applied for by another person and was awarded to the railroad company. III–168

Where surveyor-general refused to issue certificates of location (Louisiana donation) and appeal was taken and afterwards withdrawn the question is *res judicata*. II–394

A decision conclusive when it determines the validity of conflicting claims. The extent of the conflict on subsequent showing can not affect the former adjudication. VI–634

Cancellation of an entry and award of the land to another is a final adjudication. I–365

A final determination as to the invalidity of a claim may be properly adopted in a subsequent case where another party sets up a claim to a part of the land involved. XV–415

A decision of the Secretary of the Interior awarding the right to make final proof as of a certain date will not preclude his successor from considering acts performed after that date for the purpose of determining whether such acts show abandonment of the claim or impeach the good faith of the prior settlement and residence. VI–633

A question decided finally in a contest between A and B may not be again brought up by protest by B against the reception of A's final proofs. II–594

A defeated party may so far follow the decision of the Department as to see that the judgment is properly executed. I–594

A contested B's homestead entry and C interpleaded, alleging settlement and improvement prior to B; the contest and interplea were dismissed and the land was declared open to entry; then B made additional entry and C contested it, alleging as before; the question of the priority of settlement and of right based on it is not *res judicata*. II–121

Though the matter may be, yet the decision, if not executed, may be examined and construed by the Department to determine the true character and extent of the award thereunder. VI–434

Though the questions involved in a private claim may be similar to those settled in a prior case, the confirmee has the right to a full hearing. I–246

If the decision rendered by the Department was only interlocutory in character, the case, on its merits, may be renewed before the proper subordinate tribunal. VI–374

Res Judicata—Continued.

An extrajudicial opinion of the Commissioner as to the legality of an entry, expressed upon an *ex parte* and partial statement, will not preclude subsequent departmental action. IX–182

Decision of board of equitable adjudication is final and conclusive. I–411

Action of the War Department on matters within its jurisdiction must be accepted by this Department as conclusive. I–168

This Department should accept as final what was so regarded by the proper Department having charge of the interests of the government. I–173

The Department will not take jurisdiction where such action involves the consideration of a question finally determined by a decision of the supreme court of the United States. V–185; VII–204

Effect of finality given the decision of a Federal court though the government was not a party. V–87, 91

Review. See *Practice.*

Revised Statutes. See *Tables of.*

Were the legislative declaration of the law when adopted. IV–7

Adoption of, did not annul former constructions. IV–7

Right of Way. See *Reservation*, sub-title No. IV; *Timber Trespass; Timber Cutting.*

I. Railroad.
II. Station Grounds.
III. Toll Road.
IV. Canals, Ditches, and Reservoirs.

I. Railroad.

Circular of January 13, 1888, with copy of the act of March 3, 1875. XII–423

Circular of April 21, 1892, regulating applications. XIV–338

Regulations of September 17, 1898, concerning tramroads. XXVII–495

Regulations of November 4, 1898, concerning railroad. XXVII–663

Paragraphs 11 and 22 of regulations of November 4, 1898, amended. XXIX–18

Instructions of August 29, 1885, with respect to the use of timber and other material. IV–150

The rule adopted in the circular of February 20, 1894, with respect to right-of-way maps for canals and ditches over unsurveyed lands held applicable to railroad right-of-way maps. XVIII–263

Regulations of March 8, 1895, under the act of January 21, 1895. XX–165

Right of Way—Continued.

I. RAILROAD—Continued.

Regulations of December 23, 1896, under the act of January 21, 1895. XXIII–519

Circular of November 27, 1896, with respect to reservations of, in final certificates and patents. XXIII–458

Regulations of April 18, 1899, concerning, over Indian lands for railway, telegraph, and telephone lines, under act of March 2, 1899. XXVIII–457

Regulations of April 8, 1901, amending regulations of April 18, 1899. XXX–545

Act of March 3, 1875, grants but the use of land for the purposes specified. IV–526

The right-of-way privileges granted by the act of March 3, 1875, are limited to railroad companies organized as common carriers for the benefit of the general public. XXX–77

The period of original construction ceases when the road is open to the public for general use. XIV–566

The use of material under the general act of 1875 and the special act of February 15, 1887, is limited to construction, and does not include repair or improvement. XIV–566

The articles of incorporation and proofs of organization are required by the act of 1875 to be filed with the Secretary of the Interior, and where the same are found sufficient to identify the company as a beneficiary of the grant, and are accepted by the Secretary, the right acquired by said acceptance will relate back to the time when said articles and proofs were presented, so as to protect the company in any subsequent use of timber and material necessary for the construction of the road. XXVIII–439

As between the United States and a railroad company claiming the benefit of the act of March 3, 1875, the company is entitled to take from the public lands adjacent to the line of its proposed road timber and material necessary for the construction thereof on the filing of its articles of incorporation and due proofs of organization, as provided in section 1 of said act. XXVIII–439

Gravel beds or ballast pits are not subject to selection under the act of 1875, but may be used temporarily for purposes of construction. XIV–414

The taking of gravel from a pit by a railroad company for the use and maintenance of its line of road is for a public purpose or use within the meaning of the act of March 3, 1875, and a right of way map filed under said act, showing a spur from the main line of the road to a gravel pit, constructed for the purpose of securing gravel for use along the main line of road, may be approved, if otherwise free from objection. XXX–238

Right of Way—Continued.

I. RAILROAD—Continued.

Timber may not be taken from lands adjacent to one part of the road for the purposes of constructing another part. VIII–41

If timber necessary for the construction of the road can not be found laterally adjacent to and within the termini of the proposed road, it is permissible to go beyond said termini to secure such material. XXVIII–439

In determining whether timber is taken from lands adjacent to the line of the proposed road, the nature of the country to be traversed by said road, and the most available means of transportation may be considered. XXVIII–439

The right to take material from the public land conferred by the acts of 1872 and 1875, as defined by the word "adjacent," does not extend beyond the tier of sections through which the right of way passes and an additional tier of sections on either side. VIII–41

Lands 150 miles distant from the road are not "adjacent" thereto in the meaning of the statute. VII–541

The right to take material for construction purposes is limited to "adjacent" lands. VII–541

Additional lands under the second section of the act of July 1, 1862, not granted except upon full showing as to the necessity for the land. III–587

The act of 1875 only requires approval of map on surveyed lands. I–397

No authority for map of location over unsurveyed land. XIV–336

Maps will not be approved where the line of road either wholly or in part traverses unsurveyed land. XV–88

Maps of location over unsurveyed lands will be accepted for information only and will not be approved. XXX–591

Approval of a map of railroad, over unsurveyed lands confers no franchise. XV–192

Entries of public land crossed by right of way are subject to prior location of. IV–523

Grant of, across a tract of land does not diminish the acreage held in fee by the owner. XXI–114

The notation of the company's right on the entry papers is not authorized where the road is constructed over unsurveyed land and an entry is afterwards allowed for land through which the road extends. VIII–115

A statement reserving the right of the company may be placed in a patent issued under an entry allowed for lands over which a road was previously constructed and at a time when the lands were unsurveyed. VIII–115

Right of Way—Continued.

I. RAILROAD—Continued.

In issuing patents under the public-land laws for lands over which a railroad exists, such right may be reserved in the absence of statutory provisions operating to protect said right of way. XXII–451

A right of way under the act of March 3, 1875, is fully protected by the terms of the act as against subsequent adverse rights, and a reservation of such right of way, in final certificates and patents issued for lands traversed thereby, is therefore not necessary, and should not be inserted. XXIII–67; XXVII–430; XXIX–478

A reservation of a, acquired under a special act may properly be incorporated in a final certificate or patent issued for land traversed by said right of way. XXVII–430

A statutory grant of a railroad, is a grant of an easement, and the lands over which the right of way is located may be disposed of by patents to others, subject to whatever right the company may have in the same. XIX–386

A clause, reserving, should not be inserted in final certificates of entry for lands over which a right of way has been granted under the act of 1875, where it appears that there has been a breach of the conditions imposed by said act, but no reassertion of ownership by the government, as, under the terms of said act, the rights of the company are protected without such reservation. XX–131

In the issuance of patents to the Indian allottees of lands in the Southern Ute reservation, over which the Denver and Rio Grande railroad has been constructed, a clause should be inserted setting forth that the conveyance is made subject to the right of way granted to said road by the special act of June 8, 1872, which does not in terms protect the company's right. XXVI–77

The location of a, across a reservation, wherein the grant is confined to such right of way, operates to exhaust the right of the company so far as the rights of others are concerned; and if such location, on the subsequent construction of the road, is abandoned, the rights of adverse claimants will not be embarrassed by reserving a, on the line as constructed, in the patents issued to such claimants. XXII–451

A map of location not required to secure, if a road has been actually constructed by a company which has observed the preliminary requirements. VIII–115

The map of location should be filed within twelve months after such location is made on surveyed land. (Overruled, 29 L. D., 12.) XII–79

Right of Way—Continued.

I. RAILROAD—Continued.

A map filed within twelve months after location, which is returned for amendment, will be held to have been filed in time though the statutory period may expire before the perfected map is filed. XI–552

The fact that an amended map is not filed within the period fixed by law for filing the original will not prevent its acceptance if the original was filed in time. XIII–47

A map of location may be accepted as filed within time where the survey of the line and the construction of the road are carried on at the same time and the map of such survey is filed within twelve months after the location of the road. XIII–47

The data on all maps of right of way should so determine the line of route involved, with reference to the public surveys, that the lines on the surface of the earth may be reproduced at any time if necessary for verification. XVIII–510

The termini of the road should be noted on the map of location accompanying an application for. XII–72, 92

The termini of located sections of road should be designated by reference to the lines of the public survey. XVI–464

A map of location under the act of March 3, 1875, will not be approved if the termini of the road are not distinctly stated in the affidavit and certificate accompanying the same. XIII–18

Maps showing a continuous line of road may be submitted for approval though exhibiting sections of road in excess of twenty miles. XI–384

Under an act granting a, for a railroad wherein the general direction of the road is specified, the Department is without authority to approve the location of a section that shows a radical departure from the direction named in the grant. XXI–1

A railway company that secures a, under the act of March 3, 1875, and thereafter fails to complete its line of road within five years, as required by section 4 of said act, may file a new map of location, which will be operative only on such portions of the public land as are free from every claim or right at the date of approval. XXI–250

Rights secured under the act of March 3, 1875, by the approval of maps of location of a line of railroad, do not become forfeited merely by failure to construct and operate a railroad along such line of location within the period named in the fourth section of that act; but where those claiming under such approval have filed written consent to the approval of conflicting maps of location, the latter maps may also be approved. XXX–591

Right of Way—Continued.

I. RAILROAD—Continued.

The length of each section of road should be stated in the affidavit and certificate accompanying the map submitted for approval. XII–360

The map submitted with application for, should be in the form of one continuous map, and not in detached sections. XII–552

The papers and maps of beneficiaries are required to be complete in themselves, and wholly independent of those filed by any other company. XXII–636

The affidavit and certificate required on a map showing the location of a section of road should be written on the same sheet with the map. XVI–464

A map will not be approved if the statements in the certificate and affidavit accompanying the same are not in accordance with the facts as otherwise shown. XI–552

Maps of constructed roads are approved only where maps of definite location have not theretofore been approved; and the map of constructed road, in such case, is treated as a map of definite location for purposes of approval. XVIII–510

The approval of a map of location, or a plat of station grounds, under the provisions of the act of March 3, 1875, affects only public lands, and if there are no public lands to be affected by the claimed right of way the maps should not be approved by the Department. XXIX–18

The act of March 3, 1899, permitting the approval of a map of location "across any forest reservation or reservoir site," is limited in the scope of its operation to reservations falling within the control or under the jurisdiction of the Secretary of the Interior. XXIX–257

A company that is not organized as a common carrier with passenger and freight facilities is not entitled to. XIV–321

Opinion of the Attorney-General requested on the authority of the Department to revoke an allowance of right-of-way privileges. (See 12 L. D., 574.) VIII–374

The Secretary of the Interior has the power to annul the action of his predecessor in approving the map of location where such approval is secured by fraud and misrepresentation and for a purpose not authorized by law. (See 147 U. S., 165.) XII–574

The approval of, for the Union River Logging Railroad Company recalled and vacated. (See 147 U. S., 165.) XII–574

Right of Way—Continued.

I. RAILROAD—Continued.

Judicial proceedings should be instituted by the government to secure the forfeiture of a, where the grantee fails to construct any portion of its road, and such action is necessary for the protection of a constructed road whose right of way, as approved by the Department, is in part identical with that located by the former company. XIX–588

The grant of right of way (Pacific roads) was an absolute and unconditional present grant, and all persons acquiring any portion of the public lands after the passage of the act took it subject to the right of way conferred by it for the proposed road. II–846

The lands granted for railroad, under the provisions of the act of June 8, 1872, are subject to such reservation, though the road was not built as provided by said act, and can only be relieved therefrom by judicial proceedings or legislative enactment. XVII–430

The Northern Pacific Railroad Company by section 2, act of July 2, 1864, holds its right of way under a qualified fee, which, so long as the qualification annexed is not at an end, confers upon the company the exclusive right of possession; a settlement, therefore, upon said right of way is not a settlement upon the public land, and confers no right or claim to adjoining public land. XXVIII–412

The question as to whether a railroad company has forfeited its privileges, under the act of March 3, 1875, by failure to construct its road within the period designated in section 4 of said act, is one that must be determined in the courts. XX–131

The grant of a railroad, across an Indian reservation, that has vested by reason of compliance with the conditions precedent, is not lost through failure to construct the road within the period specified (a condition subsequent), where no advantage of such failure has been taken by the government. XXVI–224

The question of priority between two roads claiming right of way under act of March 3, 1875, must be determined in the courts. I–396

In the absence of statutory authority granting right of way through the Puyallup Indian reservation, an application therefor should be addressed to Congress. VII–450

The cession to the United States of the Red Lake Indian lands made in pursuance of the act of January 14, 1889, was for the sole purpose of disposing of said lands for the benefit of the Indians, and said lands are therefore not public lands, subject to the general act of March 3, 1875. XXIX–620

Right of Way—Continued.

I. RAILROAD—Continued.

The act of March 2, 1899, granting a, for a railway, telegraph, and telephone line, through "any Indian reservation" or through "any lands reserved for an Indian agency or for other purposes in connection with the Indian service," does not in terms cover lands occupying the status of those ceded under the act of January 14, 1889, or necessarily indicate an intention to include such lands within the scope of its operation; and the Department is therefore not justified in taking any action with respect to said lands under said act of 1899. XXIX–620

Under a grant of, to a railway company across an Indian reservation, where the statute authorizes the construction and maintenance of a telephone line upon said right of way, it is immaterial, so far as the United States and Indians are concerned, whether said railway company constructs and operates the telephone line or permits another party so to do. XXIX–1

The act of July 24, 1866, authorizing the construction and maintenance of telegraph lines through and over the public domain, and along military or post-roads of the United States, contains no grant or authority for the construction and maintenance of telephone lines. XXIX–1

The provisions of the acts of March 3, 1901, and February 15, 1901, relating to rights of way for telephone and telegraph lines through Indian reservations, are not necessarily repugnant, and both may, without inconsistency or conflict, be given effect. XXX–588

Action of the Department authorizing the construction of a road across an Indian reservation pending the completion of the necessary arrangements is not final in its character, and confers no vested rights. XII–481

The proviso in section 5, act of March 3, 1875, does not render said act generally applicable where a right of way is provided for under treaty stipulation; but provides that when such privilege has been specifically granted the provisions of said act shall govern so far as applicable. XII–481

Conveyances for, executed by Indians holding under patents in which the right of alienation is dependent upon the President's approval must be submitted to the President for his action. XII–481

Through certain Indian reservations granted by the act of February 15, 1887, was secured on the approval of the maps showing the location of the road, and the construction thereof in due compliance with said act; and no further approval of said location is required by reason of the restoration of said lands to the public domain and their subsequent survey. XVIII–510

Right of Way—Continued.

I. RAILROAD—Continued.

The relinquishment to the United States by the Indians of their interest in the Fond du Lac reservation does not defeat their subsequent claim for damages on account of the location of a railroad right of way through said reservation prior to such relinquishment. XIX–320

The act of February 18, 1888, and the acts amendatory thereof provided for a right of way over Indian lands, but the provisions so made are inapplicable to lands held under individual allotments, and confer no right of way privileges as to lands thus held. XXVII–414

For railroads are approved though crossing school sections. XIII–454

The act of March 3, 1875, is applicable to the Denver and Rio Grande Railroad Company and not inconsistent with the act of 1872. VIII–41

Company is not required to file proof of organization under the laws of every State and Territory through which the road may pass. V–384

Application for, will not be approved in the absence of due proof showing the organization of the company under its incorporation. XI–432

Application under the act of 1875 should be accompanied by an authenticated copy of the local statutes regulating the organization of railroad companies. XII–72

Privilege does not attach on the filing and acceptance of the articles of incorporation and proofs of organization, but on location, either by actual construction or filing a map. VIII–115

Where a right of way has been duly approved the transfer of the line to another company carries the right of way with it, and the approval of a new map is unnecessary. II–543

Act of March 3, 1875, applicable to "public land strip." V–384

The beneficiary under a special act having abandoned its rights thereunder may avail itself of the provisions of the general act of March 3, 1875, by due compliance with the terms thereof. XXII–674

Lands of the Chicago, Milwaukee and St. Paul company forfeited under the act of March 2, 1889, opened to entry. (See 21 L. D., 324.) XX–121

Section 2288, R. S., as amended by the act of March 3, 1891, authorizing settlers to execute conveyances of lands embraced within their claims for "railroad" right of way purposes, is applicable to "tram roads." XX–509

Right of Way—Continued.

I. RAILROAD—Continued.

The words "For the right of way of railroads," as used in section 2288, R. S., are not limited to the width of the railroad track, but include such space as is necessary for side track, stock yards, or other purpose incident to the proper business of a railroad as a common carrier. XXVIII–561

All railroads in operation are by statutory provision "post roads," and as such their right of way is subject to the use of any telegraph company which accepts the provisions of the act of July 24, 1866, and desires to use such right of way for its line in such manner as will not interfere with the operation of the road. XXVI–572

The provisions of the general act of March 3, 1875, are not applicable to lands in the District of Alaska. XXV–290

A railroad right of way, under the act of March 3, 1875, across Minnesota lands withdrawn by proclamation of November 28, 1881, as a "water reserve," can not be approved, for lands so reserved are specifically excepted from the operation of said act by the provisions of section 5 thereof. XXIX–257

II. STATION GROUNDS.

Plats showing the selection of station grounds should be submitted through the General Land Office. IV–525

Location of station grounds to be approved by Secretary. IV–525

Locations may be disapproved where the intent of the act is not secured. IV–525

Each station as located must represent its particular section of ten miles. IV–525

Depots, station houses, etc., not included in the term "railroad." VIII–41

Land embraced within a *prima facie* valid entry is not subject to selection for station purposes. XII–264

The actual use of unsurveyed public land as station grounds precludes the subsequent acquisition of adverse rights to the land so occupied. XXVI–83

The actual use of land as station grounds, prior to survey, by a company that has filed its articles of incorporation, proofs of organization, and constructed a railroad over unsurveyed land, entitles said company to an approval of a plat of said grounds, as against an intervening homestead entry, if such use antedates the settlement of the homesteader. XXIV–460

Right of Way—Continued.

II. STATION GROUNDS—Continued.

A plat of station grounds covering land embraced within a prior mineral application can not be approved; but the use and occupancy of such land for station purposes will protect the right of the company, as against subsequent claimants, if the mineral application is abandoned. XXV-250

An intervening entry should not defeat the approval of a station plat, if the land was open to appropriation under the right-of-way act at the date of filing said plat. XXVI-181

A homestead entry allowed of land in the prior actual use and occupancy of a railroad company in the necessary operation and maintenance of its road, must be held subject to the prior right of use in the company under its application for additional station grounds. XXIX-36

An application for station grounds, properly rejected on account of an existing entry of the land involved, and awaiting action on appeal, will not attach on the subsequent cancellation of said entry. XXII-685

Plats of station grounds must show the line of the company's right of way. XIII-18

An application under section 21, act of March 3, 1871, to purchase land for station purposes unacted upon at the time of the forfeiture of the grant made by said act can not be allowed. XIII-665

A selection of a tract exceeding twenty acres in area can not be approved. XIV-117

A plat showing proposed station grounds extending one and a half miles along both sides of the line of the road and seventy-five feet in width will not be approved. XIV-118

A grant for station purposes is not in fee, but an easement. XIV-109

Application to select station grounds should not be submitted until the company has secured the approval of its right of way. XIV-118

Right of selection for station purposes is limited to lands adjoining the company's right of way theretofore acquired. XIV-117, 414

A plat of station grounds will not be approved where the location is such as to exclude access to public lands not included therein. XIII-111; XIV-102

An application for additional, under the second section of the act of July 1, 1862, should explicitly show the necessity for such land. III-587

The grant of to the Union Pacific Ry. Co. by section 2, act of July 1, 1862, may extend beyond two hundred feet on either side of the road, where the land is desired for the uses specified in the act, and the necessity for the use is made to appear. XXV-540

Right of Way—Continued.

II. STATION GROUNDS—Continued.

In the disposition of applications for additional station grounds under the act of April 25, 1896, the Secretary of the Interior must first determine the question as to necessity for taking such ground, and, thereafter, if the company's maps of definite location are approved, proceed as provided by said statute to settle the question of compensation. XXVI–280

The right to take additional station grounds under section 2, act of July 27, 1866, can not be recognized in the absence of a satisfactory showing of the necessity for the use of such additional ground. XXVII–322; XXIX–36, 338

It is not necessary, in order to warrant the approval of a plat of additional station grounds under the act of July 27, 1866, that the plat shall embrace only lands in actual use and necessary for the present operation of the road. The company has the right to anticipate the future necessities of the road, but the showing of present necessities must reasonably support the claim for future use. XXX–239

Under section 2, act of July 27, 1866, providing for a right of way for the Atlantic and Pacific railroad, "including all necessary grounds for * * * water stations," it can not be held that a "pipe line" is embraced in the general provision for a "water station;" and where the application shows that the necessity for said line arises from causes other than the operation and maintenance of the road it can not be approved. XXVII–649

The grant of necessary lands for station and other purposes, outside the limits of the general right of way, does not, like the grant of the general right of way, relate back to the date of the act making the grant; hence no rights are acquired, as against an adverse claimant, by an application for additional station grounds tendered in advance of actual use and occupancy and at a time when the lands are appropriated by an existing entry. XXVII–322

Under a grant of a railroad right of way through the Indian Territory, with necessary station grounds, it is a proper exercise of the general authority of the Interior Department to require a plat to be filed showing the lands required for station purposes, although the granting act does not provide for the filing of such plat, and the approval thereof fixes the right of the company to occupy the ground included therein. XXVIII–130

Right of Way—Continued.

II. STATION GROUNDS—Continued.

The acts of April 25, 1896, and March 2, 1899, do not divest or impair rights theretofore acquired under previous right-of-way legislation, but place limitations upon the extent to which the Secretary of the Interior may thereafter grant or authorize the use of grounds, for station and other purposes, by companies operating railroads in Indian Territory, and regulate the procedure whereby such grant or authority may be obtained. XXIX–338

The act of March 2, 1899, prescribes limitations as to the width and length of station grounds to be taken thereunder, and a map of station grounds which shows a disregard of these limitations can not be legally approved. XXX–599

The right to station grounds under the act of May 14, 1898, is limited to one station for each ten miles of road, not to exceed in amount twenty acres for each station, with the exception to this limitation that the grant may, at such stations as are also junctions or terminals, include forty acres additional, if necessary for legitimate terminal or junction purposes. XXIX-106

Lands selected for terminal purposes under the act of May 14, 1898, should be taken in one compact body, where a sufficient quantity in such form can be found for the necessary uses of the railroad at or near its terminus; but the selection of separate tracts may be permitted, where the necessity therefor is made to appear. XXIX–106

Section 6, act of May 14, 1898, authorizes the issuance of a permit for a right of way in Alaska only for the construction of wagon roads and tramways. A foot bridge does not come within the ordinary or commonly accepted meaning of either a wagon road or a tramway. XXIX–451

An application for a tramroad, under said section 6, should not be granted, if the construction of said road would operate to destroy or seriously impair the water-front privileges reserved to the public by other provisions of said act. XXIX–447

The right to levy and collect freight and passenger charges by a company operating a tramway, under the terms of the act of 1898, is subject to the supervision of the Secretary of the Interior XXIX–447

The phrase "line of mean high tide" used in an application for a tramroad, in Alaska, under section 6, act of May 14, 1898, must be regarded by the Department, in its action on such application, as meaning that part of the shore of the sea to which the waves ordinarily reach when the tide is at its highest. XXIX–447

Right of Way—Continued.

II. Station Grounds—Continued.

Under the act of March 1, 1899, granting a right of way through the Nez Perces Indian lands, the company may erect, or permit others to erect, upon its right of way and depot grounds, suitable structures or buildings, such as warehouses and elevators, for the convenient receipt and delivery of freight, so long as the exercise of the franchises granted is not interfered with, and a free and safe passage is left for the carriage of freight and passengers. XXIX–569

And station privileges on the former Crow Creek Indian reservation, as provided for the Chicago, Milwaukee and St. Paul Railway Company by section 16, act of March 2, 1889, is not defeated by a settlement right claimed under section 23 of said act. XIV–167

The failure of the Chicago, Milwaukee and St. Paul company to complete the road within the time prescribed in the act of March 2, 1889, worked a forfeiture of all the lands reserved to the railroad company by section 16 of said act for right of way and station purposes, dependent only upon the proclamation of the President declaring the fact of said forfeiture. XIX–429

Proclamation of the President, declaring the forfeiture of the, and station grounds, granted to the Chicago, Milwaukee and St. Paul Railway Company, by the act of March 2, 1889. XIX–431

A plat of station grounds on unsurveyed land will not be approved although a map showing the line of road over such land may have been approved in accordance with former practice. XV–192

On application for the approval of a plat, the land involved, though within a partly unsurveyed township, may be treated as surveyed, where it lies within a surveyed townsite, and the survey of said station grounds is duly connected with the public surveys. XXVII–714

III. Toll Road.

A toll road company by the location and construction of its road acquires a vested, over public lands under the terms of section 2477, R. S., that can not be defeated by a subsequent townsite settlement; and in such case the townsite patent should issue subject to the easement held by the company under said statute. XXI–351

In recognizing a, claimed on behalf of a toll road under section 2477, R. S., the Department will not, in the absence of expressed statutory authority, determine the width of such right of way. XXII–145

It was not intended by section 2477, R. S., to grant a, for highways over public lands in advance of apparent necessity therefor. XXVI–446

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Right of Way—Continued.

IV. CANALS, DITCHES, AND RESERVOIRS.

Circular of April 17, 1891, in the matter of canals, ditches, and reservoirs located under the act of March 3, 1891. XII–429

Circular of April 21, 1892, regulating applications under the acts of March 3, 1875, and March 3, 1891. XIV–438

Circular of February 20, 1894, with respect to applications for canal, ditch, and reservoir. XVIII–168

See regulations of March 8, 1895, under the act of January 21, 1895. XX–165

Regulations of June 27, 1900, concerning, for canals, ditches, and reservoirs over the public lands and reservations. XXX–325

Regulations of September 17, 1898, concerning, for canals, reservoirs, etc. XXVII–495

Regulations of July 8, 1898, concerning, for canals, ditches, reservoirs; oil pipe lines; reservoirs for watering stock. XXVII–200

Circular of July 8, 1898, with respect to reservoirs for watering live-stock, amended June 23, 1899. XXVIII–552

Directions given as to the amendment of the regulations of July 8, 1898, governing applications for right of way for canals, ditches, and reservoirs. XXIX–18

Sections 2339 and 2340, R. S., make no provision for the filing and approval of maps showing the location of reservoir sites and pipe lines. XXIX–213

The permission to use public lands under the act of January 21, 1895, terminates with a disposal of said land; and any person receiving title from the United States to land so occupied will take it free from any charge thereon by reason of the right granted under said act. XX–164

Application for, by a corporation under section 18, act of March 3, 1891, should be accompanied by certificate of the proper officer of the State, showing that the articles of incorporation have been filed in accordance with local requirements. XIII–166

The admission to record of articles of incorporation, and the certificate of the proper officer in attestation of such fact, establishes the sufficiency of said articles under the statutes of the State, and fixes the status of an incorporation, as such, that applies for a right of way under the act of March 3, 1891. XXVII–126

Application by a canal company under the act of March 3, 1891, can not be approved until presented in conformity with departmental regulations. XIII–110

Maps or plats filed under the act of March 3, 1891, must be submitted in duplicate, and the map sent to the Department must bear the certificate of the register that it is an exact copy of the map filed in the local office. XIII–282

Right of Way—Continued.

IV. Canals, Ditches, and Reservoirs—Continued.

The provision contained in the act of March 3, 1891, requiring a map of location to be filed within twelve months after the location of a canal, ditch, or reservoir, if upon surveyed lands, or within twelve months after survey, if upon unsurveyed lands, is directory, with respect to the time so fixed, and not mandatory. XXIX–112

The certificate of the register should show that a true and correct duplicate map of survey is filed. XIII–707; XIV–28

An application for ditch and reservoir privileges should be accompanied by evidence as to the person authorized to make the survey; that the line of route and location as surveyed and mapped were duly adopted as of a certain date. XIII–357

The certificate of the engineer as to the survey of the proposed line of route should definitely describe and locate the termini of said route. XIII–166, 357

The certificates of the president and chief engineer of an irrigation company, attached to maps, should designate the termini of a pipe line along which the right of way is claimed over the public land. XIX–23

The affidavit of the surveyor should show the facts as to the date of the survey, the distance, and termini, and that the survey is correctly shown by the map. XIII–357

The map of a canal should definitely show the lines and width of said canal. XV–470

The map of a constructed canal may be accepted where in place of giving the width of the canal the area of the same in each subdivision is given. XV–577

The dates of the survey and definite location of a reservoir are not essential, where the map is not filed until after construction. XXVII–316

Slight variances between the line of survey, and the actual water line of a proposed reservoir, do not require the rejection of the map, where it appears that such variances are due to the mountainous character of the land. XXVII–126

Survey of canal should show its width at places where the lines depart from the width established at the initial point. XIII–707

In the survey of a canal its width and the course and distance of the line of route should be noted and duly shown. XIV–30

Survey of, on unsurveyed land should be connected with government surveys or with some well-defined natural monument. XIV–516

In the survey of a ditch the subdivisional lines of sections should be laid down on the map and the field notes of survey accompany the same. XIV–28, 30

Right of Way—Continued.

IV. CANALS, DITCHES, AND RESERVOIRS—Continued.

In the survey of a ditch the termini should be definitely fixed, and at each point where the ditch crosses the lines of the public survey the distance to the nearest established corner of said survey should be noted on the map. XIV–28

When the survey of a canal crosses section and quarter-section lines the distance to the nearest established corner of the public survey should be noted on the map. XIII–707

Maps of survey filed under the act of 1891 must show the lines of each smallest legal subdivision affected, and should be drawn to a scale of not less than 2,000 feet to 1 inch. XIII–166

A map of a ditch or reservoir drawn to a less scale than 2,000 feet to 1 inch may be accepted if not inconveniently large. XIV–28

The survey of a reservoir may be mapped to the scale of 1,000 feet to 1 inch. XIII–681

In the survey of canals and reservoirs the variation of the magnetic from the true meridian should be noted. XIV–30

Where the boundary lines of a reservoir cross the lines of a public survey the point of intersection should be marked on the ground and the distance therefrom to the nearest established corner outside of the reservoir noted on the map. XIII–681

The survey of a reservoir should show the lines of the government survey around the same, and the map should be prepared on a scale proportionate to the size of the reservoir. XVI–264

In the survey of a reservoir the initial point of the survey should be fixed by reference to a corner of the public survey or some well-defined natural monument. XIV–28, 516

In running the boundary line of a reservoir the points where it crosses the lines of the public survey should be marked by a stake or stone and the distance to an established corner outside the reservoir noted on the map. XIV–28

The General Land Office may properly insist on compliance with the circular requirement that monuments shall be placed as reference points for public survey corners that will be destroyed in the construction of the reservoir, even though such requirement may have not been in force when the maps were filed. XIX–256

Reservoirs should be so surveyed as to include only the land covered with water, as the right of occupancy is limited to such land and fifty feet of marginal land for use in construction and repairs. XIV–30

For canals and reservoirs under the act of 1891 on unsurveyed land can not be approved. XIII–660; XIV–336; XVIII–573

A map showing the location of a canal over unsurveyed land in part will not be approved. XV–245

Right of Way—Continued.

IV. CANALS, DITCHES, AND RESERVOIRS—Continued.

Will not be approved across lands formerly embraced within an Indian reservation until such lands have been surveyed. Survey of the exterior lines of said reservation does not remove the objection. XVI–66

Map showing location of canal will not be approved where the initial and terminal points are on unsurveyed land and the line for the greater part traverses land in the same condition and the portion on unsurveyed land can not be used independently of the remainder. XVI–148

For a canal that passes over surveyed and unsurveyed land may be approved for the part on surveyed land where such portion can be utilized independently of the remainder. XVI–192

Though not approved for a canal over unsurveyed land under the act of 1891, priority of possession in the use of water thereon is protected by sections 2339 and 2340, R. S. XVI–192

The easement conferred by the act of 1891 extends not only to the land occupied by the canal, but to a strip of land fifty feet in width on each side of the canal, the meander line being fifty feet from the high-water line. XV–472

In approving an application for, the Department does not determine the marginal width necessary for the construction and maintenance of the ditch. XVI–425

The Secretary has no jurisdiction to act upon application for, under the act of March 3, 1891, unless it affirmatively appears that some portion of the public domain is affected thereby. XV–345

Application for canal purposes may be approved so far as it affects public land though the line for the greater part traverses land that does not belong to the public domain. XV–577

The right of an applicant for a reservoir site under the act of March 3, 1891, will not be defeated by an intervening adverse entry, if at the date when the map showing the location of said reservoir site is filed the lands included therein were subject to such appropriation. XXVIII–402

For canal purposes can not be approved across land granted for school purposes. XIII–357

Where the line of route passes through a school section it should be shown whether said section passed to the State or was excepted from the grant; and it should also appear whether the ditch or reservoir passes through or embraces land within a government reservation. XIII–357

Right of Way—Continued.

IV. CANALS, DITCHES, AND RESERVOIRS—Continued.

The act of March 3, 1891, does not authorize the approval of an application for a canal, across an Indian reservation; nor will such right of way below said reservation be granted if the canal is dependent for its water supply upon the right of way asked for through the reservation. XXVI–381

For a ditch that traverses, among other lands, a military reservation, and also an Indian reservation, will not be approved as to any part where by the maintenance of said ditch the supply of water necessary for the proper use of said reservations will be impaired. XXI–355

For canals and ditches not granted through Indian reservations by section 18, act of March 3, 1891. XIV–265

The provisions of section 18, act of March 3, 1891, granting the right of way "through the public lands and reservations of the United States" for irrigation purposes include Indian reservations, subject to the condition that the location and construction of the ditch or canal shall not interfere with the proper occupation of such reservations by the government for Indian purposes and uses. XXVII–421

Through reservations is granted by section 18, act of March 3, 1891, but the proviso thereto requires all maps of location to be submitted for approval to the Department having jurisdiction over the reservation involved. XIII–165

The act respecting privileges for irrigation purposes is applicable to the Sequoia National Park reservation, subject to the condition that the right of way, if granted, shall not interfere with the proper occupation of the reservation by the government. XX–253

Where the proposed location traverses a forest reservation the Department should require a stipulation on the part of the applicant that no timber will be taken from the land within the reservation outside of the reservoir, or from land not occupied by the waterway. XXI–330

The provisions of the act of March 3, 1891, conferring, privileges for irrigation purposes over the public domain and reservations of the United States, do not contemplate the allowance of such rights over lands reserved by the government for reservoir sites. XXIII–275

Application for a site under the act of 1891 in conflict with claims under the railway right of way act and the town site laws should not be approved without opportunity given for objections to be presented. XV–468

Right of Way—Continued.

IV. CANALS, DITCHES, AND RESERVOIRS—Continued.

The act of 1891 does not contemplate the appropriation for reservoir purposes of natural lakes that are already a source of water supply. XIII–681

A natural lake can not be appropriated for a. XIV–508

The departmental regulations of February 20, 1894, under certain conditions, recognize the right to appropriate natural lakes or rivers for reservoir purposes. XVIII–268

A reservoir site can not be secured under the act of 1891 by damming a river and overflowing the adjacent land. XIII–682

The bed of a stream may be appropriated for, under the act of 1891 where it appears that no water is contained therein during the season when irrigation is most needed. Penasco Reservoir case distinguished. XV–468

A river bed may be included within a reservoir site if it is satisfactorily shown that it carries no water in the season when water is most needed. XVI–501

A natural ravine or creek bed that does not carry water sufficient to be appropriated under the laws of the State may be used for a reservoir and ditch, and an application for a right of way therefor approved under the act of March 3, 1891. XXVII–511

Site can not be acquired under the act of 1891 by damming a river and overflowing the adjacent land where said stream carries a strong volume of water through all seasons. XV–470

The Department will not attempt to interfere with the control of water, or determine the rights of conflicting claimants thereto, except in so far as may be necessary to ascertain whether such *prima facie* right to the use of the water, or to store the same, has been shown as will entitle the applicant to utilize the grant for the purposes contemplated by the act. XXVI–520, XXX–382

The provisions of the act of 1891 deal only with the right of way over the public lands to be used for the purposes of irrigation, leaving the disposition of the water to the State. XVIII–573

Questions involving the control and appropriation of the waters of a State can not be adjudicated by the Department under an application for right-of-way privileges over the public land. XXII–709

The act of March 3, 1891, restricts the purpose for which the right of way therein granted may be used to that of irrigation; and maps of location will not be approved where it appears that the right of way is desired for any other purpose than irrigation. XX–154; XXI–63; XXV–344; XXVIII–474

Right of Way—Continued.

IV. CANALS, DITCHES, AND RESERVOIRS—Continued.

An application for, under the act of March 3, 1891, can not be approved where the purpose of the proposed pipe line and reservoir is to afford an auxiliary to the waterworks of a city. The watering of gardens and lawns in a city during the summer season is not the irrigation contemplated by said act. XX–464

The grant of right-of-way privileges by the act of March 3, 1891, is restricted to purposes of irrigation, hence an application for right of way can not be approved under said act where the water is to be used in generating electricity. XVIII–573

The acts of March 3, 1891, and May 14, 1896, differ so widely in the character of the estate granted, as well as in the uses to which the, may be devoted, and the extent thereof, that an application can not properly be allowed on the two acts taken together: the permission must rest either upon one act or the other. XXIV–560

An application for a canal and pipe line, under the act of May 14, 1896, will not be denied on the ground of a prior appropriation of the water, if it is made to appear that the water can be used, and returned to the stream above the prior appropriator's intake, practically unimpaired in quality and quantity. XXVI–521; XXX–383

The act of May 14, 1896, in granting a, across public lands and forest reserves "together with the use of necessary ground, not exceeding forty acres," while restricting the area that may be thus used does not limit such use to a single tract. XXVII–315

The provision in the act of May 2, 1890, that the "public land strip" shall be opened to settlement under the "homestead laws," does not reserve said land from the operation of the act of January 13, 1897, authorizing the use of public lands for reservoir purposes. (Watering live stock.) XXIX–147

Where a reservoir right of way has been approved, but the reservoir is not constructed within the statutory period, a transferee of the reservoir company may be permitted to file a new map of location, to operate only upon such portions of the public lands as are free from any claims or rights at the date of the approval of said map; and in such a case the later application of another party for a right of way covering practically the same ground must be rejected. XXVII–585

The maps and papers pertaining to, proceedings may be delivered to the receiver of an irrigation company, for purposes of amendment, on due showing that he is acting under judicial authority. XXVI–154

Right of Way—Continued.

IV. Canals, Ditches, and Reservoirs—Continued.

Protests against the allowance of applications for, should not be acted upon independently of the merits of the application. XIX–304

Persons who allege injury to their premises by reason of the subsequent allowance of right-of-way privileges, and action thereunder, must seek redress in the courts. XIX–304; XXVI–520

In the case of an indemnifying bond furnished by an irrigation company, on application for a right of way across a forest reservation, where the surety is a company duly certified as authorized under the act of August 13, 1894, to act in such capacity, it is not necessary that such surety should furnish a statement as to its assets and liabilities. XXVII–315

Riparian Rights. See *Accretion; Island; Lake; Public Land; Survey.*

Land formed between the meander and shore line of Lake Michigan, through the acts of persons or corporations, is not the property of the government, or subject to the jurisdiction thereof, under the public land laws. XXI–131

Land lying within the banks of a meandered stream, and forming a part of the bed thereof as surveyed, but subsequently left dry by a change in the channel thereof, can not be entered under the homestead law, where patents have issued for the adjacent lands. XXI–429

Of an Indian allottee, extends to the middle of a non-navigable meandered lake. XIV–156

The control and right to dispose of public lands lying under a navigable stream, that forms the boundary of a State, and within the limits thereof, passes from the government of the State on its admission to the Union, and if a sudden change occurs thereafter in the course of such stream, the reliction lying within said State is not the property of the United States. XXVIII–124

Purchasers or grantees of meandered subdivisions, bordering upon a body of water, take title thereto with all of the incidents of ownership, among which is that of a right to relictions. This right pertains to the ownership of lands bounded by a water line, without reference to the character of the land, and hence exists in the case of title acquired under the swamp act. XXVIII–444

River. See *Survey.*

When adopted as the boundary of a State, sudden changes in the channel do not affect the boundary line as originally established. XXIV–372

Saline Land and Salt Springs. See *Mineral Land; Reservation: States and Territories.*

Saline lands not expressly reserved by law or order, but merely by markings on the official plats, are subject to agricultural claim on proof of non-saline character, and the claim relates back to date of settlement or filing. II–847

The failure of the plats to show the saline character does not subject the land to entry, for the statute reserves all salines, whether marked on the plat or not. II–851

No authority for the disposal of, belonging to the United States except under the provisions of the act of January 12, 1877. VII–549

The act of January 12, 1877, is not applicable to the Territory of Utah. VII–549

There is no law authorizing the disposal of, except the act of January 12, 1877, and said act is not applicable to the Territory of Oklahoma. XXVII–515

The settled policy of the government in the disposition of salt lands and, has been and is now to reserve the same from general disposal. XVI–597

Deposits of rock salt are saline lands and not subject to entry under the statutes authorizing the disposal of mineral lands. XIV–597

Land chiefly valuable for its salt deposits is not subject to entry as a placer mine. VII–549

May not be appropriated under the desert-land law. XX–299

In the grant of salt springs and, to the several States the phrase, "the land reserved for the use of the same," means the section including each salt spring. XXI–320

The Department is without authority to withdraw from settlement and entry lands for the benefit of a State as necessary and proper for the working of salt springs that are not in use by the State. XXI–320

School Land.

I. GENERALLY.
II. INDEMNITY.

I. GENERALLY.

Instructions of May 15, 1901, relating to final proof notice on school lands. XXX–607

The authority of the Secretary of the Treasury in the matter of, conferred by the act of May 20, 1826, was transferred to the Secretary of the Interior by the act organizing the Interior Department. XXIV–106

School Land—Continued.

I. GENERALLY—Continued.

Reservation of lands to a Territory for the benefit of schools is not a grant, but an act with a view to a grant, the government in the meantime retaining control of the land (Wyoming). I–632; VI–71

An act reserving lands in a Territory (Wyoming) has the same force, so far as the reservation goes, as a grant for the same purpose to a State. V–216; VIII–495

The act of May 2, 1890, reserving for school purposes sections 16 and 36 in each township in the Territory of Oklahoma, did not make a grant to said Territory, but made a reservation for a future grant, which reservation included both sections in place and lieu selections where such selections were made in accordance with law and are of the character of land appropriated for that purpose. XXX–244

Land known to be mineral in character at the date of the admission of the State to the Union is excepted from the grant of school lands to the State (Washington). XVIII–199

Known to be mineral at date of survey do not pass under the grant. III–233; IV–75; V–696; VI–412; VII–459; IX–408

Title passes to the State at the time the grant takes effect, without patent or certificate, and to except land therefrom on account of coal found therein the existence of such mineral in paying quantities must be shown and that such fact was known when the grant took effect. XIV–681

The title of the State vests, if at all, at the date of survey, and if the land is in fact mineral, though not then known to be such, the subsequent discovery of its mineral character will not affect the title of the State. VI–412; IX–408; XXIV–14

Outcropping surface veins of coal on a school section are not sufficient, in the absence of evidence as to the actual value of the deposit, to establish the known mineral character of the land and except it from the operation of the school grant. XXII–510

Grant of, will not take effect on land covered by a placer entry of land, chiefly valuable for building stone, allowed under departmental rulings. XXI–327

The State (Colorado) entitled to sections 16 and 36 if said sections were not known to contain mineral when the survey was approved; and the discovery of mineral after approval of the survey will not defeat the title of the State. VII–459

Mineral applicant for lands in section 16 (Colorado) may submit proof, after due notice to the State, that the land was of known mineral character prior to and at the date when the State was admitted to the Union. XII–604

School Land—Continued.

I. GENERALLY—Continued.

Land known to contain coal prior to the admission of the State to the Union is excepted from the operation of the school grant (Mont.). XXIII–116

In determining whether land is excepted from the grant to California on account of its mineral character the status of the tract at date of survey is the subject of inquiry. XV–273

The grant of school lands to the State of Utah became operative on its admission to the Union, and lands then of known mineral character did not pass to the State, though not in terms reserved from said grant. XXVII–53

The act of Congress providing for the admission of Nevada as a State and for a grant of, did not pass title to lands of known mineral character, though said grant does not in terms except such lands therefrom. XV–259

Land chiefly valuable for ordinary building stone thereon is not excepted from the grant to South Dakota. XVI–263

Where a mineral entry has been allowed on, the protest of the State will not be considered with a view to a hearing in the absence of a definite allegation that the land was in fact not mineral land or known to be such at the date the school grant attached. XXIII–313

A homestead claimant for land within a school section will not be heard to say that such land is excepted from the grant to the State by reason of its status under the mining laws at the date when the grant became operative; for, if in fact said land is not mineral, it passed to the State, and if mineral it is excluded from appropriation under the homestead law. XXVII–289

The existence of a placer location within a school section, or the pendency of an application for a placer patent therefor at the date when the grant of school lands becomes effective, will not operate to except such land from the grant to the State, if in fact said land is not mineral in character. XXVII–289

Prior to the approval of a school indemnity selection the land included therein, if mineral in character, is open to exploration and purchase under the mining laws of the United States. XXVII–411

A partial survey declared final, showing all or part of a school section within a grant, is the final survey contemplated in section [illegible] of the act of July 23, 1866. III–30[illegible]

Can not be regarded as identified by survey so as to exclude settlement where a resurvey of the land is found necessary. XIV–29[illegible]

Title to, does not pass by an irregular survey apparently inaccurate and subsequently set aside (California). VII–4[illegible]

Settlement upon, when the grant therefor takes effect, defeats the claim of the State. III–2[illegible]

School Land—Continued.

I. GENERALLY—Continued.

On which settlement or cultivation was found at survey did not pass to the State (California). I–338, 403

Settlement on, prior to survey excludes the land from the reservation for school purposes; but a purchaser after survey from such settler acquires no right against the State. X–348

The right of settler on, prior to survey is personal and can not inure to the benefit of another. I–403; IV–169; V–408; X–419, 263

A purchase after survey of the possessory right and improvements of one who settles on, prior to survey confers no right as against the State. VIII–495; IX–554; XIII–434; XXIV–581

If one who has settled prior to survey abandons his claim, the fact of such settlement can not be set up by a third party to defeat the title of the State. IX–408

A settlement under the donation law prior to survey does not except the land covered thereby from the operation of the grant of, where after survey the settler abandons his claim without asserting any right thereto before the land department. XXVIII–366

Settled on at survey and subsequently abandoned vests in the State as of the date of survey. I–403; VI–71, 439

Preëmptor alleging settlement before survey allowed to submit final proof though he had failed to file for the land within the statutory period. V–14

A preëmption settlement on, prior to survey initiates a right that is not defeated by failure to make final proof within the statutory period where the State waives its claim to the land involved. XX–52

Settler prior to survey claiming as a preëmptor must assert his claim within the legal period or the right of the State will take effect as of the date of survey (Colorado). I–630

Failure of settler before survey to assert his claim within statutory period does not inure to the benefit of the reservation (Utah). I–632

Settlement right on lands reserved for school purposes, acquired prior to survey, is not defeated by failure to establish residence for a term of years after settlement and survey where during such period valuable improvements are made and due residence established thereafter. XIV–213

Intent of legislation for Washington Territory in line with the general law with respect to settlement at survey. VI–74

Under the act of March 2, 1853, the occupancy of, prior to survey by actual settlers operates to exclude from the reservation only such parts of sections 16 and 36 as are included within such occupancy. XIII–382

School Land—Continued.

I. GENERALLY—Continued.

The protection extended by the act of February 26, 1859, is limited to those who have, prior to the survey in the field, made a settlement with a view to preëmption. IX–55[illegible]

Settlement on, prior to survey by one who has exhausted his preëmptive right and claims as a homesteader does not defeat the reservation if the survey is made prior to the act of May 14, 1880. XI–527

By section 11, act of February 22, 1889, all lands granted by said act for school purposes are reserved whether surveyed or unsurveyed, from preëmption, homestead, or other entry. The provisions of the later act of February 28, 1891, amendatory of sections 2275 and 2276, R. S., protecting settlement rights acquired prior to survey, are inapplicable to a desert-land entry (Mont.). XXIX–695

Settlers upon, under act of 1853 should submit final proof within reasonable time after survey. III–233

Settlement on, after actual survey in the field confers no right upon the settler in the event of the final approval of the survey. XXI–410

Claim of homesteader where settlement was made after survey sent to the board of equitable adjudication. III–38[illegible]

Settlers on Territorial, after survey can not be authorized by the Department to remain in occupancy until the lands are subject to disposal by the State. XII–18[illegible]

Though embraced in a private claim, it will pass under the grant to the State if in fact "not sold or otherwise disposed of by any act of Congress" when the grant became effective. IX–553

The lines of the public survey may be extended or protracted over a confirmed private-land claim for the purpose of ascertaining the amount of school land lost to the State by reason of section 16 being included within the limits of such claim. XXX–187

Order of March 24, 1885, suspending action on mineral applications for school lands revoked. IV–531

Circular of November 16, 1888, with respect to Wyoming school lands. VII–58[illegible]

Rights of a State under the grant of, controlled as to acreage by the returns of the surveyor. XVII–[illegible]

Irregularity in the form and place of section 16 arising from the survey of the township will not defeat the grant. VIII–56[illegible]

School Land—Continued.

I. GENERALLY—Continued.

It is the number of townships, or fractional townships, within a State that determines the extent or measure of the grant for school purposes; hence when it is found that the State has received for each township the designated sections, or an equal quantity in lieu thereof, or for the fractional quantity due, no mere irregularity in the matter of adjustment is material as between the State and the United States. XXIX–127

No authority except in Congress to dispose of lands reserved for the use of schools. IX–333

A legislative reservation of, not defeated by a subsequent executive reservation of the land for military purposes (Michigan). VIII–560

Fee to the school sections within the Menomonee reservation passed to the State (Wisconsin), subject to the Indian occupancy, which can not be disturbed by the State nor its assignee. XII–176

The provision in the act of August 23, 1894, that lands within abandoned military reservations restored for disposal under said act shall be subject to entry by actual settlers, is a congressional disposition of said lands that takes them out of the operation of the school grant, if it had not attached prior to the establishment of the reservation. XXVI–87

The proviso to section 6, act of July 16, 1894, admitting Utah to the Union does not take the grant of, to said States out of the operations of the general rule as to the time when said grant attaches to the specific sections, or limit the authority of Congress to so provide for the disposal of reserved lands, that on their restoration the right of the State to the specific sections may be defeated. XXVI–87

The instruction of January 28, 1898, 26 L. D., 87, with respect to the grant of, to the State of Utah as affected by legislation governing the disposal of abandoned military reservations, vacated. XXIX–418

The reservation of sections 16 and 36 for school purposes in the Territory of Utah, under the act of September 9, 1850, "when the lands in the said Territory shall be surveyed * * * preparatory to bringing the same into market," does not become effective as to lands in said sections on the survey of only two of the exterior lines thereof. XXX–314

School Land—Continued.

I. GENERALLY—Continued.

Lands "sold or otherwise disposed of" at the time of the admission of Utah into the Union are excepted from the school grant to said State; and where prior to said date a desert-land filing has been properly allowed and the first payment on the land accepted, the claimant thereby acquires such a right to complete his purchase and perfect title by further compliance with the desert land act that the right of the State, if any under its school grant, is subject to the prior right under said filing. XXX–314

The act of July 5, 1884, and August 23, 1894, relative to the method in which lands in abandoned military reservations should be disposed of, did not in themselves amount to a disposition of said lands, and hence bring them within the exception of lands "sold or otherwise disposed of" contained in the grant of, to the State of Utah. XXIX–418

The grant of, to the State of Utah became operative on the admission of the State into the Union; and where at such date a portion of a school section is embraced within a subsisting timber-culture entry, made prior to the date of the granting act, the State takes title to such land subject only to the entryman's right to perfect title under his entry, and if said entry is subsequently canceled, the title of the State becomes complete as of the date of admission, to the exclusion of any preference right on the part of a contestant who secures such cancellation. XXIX–623

Is not lost to a State by an executive order creating an Indian reservation where sections 16 and 36 are expressly excepted therefrom, nor does the fact that such sections are within the boundaries of said reservation authorize lieu selections under the act of February 28, 1891. XVII–71

The "contingent location" of lands in sections 16, in Mississippi, under executive order issued October 13, 1834, did not operate to reserve said lands so as to prevent title vesting in the State under the acts of Congress relating to school lands in said State. XXX–230

Lands selected for educational purposes are reserved from the operation of the timber land act of June 3, 1878. VI–696

Section 16 in each township in the State of Louisiana, reserved for the support of schools by section 10 of the act of March 3, 1811, did not pass under the swamp-land grants to said State by the acts of March 2, 1849, and September 28, 1850. XXX–276

The Department has no authority to permit land reserved for the use of schools to be used for cemetery purposes. IX–333

The Department has no authority to sanction the use or lease of, for townsite purposes. XIII–640

School Land—Continued.

I. GENERALLY—Continued.

Leased for agricultural and grazing purposes, under the regulations and form of lease required by the Department can not be sublet for the purpose of establishing a brickyard thereon. XXI–141

In a lease of, the intention of the parties as to the time from which the agreement shall become operative should control, if such intent is apparent by the terms of the lease. (New Mexico.) XXIX–364

May not be taken for townsite purposes in the absence of settlement rights acquired prior to the public survey. XIII–327

Sections 16 and 36 embraced within the lands excluded from the Fort Sanders reservation are reserved for school purposes and not subject to entry. VII–548

Sections 16 and 36 within an abandoned military reservation are not subject to a subsequent school grant, but must be disposed of under provisions of July 5, 1884. XIV–527

Applications to file coal declaratory statements may be received for sections 16 and 36, with due opportunity for the State (Colorado) to be heard. VII–490

The Territory (Wyoming) can not control or make disposition of lands reserved for school purposes. IV–390

The surveyor-general of California is the authorized agent of that State in the adjustment of the school grant. VI–403

Possession entered into after survey under Territorial authority not legal. IV–390

Under certain acts Arsenal Island was surveyed and set apart to the board of St. Louis public schools and the selection approved; under the law (Sec. 2449, R. S.) the title of the United States was by the approval fully vested in the public schools and their grantees. II–457

By section 2, act of April 28, 1870, extending the jurisdiction of the State of Nebraska over the territory added thereto by the provisions of said act, Congress conferred upon said State all the rights incident to the original enabling act, and it therefore follows that the reserved school sections embraced within such added territory passed to said State by such transfer of jurisdiction, though the statute does not in terms make an express grant thereof to the State. XXIII–348

On the approval of a survey made after the admission of the State of Nebraska to the Union the title to the school sections vested in the State, and the subsequent resurvey of Grant and Hooker counties, authorized by act of August 9, 1894, did not defeat such title, though by said resurvey the designation of such sections by number may have been changed. XXVIII–264

School Land—Continued.

I. GENERALLY—Continued.

Grant of, compared with the swamp grant and a similar rule of construction held applicable. VIII-310

The Department is without authority to determine whether a State in its disposition of, has done so in the manner provided by statute. XXI-365

The act of March 3, 1849, reserving lands in the Territory of Minnesota for school purposes, was not irrevocable by Congress. XXVIII-374

The proposal made by the United States in the act of February 26, 1857, to grant to the State of Minnesota, when admitted into the Union, sections 16 and 36, for school purposes, was modified by the joint resolution of March 3, 1857, and it was the proposal, as so modified, that was accepted in the State constitution adopted October 13, 1857. XXVIII-374

Under the compact effected by the modified proposal of March 3, 1857, and its acceptance, the status of said sections at the time of survey was made the criterion in determining whether the State became entitled to the specific sections, or to other equivalent lands as indemnity. (Minn.) XXVIII-374

The lands known as the "Red Lake reservation" in Minnesota, were unsurveyed at the passage of the act of January 14, 1889, and by the terms of said act, and the agreement with the Indians thereunder, were set apart to be used in raising a fund for the benefit of the Indians, and by such appropriation were "reserved for public uses," within the meaning of the joint resolution of March 3, 1857, prior to survey; sections 16 and 36 in said reservation, therefore, did not pass to the State under the school grant, but other equivalent unappropriated lands may be selected in lieu thereof. XXVIII-374

II. INDEMNITY.

1. Generally.
2. Alabama.
3. California.
4. Colorado.

1. Generally.

Indemnity selections. Instructions of July 23, 1885. IV-79

Circular of July 29, 1887, cited in full with approval. VI-702

Instructions of December 19, 1893, relative to selections in lieu of swamp lands and lands within forest reservations. XVII-576

Regulations of March 11, 1899, with respect to indemnity selections for lands in forest reservations. XXVIII-195

School Land—Continued.

II. INDEMNITY—Continued.

1. Generally—Continued.

Regulations of March 11, 1899, modified. XXX–491

The provisions of section 2276, R. S., restricting indemnity selections to the land district in which losses occur are repealed by the act of February 28, 1891. XIII–708; XXIV–423

The right to select lieu lands vests immediately upon the legal ascertainment that a school section is reserved for public use. III–327

The sale by a State of lands in fact excepted from its grant of, does not defeat its right to subsequently select indemnity therefor. XXII–666

The act of February 28, 1891, provides that the State may waive its claim to, and take indemnity instead. XV–154

The State may not at will waive its right to land in place and take lieu lands of equal acreage. XVII–266

The State acquires no right to land as school indemnity prior to the selection thereof. IX–139

The essential thing was the selection of the lieu land for a portion of section 16 (Missouri) disposed of, and the selection and entry vested title in the State. II–496

Certification, when made, relates back and takes effect as of the date of survey. IX–413

Selection, certification, and approval pass the title to school land as fully as though transferred by patent, and the Department is without authority to set aside said certification and cancel the selection. IX–106, 636

By the certification of a school indemnity selection title passes to the State, and an order thereafter made, by the General Land Office, canceling such certification, is without authority and void. XXIX–127

A selection of land subject thereto, approved and certified, precludes the allowance of another selection in lieu thereof until such certification shall be set aside by proper authority. VII–91; XIV–317

Informal notation on the record of the words "set aside" does not constitute a rejection of the selection. V–352

Where a selection of land not subject thereto has been approved the State is not entitled to take other land in lieu thereof until the first selection has been relinquished or vacated. XV–559

In case of a lieu selection of land not subject thereto, such land was not reserved or granted by any act of Congress, and such selection, although it may have been approved and certified by the Secretary of the Interior, is still subject to his jurisdiction and control. XXX–244

School Land—Continued.

II. INDEMNITY—Continued.

1. Generally—Continued.

Invalid selection approved and certified can only be canceled on the judgment of a court. IX–106

Certification of indemnity selection of land to which a prior adverse right had attached is null and void. I–494

A decision of the Commissioner passing upon the validity of a selection is conclusive upon his successor in office. XV–385

Approved indemnity selections are as fully reserved as the sections in place. V–216

No title acquired by a selection until it has been approved and certified. XV–559

The approval of an indemnity selection by the Secretary of the Interior passes the title thereto, and, in contemplation of law, makes such selection the act of the Secretary, and it is thereafter not material to inquire how such selection was made in the first instance. XXIV–106

The approval by the Department, and certification thereunder, of a list of indemnity school selections made by a State, covering lands of the character granted for indemnity purposes and free from adverse claim or appropriation, which list is *prima facie* valid, and only defective by reason of the erroneous assignment of an improper basis therefor, passes the legal title of the lands selected to the State, and the Department is thereafter without jurisdiction to revoke or cancel the selection so erroneously approved and certified. XXX–230

A purchaser of the State's interest in indemnity lands prior to the certification of such lands acquires no rights thereby; and if the State, in such case, waive its right under its selections the purchaser has no standing to be heard before the Department. XVIII–245

The withdrawal of a list of selections terminates the interest of the State in the lands, and it thereafter has no interest therein that can be the subject of investigation, or considered on appeal in the presence of intervening adverse claims. XVIII–245

Where the fee is in the government at survey, but the land is so encumbered that title can not fully vest in the State, an equivalent therefor may be taken by the State, or it may elect to await the union of title and possession in the government and then take the land specifically granted. VI–412; XII–180

Indemnity may be allowed for section embraced within an executive order made prior to survey withdrawing lands for an Indian reservation. XV–350

School Land—Continued.

II. INDEMNITY—Continued.

1. Generally—Continued.

The grant of, to Nebraska included lands within that part of the Sioux reservation added to said State by the act of March 28, 1882, subject to the right of Indian occupancy; and, such right having been extinguished, the State is entitled to select indemnity within the limits of such reservation in said State for losses sustained therein. XVIII–124

Real status of indemnity selection not affected by failure of local office to properly note the same of record. XV–367

Selection of, excludes the land covered thereby from entry. X–263

Selection of, though invalid, reserves the land from other disposition. VI–439; VII–350; XV–549

A selection of indemnity under act of February 26, 1859, recorded and uncanceled, appropriates the land and reserves it from other disposal. II–626

Selection of, prior to statutory authority therefor (act of February 26, 1859) does not operate to reserve the land embraced therein. XVII–43

Indemnity selection made by the Territory of Washington under section 2275, R. S., reserves the land covered thereby, and lands thus selected are not released from such reservation by the act admitting said Territory into the Union.

XI–381, 382; XII–165; XIII–378; XIV–271; XX–35

Section 10 of the act of February 22, 1889, so far as it prescribes the manner or form of selection, refers to future selections only, and in no wise affects the legality of selections put in reservation prior to its passage. XX–35

Territorial school indemnity selections reserve the land covered thereby. V–216

Title acquired by valid selection will not be impaired in the hands of the State's grantee by a subsequent duplication of the basis. VIII–480

A pending indemnity selection will not bar the State from the assertion of its right to the section in place. IX–553

The State may change the description of an indemnity school selection to include the identical land according to United States survey in case stated. III–401

A selection not invalid under the circular of July 23, 1885, because slightly in excess of the basis. VI–702; VII–580

The validity of a section, slightly in excess of the basis, made under regulations that allowed such excess, is not affected by subsequent regulations that do not recognize such a selection. XX–35

Basis of indemnity selection to be indicated. IV–79

School Land—Continued.

II. INDEMNITY—Continued.

1. Generally—Continued.

Selection made upon a basis defective in part is invalid as to the entire selection. VI–699; XV–55

Under the provisions of the act of February 28, 1891, indemnity selections, resting on bases in part defective, may be approved, the defect being due to the failure of the government to properly mark the boundaries of an Indian reservation. XVII–296

Misdescription in basis resulting from clerical error will not invalidate selection where the rights of others were not prejudiced thereby. VI–702

Defect in basis for selection may be cured by amendment or relinquishment, but the right of the State takes effect only from the date when the defect was cured. VI–699; XXVII–644

Indemnity selection defective for want of proper basis can not be amended so as to defeat an intervening claimant. XV–549

The improper description of the basis as a portion of section 36 will not defeat a selection made in fact upon a deficiency caused by the non-existence of sections 16 and 36. VII–580

Transfer of the basis to another selection will not defeat the title of one holding under a prior purchase of the land first selected. XV–367

A selection can not be regarded as the renewal of a previous selection where neither the base alleged, nor the land claimed, are the same in the two selections. XX–490

A selection on a basis already used in a prior selection is invalid, but the defect may be cured in the absence of an adverse claim by cancellation or relinquishment of the first selection. X–303

The State may be permitted to designate a new basis in support of an indemnity selection, where it is found that the basis originally assigned is invalid, but that the selection so made was accepted, and the land sold to an actual occupant. An intervening homestead entry is no bar to such action. XXIX–610

Where the State has sold a tract as indemnity land, and subsequently the record discloses no selection thereof, it may be permitted to select such tract, on due assignment of basis, where such action is necessary for the protection of its vendee, and is in pursuance of its original intention. XXVIII–235

Indemnity not allowed for losses alleged in an unsurveyed township. VI–824; XXIV–54

Indemnity selection resting upon a loss alleged prior to survey of the township in which such basis is situated is not void, but voidable, and becomes valid in the absence of an intervening right from the date when the loss is definitely ascertained. VII–347

School Land—Continued.

II. INDEMNITY—Continued.

1. Generally—Continued.

A selection can not be allowed on an alleged loss that is not definitely ascertained by survey. XXVII–644

A selection defective in part is invalid as a whole upon the face of the record. IV–76

Selection of indemnity will not be disturbed where the local office corrects a misdescription and the State ratifies such action prior to the intervention of an adverse claim. XIV–24

Indemnity selection made on a valid basis, but covering in part lands excluded from selection, may be approved as to the tracts subject to selection. VI–680, 699; VIII–72

The State is not authorized to select double minimum land in lieu of lost single minimum school sections. IV–76; V–543; VI–696

The State is entitled to select indemnity of the character and class it would have received had there been no deficiency. VIII–31, 32

An indemnity selection of double minimum land may be confirmed in the absence of an intervening claim where such land was reduced in price prior to final action on the selection. VI–571

Double minimum land may be taken in lieu of double minimum loss, but not for single minimum loss (Louisiana). VIII–126

Double minimum lands may be taken for double minimum loss. XIV–271

The State is entitled to select, for lands lost in place, other lands, acre for acre, regardless of price, whether single minimum or double minimum. XVIII–343

Indemnity selection of double minimum land of one-half the acreage of a single minimum loss, made under a practice of the Department that permitted such selections, and that was acquiesced in by the State, is held to have exhausted the right of the State to indemnity so far as such basis is concerned. XXII–428

Twice the amount specified in section 2276, R. S., will be allowed for deficiencies where two sections to each township were granted to the State. VI–696; XII–80; XIX–206

The State, by accepting indemnity in lieu of a deficiency shown by the existing survey, is divested thereby of all right to the basis and can assert no claim thereto under a later survey and after the rights of third parties have intervened. XII–390

Selection of indemnity is an acknowledgment on the part of the State that it has no title to the basis, and the pendency of the selection is notice to a purchaser from the State of such defective title. XVI–55

School Land—Continued.

II. INDEMNITY—Continued.

1. Generally—Continued.

A lieu selection of school lands by a State or Territory operates as waiver of all claim to the lands assigned as bases, and after the approval of such selection by the Secretary of the Interior it is not material to inquire how it was made in the first instance. XXX–83

No provision made for indemnity where school sections are crossed by railroads claiming the right of way. Recourse to the courts must be had by the State if the right of way is improperly asserted. XIII–454

Indemnity may be allowed for the loss of section 36 in a fractional township, prior to the subdivision of such township, if the exterior lines thereof are established, and the loss thus made certain. X–498

Selections on behalf of different fractional townships should be so apportioned that each township will receive credit for the amount to which it is entitled. X–498

For lands not in place the basis of selection indicated by description of fractional township. IV–79

Indemnity for losses occasioned by fractional sections taken under the act of February 26, 1859. V–216

In determining the amount of school indemnity land to which a State is entitled on account of a fractional township, the entire quantity of land in said township is the basis of adjustment, irrespective of the fact that a part of said township may be embraced within an Indian reservation. XXVIII–366

The fact that sections 16 and 36 are left unsurveyed on account of their mountainous character does not render such sections fractional or wanting from a natural cause, so as to warrant the selection of indemnity therefor. XVI–437

A school section made fractional by the exclusion of "mud flats" from the public survey, as shown by the returns of the surveyor-general, constitutes a proper basis for school indemnity selections in the absence of any proof of fraud or mistake in the survey. XXVI–510

The act of February 26, 1859, is a general provision applicable alike to all States and Territories and authorized the Territory of Washington to select indemnity to cover losses caused by the reserved sections being covered in part by permanent bodies of water. XIII–378

The State is entitled to indemnity in lieu of land covered by settlement claims at date of survey. V–218, 543; VII–270

School Land—Continued.

II. INDEMNITY—Continued.

1. Generally—Continued.

The act of February 22, 1889, so far as in conflict with sections 2275 and 2276, R. S., as amended by the act of February 28, 1891, is superseded by said amended sections, and the grant of 1889 should be adjusted under the later legislation.

XII–400; XXIV–12, 106

The act of February 28, 1891, amending sections 2275 and 2276, R. S., supersedes the provisions of section 24, act of March 2, 1889, so far as the same is in conflict with prior statutory provisions protecting settlement rights on school lands, acquired prior to survey, and leaves the rights of the State and settlers, in such cases, to be adjusted under the general provisions of the law.

XXI–220

The act of February 28, 1891, amending sections 2275 and 2276, R. S., is applicable to all the public-land States, and operates as a repeal of all special laws theretofore enacted, so far as in conflict therewith. XXIII–423

The act of February 28, 1891, amending section 2275, R. S., repealed so much of the proviso to section 2, act of July 10, 1890, as declares that the State of Wyoming shall not be entitled to select school indemnity in lieu of sections 16 and 36 in the Yellowstone National Park; and under said section 2275, R. S., as thus amended, the State is entitled to such indemnity, in so far as said park lies within its boundaries. XXVII–35

By the act of June 21, 1898, a grant, *in præsenti*, is made to the Territory of New Mexico; and under the provisions of section 2275, R. S., as amended by the act of February 28, 1891, said Territory may relinquish its claim to such school sections as it may be entitled, that are included within the limits of a forest reserve, and select other lands in lieu thereof. XXIX–364

Where the title to school sections has vested in the Territory of New Mexico under the grant of June 21, 1898, and such sections are subsequently embraced within a reservation created by executive order, the Territory may, under the provisions of section 2275, R. S., as amended by the act of February 28, 1891, waive its right to such sections and select other lands in lieu thereof.

XXIX–399

Lands within a confirmed private claim in Florida have been "disposed of by the United States" within the meaning of section 2275, R. S., as amended by the act of February 28, 1891, and the State is therefore entitled to indemnity for sections 16 included within such claim and thereby lost to its school grant. XXX–187

School Land—Continued.

II. INDEMNITY—Continued.

1 Generally—Continued.

Under sections 2275 and 2276, R. S., as amended by the act of 1891, directing the Secretary to "ascertain and determine by protraction or otherwise," the townships for which indemnity may be selected, in cases of reservations, the protraction, by the surveyor-general, of the township lines over an island, reservation from a map of the State published by the Department, is a proper method of determining the amount of lands lost. XX-107

Lands within the Territory of Oklahoma included in a *bona fide* settlement claim, initiated before survey, must be treated as "appropriated" within the meaning of the act of February 28, 1891, and therefore not subject to lieu selection by the Territory, for school purposes, within the period of three months after the filing of the township plat accorded to the settler within which to place his settlement claim of record. XXX-244

Settlement on, prior to and existing at survey excepts the land from the grant and entitles the State to select indemnity so long as the claim of the settler exists. VIII-495

Indemnity selection for land covered by settlement at survey releases the basis from reservation. VI-71

When selection has been made, title to the land selected passes to the State, which at the same time is divested of all right to thereafter claim the tract used as the basis, whether the settlement claim therefor is made good or not. VII-270

If the State makes a selection in lieu of land covered by settlement at survey, the reservation is transferred from the basis to the indemnity, and by the same act the claim to the basis is relinquished and the land opened to entry. VIII-394

The selection and approval of indemnity divests the State of all title to the alleged basis, which is thereafter open to settlement and entry. XVII-287

The Territory is not bound to select indemnity for land covered by settlement at survey, but may await the action of the settler. VI-71

In case of a preëmption settlement on, prior to survey the State may either select indemnity therefor or await the action of the settler and, if his claim is abandoned, assert its right to the land in place. XIV-394

The selection of indemnity is a waiver of all claim to the land in place, and to protect a settlement claim on such land the State may take indemnity therefor if it so elects. XIV-232

School Land—Continued.

II. INDEMNITY—Continued.

1. Generally—Continued.

If one who has settled prior to survey subsequently thereto abandons the land, the title of the State attaches to the school section as of the date of survey and the right of the State to select indemnity ceases. VIII–495

Settlement prior to survey extends only to those tracts on which improvements are placed, and the indemnity therefor is measured by the extent of the settler's appropriation. X–348

The exclusion of a tract included within a preëmption filing for an excessive acreage, based on settlement before survey, relieves the tract excluded from the settler's claim and leaves it subject to the school grant; and relinquishment of the tract by the State affords no basis for indemnity. XIII–456

The act of August 9, 1888, does not authorize the Secretary of the Interior to recognize settlement rights acquired after survey and require the Territory (Wyoming) to select indemnity therefor. VIII–495

Authority of county commissioners to make indemnity selections under the act of 1853. V–216

The county commissioners are not authorized to select lands in lieu of sections 16 and 36 unless actual settlers occupied them prior to survey; after survey said sections were not subject to preëmption entry. II–626

The authority to make indemnity selections rests with the county commissioners, who derive their authority from the act of March 2, 1853 (Washington). XI–382

The authority to locate indemnity selections conferred upon county commissioners may be exercised through an authorized agent (Washington). XIII–378

The departmental regulations issued under the act of February 26, 1859, authorized the local officers to make indemnity selections, where the county commissioners, after due notice, fail to make such selection either in person or through an agent. XX–35

Selections of indemnity in Oklahoma may be made from any unappropriated surveyed non-mineral public lands within said Territory for losses by Indian allotment, settlements prior to survey, fractional surveys, or from any natural cause. XIV–226

A selection improperly allowed because of a prior pending claim may be allowed to stand on the removal of such claim from the record. VI–680; VIII–72

The act of May 20, 1826, construed by subsequent legislation. V–546

Under the act of 1826 the State (Louisiana) is not entitled to indemnity for sections in place but covered by private grants. VIII–126

School Land—Continued.

II. INDEMNITY—Continued.

1. Generally—Continued.

The act of May 20, 1826, authorizes selections on account of sections in place but lost to the State (Louisiana) by reason of being included within confirmed private claims. IX–157

The act of 1826 includes selections for "radiating" and other irregular surveys (Louisiana). VIII–126

The selections authorized by the act of May 20, 1826, are not "lieu" selections. VIII–563

Lands embraced within an executive order of withdrawal are not subject to selection as indemnity. XXI–134

A certification under the act of August 3, 1854, of lands on account of a railroad grant that were, at the date of the grant, embraced within a pending *prima facie* valid school indemnity selection, is no bar to the subsequent approval of such selection. XXIV–364

A selection should not be allowed to embrace a tract appropriated by a prior uncanceled homestead entry. XX–74

An intervening indemnity selection does not defeat the right of a homesteader who settles prior to survey but fails to make entry within the statutory period. XIV–417

The right to select school indemnity extends only to "unappropriated" lands, and hence can not be recognized where at the date of selection the land applied for is embraced within a *bona fide* settlement claim of a qualified homesteader who has improved the land and is residing thereon. XXVI–669

Lands within the limits of the Great Sioux reservation, restored to the public domain by the act of March 2, 1889, are subject to disposition only under the homestead law for the benefit of the Indians, and cannot be taken as school indemnity: the certification, therefore, of said lands under school indemnity selections is wholly inoperative and conveys no title to the State.

XXVI–347; XXVIII–358

The acts of May 20, 1826, and February 26, 1859, determine what lands are subject to indemnity selection. V–545

School indemnity selections for lands covered by private claims prior to the survey of such claims are invalid. III–89

The return of sections 16 and 36 by the surveyor-general as mineral land is sufficient evidence of its mineral character to entitle the State to select indemnity therefor in all cases where said return is not overcome by competent evidence to the contrary.

XXIII–423

The State, by a school indemnity selection in lieu of land alleged to be mineral in character, waives its claim to the basis, which may be thereupon disposed of as part of the public domain. XXIV–14

School Land—Continued.

II. INDEMNITY—Continued.

1. Generally—Continued.

A discovery of mineral on each twenty acres of a placer location serves to except the whole location from school indemnity selection. XXIV–507

An indemnity selection in lieu of land patented as mineral, of record at the passage of the act of February 22, 1889, authorizing such selections, operates to reserve the land as against a subsequent homestead application (Washington). XIV–282

Indemnity selections of land returned as mineral will not be allowed without due compliance with the regulations requiring notice of the application and affirmative proof as to the character of the land. XXII–294,402

The "affirmative proof" required on selection of lands returned as mineral may consist of the affidavit of the applicant, supported by the affidavits of two or more persons whose acquaintance with the character of the land is derived from a careful personal examination of each ten-acre tract thereof. XXII–402

Where an application to select indemnity is rejected on account of an adverse claim, and the State elects to stand on a protest against said claim and not appeal from the rejection, it will be bound by the result of the action on the protest. XV–316

Land claimed as indemnity should not be leased until the validity of the selection has been determined (Oklahoma). XV–370

Lands lying within the limits of a railroad grant forfeited by the act of September 29, 1890, are subject to selection as indemnity for, lost in place. XXIII–423

All applications for indemnity lands in lieu of school sections embraced, after survey, within a forest reservation, "must designate by specified legal subdivisions the lands in lieu of which indemnity is desired," and applications which do not conform to this requirement can not be accepted. XXX–608

A selection authorized by the State of lands in lieu of sections 16 and 36 in a forest reservation, where the right of the State to said sections has attached under its school grant prior to the establishment of the reservation, is such a waiver of its right to said sections as to obviate the necessity for the formal relinquishment thereof to the United States, as required by circular instructions of March 11, 1899. XXX–438

School Land—Continued.

II. INDEMNITY—Continued.

1. Generally—Continued.

The State is required, in making application to select land in lieu of sections 16 and 36 in a forest reservation, where the title of the State to such sections has vested prior to the establishment of the reservation, to designate by specified subdivisions the lands in lieu of which indemnity is desired, and to show, by certificate of the proper officer having charge of its records of disposal of its school lands, that it has made no sale or other disposal of the lands assigned as a basis for its proposed lieu selection, and also, by certificate of the officer having charge of the record of titles to lands in the county where the lands lie which are assigned as a basis for the selection, that no conveyance of title, lease, or other transfer of such lands, or of any interest therein, appears of record in his office. XXX–484

2. Alabama.

By the enabling act and act of admission the State of Alabama was invested with the legal title to every sixteenth section, according to the surveys, irrespective of the character of the lands upon which they were located, and in case of previous disposal thereof the right to indemnity existed in the same character of land. VI–493

The legislation subsequent to the enabling act, while resulting in a particular method for the disposition of mineral land, did not repeal that act or abridge the right of the State to the sixteenth section or to select indemnity therefor. VI–493

The act of March 3, 1883, did not operate to reserve lands reported as containing coal and iron from selection until after public offering. VI–493

3. California.

Circular of July 23, 1885, as to selections of indemnity in California, modified. XXV–383

In the adjustment of the grant the surveyor-general of the State may appoint an attorney to represent the State, or revoke such an appointment when made if the power conferred thereunder is not coupled with an interest. VI–403

The rejection of an application to purchase under the act of March 1, 1877, will not bar a second application by the same party based on a different claim. VIII–326

School Land—Continued.

II. INDEMNITY—Continued.

3. California—Continued.

The act of March 1, 1877, confirmed to the State all invalid selections made prior thereto except (1) for lands occupied by *bona fide* settlers prior to certification, (2) those mentioned in the first proviso to the second section, and (3) selections in lieu of sections which had been surveyed in place and the title to which had vested in the State at the date of said selections VI–302, 552

Selections made for losses alleged through conflicting Mexican grant and approved before the act of 1877 were confirmed by the second section of said act though on final survey of the said grant or survey of the public lands it transpires that the school lands were not lost, as alleged, and as the result of such confirmation the United States resumed ownership of the basis. VI–302, 552

A selection of indemnity made and approved before the final survey of a private claim excluding the basis therefrom is confirmed by section 2, act of March 1, 1877, and the basis therefor is subject to disposal as other public lands. XIV–252

A purchase from the government of an indemnity selection confirmed by the act of 1877 does not strengthen the title or cause the title to the basis to revert to the State. XV–519

A selection made prior to the act of March 1, 1877, in lieu of lands included at date of selection in the surveyed limits of a Mexican claim and subsequently excluded therefrom is confirmed by section 2 of said act, and title to the basis reinvested in the United States. XV–519

A selection approved prior to the act of March 1, 1877, erroneously based on a tract that had been identified as school land and never included in a Mexican claim by an authorized survey, is confirmed by section 2 of said act, and title to the basis reinvested in the government. XV–477

If full compensation has been received on account of a fractional township, further selections will not be allowed on the ground that the basis in the original selection was improperly described as a part of sections 16 and 36; and this rule applies whether such selections were made before or after the act of March 1, 1877. VIII–307

A selection resting upon a basis already exhausted by a prior approved selection is not confirmed by section 2, act of March 1, 1877. IX–106

If by public survey approved after the passage of the act of March 1, 1877, a school section is found in place and not within a Mexican grant, a selection made in lieu thereof is confirmed by said act although the final survey of the grant which excluded the school section was made prior to the passage of said act and date of selection. VI–552

School Land—Continued.

II. INDEMNITY—Continued.

3. California—Continued.

Indemnity selection is not confirmed by the act of 1877 if the basis therefor was found in place and subject to the grant. I–403

A selection, made and approved prior to the act of March 1, 1877, in lieu of lands within an Indian reservation, but which in fact at date of selection and approval had been restored to the public domain, and were afterwards by the public survey shown in place, is within the confirmatory provisions of section 2 of said act. XIX–432

A certified selection which fails by reason of the basis being excluded from the final survey of a Mexican grant is confirmed by section 2 of act of March 1, 1877, though the final survey of the grant was prior to the passage of the act. IX–208

An applicant for the right of purchase under the act of March 1, 1877, is "an innocent purchaser" if his vendor held without notice of defect in the State's title. VIII–326

Indemnity selections certified prior to the act of March 1, 1877, for losses alleged in townships made fractional by the segregation of swamp lands will not be disturbed. VIII–4, 24

Right of purchase under the act of March 1, 1877, not defeated by the erroneous cancellation of a selection. VIII–326

Irregular selections of lands sold to innocent purchasers prior to the act of July 23, 1866, confirmed by section 1 of said act. VIII–480

Invalid indemnity school selections upon unsurveyed land disposed of prior to July 23, 1866, confirmed on the State's indicating an equivalent acreage for the invalid basis. III–401

The segregation of swamp lands does not render a township fractional and thereby furnish a basis for indemnity. XV–10

The phrase "reserved for public uses" in section 6, act of July 23, 1866, does not authorize the allowance of indemnity for lands that passed to the State under the swamp grant. XV–10

Section 2275, R. S., as amended by the act of February 28, 1891, does not authorize the allowance of indemnity to California swamp lands. XV–10

Swampy character of a school section affords no basis for indemnity. XVII–576; XIX–359

Under the provisions of section 2275, R. S., as amended, the State is entitled to indemnity for school sections lost to the State by reason of their mineral character. XXIII–423

Section 2275, R. S., is not applicable to the State of California, as said State derives the right to indemnity through special provisions made by the act of July 23, 1866. XV–10

School Land—Continued.

II. INDEMNITY—Continued.

3. California—Continued.

The permanent reservation, for light-house purposes, of an island lying off the coast of California entitles the State to select indemnity lands lost to the State by reason of said reservation. XX–103

Instructions of December 19, 1893, relative to amendatory selections and selections in lieu of land within forest reservations. XVII–576

Indemnity selections may be properly allowed in lieu of unsurveyed sections in place that fall within a forest reservation. XIX–244; XX–327

Sections 2275 and 2276, R. S., as amended by the act of February 28, 1891, do not authorize school indemnity selections in lieu of surveyed school sections that are subsequently included within the boundaries of a forest reservation. XIX–585

Where a forest reservation includes within its limits a school section, surveyed prior to the establishment of the reservation, the State under the authority of the first proviso to section 2275, R. S., as amended by the act of February 28, 1891, may be allowed to waive its right to such action and select other land in lieu thereof. XXVIII–57

A withdrawal of public lands for the purpose of creating a forest reserve precludes the subsequent selection of such lands as indemnity. XX–103

An application to select indemnity, on a basis of an alleged loss of unsurveyed lands within a timber reservation, prior to an official determination of the number of townships included in said reservation, may be accepted and treated as valid, not in recognition of any such right on the part of the State, but as a matter within departmental discretion. XXV–40

4. Colorado.

The grant to Colorado was of the sixteenth and thirty-sixth sections where such sections at the date of survey had not been sold or otherwise disposed of, with the right to indemnity if such sections at the time of survey were not subject to the grant. VI–412

Sections appearing as mineral at date of survey do not pass under the grant, but the State (Colorado) is entitled to indemnity therefor. VI–412

Selections in Colorado in lieu of mineral lands in sections 16 and 36. Circular provisions of March 23, 1887. V–696

The State (Colorado) entitled to indemnity for, within the Ute reservation. VI–412

School Land—Continued.

II. INDEMNITY—Continued.

4. Colorado—Continued.

If the State takes indemnity for land returned as mineral, it is estopped from asserting a further claim to the basis even though it is in fact agricultural land. XI–504

In adjusting the grant to the State of Colorado indemnity may be allowed for lands lost by settlement and entry, and also where the bases are covered by military reservations or patented private claims. XII–70

Indemnity selections may be made from lands that are reasonably contiguous to the bases (Colorado). XII–70

The State of Colorado is entitled to indemnity for sections 16 and 36 in Fort Reynolds military reservation, as said reservation was created prior to survey and the statute directing disposition of the land makes no exception of said sections. XV–151

A fee of $1 each to the register and receiver is chargeable to the State (Colorado) for each indemnity selection of 160 acres. XIII–728

Scrip. See *Private Claim; States and Territories; Warrant.*

Returns from local office on location. Circular of December 4, 1889. IX–657

Circular of February 2, 1895, under act of December 13, 1894, providing for the satisfaction of certificates of location issued under section 3, act of June 2, 1858. XX–95

Circular of May 31, 1898, respecting location and assignment of. XXVII–167

Identity of assignee must appear. I–300

Erasures in assignment of, must be accounted for. I–301

Assignment of, in blank not accepted. I–301; II–430

Assignment of, required from the legal representative of the party to whom it was issued. I–302

A location is not invalid because the name of the assignee is inadvertently omitted from the written assignment where it is apparent that the locator is in fact the lawful possessor with authority to locate in his own name. XIX–547

Attorney in fact must show authority for assignment of. I–302

Where the scrip was assigned to a person unknown, the name of the assignee erased, and the claimant's inserted, the latter is required to show title and account for the erasure. III–142

When there is a discrepancy in the spelling of names, affidavit as to the true orthography and identity of persons is required. II–430, 431

An application to locate is not complete unless the, on which it is based accompanies the application. XXI–71

Scrip—Continued.

Return of, on reconveyance of title not justified in the absence of showing that the value of the land has not been diminished by the patentee. XIII–550

Returned if the entry made by specific location fails. I–533

An application for permission to surrender a patent issued on a location of, and for the return of the scrip with the right to pay cash for the land, on the ground that the acreage called for by the scrip and shown by the public survey is not found in place, must be denied, as the land is not now and was never subject to private entry. XIII–550

Where an application to locate covers non-contiguous tracts and is allowed for one and rejected as to the other on account of non-contiguity, the entry allowed may be canceled on request and the scrip returned if the government by such action sustains no loss. XI–328

A locator of, can not compel the cancellation of a location by failure to furnish the requisite non-mineral proof, as the government may determine the character of the land without the aid of the locator. XV–255

Where title has been acquired through location of duplicate the beneficiary can not locate the original on another tract while patent to the former is outstanding. XII–106

Location of, properly subject to contest. XIV–576

Commissioner may order a hearing to determine the validity of a location. VIII–207

Location confers no vested right that precludes inquiry on behalf of the Department as to the status of the land, or as to any question affecting the validity of such location. XXVI–453

A location made in accordance with the law passes title out of the United States. VIII–207

Location by one holding scrip in violation of law confers no title. VIII–207

Validity of claims may be passed upon where adverse claimants voluntarily appear at a hearing. VIII–207

Is money within the meaning of section 2262, R. S., if used in payment for the land. II–599

Failure to show title in the claimed assignee of indemnity scrip renders it unavailable in his name. III–44

Location of, upon unsurveyed lands (tide lands) confers only a preference right to perfect the location after survey as against everyone except the United States; but until after the location is adjusted the government has full power to dispose of the land covered thereby. X–365

Scrip—Continued.

Pending unadjusted locations on tide lands confer no rights as against the title of the State on its admission into the Union. XIII–299

Location of, prior to survey may not be enlarged to the detriment of subsequent claims. I–431

Adjustment of a location to the lines of the public survey does not validate a location theretofore invalid. VIII–207

The execution of an act authorizing the issuance of, having been suspended by joint resolution of Congress, precludes further action by the Department. VI–13

Right of locator to act as the agent of the party to whom the scrip was originally issued not material where its possession had been awarded another. VI–101

Application for, if the matter is not *res judicata*, should be addressed to the Commissioner of the General Land Office or the surveyor-general. VI–374

Issued under the act of June 2, 1858, in satisfaction of a private claim may only be located on land subject to private entry. XI–378

The special provisions of the act of June 2, 1858, relating to the location of surveyor-general's certificates of location upon lands subject to sale at private entry, are in no wise affected by the general provisions of the act of March 2, 1889, restricting the sale of public lands at private entry to the State of Missouri. XXX–616

Applicant for, under the act of 1858 must show himself to be the legal representative of the confirmee. V–570

An entry in which the land is paid for with surveyor-general's, issued under the act of June 2, 1858, may be referred to the board of equitable adjudication, where the application to locate the scrip was irregularly made for the aggregate amount, instead of separately for each piece. XX–502

An application for the issuance of, under a special act of Congress authorizing the Commissioner of the General Land Office to permit the person named therein "to enter 160 acres of public land subject to entry under the homestead law" must be denied where the act contains no provision in terms authorizing such action, and furnishes no basis for the exercise of discretionary power in that respect XXIV–390

Authority of law for the issue of Wyandotte scrip not questioned. III–444

Land open to preëmption and settlement subject to Wyandotte location. III–443

Scrip—Continued.

Lands withdrawn for railroad purposes and restored to "homestead and preëmption entry only" not subject to supreme court location. III–319

Issued under the act of June 22, 1860, locatable only on land subject to private cash entry. X–616

A New Madrid location of unsurveyed land is not authorized by the act of February 17, 1815, and while the law thus remained was no bar to other disposition of the land. XIV–3

The act of April 26, 1822, did not operate to save a location on unsurveyed land where such land had been previously sold by the government to intervening adverse claimants. XIV–3

Agricultural college, issued under the act of July 2, 1864, is on the basis of a single minimum grant and must be so computed in the location of double minimum land. XIV–377

The right of purchase accorded by the act of June 8, 1872, under Chippewa half-breed locations is restricted to locations made prior to said act. XVI–204; XXVII–482

The treaty of September 30, 1854, and the act of December 19, 1854, must be read together to ascertain the intention of Congress concerning lands that could be taken under Chippewa half-breed scrip, and when so construed it clearly appears that such intention was to limit said selections or locations to the ceded territory. XXVII–482

Issued to the Chippewa mixed bloods under the seventh clause of section 2, treaty of September 30, 1854, is personal and not assignable, and a valid transfer thereof can not be effected through a double power of attorney. XIV–576

The subsequent ratification of acts performed under double power of attorney executed to effect a transfer of Chippewa will not operate to give validity to a location and sale thereunder. XIV–576

The right to select eighty acres of land accorded to the mixed bloods of the Chippewas of Lake Superior by the seventh clause of article 2 of the treaty of September 30, 1854, is not dependent upon actual residence, at the date of said treaty, among or contiguous to said Chippewas; nor do the provisions of said treaty prohibit the sale, prior to patent, of land located by power of attorney under such right of selection. XIX–64

The seventh clause of article 2 of the treaty of September 30, 1854, did not authorize the issuance of, to the Chippewa half-breeds, and the location thereof on unsurveyed land would not operate to defeat a railroad grant. XVIII–290

The confirmatory act of June 8, 1872, does not ratify or confirm an unauthorized location of, as against a prior appropriation of the land under a railroad grant. XVIII–290

Scrip—Continued.

Chippewa half-breed, issued under the provisions of article 7 of the treaty of April 12, 1864, in the possession of a half-breed not qualified to receive the same under the terms of said treaty, confers no title upon the possessor or his transferee. XXI–565

Authorized by article 7, treaty of April 12, 1864, was intended to take the form of property, subject to sale and transfer, and confers upon the holder thereof title and the right of location. XXI–565

Application for the reinstatement of certain canceled Chippewa locations in the Mille Lac reservation refused on the ground that the matter was *res judicata*. III–196

Location of Gerard, limited to "public lands." IX–114

Two pieces for 160 acres each may issue in lieu of one for 320 acres. I–303

Sioux half-breed, may be reissued in smaller denomination at any time prior to location. V–695

No authority in the Department to accept the relinquishment of, issued under the act of July 17, 1854, adjudge the ownership thereof, and issue new scrip of lesser denomination in its place. VI–648

Sioux half-breed, is not subject to transfer. VIII–207; XXIX–309

Sioux half-breed, intended as an evidence of a personal right in the half-breed to locate and receive patent for the number of acres named therein, and can not be used to secure title to lands except for the benefit of the half-breed. XII–138

Sioux half-breed, issued under the act of July 17, 1854, is not transferable, and the beneficiary is estopped from denying the validity of a location made under a duplicate issue, as such location could only be made for his benefit. XII–105

Transfer of Sioux half-breed, effected through double powers of attorney will not be recognized. VIII–207; XXI–111

A location of Sioux half-breed, by one acting in his own interest and not for the half-breed is a violation of the statute under which the scrip issued. XII–138; XIII–673; XXI–111

The right to locate Sioux half-breed, on unsurveyed land can only be exercised where the half-breed has made improvements on the land, and such improvements must be for the benefit of the half-breed. XII–138; XVIII–368; XXI–306; XXIX–309

If the location of Sioux half-breed, is illegal, a deed of ratification executed by the beneficiary will not give it validity or prevent inquiry as to whether the improvements were placed on the land for the benefit of the half-breed. XII–157

Scrip—Continued.

Issued to the Sioux half-breed requires in location on unsurveyed land a showing of improvements made for his benefit. VIII–207

Improvements made for the benefit of one claiming the right of location under a power of attorney are not within the intent of the law. VIII–207

Sioux half-breed, not locatable upon "occupied" land. III–557

The act of July 17, 1854, authorizing the issuance of Sioux half-breed, does not require that the locations of such scrip should be made of contiguous tracts. XXIX–601

Sioux half-breed, may not be located on land withdrawn for a railroad (Northern Pacific) while an Indian reservation and afterwards released. II–520

The location of Sioux half-breed, on unsurveyed land is permissible, but until the government survey is filed the scrip location remains unadjusted. XX–530

The right acquired by the location of Sioux half-breed, on tide lands is not sufficient to defeat the title of the State, by virtue of its inherent sovereignty, on its admission to the Union, over land within its limits below ordinary high-water mark. XX–530

The Department has authority to issue duplicate Sioux half-breed in lieu of scrip lost or destroyed. XXII–40

The act of July 17, 1854, authorized the issuance of, to the Sioux half-breeds in payment for their interest in the reservation purchased by the government, on due relinquishment of such interest; and where it appears that such scrip was procured on a forged power of attorney and relinquishment of like character, and was afterwards located and the entry carried to patent, all without the knowledge or consent of the rightful claimant, the right of said half-breed to receive new or copy scrip should be recognized, and his relinquishment secured. XXII–42

Land within the corporate limits of the city of Chicago is not vacant public land, and as such subject to location with McKee scrip. XII–389

Land lying between the meander line of a lake and the water line thereof is not public land of the United States subject to location by McKee, if at the time of such attempted location the government has no interest in said land as riparian owner. XXVI–453

Porterfield, is locatable only upon lands that have been surveyed under authority of the government. XXIII–319

Porterfield, may be located upon offered or unoffered land and upon land within the incorporated limits of a town. I–497

Porterfield, can not be located upon land actually settled upon, used, and occupied for town-site purposes. XVI–397

No merely *de facto* appropriation will defeat a Porterfield location. I–497

Scrip—Continued.

Porterfield, may be located upon any surveyed land of the United States not mineral and not legally appropriated. I–497

Temporary order of Commissioner reserving land from appropriation defeats a Porterfield location. III–217

Porterfield, not locatable upon land dedicated by statute to municipal uses. X–375

Porterfield, is not locatable upon double minimum land. XXI–331

Porterfield not locatable upon abandoned military reservation. XXVII–82

Valentine, may not be located on a tract in Chicago formed by accretion after survey on the lake shore of the section. II–338

Valentine, not locatable within the corporate limits of a city or town site. V–382

Land embraced within a reservation for town-site purposes is not subject to location with Valentine. XII–281

Right to locate Valentine scrip on lake front in Chicago *res judicata.* V–382

Valentine, not locatable upon unsurveyed lands within the Territotories lying below high-water mark and above low-water mark. X–365

Lands occupied and within the corporate limits of a city not subject to Valentine location. III–200

Valentine, may be located on lots made by union of small tracts in adjoining quarter sections. II–460

Valentine, may not be located on land covered by a preëmption claim. II–594

Valentine, may not be located on lands valuable mainly for pine timber within the reservation in Michigan for the Ottawa and Chippewa Indians. II–190

The owner of Valentine, who has located the same upon unsurveyed land may withdraw the same or change the location at any time prior to survey and before the adjustment of such location. XV–170

A location of Valentine, on unsurveyed land when adjusted after survey is equivalent to a purchase if the land is subject to such disposition, and the owner of the scrip can not thereafter change the location and use the scrip again. XV–255

A special swamp indemnity certificate, issued to the State of Florida under the act of June 9, 1880, is not locatable upon lands within the corporate limits of a city. XVII–355

A special swamp indemnity certificate (Palatka scrip), locatable upon "vacant and unappropriated public lands," may be located upon lands of such character lying within the corporate limits of a city, if in fact such land is not claimed by said city, and can not be under the public land laws. XIX–77

Scrip—Continued.

The general provisions of the act of March 2, 1889, restricting the sale of public lands at private entry to the State of Missouri, did not contemplate the nullification of the special right conferred by the act of March 2, 1855, upon States to locate swamp indemnity certificates on lands that were at the date of said act subject to entry at $1.25 per acre. XXII–657

Secretary of the Interior. See *Land Department.*

Selection. See *Railroad Grant; School Land; States and Territories; Swamp Land.*

Seminole Lands. See *Oklahoma Lands; Town Site.*

Circular of April 1, 1889, directing the manner of disposition under the act of March 2, 1889. VIII–336

Proclamation of the President opening to entry. VIII–341

Settlement. See *Filing; Indian Lands; Oklahoma Lands; Railroad Lands; Residence.*

I. GENERALLY.
II. HOMESTEAD.
III. OSAGE LAND.
IV. PREEMPTION.

I. GENERALLY.

Actual date of settlement may be shown on contest or in final proof, though it be earlier than alleged in the application.
I–444; III–103, 380

Priority of, confers no right where it is not made for the purposes contemplated by law. XII–654

Priority of, is protected only under legal assertion of right. IV–387

Rights claimed under, should be asserted within the statutory period to be effective as against the intervening entry of another.
XV–397; XVI–266, 270; XVII–345; XX–550; XXI–542

A claimant will not be heard to assert a, where by his own laches he has allowed the rights of others to intervene, and by his own acts recognized such intervening rights. XXI–138

A party who settles on land covered by the entry of another, under an agreement with the prior entryman that such entry shall be relinquished for his benefit, acquires no right as a settler as against the intervening entry of another, made on the relinquishment of the prior entry, if he fails to secure the release of said land through contest or in the manner agreed upon.
XXII–490; XXVIII–369

Settlement—Continued.

I. GENERALLY—Continued.

One who goes upon land covered by an existing entry, with intent to acquire the same as a homestead, and purchases the relinquishment of said entry, together with the improvements and household effects of the entryman, and thereupon assumes possession of the premises, initiates a right superior to the claim of another who, with full knowledge of said facts, subsequently, and prior to the filing of the relinquishment, settles on said land. XXVIII–547

The failure of a settler to assert his right within the statutory period, and consequent loss of priority as against an intervening entry, does not preclude the assertion of his right as against a subsequent entryman, where said settler remains on the land and the intervening entry is canceled. XIX–421

During the period in which the local office is closed time does not run against a settler in the matter of asserting his claim. XVIII–543

The right to be heard on an allegation that claim of, is not asserted within the statutory period can only be accorded the "next settler," and will not be recognized when set up by a State claiming under a selection. XV–93

Rights extinguished by executive order creating reservation. I–30, 450, 451; VIII–502

Acts of, to be received as such must be followed within a reasonable time by the establishment of residence. IV–339; XVIII–543

Will not be held to relate back to the alleged initial act, if such act is not followed by substantial and *bona fide* acts of settlement and improvement. XXIII–87

Rests on acts performed in person by the party claiming the benefit thereof. VIII–623; XI–175; XIII–142; XXVI–616

Mere personal presence on public land, without the performance of acts connecting the claimant with the land, is not a, within the meaning of the law. XXII–642

Priority of, must be determined by acts performed indicative of the settler's intent, and not by priority of presence on the land, or declarations of intention to settle thereon. XXIV–499

Act of, complete from the instant the settler goes upon the land with the intention of making it his home and performs some act indicative of such intent. II–628; III–294; VIII–176; X–25, 582; XII–415

Act of, is sufficient if it tends to disclose a design to appropriate the land in accordance with the law. XII–415; XXII–310

An alleged act of, set up to establish priority of right as against an adverse claim, can not be accepted as sufficient, if said act is not of a character to give notice of the settler's claim. XXIV–315

Settlement—Continued.

I. GENERALLY—Continued.

Consists in substantial improvement, permanent in character, with intent to appropriate the land. III–162, 295; XX–452

Must be made in person upon unappropriated land. III–380

As between parties claiming priority of, preference must be given to the one who first performs some act on the land indicative of an intent to appropriate the same. XXIII–74

"Picking" a small patch of ground and erecting a cross are not acts of. III–162

Priority of, accorded to one who first reaches the land and puts up a stake thereon, with the announcement of his claim, where such act is duly followed by the establishment of residence. XVII–162

Setting stakes to mark the foundation of a house will not be considered an act of, where the stakes are so small as to be scarcely visible, and hence do not serve as notice of a claim. XX–452

Going upon the land may be properly regarded the initial act of, as between parties that make the race at the hour of opening Oklahoma lands, and are aware of a common intent to settle on the same tract. XXV–273

The conditions attendant upon opening lands in Oklahoma require the recognition of extremely slight acts of, in determining priorities between adverse claimants. XXIII–10; XXIV–92; XXVII–519

Under the conditions attendant upon the opening of lands to, in Oklahoma the sticking of a stake may be recognized as initiating a right, as against competing settlers on the day of opening, but such act will not be available as against subsequent settlers if not followed, within a reasonable time, by additional acts of. XXIV–358; XXVII–458

The rule recognizing slight acts of, as between parties making the run for Oklahoma lands on the day of opening, is not applicable to the ordinary case of a party who claims priority of. XXIV–476

By driving stakes to indicate the site of a house at a time when he admits the right to the land to be in another, one does not perform an act of settlement. II–184

The erection of a "claim stake" with the description of the land thereon is not such an act of, in itself as will authorize a preemption filing. XIII–480

Not effected by the arrangement of a few logs in the form of a square. II–26; III–449

Digging a small hole in the ground is not such an act of, as will confer priority of right as against one who, without knowledge of such act, subsequently makes settlement on the land in good faith. XIX–122

Settlement—Continued.

I. GENERALLY—Continued.

Placing building material on public land with intent to use the same is an act of, that will be protected if followed up with reasonable diligence by the actual construction of a house. XV–231

Going on the land and erecting thereon a board with a statement of his claim upon it and then leaving the Territory is not a good settlement. II–621

Long-continued occupancy of land as a home and the cultivation and improvement thereof are acts that indicate an intention to claim the land under the settlement laws. X–637

On public land by a qualified settler presumptively made with the intention of entering the same under the settlement laws. XII–547

Rights not obtained by occupation as tenant.

III–46; IV–259, 412; X–582

No rights acquired by one who remains on public land through the consent of others and without asserting any right of his own or performing the acts required of a settler. X–510

One who is occupying land as the tenant of an entryman acquires no right as a settler, on the relinquishment of the entry, that can be set up to defeat the intervening entry of another.

XI–178; XXVIII–395

One who is residing on land as the tenant of another, may, on the termination of such relation, acquire a valid settlement right by remaining thereon and improving the same with the intent to make it a permanent home. XI–72, 284

A claim based on, can not be initiated by one while holding public land as a tenant of another; but if the settler makes entry of the land his rights may be regarded as legally initiated on the date of said entry. XVIII–361

One who enters upon land as a representative of another and remains thereon in such capacity is not a settler within the meaning of the preëmption law. XI–63

Acts done as an agent are not acts of settlement. II–173, 175

No one can acquire a settlement right on public lands through acts performed by an agent.

II–188; VI–521; XV–69; XVII–501; XIX–91; XXVI–616

Can not be maintained through the occupancy of a tenant. XVII–561

Where one went upon public land as the tenant of another who has absented himself without claim to it he may make entry of it in the absence of fraud. II–135

Must be the act of the claimant himself, and the rights dependent on it are not enlarged by the prior settlement and occupation of another who has sold his preëmption right to the claimant. II–560

Settlement—Continued.

I. GENERALLY—Continued.

An agreement between two settlers on the same quarter section, who have in effect recognized a partition of the land as between themselves, that the abandonment of either shall inure to the benefit of the other, can not operate to defeat the right of an intervening settler, in the event of such abandonment. XXVII–575

Rights not acquired by one who enters upon and retains possession of land under contract of purchase from another. VIII–207

Rights are not acquired by the purchase of the possessory right and improvements of another. II–188; VIII–623; IX–329; XIII–142; XIV–90; XV–69; XVIII–446; XIX–91, 237; XXVI–616: XXVII–629

Sale of improvements by one holding a possessory claim while conferring no right under the settlement laws is not in violation thereof. IX–139; XIX–91

The purchase and repair of improvements made by a prior settler constitute a good settlement. III–354

The purchase of improvements is equivalent to making the same if the purchaser makes his home on the land.
III–100; IV–56; V–239; XIII–726

The assertion of a possessory right to land does not confer any right thereto under the settlement laws. VII–165

In the absence of actual, the ownership of improvements on public land or the use of such land for ranch purposes does not confer any right under the settlement laws. X–276

Based on forcible intrusion confers no right. I–424; IV–388, 411, 501; V–377; XIII–209; XVIII–326; XXII–266; XXIV–343

Rights to the detriment of one in possession under color of title can not be acquired by acts of trespass. VII–68, 92

No rights are required under the settlement laws by trespass on the undisputed and unknown possession of another who believes his title to be good. XXI–362

On land covered by the open and notorious occupancy and possession of another is with notice of any rights that may exist in the prior occupant. XI–191

Rights of, can not be acquired by trespass, nor constructive possession of such land by settlement on an adjacent tract. XIV–475

And residence of one who fails through mistake to include the land within his entry will be protected as against the subsequent occupation of another who takes forcible possession with full knowledge of the facts. XI–394

A growing crop of grain on land is quite as much notice of possession as an inclosure thereof. VII–92

Ruling in Atherton *v.* Fowler applicable only in case of forcible intrusion. IV–140, 388

Settlement—Continued.

I. GENERALLY—Continued.

The Atherton-Fowler doctrine is not to be extended to cases where the prior settler is a mere trespasser or has disregarded statutory requirements. I–423, 424; II–45

Made by going upon public land and taking possession of an apparently abandoned dwelling house is not within the rule laid down in Atherton *v.* Fowler, where the owner of such dwelling makes no objection as to such occupancy, and the settler subsequently purchases said building of him. XXVII–569

Rights based on unlawful possession can not be set up as against the lawful appropriation of another. IV–560

Made peaceably upon an uninclosed part of a forty occupied by a prior settler is lawful. II–630

The validity of, as affected by its having been made within the inclosure of another, can not be questioned by one who at such time had no interest in the land, nor in the improvements thereon. XIX–503

Made without violence within the unlawful inclosure of another is valid and will not be defeated by said unlawful occupancy. VII–340; IX–455; XII–382, 488; XXIX–362

May not be prevented by the maintenance of an illegal inclosure of public land. XIII–702

The Atherton-Fowler doctrine applies to a case where a *bona fide* homestead entry and improvement of a quarter section gave a legal possessory right which the entryman continuously asserted under color of law, even after relinquishment of the entry for the purpose of changing it to a timber-culture claim. II–44

A settled in July, 1881, on land not subject to homestead or preëmption, and thereafter resided on and improved it; the land was opened to settlers on December 14, 1882; on January 6, 1883, B made homestead entry, and on March 15, 1883, A filed preëmption declaratory statement, which was rejected by the local office because of B's claim of record and A's failure to file as required by law; B's entry was relinquished April 23, 1883, and on the same day C made homestead entry; held that A was protected by the rule in Atherton *v.* Fowler. II–597

Where one makes entry (homestead) of a tract, but settles on another intentionally and fails to use diligence in appropriating it lawfully (amended entry), he is a trespasser on the second tract, and a third person is not bound by notice of his homestead settlement and improvements. II–576

Begun clandestinely and residence maintained by fraud and violence confers no right. III–192

Under contract with supposed owner not trespass. V–239

Settlement—Continued.

I. GENERALLY—Continued.

Priority of right may be properly accorded a settler, who, under an agreement with an adverse claimant, goes upon a tract with the knowledge and consent of such claimant. XVII–187

Improvements existing upon an abandoned claim are no bar to settlement. III–100

Peaceable settlement may lawfully be made on a part of a forty already settled on by another, but not in his actual possession by inclosure or otherwise. II–630

Rights acquired on lands prior to an order withdrawing the same from entry are held in abeyance during the existence of such order, but may be exercised when it is vacated. XIX–48

Rights on land formerly covered by railroad indemnity withdrawal recognized after revocation of the withdrawal. VI–382

On lands withdrawn for railroad purposes takes effect on revocation of the withdrawal. VIII–355; XIII–145; XXVI–538

On land withdrawn for the benefit of a railroad grant confers no rights. VI–543; VIII–355, 570; X–85; XIII–432; XIV–369; XV–91; XVII–34; XIX–275

On lands subject to the operation of a railroad grant confers no rights. XI–91

Confers no right to land embraced within a railroad indemnity selection pending an appeal. XIV–418

A settler on land reserved for railroad purposes is entitled to three months from date of restoration of land in which to make filing and protect his right as against a subsequent settler. XIV–230

No rights of, acquired on lands reserved by competent authority. II–521, 604; X–513

On land reserved for a public highway, along a section line, as provided under section 23, act of May 2, 1890, prior to the actual location and use of such highway, is valid and extends to the adjacent quarter section on which settlement is intended to be made. XXIV–160

No rights acquired by, where the land is included within a reservation created by executive order. XII–437

Land included within a pending order for its sale as an isolated tract is not subject to. XII–397; XIV–458

Not effective if made on land covered by an entry or otherwise appropriated. I–52; II–89; III–344, 553, 562; V–147, 238; VIII–243; XIX–526

Rights not acquired on land subject to Indian occupancy. XIII–269, 302, 578; XIV–300

Lands actually included within Indian occupancy are not subject to. III–371; VI–341; XVI–14, 209

Settlement—Continued.

I. GENERALLY—Continued.

On military reservation with knowledge of the existing reservation not legalized by the act of July 5, 1884. X–488

On appropriated tract no basis for claim to adjoining unappropriated land. V–289

On land covered by an entry must be accompanied by residence or other evidence of occupation in order to take effect on cancellation of the entry. II–26, 123

On land embraced within the entry of another confers no right as against the entryman or the government. VI–248, 330, 709; VII–212; XVIII–3; XIX–467; XX–147

The right of a settler who is residing upon a tract of land under the belief that his title is complete under a prior patent, to enter said tract on the relinquishment of a record entry thereof, is superior to, and will defeat an intervening entry, made with knowledge of the adverse claim. XXV–135

Upon land covered by the entry of another confers no right as against the entryman who complies with the law. VIII–227

On land covered by an entry confers no right as against the record entryman, but as between subsequent claimants the settlement first in time is entitled to the highest consideration on cancellation of the existing entry. XI–284; XX–452; XXV–37, 448

Priority of, may be considered as between settlers on land covered by the subsisting entry or appropriation of another. IV–410; V–147, 239, 361; VI–248, 330, 709; VII–212; XIV–90

In determining conflicting claims of, on railroad lands restored by the forfeiture act of March 2, 1889, acts of settlement prior to such restoration may be considered. XVIII–392

On railroad lands restored to the public domain by the act of March 2, 1889, after the passage of said act, and prior to the time when such lands were opened to entry, is protected as against the intervening entry of another, if the right of such settler is asserted within the statutory period. XXVI–288

The right of one who is residing on a tract of land embraced within a railroad indemnity selection at the date of the cancellation thereof, and thereafter applies within three months of such cancellation to make entry, is superior to any adverse claim made after said cancellation. XXVIII–431

On the Northern Pacific right of way is not a settlement on public land, and hence confers no right under the settlement laws. XXVIII–412

Settlement—Continued.

. GENERALLY—Continued.

Acts of, on land held in reservation confer no right against the government, but may be considered in determining the priorities of subsequent claimants.

IX–89; XI–197, 452; XIII–214; XVII–171; XIX–1

On land withdrawn for railroad purposes confers no right as against the government, but may be considered in determining priorities between adverse claimants where the land is subsequently restored.

XV–583

Acts of, performed in direct violation of a departmental order opening lands to entry can not be considered in determining priorities between conflicting applicants for the same tract. XVI–302

Settlers who, without authority of law, enter upon lands that are held in reservation under departmental instructions that expressly forbid all settlers from entering thereon, until lawful permission is given, acquire no equities thereby.

XVII–369; XVIII–176, 482, 486; XXII–276

In the case of, on land that is treated as in reservation by the Department, when under the law it was open to settlement, the rights of claimants should be determined on the priority and good faith of their respective settlements, and their compliance with law in placing their claims of record after the land is declared open to entry by the Department. XXV–420

The right of persons alleging, on lands opened to such appropriation under the act of September 29, 1890, is not affected by the fact that such lands were at the time of settlement and application therefor, reserved from disposal under the departmental rulings then in force. XXV–394

Acts of, on land within a railroad grant may, on the forfeiture of said grant and restoration of the land, be considered in determining priority between two settlers. VI–709

One who settles on patented lands can gain no right thereto while the patent is outstanding; but if the patent is subsequently vacated, and the lands become subject to, as part of the public domain, the right of such settler will attach from such time, and must be protected, if duly asserted. XXVI–350

Made on the reservoir lands opened by act of June 20, 1890, after the beginning of the specified calendar day and prior to the entry of another on the same day defeats the right of such entryman.

XV–302; XVI–306; XVIII–409

Settlement—Continued.

I. GENERALLY—Continued.

One who knowingly enters and occupies the lands opened to, by the act of June 20, 1890, prior to the time fixed therefor, is disqualified thereby, though outside of the boundary when said lands were opened. XVIII–550

One who purposely enters upon the reservoir lands, restored to the public domain by act of June 20, 1890, prior to the time fixed therefor, and goes upon the tract subsequently selected, is thereby disqualified to make homestead entry of said land. XVIII–133; XIX–191

One who enters in person or by agent, during the inhibited period, upon the reservoir lands opened to settlement by the act of June 20, 1890, for the purpose of securing information with respect to said lands, is thereafter disqualified as an entryman. XXII–324

A settler who enters upon the lands opened by act of June 20, 1890, prior to the day fixed therefor for the purpose of selecting a tract is disqualified to enter said tract under section 3 of said act though settlement is not actually made until the lands are subject thereto. XVI–306; XVIII–581

One who enters upon the reservoir lands restored to the public domain by act of June 20, 1890, prior to the time fixed therefor, and remains thereon until said lands are subject to settlement, is disqualified as a settler under said act. XVII–364

No new act of, required of one on land at the date of its becoming subject to. I–444, 445; V–250

On land covered by entry takes effect *eo instanti* on the cancellation of the same. I–112, 443; IV–447; XI–197

The right of a settler who is residing on land covered by an entry of another attaches *eo instanti*, on the cancellation of said entry, without any specific act of settlement on his part at such time, if he is then in possession of said land. XX–147

Right of one resting on land covered by the entry of another attaches *eo instanti* on relinquishment of said entry, and is superior to the right acquired by an entry made immediately after said relinquishment. VI–246; XVIII–538; XIX–526

Where the settler is in good faith on land covered by the entry of another, prior to the cancellation of the existing entry, his temporary absence from the claim, at the instant of relinquishment, will not defeat his settlement right. XIX–526

Status of adverse existing settlement in case of simultaneous relinquishment and application. IV–125

A settled in 1879 and filed April 20, 1880; B settled on April 27, 1880, and filed two days after; A relinquished May 14 and made homestead entry May 17, 1880; held that B's settlement took effect on relinquishment. II–620

Settlement—Continued.

1. GENERALLY—Continued.

The right of a settler on land at the time of the cancellation of a prior entry thereof, if asserted within the statutory period, will not be defeated by an adverse intervening application to enter. XXVII–186

On land covered by the entry of another takes effect at once upon the relinquishment of such entry to the exclusion of rights claimed under an application to enter filed with the relinquishment. XIII–148, 192; XV–542

Right of a settler on land covered by the timber-culture entry of another, on relinquishment of such entry, is superior to the entryman's claim under a homestead application filed with said relinquishment. XIV–439

Made subject to the right of a successful contestant defeats the subsequent entry of another who files a waiver of the contestant's preferred right. XV–443

On unsurveyed land that is subsequently included within the desert-land entry of another, will defeat the preference right of one who successfully attacks said entry, if duly asserted on the survey of the land. XXVII–594

On cancellation of an entry under contest a *bona fide* settler then on the land is entitled to the right of entry as against everyone except the successful contestant. VIII–597

In the case of a successful contest, where the contestant waives his preferred right and a third party makes entry of the land, the former entryman can not defeat such entry on the ground that he was residing on the land at the time said entry was allowed, if he fails to assert his settlement claim within three months after the waiver of the contestant's preferred right. XXVII–592

On land covered by the entry of another is subject to the superior right of a contestant who secures the cancellation of such entry. IX–269

On land covered by the entry of another, confers no right as against a successful contestant who secures the cancellation of such entry. XXIV–221, 432

While as between two parties claiming the same tract, the right of one as a settler may not defeat the superior right of the other as a successful contestant, yet if such contestant thereafter enters the land and relinquishes the entry, such settlement right, if maintained, will defeat the subsequent entry of a third party. XXIV–49

The cancellation of an entry as to part of the land covered thereby, on account of an adverse claim, will not prevent the entryman from subsequently asserting his right as a settler to the entire tract covered by his original entry, as against a third party. XXIV–342

Settlement—Continued.

I. GENERALLY—Continued.

Acts of, performed while the land was not subject thereto may be considered in determining the question of good faith. VI–636

A canceled entry is no bar to the subsequent acquisition of settlement rights by another. XII–488

Prior to survey confers no vested interest in the land. VIII–541

A settler on unsurveyed land is charged with notice of the filing of the plat of survey and the opening of the lands embraced therein to entry. XVIII–214

Prior to survey, marked by distinct boundaries, may not be enlarged to the injury of subsequent settlers. I–414, 431

Where valuable improvements exist on one forty, and three others adjoining were regularly cultivated and part of a fifth forty accidentally, there is no claim to the fifth forty. II–589

Upon unsurveyed land should be of such character and so open and notorious as to be notice to the public of the extent of the claim. III–76; IX–38; X–234; XIX–91; XXVII–365

Notice by a prior settler to another to keep his stock away from a tract valuably improved by the former is sufficient notice of claim to the forty on which said improvements are found by the survey to be. II–588

A notice to a settler before survey of a contingent claim on the part of one who has not reduced the land to possession, nor placed any improvements thereon, will not serve to defeat the right of the settler. XX–338

And improvement before survey on land included within the known settlement right of another are invalid as against the prior settler. I–414; VIII–630

Notice of a claim is not the basis of title; and where, is relied upon as the basis, failure to maintain such, may be taken advantage of by a later settler although he may have notice of the prior claim. XXVII–163

In good faith prior to survey will be protected as against a subsequent adverse claim made and maintained with full knowledge of the facts. XVIII–309

The right of a settler to enter the land covered by his improvements is not defeated by the fact that prior to survey he incorrectly designated the land actually claimed. XVI–56

Written notice of a settlement claim is of no validity in the absence of the settlement and residence required by law. XVI–12

Actual notice of the extent of a claim made by, will protect such claim as against the entry of another. XI–404

One who definitely declares the extent of his claim is estopped from subsequently claiming a larger tract to the injury of one who relies upon such declaration. XIII–198

Settlement—Continued.

I. GENERALLY—Continued.

A notice of a possessory claim, given prior to survey in the field, will not estop the settler from afterwards making his entry conform to the legal subdivisions, in such manner as to include the land actually settled upon by him, as against settlers whose rights are acquired after such survey. XXVIII–412

Conflicting rights acquired by, may be adjusted by an equitable apportionment of the land, though one of the parties may have settled after survey. XVIII–297

Conflicting rights acquired prior to survey may be adjusted through an entry made on the agreement of either party to convey to the other the land covered by his occupation.

XIII–19; XX–490; XXI–224

Conflicting rights acquired prior to survey adjusted through agreement of the parties. VI–826; VII–3; VIII–536

In case of conflicting claims arising through settlement before survey the rights of the parties may be equitably adjusted.

XVIII–335

Joint entry allowed in case of conflicting settlements before survey.

II–104, 150, 588; III–609; IV–520; V–605; VI–138, 826; VII–3; VIII–536; X–234

Questions as to priority of right, or adjustment of rights, acquired by, prior to survey, can only arise where the settlement is made prior to the survey in the field. XXVIII–412

Conflicting rights of, acquired after survey in the field and before the filing of the plat, must be determined by actual priority of settlement and the good faith of the parties. XXVIII–510

Should be so marked in the matter of improvements as to give notice of the extent of the settler's claim. V–372; VI–324

The notice given by improvements and, extends only to the quarter section as defined by the public survey. V–141, 556; VI–151, 172; VII–76; XIII–134, 480; XVI–12, 248; XVIII–356; XXIII–50; XXV–394

Notices, defining the extent of a claim, posted on subdivisions thereof outside of the technical quarter section on which the improvements are placed, are as effectual in notifying subsequent settlers of the extent of said claim as improvements placed on the different subdivisions. XVII–197; XXV–420

A posted notice of a claim that covers land in different sections will not protect such claim for sub-divisions outside the section on which said notice is posted, as against a subsequent applicant who is without knowledge of such posting. XXIX–197

Posted notices of the extent of a claim, that embraces land in fractional quarter sections, placed on the sub-divisions not occupied and improved by the settler, serve to protect his priority of right thereto. XXIX–197

Settlement—Continued.

I. GENERALLY—Continued.

In the case of a claim for land in different fractional quarter sections, and surveyed as lots, the notice of the extent of the claim, given by occupancy and improvement, is limited to the particular lots occupied and improved. XXIX–197

A claim of notice of a settlement right by reason of improvements on the land will not be heard as against an adverse claimant, where, at such time, the settlement and posted notice of the party claiming such benefit of said improvements show the assertion of a settlement right to another quarter section. XXVI–527

The departmental ruling that the notice given by, extends only to the quarter section on which the settlement is made, is general in its application, and covers a case of settlement on a tract that has public land on one side only. XVII–522

Actual notice of the extent of a claim will protect such claim as against the subsequent entry of another, when such notice is supported by actual settlement and improvements upon contiguous land. XVII–343

Notice defining the extent of a claim posted in conspicuous places thereon will protect such claim as against subsequent settlers; and it is immaterial whether the later settler has actual notice or not, if the posted notices are of such a character that they might have been seen by a reasonable exercise of diligence. XVII–454

A settler who seeks to acquire title to land lying in different sections by virtue of, must show acts of, extending to the tracts in each section. XIX–48

The notice of a claim given by improvements on unsurveyed land extends only to the technical quarter section on which said improvements may be found. XX–338

The fact that land is sub-divided into forty-acre tracts does not operate to confine a settlement right to the sub-division on which the, is actually made; but notice of a settlement right, as given by improvements, is limited to the quarter section on which such improvements are situated. XX–392

In the absence of special statutory authority therefor, the public lands can only be disposed of according to the legal subdivisions of the public survey; and it follows from such rule that the right obtained by settlement under the homestead law upon a given legal sub-division extends to the whole of that sub-division. XXVIII–412

On land not subject thereto does not operate as notice, constructive or otherwise, of a claim to other land in the same quarter section. XXVI–264

Settlement—Continued.

I. GENERALLY—Continued.

Slightly marked on heavily timbered land is not notice as to the extent of the claim outside of the quarter section settled upon. IV–73

Does not extend to non-contiguous tracts. VI–621

Recognized though made outside of inclosure where the sectional subdivision extends inside of the inclosure. I–429

And improvement extend constructively to all parts of the quarter section claimed by the settler. XIV–54

Made by a minor not the head of a family secures no right to public land. XIV–290; XXVI–31

As between two settlers on the same tract, one of whom is qualified and the other disqualified by reason of minority, the existing adverse right of the former precludes the claim of the latter on attaining his majority, as against the right of said qualified settler. XXII–258

Of an alien confers no right under the public land laws. I–489; IV–139; VI–485; X–463; XI–89, 354; XII–507; XIV–664; XXIV–60

Of an alien becomes valid from the date of filing declaration of intention to become a citizen. VI–485

Of an alien relates back to settlement on subsequent naturalization in the absence of any intervening right. XIV–568

Of an alien is made good by a subsequent declaration of intention to become a citizen filed prior to the intervention of a valid adverse claim. XIII–182, 242

Of an alien on unsurveyed land protected through his subsequent declaration of intention to become a citizen and declaratory statement filed when the land became subject thereto. VIII–536

Of an alien is ineffectual, and his right will not relate back on subsequent qualification to defeat the intervening claim of another. XI–354

Where rights are claimed under the acts of one who is an alien by nativity it must be affirmatively shown that the disqualification in the matter of citizenship was removed during the existence of the alleged settlement. XII–507

Of one becoming qualified to make, while on the land dates from such time. I–444

Right set up to defeat the entry of another must fail unless the qualification of the settler to make entry is made to appear. XII–684

A settler is bound to take notice of established priorities. IV–170, 306

Where entry and, are simultaneous the settler will be recognized as having the superior right. XVIII–133

Settlement—Continued.

I. GENERALLY—Continued.

Where made prior to the hour at which the adverse entry of another is allowed the right of the settler is superior, though the entryman was at the local office before such settlement, and only prevented from making his entry then by the number of prior applicants in attendance at said office; but the right of the settler will be limited to the technical quarter section on which his settlement is made. XVIII–380; XXVIII–243

As between two applicants for the right of entry where the question of priority depends upon the time of, on the part of one, as against the time of application by the other, the settler will be given the precedence, if it can not be satisfactorily determined that the adverse application was regularly tendered prior to the act of settlement shown, and entitled to consideration at such time. XXVIII–267

Where a settler has properly initiated a claim to a tract of which he has retained possession, though he has failed to do the things necessary to the acquisition of title, another settler on an adjacent tract can not, by a merely verbal claim or without attempting to reduce the tract to possession, acquire any right to it. II–186, 637

Right of settler not affected by the wrongful removal of his dwelling-house by an adverse claimant. IV–139

Rights in conflict adjusted equitably where the legal status of the claimants is the same. VI–152

Where two settlers were on land covered by desert entry at the date of its cancellation a partition of the land was directed. III–72

Where two claimants settle simultaneously, and place their improvements on the same forty-acre sub-division, the tract may be awarded to the highest bidder of the two applicants. XX–392

In a case involving priority of, wherein it can not be determined which of the parties was the first settler in fact, the claimants may make an amicable division of the land; or, in the event of their inability to agree, the right to make entry may be awarded to the highest bidder. XXI–485

If the parties can not agree to a division of the land in a case wherein the priority of, can not be determined by the evidence, the land should not be divided between them by a departmental order, but the right of entry to the entire tract awarded to the higher bidder of the two. XXII–517

A finding of simultaneous, does not justify an arbitrary division of the land. XXIII–201

There is no authority under the law, in cases of simultaneous, for offering the right of entry to the highest bidder. XXIII–201, 400

Settlement—Continued.

I. GENERALLY—Continued.

In a case wherein priority of, is the issue, any period of time susceptible of notation intervening between the acts of, on the part of the adverse claimants, and which is noted with sufficient distinctness to separate said acts by a recognized period, will prevent the consideration of said acts as simultaneous. XXII–382

Right can not be acquired or maintained on different tracts at the same time. VIII–96, 200, 461; IX–63

Rights under different laws can not be maintained for different tracts at the same time. X–419; XIX–516

One who secures a patent to land by alleged compliance with the settlement laws will not thereafter be heard to say, in support of another settlement claim covering the same period of time as the first, that in fact he did not actually reside on the patented tract. XXVII–480

On land for the purpose of securing the timber thereon, and not for the purpose of a home, is not *bona fide*. VII–555

Rights on timber land recognized by the act of June 3, 1878. VI–691

On lands chiefly valuable for their timber and stone should be carefully scrutinized. VII–555

No rights are secured by a, made for the purpose of securing the timber on the land and not for the establishment of a home. XXIV–272

Not necessarily speculative or fraudulent because made near prospective town site. III–434

Right of, can not be acquired on land that is embraced within a prior town-site claim even though said land may not be at such time actually occupied for town-site purposes. XV–324

Made ostensibly for the purpose of securing a homestead, but in fact with a view to speculation in town lots, is lacking in good faith, and should not be accepted as the basis of a homestead entry. XXIII–87

Made with the intention to secure title under section 2287, R. S., and without residence on the land, is not in good faith and does not authorize a purchase under said section. XI–18

Right not established on a showing that the tract is included within a large body of land improved and occupied as a whole for a cattle ranch. XI–463

Taking possession of and improving land, relying upon the erroneous statement of an attorney, without initiating legal claim to it, gives no right against soldiers' additional homestead entries subsequently allowed. II–56

Priority of right should be determined on hearing as between preemptor and homesteader. V–526; VIII–528, 623

Settlement—Continued.

I. GENERALLY—Continued.

An allegation of, subsequent to that set up in support of a prior adverse entry does not afford any basis for a hearing as against the right of the prior entryman. XIX–507

Circular of July 1, 1879, declaring invalid entry on land in the possession of a settler, protected the contestant under it until it was revoked. II–66

Bona fide settlement or improvement on land bars a subsequent application under the timber and stone act. II–336

Where not protected by filing or entry through the fault of another such person may not take advantage thereof. IV–158

One who induces another to settle on a tract of land is thereby estopped from alleging a prior right in himself. XXI–224

Acquired with the knowledge of and under an agreement with an adverse claimant is entitled to recognition as against the subsequent claim of said adverse claimant. XXII–646

Not required of desert-land applicant and confers no right under the desert-land act. III–326, 331

Confers no right under the timber-culture law. XV–513

II. HOMESTEAD. See *Homestead*, sub-title No. VIII.

Rights of settler relate back to, under the act of May 14, 1880. I–84; VI–653

Settlement prior to act May 14, 1880, could inure to the settler's benefit only under section 2273, R. S. II–575

The act of May 14, 1880, is not retroactive, so as to cut off a valid adverse interest which had attached prior to its passage. II–575

Of homesteader only protected by the act of May 14, 1880, for the statutory period as against intervening settlement rights. V–624; VI–306; XVIII–214

Priority of, as against an intervening entry, should be asserted by contest initiated within three months after settlement. XXIX–201

An intervening adverse entry defeats a prior settlement right if such right is not asserted within the statutory period. XXII–77

The failure of a settler to make entry within the statutory period can not be excused on the ground of poverty, in the presence of an intervening adverse entry made after the right of such settler has expired by limitation of the statute. XXVIII–86

Conceding that the time within which a settler must assert his claim under the act of May 14, 1880, will not run while the land is embraced within a pending indemnity selection, yet if such selection is subsequently relinquished, and the intervening entry of an adverse claimant is allowed, it is then incumbent upon such settler, as against the adverse claimant, to present his claim by contest or otherwise within three months thereafter. XXVI–390

ettlement—Continued.

I. HOMESTEAD—Continued.

Where an order canceling a list of railroad indemnity selections provides that no disposal of the lands shall be made until pending applications therefor have been adjudicated, and a hearing is subsequently directed as between said applicants, at which they appear, they will not be held in default, as to the timely assertion of their settlement claims, on account of failure to make application to enter within three months after said cancellation. XXIX–125

On the allowance of an entry of land embraced within a previous indemnity selection, it is incumbent upon one claiming an adverse settlement right, by reason of residence on the land, to assert such right within three months thereafter. XXIX–218

To protect a right of, acquired before survey, against adverse claims the right must be asserted within three months after the plat of survey is filed in the local office. XXII–79

Priority of, on unsurveyed land must be followed by the maintenance of residence, and the timely assertion of right, to operate as a bar to the acquisition of an adverse settlement claim. XXIX–30

In the case of a claim of, that includes surveyed and unsurveyed lands, the right of the settler to make entry of the surveyed land is only protected for the period of three months from settlement as against intervening adverse claims. XXVIII–91

A homestead settler claiming priority over another who has made entry must make application for the land within the prescribed period in order to obtain recognition of his rights. II–119, 620

It is not necessary for the protection of a settlement claim, on land included within the prior pending application of another, that the settler should assert his settlement right by an application to enter while the land occupies such status. XXVIII–490

Protected as against the intervening entry of another without formal application to enter, if the settler within three months after the land is open to entry begins a contest against said entry on the ground of his own priority. XVI–266, 270; XVII–345

A formal application to enter, made within three months from settlement, is not required to protect such settlement as against the intervening application of another, if the settler files a protest against the acceptance of said application, alleging his own priority, within three months after the land becomes subject to entry. XXX–370

As against third parties, the settlement right of a claimant will be protected during the pendency of proceedings between such claimant and a prior entryman. XXII–148

Settlement—Continued.

II. HOMESTEAD—Continued.

A homestead entryman has six months from the date of his entry within which to establish actual residence; but during such period his entry occupies the status of a settlement claim, and will defeat the right of entry on the part of a prior homestead settler who has failed to assert his claim within the statutory period. XXIV–522

A settler who files application within the statutory period after settlement, but fails to secure an entry on account of a prior adverse record claim, is not in default in the matter of protecting his settlement right, where, as soon as practicable, he attacks said claim, alleging his own priority of settlement, though such contest may not be instituted until after the expiration of said period. XXVII–562

A soldier's homestead declaratory statement does not segregate the land covered thereby, and it is therefore not subject to contest: hence the proper method of asserting a settlement claim adverse thereto is by application to make entry within the statutory period after settlement. XXVII–597

Of a homesteader protected as against other and later settlers for the period of three months only by section 3, act of May 14, 1880 VII–537

Followed by residence and improvement, confers a right of homestead that attaches from date of settlement, and such right is not impaired by the subsequent occupation of the land by town-site settlers on the day of such settlement. XI–330

Right of a homesteader will not defeat the claim of subsequent town-site settlers if not asserted and maintained in good faith after the adverse occupancy of the land for town-site purposes. XVI–476

Under section 3, act May 14, 1880, can not be made on land covered by a desert-land entry. II–26

Under section 3, act May 14, 1880, can not be made on land not subject to homestead entry (mineral). II–35

The qualifications requisite on the part of a homesteader must exist at the date of entry, and if after settlement and prior to entry the settler for any reason becomes disqualified, the privilege gained by settlement is lost. XXX–8

In good faith on land covered by the entry of another will not deprive the settler of the benefit of the act of May 14, 1880, where no adverse claim exists. VIII–448

Settlement—Continued.

II. HOMESTEAD—Continued.

One who is residing on land under the belief that his title thereto is complete under a warrant location is entitled to enter such tract on the cancellation of said location, and such right will not be defeated by an intervening adverse entry made before the settler is aware of such cancellation. XXVII–402

Where the land is apparently embraced within a railroad grant, and is settled upon by one intending to purchase the same from the company, and it is subsequently found that said land was excepted from said grant, the right of such settler to make entry of the tract will not be defeated by the intervening application of another. XXVII–196

On the relinquishment of a railroad selection the right of a settler on the land to enter the same will not be defeated by an adverse claim of prior occupancy, set up on behalf of one who has cultivated and improved the land, but not established residence thereon. XXVII–382

A person resident on and intending to take as a homestead land covered by an uncancelled entry, upon cancellation has three months within which to file his claim. II–117, 123

One will not be permitted, in the face of a contest for default against his timber-culture entry, to assert a homestead right initiated (by building and improving) while the tract was covered by said entry. II–265

Pending determination on appeal of the right to make homestead entry an applicant is not required to make, where his claim rests on his application. XX–295

One who claims the right to make a homestead entry on account of priority of, must show that it was followed by the establishment and maintenance of residence. XXI–97

On public land must be followed, within a reasonable time, by actual residence, in order to give the claimant any rights thereunder. XXIX–218

Priority of, as against an existing homestead entry is forfeited, where the settler subsequently, through the acquired ownership of other land, becomes disqualified as a claimant under the homestead law. XXVII–70

Climatic reason for failure to make, not accepted in the absence of good faith. IV–393

Where two settled prior to survey on a forty, agreeing on a boundary, and both claimed duly, one as preëmptor, the other as homesteader, they make joint entry. II–585

Settlement—Continued.

II. HOMESTEAD—Continued.

Where there was an improvement by two settlers on the same forty-acre tract, with an agreed boundary line, and they each duly made homestead entry embracing it, a joint cash entry is allowed; but if either refuses to unite therein within ninety days from notice the entire tract is awarded to the other. II–104, 150

Section 2274, R. S., is only applicable to settlements made under the agricultural laws, and does not, therefore, authorize a joint entry as between a homesteader and townsite settlers. XXVII–629

Where two settlers prior to survey agree as to the line separating their claims, and it is found that their improvements are on the same subdivision, their rights should be adjusted, in accordance with the agreed line, by allowing the entry of one for the tract, on condition that he make title to the other for such portion of said tract as would fall to him under the original agreement. XXVII–154

Where three persons embraced a 40-acre tract in their homestead entries the entry of one of them, who had no improvement on it prior to the filing of the plats, must be canceled. II–105

Acts of, performed by one claiming the right to make a second homestead entry, prior to his application for the exercise of such privilege, are not invalid, if it is found that the settler is in fact entitled to make such entry. XXIV–584

Made by one who has at such time an existing homestead entry for another tract, must be held valid where the settler is entitled to make a second entry. XXIII–440

If one claiming the right to make a second homestead entry settles and applies for the restoration of his homestead right, and permission to enter the land so settled upon, and is adjudged to be entitled to make such entry, such judgment validates his acts of. XXIII–63

Where one was actually in possession of 160 acres at the passage of the acts of March 3, 1879, and May 14, 1880 (though prior thereto he could enter but 80 acres), he was entitled to enter it as a homestead. II–141

Where there has been *bona fide* settlement and a preëmption or homestead claim duly made after filing of the plats, a temporary absence of the settler prior to making claim does not forfeit the right. II–337

Not made in good faith, but with a view to speculation, does not confer any rights. XI–330

Acts of, induced by knowledge of an impending contest can not be accepted as in *bona fide* compliance with the requirements of the homestead law. XVII–176

Settlement—Continued.

II. HOMESTEAD—Continued.

Can not be made by one who is at the same time maintaining a settlement claim for another tract under the preëmption law. XI–559

Not affected by the fact that it is made pending the issuance of final certificate on preëmption proof previously submitted in due compliance with law. XI–182

Rights acquired by, are abandoned as to the land not included within the entry. XI–557

The homestead law does not define the character or value of the improvements required at the hands of the settler. XX–319

III. OSAGE LAND.

If the settlement is not *bona fide*, but for the benefit of another, the settler is not an "actual settler" under the act of May 28, 1880. VIII–173

An "actual settler" under the act of May 28, 1880, is one who goes upon the land intending to make it his home, and does some act thereon indicating such intention, and sufficient to give notice thereof to the public. VIII–173; X–36

An "actual settler" on Osage trust and diminished reserve is one who has made *bona fide* residence and improvement. II–187; V–303, 442, 537; VII–278; IX–98; X–23

IV. PREËMPTION.

Is the sole basis of the preëmptive right, and such right is not greater nor less than the settlement. II–637; V–274

Of the preëmptor defines the extent of the claim. XI–72

On public land does not cause a "preëmption right" to attach in the absence of an intention to take the land under the preëmption law. XX–280

Not constituted under preëmption law by mere intention. III–295

Extent of claim may be determined by the location of the improvements and the land included in the declaratory statement. IV–401; VI–249; XII–471

Under the preëmption law there is a recognized distinction between settlement and residence. VIII–503

To constitute a legal act of, there must be an entry upon the land with the intent to appropriate it and an act indicative of such intent, and the two must harmonize. III–294

And filing confer an inchoate right under the preëmption law which will be protected. I–333; IX–41

Act of, may be valid without residence, but residence must follow within a reasonable period after settlement. III–218, 553

Settlement—Continued.

IV. PREËMPTION—Continued.

Temporary residence for the sole purpose of cultivating the land, and not for the establishment and maintenance of a permanent home, does not create a valid settlement claim under the preëmption law. XXVII–297

Date of, is a matter of proof without respect to allegation in declaratory statement. I–444

The actual date of settlement may be shown to be earlier than alleged in the declaratory statement. I–444; III–102, 380; XI–143; XII–299; XIV–431

Can not be post-dated in order to defeat the intervening claim of another. XII–519

On segregated land confers no right of preëmption. V–289; XI–477

Preëmption claimant on land at cancellation of another's entry is a settler without the performance of any new act of settlement. III–218, 553

And filing do not reserve land from timber-culture entry though notice of the preëmptor's priority of right is given thereby. IX–262

Prior to inception of adverse claim good though made after filing. III–373, 499; IV–424; VI–232; VIII–504

Held good for preëmption claim where the settler on the same day had abandoned and relinquished a former homestead entry. III–102

Of a preëmptor not defeated by an outstanding homestead entry previously made by him if he has in fact abandoned the land covered by said entry. XIII–702

By a minor is invalid under the preëmption law, but the defect is cured if in the absence of an adverse claim he attains his majority prior to making entry. IX–297

Change of, does not affect rights of settler until after filing declaratory statement. IX–139

Of one who has exhausted his preëmptive right is invalid under the preëmption law. IV–560; V–16

The mere purchase of improvements does not constitute an act of, but when settlement follows such purchase the improvements are held as though made by the preëmptor. III–100

One who settles or resides on public land as the tenant of another who claims it can not thereby legally establish a claim to the land in his own right. III–46

Speculative settlement may be proved by a contract made before entry to convey the land after entry. II–781

Of a preëmptor who fails to file in time is not protected as against the next settler who has complied with the law. II–578; III–455; VI–391; X–485; XIII–209

Settlement—Continued.

IV. PREËMPTION—Continued.

Though insufficient to support a filing, may be made good subsequently in the absence of intervening adverse claim. VI–232

Where the claimant abandoned the subdivision on which he had settled, and thereafter failed to connect himself with remainder of his claim until after an adverse right attached, he can not hold as a preëmptor. III–92

When two settle on the same tract the preferred right of purchase by the prior settler depends on his having conformed to the other provisions of law. II–575

On land covered by the existing entry of another confers no right under the preëmption law that is protected by the repealing act of March 3, 1891. XV–179

Within the corporate limits of a city can confer no preëmptive right on the alleged settler, where no steps are taken to subject the land to the settlement laws under the act of March 3, 1877, prior to the repeal of the preëmption law. XXVI–503

Settlers. See *Railroad Lands.*

Act of August 29, 1890, for the relief of, on railroad lands. Circular of November 1, 1890. XI–434

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Stare Decisis.

The doctrine of, recognized and followed in departmental action. I–239; V–92; X–396; XIX–365

The doctrine of, is recognized and followed in the Department in cases that involve principles well established by a uniform line of decisions. XVII–79

The General Land Office, in the disposition of cases that fall within well-settled rulings of the Department, must be governed by such rulings until they are reversed by departmental authority. XI–174

Stare Decisis—Continued.

Precedent followed unless clearly contrary to law. v–277, 713

Executive construction of a statute should not be changed except for cogent reasons. viii–255, 279; xiii–17, 516

While the doctrine of, is recognized and followed by the Department, it will not be held applicable to a decision that is violative of the law, and operates to take away a statutory right. xxv–55

States and Territories. See *Desert Land; Private Claim; School Land; Swamp Land.*

A State selection made prior to the official filing of the township plat is premature and invalid. xxiv–272

The approval of a selection is a final adjudication of the right of the State to make the same and operates to pass title thereunder; and the State having accepted the title thus acquired will not be heard to question the valjdity thereof. xxvi–94

When selections are made in mineral belts, or in proximity to lands claimed or returned as mineral, the State should be required to give notice of the selections, describing the lands selected. xviii–477

Selections of land; instructions of July 9, 1894, with respect to the manner of proceeding to determine the mineral or agricultural character of. xix–23

Instructions relative to selections by, in mineral belts. xxiii–459; xxiv–321, 416

Selection of desert lands by; regulations of November 22, 1894. xx–440

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Instructions of November 10, 1900, relative to certificate to be filed by State with lists of selections, to prevent putting in reservation on account of a grant a quantity of land in excess of the total amount granted. xxx–344

A hearing will not be ordered on an allegation that a tract of land, embraced within a certified list of State selections, was not, on account of its prior known mineral character, intended to be granted to the State, except upon a strong *prima facie* showing in support of such allegation. xxiv–486

In the case of a non-navigable stream fixed as the boundary of a State, the middle of such stream, as reckoned from its natural standing banks, is the actual boundary line. xxii–47

States and Territories—Continued.

Natural boundaries should control in the settlement of the boundary lines between the Choctaw, Cherokee, and Creek nations; hence the boundary line of the Cherokee nation should stop where it first meets the Canadian river in its southern course from the four-mile post referred to in the treaty of May 23, 1836, and from this point the river will mark the boundary between the Creek and Choctaw nations. XXVI–140

In the treaties affecting the boundaries of the lands secured to the Five Nations, wherein a river is established as a boundary, it was intended thereby to extend the title and proprietorship of riparian claimants to the middle thread of the stream. XXVI–516

The boundary between the Indian Territory and the State of Texas is the line of the middle of the main channel of Red river as it existed when Texas was annexed to the United States, and subsequent sudden changes in the current or main channel of said river will not in any way affect the location or position of said boundary line as it lay upon the earth's surface when established. XXIV–372

The control and right to dispose of public lands lying under a navigable stream, that forms the boundary of a State, and within the limits thereof, passes from the government to the State on its admission to the Union, and if a sudden change occurs thereafter in the course of such stream the reliction lying within said State is not the property of the United States. XXVIII–124

The special appropriation made in the general deficiency act of March 2, 1889, for the benefit of certain States on account of their claims on the 5 per cent fund is not to be taken as authorizing the payment to such States of said per cent on sales of Indian lands for any period of time except the one specified in said act. XXII–551

Under the provisions of the act of August 3, 1854, the certification of lands under the agricultural college grant, that in fact passed under the swamp grant, is of no operative effect. XXIII–460

A lieu selection of school lands by a State or Territory operates as a waiver of all claim to the lands assigned as bases, and after the approval of such selection by the Secretary of the Interior it is not material to inquire how it was made in the first instance. XXX–83

ALABAMA. See *Mineral Lands.*

Vested rights under mining laws not affected by the act of March 3, 1883. IV–476

The State's selection of university lands should be admitted subject to the legal claim of settlers. III–315

States and Territories—Continued.

ALABAMA—Continued.

The presentation of a State selection has the force of an application to enter. III–317

No substantial settlement claim or improvement should be prejudiced by the act of April 23, 1884, granting lands to the State for university purposes. III–317

ARKANSAS.

Where title has passed to the State under a railroad grant no action should be taken looking toward the issuance of patent to the State for the same land under the swamp grant. X–165

CALIFORNIA.

The States of California and Nevada allowed to take double minimum land in satisfaction of the agricultural college grant. V–548

The Department has no authority to review transactions between the State and its purchasers or agents. VI–403

The rejection of a State selection prior to the passage of the act of July 23, 1866, will not remove said selection from the operation thereof where notice of such action was not given the State. VII–397

A location made under a warrant issued by the State in part satisfaction of the internal improvement grant is within the confirmatory provisions of the first section of the act of July 23, 1866. VII–543

The act of July 23, 1866, confirmed to the State irregular selections where the land covered thereby had been sold to purchasers in good faith under the State law. VII–397

Patent issued to a purchaser from the State under section 1, act of July 23, 1866, prevents a claim for the same tract under the swamp grant. II–643

The purposes of the first section of the act of July 1, 1864, and the sixth section of the act of 1866, should not be confounded, as one relates to vesting title to private claims and the other to settling the right of lieu selections in the State. III–424

Section 7 of the act of July 23, 1866, was not repealed by the revision. I–417

The right of purchase under the act of July 23, 1866, section 7, is assignable, and in the absence of an adverse claim should be accorded to a purchaser in good faith after the final survey of the grant. VII–210

The right of purchase under section 7, act of July 23, 1866, is assignable, and in the absence of an adverse claim extends to one who purchases and enters into possession after final survey excluding the land from the grant. IX–241

States and Territories—Continued.

CALIFORNIA—Continued.

Right of purchase conferred by section 7, act of July 23, 1866, is alienable and descends to heirs upon the death of the purchaser. IX–445

The satisfaction by selection and patent of a Mexican grant of quantity within larger outboundaries does not preclude the purchase under section 7, act of July 23, 1866, of lands excluded from said grant on final survey. IX–241

The conditions under which the right of purchase is accorded by section 7, act of July 23, 1866, specified. VIII–144

Application for the right of purchase under section 7, act of July 23, 1866, must show (1) that in good faith he purchased land for a valuable consideration of Mexican grantees or assigns which was excluded from the final survey, and (2) has used, improved, and continued in the possession of said land according to the lines of original purchase. IX–445

The conveyance of an undivided interest does not carry the right of purchase under the act of 1866. VII–144, 279

The right of purchase under section 7, act of July 23, 1866, does not extend to one who purchases the title to a confirmed, but unsurveyed, Mexican private claim having definite boundaries, and who receives patent for the full quantity of land included within such boundaries as established on survey. XXIX–369

Right of purchase under section 7, act of July 23, 1866, is only conferred upon one who purchased from Mexican grantees a definite tract of land. VIII–144, 279

The right of purchase under section 7 does not relate back to former claimants, but extends to those then holding lands purchased in good faith before the rejection of the grant, and who had from date of purchase to the passage of the act continued in actual possession thereof within definite boundaries. VIII–144

Whether where parties purchase a specific portion of a rejected grant and hold the same as co-tenants, it is competent to enter the same under section 7, act of July 23, 1866, in the absence of any valid adverse claim: *Quære.* III–401

Right of purchase under section 7, act of July 23, 1866, not defeated by the fact that a deed under which a claimant holds an undivided interest in a Mexican grant does not describe the lands by metes and bounds, if the claimant thereunder enters into possession of a tract marked by specific boundaries and continues to use and occupy the same according to the lines of the original purchase. X–242

States and Territories—Continued.

CALIFORNIA—Continued.

Under a parol partition of a Mexican grant in which the parties thereto hold undisturbed possession according to the lines of such partition and sell the lands thus received, the grantee acquires the right of purchase under section 7, act of July 23, 1866, so far as the question of boundaries is concerned, though in the instrument of transfer the lands are described as an undivided interest. XII–667

The phrase "according to the lines of their original purchase," as used in the act of 1866, construed. X–248

A "purchaser in good faith" under section 7, act of July 23, 1866, defined. VIII–144

The right of purchase under section 7, act of July 23, 1866, dependent upon the character of title held by the grantee at date of said act. XII–667

The right of purchase under section 7, act of July 23, 1866, is not defeated by the fact that the legal title to the land is, at the date of the act, held by one not a purchaser for a valuable consideration where the owner of the equitable title at such time is not thus disqualified. XIV–536

The right of purchase under section 7, act of July 23, 1866, extends only to a purchaser who buys relying in good faith upon the boundaries of the private claim as generally accepted, and which afterwards are found to be incorrect, and affords no protection to one who buys with good reason to believe that the land is not included in the grant. XIII–448

The right of purchase under section 7, act of July 23, 1866, does not extend to one who purchases the title to a confirmed, but unsurveyed, Mexican private claim having definite boundaries, and who receives patent for the full quantity of land included within such boundaries as established on survey. XXIX–369

The purchaser of a private claim of quantity within larger outboundaries who controls the location of the claim is not entitled to purchase lands excluded on final survey. XVI–665

A settlement on land not subject thereto is not such an adverse claim as will defeat the right of purchase under section 7 of said act. IX–241

The right of purchase excludes the land covered thereby from the general operation of the preëmption law. IX–445

The question of the applicant's laches can not be raised by one claiming an adverse right under the preëmption law. IX–446

In the absence of general regulations or statutory authority the Department should not fix a time within which the right of purchase under section 7 shall be exercised in a particular case. IX–446

States and Territories—Continued.

CALIFORNIA—Continued.

Joint entry under section 7, act of July 23, 1866, is measured by the joint occupancy of the parties. VI–434

Prima facie valid selections of record under section 8, act of September 4, 1841, prior to survey by the government and renewed when the plat of survey is filed, operate as a bar to any other disposition of the land and may be certified to the State if found valid. X–217

Valid selections under section 8, act of September 4, 1841, do not depend upon the act of July 23, 1866, for confirmation. X–200

Lands within the limits of a railroad grant, and withdrawn for the purposes thereof, are not subject to selection under the grant made to the new States by section 8, act of September 4, 1841, and no rights are acquired by an application to select, made when the lands are not subject thereto. XVII–417

The location of lands granted by the act of September 4, 1841, was restricted to lands not "reserved," and it therefore follows that land within a withdrawal for a railroad grant is not subject to such location; nor would the relinquishment of the company remove the reservation so as to render such land subject to location as public land. XIX–277

An application for survey filed by the State under the act of March 3, 1871, in which the land is described by township and range, is not materially defective, because the county is wrongly named therein (university lands). XIII–570

An application of the State for a survey initiates a right to the land embraced therein that is protected against subsequent settlers (university lands). XIII–570

The authority of one acting for the State under the act of March 3, 1871, sufficiently appears where his acts are recognized by the Department and ratified by the State. XIII–570

One applying to purchase school lands from the State is put upon inquiry as to the State's title by the possession and cultivation of another. IX–106

A mere applicant for the right of purchase from the State is not entitled to purchase under section 2, act of March 1, 1877, as a "purchaser for a valuable consideration." IX–106

The holder of a certificate of purchase from the State, not yet entitled to a patent, can not claim the protection extended to the "purchaser for valuable consideration." IX–106

An innocent purchaser from the State is protected under section 2, act of March 1, 1877, whether the purchase was made before or after the passage of the act. IX–106

States and Territories—Continued.

CALIFORNIA—Continued.

Official notice to the State of the invalidity and cancellation of a school selection is such notice to one applying to purchase thereunder from the State as to preclude him from pleading the status of an innocent purchaser. IX–106

COLORADO.

The provisions in the act of March 3, 1875, requiring the State to make its selection of salt springs within two years after the admission of the State is directory only, and a failure to select within said period does not work a forfeiture of the grant. X–222

The act of March 3, 1875, is not repealed by that of January 12, 1877, nor does the proviso in the later act amount to a legislative declaration that the right to select salt springs conferred by the act of 1875 expires at the end of two years after the admission of the State. X–222

DAKOTAS.

Under section 13, act of February 22, 1889, each of the Dakotas is entitled to seventy-two sections of land for university purposes, and the lands selected by the Territory of Dakota lying wholly within South Dakota inure to said State. XII–89

FLORIDA.

By the act of June 9, 1880, the right of the State (Florida) to select indemnity is confined to "vacant unappropriated public lands." VIII–380

Instructions of April 4, 1899, under relief act of February 25, 1899. XXVIII–273

IDAHO.

Land selected for university purposes is not open to entry. IX–232

The Department has full control of university selections until approved by the President, and may protect a subsequent entry improperly allowed for land thus selected by allowing another selection in lieu of the entered tract. IX–232

Section 4, act of July 3, 1890, requiring selections to be made "in legal sub-divisions of not less than one-quarter section," contemplates selections in as nearly a compact body as possible, limiting the minimum amount that may be taken in any one place to a quarter section. XX–170

The Department will not reserve unsurveyed lands from settlement in order that the State may select lands therein after survey in satisfaction of the grant made by the act of admission. XVI–458

States and Territories—Continued.

IDAHO—Continued.

A pending application of the State to select an isolated tract (island) after survey under the preferred right accorded by the act of March 3, 1893, should be respected if the land is subject to such selection. XVI–496

The preferred right of selection conferred upon the State by the act of March 3, 1893, is not operative as against *bona fide* settlement rights existing at the time the plat of survey is filed in the local office. XXIII–147

The right of selection accorded to the State by the act of August 18, 1894, does not extend to land embraced within a prior adverse settlement claim that is asserted in due time after survey. XXIX–590

A homestead entry improperly allowed during the period of preferred right of selection accorded the State by the act of August 18, 1894, on land surveyed under said act upon the application of the State, will be permitted to stand, as of the date of the expiration of said period, where the State fails to make a valid selection of the land until after the period of preferred right has expired. XXX–79

Homestead entries and applications to enter made subsequently to the expiration of the period of preferred right granted the State by said act, and prior to any valid selection by the State, take precedence over such selection when made. XXX–79

One who settles upon land subsequent to an application by the State to have it surveyed under the act of August 18, 1894, and who after survey but during the period of preferred right of selection accorded to the State applies to enter the same, acquires no right as against the State. XXX–1

A qualified settler who, after the expiration of the period of preferred right of selection on the part of the State, is residing on the land, will be protected by the Department as against a subsequent selection by the State, even though he may have failed to assert his claim within three months after the land became subject to entry. XXX–1

No rights are secured under State selections tendered prior to the filing of the township plat of survey. XXX–1, 79

KANSAS.

Under act admitting to the Union, is entitled to 5 per cent of the proceeds of cash sales of public lands; is not entitled to a percentage of the fees received in homestead and preëmption filings, etc., which are no part of the price of the land, but are designed to defray the expenses of the local officers. II–695.

States and Territories—Continued.

KANSAS—Continued.

The act of 1857 allowing 5 per cent to the States on sales of former Indian lands only applicable to the States then in the Union. v–712

The declaration common to the act admitting the States that "all laws not locally inapplicable shall have the same force and effect within that State as in the other States of the Union" does not enlarge a specific grant. v–712

The payment of the 5 per cent to Kansas was limited to sales of *public* lands, and can not be allowed on sale of Indian trust lands. v–712

LOUISIANA.

Warrants issued by the State in satisfaction of the internal improvement grant afford no basis for the selection of lands in lieu of deficiencies under said grant arising from the erroneous certification thereunder of lands not subject thereto. xv–314

MINNESOTA.

Selection under the act of March 3, 1879, must be for unoccupied land. iii–456

An application in 1889 for the reinstatement of university selections canceled in 1882 on the governor's relinquishment comes too late for favorable action where most of the lands have in the meantime been sold by the government. xii–135

The act of March 3, 1879, providing that, "There be, and hereby are, granted to the State of Minnesota, to be selected by the governor of the State, twenty-four sections of land out of any public lands of the United States not otherwise appropriated," with the proviso that the lands so granted shall be selected within three years, is a present grant, and the requirement as to selection, contained in the proviso, should be construed as directory and not mandatory; hence a failure of the State to make such selections within the time specified will not defeat its right under said grant. xxv–432

MISSISSIPPI.

The right under the act of June 20, 1894, to select lands for university purposes, from those restored by the act of March 2, 1895, is limited to lands restored by said act free from any provision requiring their disposal in a special manner. The right of selection therefore does not extend to the lands restored by said act that were by the terms thereof set apart for entry under the townsite laws. xx–510

States and Territories—Continued.

MISSISSIPPI—Continued.

The act of June 20, 1894, authorizing the selection of lands for university purposes, restricts such selection to unoccupied and uninhabited lands, and also provides for the issuance of patent for the lands so selected; and it must therefore be held that until patent issues on said selections, the Department retains jurisdiction to inquire into the status of the lands at date of selection with respect to alleged adverse settlement rights. XXV–106

The act of June 20, 1894, authorizing the governor to select, for university purposes, out of the unoccupied and uninhabited lands of the United States in said State, a specified amount of land, was not a grant *in præsenti*, but title to the lands designated only vested in and accrued to the State upon selection and certification, legally exercised as authorized in the act, and subsequently approved. XXX–149

An occupant of a tract of land, within the meaning of the act of June 20, 1894, is one who has the use and possession thereof, whether he resides upon it or not. XXX–149

In making selection under the act of June 20, 1894, it devolved upon the State to show affirmatively that the lands selected were of the character designated in the act, but such showing having been made, and the selection approved, it was thereafter incumbent upon the party attacking the validity of the approved selection to assume the burden of proof. XXX–149

MONTANA.

The Department controls selections under the university grant until they are approved, and may authorize the change of a selection which embraced a *bona fide* settlement claim made without notice of the selections. VIII–55

An application for the survey of lands with the view to their selection under act of February 22, 1889, does not withdraw such lands from settlement; nor is there any authority to withhold such lands from settlement until the State has opportunity to select. XIII–711

A reservation of unsurveyed lands upon the application of a State to have them surveyed under the acts of August 18, 1894, and February 22, 1889, will be revoked where it appears that prior to such application by the State a railroad company had made application for their survey under the provisions of the act of February 27, 1899, had made the deposit required by said act, and steps had been taken by the land department to execute such survey. XXX–278

States and Territories—Continued.

MONTANA—Continued.

University selections approved prior to the admission of the State require no further action to complete title except the admission of the State; the certification to the governor of the Territory is sufficient evidence of title. XIV–142

The certification of lands selected under the act of February 22, 1889, is the equivalent of a patent thereto, operating to terminate the jurisdiction of the land department over the lands thus certified; and after such certification there is no authority in the Department to accept a reconveyance of said lands, with a view to allowing the State to make other selections in lieu thereof. XXVII–474

As to unapproved selections under the act of February 22, 1889, the Department may, on good cause shown, permit the State, through its duly authorized officers, to relinquish its claim, with a view to making other selections in lieu thereof, such relinquishment to be accompanied by due showing that none of the land so relinquished has been disposed of or encumbered by the State. XXVII–474

NEBRASKA.

Directions given for the survey of boundary line between South Dakota and. XV–594

NEVADA.

The settlement right of a homesteader defeats selection under the grant of June 16, 1880, and the failure of the settler to assert his claim within the statutory period will not operate to the advantage of the State. XV–99

NEW MEXICO.

Rules and regulations for making selections in, under the act of June 21, 1898. XXVII–281, 302

OHIO.

The act of May 27, 1880, affects no land sold by the Ohio Agricultural College under the act of 1871. I–3

Legislation with respect to the Virginia military district in Ohio. I–5

OREGON.

The provisions in the act of February 14, 1859, granting salt springs and adjacent lands to the State, and the act of December 17, 1860, amendatory thereof, so far as they fix a time for selections under said grant, are directory and not mandatory; but as the grant so made only becomes effective as to specific tracts on selection by the State, the right to make such selections after the expiration of the time fixed therefor will be defeated by an intervening adverse right asserted under the general provisions made for the disposal of saline lands by the act of January 12, 1877. XXIV–116

States and Territories—Continued.

SOUTH DAKOTA.

The payment to of 5 per cent of the net proceeds of the sales of lands therein, formerly included in Indian reservations, authorized by section 2, act of March 3, 1857, is limited to the States in the Union at the date of said act. XXII–550

Section 13, act of February 22, 1889, providing for the payment to the State of 5 per cent of the proceeds of the sales of public lands, contemplated a disposition of such lands for the benefit of the government, out of the proceeds of which said per cent might be paid; and it therefore follows that the State is not entitled to said per cent on lands disposed of under the general provisions of section 21, act of March 2, 1889, as said disposals are for the sole purpose of creating a trust fund for the benefit of the Indians, in which the government has no interest save that of trustee; but the State is entitled to said per cent on homestead entries of said lands commuted under the amendatory act of March 3, 1891, as in such cases the entryman is required to pay the government price of the land in addition to the payments made for the benefit of the Indians. XXII–551

UTAH.

State of, not entitled to select, under section 8, act of July 16, 1894, lands valuable for their deposits of guano. XXVII–95

Coal and mineral lands are not subject to selection under section 7, act of July 16, 1894; but lands containing building stone may be taken thereunder. XXIX–69

The grant to the State of 100,000 acres for the establishment and maintenance of an institution for the blind, made by sections 12 and 13 of the act of July 16, 1894, is one of quantity to be selected by the State, under the direction of the Secretary of the Interior, "from the unappropriated public lands" within the State. The status of the lands at the date of their selection by the State is the criterion in determining the rights of the State under its selection. XXX–301

The acts of July 5, 1884, and August 23, 1894, relative to the disposition of lands in abandoned military reservations, provide a mode for the disposal of such lands exclusive of all others, and lands thus set apart for disposition in a designated manner are not subject to selection as "unappropriated" public lands under the grant of July 16, 1894. XXX–301

WASHINGTON.

On the admission of a State to the Union it acquires absolute title to all the tide lands within its borders to the exclusion of any rights under pending unadjusted scrip locations for such lands. X–365; XIII–299; XX–530

States and Territories—Continued.

WASHINGTON—Continued.

Selections under section 12, act of February 22, 1889, for public building purposes, must be made in legal subdivisions of not less than one-quarter section. XVII–575

In selections for the benefit of scientific schools, can not take advantage of a homestead settler's failure to make entry within the statutory period after the land is open to such appropriation. XXI–453

An application on the part of a State to select lands should be rejected if the lands applied for are not open to such appropriation at the date of selection or at the time when the application is received. XXII–385

A State will not be permitted to contest an entry, with a view to selection of the land involved under a grant to the State, where it appears that approved and pending unapproved selections on account of said grant equal or exceed the full amount granted. XXX–369

WYOMING.

The certification of lands granted to the State by the act of July 10, 1890, conveys the fee simple of the lands so certified; and the Department is thereafter without jurisdiction over said lands. XVIII–473

Where lands not subject to selection under the grant of July 10, 1890, on account of their mineral character, have been erroneously certified, the State may relinquish the same and be permitted to select other lands in place thereof. XVIII–473

Station Grounds. *See Right of Way.*

Statutes. *See Acts of Congress Cited and Construed; Revised Statutes Cited.*

Are operative from their date and are constructive notice to all. II–30

The Revised, of the United States must be treated as the legislative declaration of the statute law on the first day of December, 1873. XV–388

Is operative from its date if no time is fixed when it shall become effective. XIV–596

An act of Congress takes effect as a law from the time of its approval by the President, and the portion of the day that expires before such approval is excluded from the operation of the act. XV–142

In construing Revised, reference may be had to the original where language is doubtful. VI–314

Statutes—Continued.

Recurrence to the history of the times at the date of the act proper in the construction of. x–329

Courts will take judicial notice of the condition of the country and titles to land at the time of the passage of an act. i–280

The title of an act may not override its text, but may give an insight into its purpose and scope. ii–825; v–61

Debates in Congress considered in construing. vi–402

Action of Congress prior to passage of, considered. vi–730

Statutes are to be construed and applied according to their intent, and that is to be determined, if possible, from the language employed. i–187; ii–605

Must be interpreted according to the intent and meaning, and not always according to the letter. v–543

The natural and persuasive presumption of intent may be overthrown only by words of clear and unmistakable import. ii–349

A thing which is within the intention of the makers of a statute is as much within the statute as if it were within the letter. ii–444

To be so construed as to give its designed effect. i–10

If possible, sense and meaning should be given to every part. i–70

Where the construction of the language of a statute is doubtful, courts will prefer that which will confirm rather than destroy any *bona fide* transaction or title. ii–70

General terms should not be so construed as to lead to injustice. xix–144

Will not be given retrospective operation unless compelled by language so clear as to leave no doubt. ix–396

Consequences are to be considered in expounding laws where the intent is doubtful, but the principle is to be applied with caution. ii–858

A special right conferred by a special act will not be taken away by general legislation without express words requiring it. vi–502

Words or phrases repugnant to other words or phrases that clearly express the intent and meaning of the statute should be rejected as surplusage. v–543

Construction of, impliedly by subsequent legislation. i–2

Congress presumed to be familiar with the subject-matter of its legislation. i–10, 15, 278

And executive acts are presumably constitutional, and will be so regarded by the Department until declared unconstitutional by a court of competent jurisdiction. xxii–196

Questions relative to the constitutionality of, can not be considered by the Department in the administration of the law. i–335; xix–496

Statutes—Continued.

If any authority exists in the executive branch of the government to declare a statute unconstitutional, it should not be exercised except where the violation of fundamental law is so manifest as to overcome every presumption in its favor. VI–13

Where a provision in an appropriation act of general application is not expressly restricted to the appropriation it will be regarded as a permanent enactment. II–464

Acts *in pari materia*, though passed at different times and not referring to each other, should be taken and construed together. V–574; VI–8, 502; VIII–368

If the words would fairly admit of different meanings, it would be right to adopt that which is more favorable to the interests of the public; applied (by the court) to a land grant act where the grantees may be supposed to have drawn the act. II–858

Granting acts should be construed more strongly against the grantee. I–331, 365; III–243; IV–216, 429; V–381

Of a remedial act is to arise from a consideration of the old law, the mischief, and the remedy. II–582

Of remedial character to be construed liberally. I–335, 532; V–622; XII–674

Of remedial character to be so construed as to suppress the mischief and advance the remedy. XVIII–183, 283, 460

Distinction between mandatory and directory. V–113; X–224

Provisions of, directory when not of the substance of the things provided for. I–226

Where power is given to public officers, and the public interests or individual rights call for its exercise, the statutory language, though permissive in form, is in fact peremptory. XII–171

The law (section 2294, R. S.) is permissive and beneficial, and, its purpose being to facilitate *bona fide* settlement, it should be construed so as not to hamper or embarrass applicants. II–208

A proviso in restriction of a general grant takes nothing out of the grant but the special matter contained in the exception. II–476; XVIII–278

Proviso, to be construed strictly, as it carves special exceptions only out of the enacting clause. I–278; VI–216

Should be so construed, if possible, to avoid conflict with previous legislation. IX–396; X–70

Conditions precedent must be strictly performed. I–12, 605

Failure of conditions subsequent only taken advantage of by the grantor. I–605

The maxim *expressio unius est exclusio alterius* is applicable to section 3, act of June 14, 1878, limiting contests against timber-culture entries to homestead and timber-culture claimants. (Overruled, 5 L. D., 591.) II–294

Statutes—Continued.

Decision of highest judicial authority of a State, expounding a State statute is as much a part of the law as if it were a statutory enactment. II–14

In construing a congressional grant it must be borne in mind that the act by which it is made is law as well as a conveyance. I–282

Rights conferred by, not defeated by departmental regulations. II–58, 283; V–429

There is no authority to import a word into a statute in order to change its meaning. I–177, 278

Words should be construed in connection with the context. I–309, 345

Will be construed as employing words and phrases in the same sense as that given in long-continued departmental practice under prior statutes with reference to the same subject-matter. VII–172

General words in a statute following particular words apply to persons and things of the same kind as those which precede. II–271

In legal parlance the singular embraces the plural and the plural the singular. V–552, 622

Words in the Revised Statutes importing the singular number may include several persons or things and words importing the plural number may include the singular II–756

To reach the obvious purpose of, "and" is construed "or." V–81

"And" and "or" convertible terms, as the sense of the statute may require. V–523

The words "adverse claim" in the act of April 7, 1896, held to mean *valid* adverse claim. XXIII–582

The word "children," in section 2168, R. S., is used in its natural sense and is not qualified by reference to minority. II–611

The word "citizen" in section 5, act of March 3, 1887, construed to mean a "corporation" organized under the laws of a State. (See 22 L. D., 1 and 558.) XIX–141

"As near as practicable" in section 2331, R. S., means as nearly as is reasonably practicable. II–764; VI–227

An "actual settler" under the act of May 28, 1880, is one who goes upon the land with the *bona fide* intent of making it his home under the settlement laws and does some act indicative of such intent. VII–278; VIII–173; X–36

"Actual settler" in section 2382, R. S., means actual resident. II–337, 628

"Actual settlers in good faith" under the act of September 29, 1890, are those who have gone upon and occupied land in the *bona fide* intention of making it a home, and done some act in execution of such intention. XVII–386

Statutes—Continued.

The words "may have settled," etc., as used in section 3, act of September 29, 1890, require a showing of residence. XVII–498

The word "occupant" construed to mean one entitled to "use and possession." XXVIII–537

The word "day" as employed in section 3, act of June 20, 1890, opening to settlement and entry certain reservoir lands, is not restricted to the "business day," but contemplates the calendar day of twenty-four hours. XV–302

"Sales of public lands," within the meaning of the land laws, are cash sales only. II–696

Under sections 2401, 2402, 2403, R. S., and act of March 3, 1879, corporations can not be considered as "residing" or being "settlers" in a township, etc. I–305

The word "section" as employed in section 2, act of March 3, 1891, amending the desert-land law, construed to mean the same as "provision." (See 22 L. D., 450.) XIX–85

"Person" includes corporation and "entry" includes a selection under section 2, act of June 16, 1880 (repayments). II–681

The words "disposed of" in the proviso to section 1, act of March 12, 1860, means sold and title alienated. II–641

The phrase "erroneously allowed" as used in the act of June 16, 1880, construed. II–694; VII–509; VIII–423; IX–103, 643; XIV–514

The words "land district," construed. XVIII–601

The word "enter," in section 8, act of March 3, 1891, construed. XX–67

The word "casualty," as used in section 3, act of March 2, 1889, construed. XX–21; XXII–716

The words "seized in fee simple," as used in section 20, act of May 2, 1890, construed. XXI–505

The phrase "homestead laws," used in a generic sense in section 2, act of June 15, 1880. XX–528

The phrase "who has under existing laws taken a homestead," used in the act of March 3, 1879, construed. I–24

"Homestead laws" considered as a generic term embracing other settlement laws. I–71; V–591; VI–45

The phrase "had the benefit of the homestead law" held to apply to a party who had made an entry and acquired title thereunder. X–634

The words "public lands" are habitually used to describe such lands as are subject to sale or other disposal under general laws. V–712; X–367

The phrase "public lands adjacent to the line of said road" construed. VI–449; VII–541

The phrase "public lands adjacent thereto" as used in the act of June 4, 1897, construed. XXIV–588; XXV–149

Statutes—Continued.

The words "two years" in the proviso to section 7, act of March 3, 1891, considered, and rule announced as to the computation of such period. XXV–157

The phrase "known mines" construed. VII–63

Contemporaneous and uniform interpretation is entitled to weight in the construction of the law, and in cases of doubt ought to turn the scale. I–2; V–124, 137, 472, 532, 575, 621; VIII–17, 93

The word "located" as used in the act of July 4, 1884, means "settled." XXIX–277

"Minimum price" as used in section 2387, R. S., is the price fixed by law. XXIX–503

Departmental construction of, has all the force and effect of law, and acts done thereunder should be protected. V–169, 261, 382; IX–86, 189, 284, 353

Executive construction of, in circular regulations has all the force and effect of law if not in conflict with the statute under which they are issued. XII–138, 155

The contemporaneous construction of, by the officers charged with the execution of, is entitled to great weight and will not be overturned unless clearly wrong. XIII–17, 516

Departmental regulations under, if not in conflict therewith, have all the force and effect of law. XIV–587

Departmental construction of, where doubtful in terms will be received with due consideration by the courts. XXV–355

Rights acquired under an existing construction of the law will not be impaired by a later and different interpretation. VIII–109, 399

A changed construction of the law will not impair rights acquired under a former interpretation of the same law. VI–145, 217, 225

An erroneous construction of a statute, promulgated as a ruling, has all the force of law until changed, and rights acquired or acts done under it must be regarded as legal. II–711

The rule protecting vested rights on a change of ruling does not apply to one who asserts no such right in himself or through another acquired under the former construction of the law. X–136

Executive construction of, should not be changed except for cogent reasons. VIII–255, 279

Legislative recognition of the departmental construction conclusive. X–513

Repeal of, by implication is not favored in law. I–419; VIII–368; IX–396; X–70

Are repealed by express provision or by necessary implication; in the latter case there must be such a repugnancy between the old and new law that they can not stand together or be reconciled. IX–49

Statutes—Continued.

An earlier special statute is not repealed by a later general act. XII–401

When evidently intended to cover the whole subject to which it relates it will by implication repeal all prior statutes on the same subject. XVI–472

Repeal of, by revision does not affect previously acquired rights. I–419

Local and temporary, not repealed by the revision. I–419

Act of August 18, 1856, relative to certain reservations in Florida, was local in its character, and therefore excepted from the general repealing clause of the Revised Statutes (Sec. 5596). II–604

An Indian treaty when approved is in effect a legislative enactment. XXII–388

Stone Land. See *Mineral Land; Mining Claim; Timber and Stone Act.*

Circular of October 12, 1892, under the act of August 4, 1892, with copy of the act. XV–360

Is not withdrawn from agricultural entry by section 1, act of August 4, 1892. XV–360

Survey. See *Accounts; Mining Claim; Private Claim; Right of Way.*

I. GENERALLY.
II. DEPOSIT SYSTEM.
III. ON APPLICATION.

I. GENERALLY.

Circular of June 15, 1898, as to resurveys and retracements. XXVII–79

Penalty for the destruction of marks of; circular of October 29, 1898. XXVII–574

Instructions of January 4, 1901, relative to surveys within the limits of the Klamath Indian reservation. XXX–395

Of settlers' claims in Black Hills forest reserve; instructions of September (7) 22, 1899. XXIX–192

The provisions in the appropriation act of March 3, 1899, requiring public land surveys thereafter made, whether within or without reservations, to be under the direction and supervision of the Commissioner of the General Land Office, do not preclude the completion, by the Geological Survey, of the sub-divisional survey of a township, within a forest reserve, begun under authority of the act of June 4, 1897. XXVIII–292

Survey—Continued.

GENERALLY—Continued.

Made under the supervision of the General Land Office.
IX–14; X–99

Supervisory authority of surveyor-general in the matter of returns made by subordinate and of work in the field. I–325; III–270

Date of, fixed by approval. V–415

The date of a township, is not fixed by the date of the work in the field, but by the approval of the plat. XXIV–54

The acceptance by the Commissioner of the General Land Office of a, as returned by the surveyor-general, with directions that the plat shall be filed in the local office, amounts to an approval.
XXIII–230

Contracts for, under the supervision of the General Land Office.
IV–452

Bonds for United States deputy. Instructions of June 16, 1882.
I–669

Additional bond may be required to cover the balance in excess of the entire liability. IV–452

Deputy surveyors entitled to mileage for every mile or part of mile run. III–185

Augmented rates allowed where the lands are mountainous or covered with dense timber or underbrush. VIII–255, 364

Special maximum rates will not be allowed except on satisfactory showing that such payment is necessary. XIII–642

The act of March 3, 1891, provides for the survey of heavily-timbered and mountainous land and for the examination of surveys in the field. XIII–661

Section 2411, R. S., providing per diem rates, applicable only to California and Oregon. VIII–254

The price fixed for the original survey of exterior lines should be allowed for retracing and reëstablishing such lines if the contract authorizes such work but fixes no price therefor. V–668

A claim for compensation on account of the retracement of old lines, in order to secure a starting point for the work in hand, can not be recognized where it does not appear from the field notes that such action was necessary; nor can the failure of the field notes to show the necessity for such retracement be made good by a supplemental statement. XXII–471

The fact that a deputy surveyor fails to obtain special authority for making a resurvey is no reason for the disallowance of his account, if, upon examination, it is found that such resurvey was actually necessary and would have been authorized if application had been made therefor. XXVIII–253

Survey—Continued.

I. GENERALLY—Continued.

Compensation should be allowed for the retracement of lines, though no provision therefor is made in the contract, but the instructions of the surveyor-general direct such resurveys when absolutely essential, and the necessity for such action is fully disclosed by the field notes of survey. XXVI–609

In the, of a "small holding" claim that has a boundary line in common with an adjacent claim, for which mileage has been charged and allowed, the surveyor is only entitled to compensation for such common boundary line when it is actually run the second time, and such action appears from the record to have been necessary. XXVIII–192

A resurvey is authorized, at rates not in excess of those provided by law, where such action is rendered necessary by the imperfect work done on the original survey. XII–505

Maximum rates for, allowable if the land is heavily timbered, mountainous, or exceptionally difficult to survey. X–578

The term "dense undergrowth," as used in the statutes wherein provision for augmented rates is made, means such a growth as obstructs the use of the transit and seriously impedes the work of chaining the line. XXI–526

A contract for, at maximum rates of lands not specifically designated in the departmental approval of such rates, will not be subsequently approved by the Secretary where it is apparent that compensation in excess of intermediate rates is not authorized by law. XVII–427

The surveyor-general should give notice of all contemplated public, in his district, or those coming under his immediate supervision, and invite bids for the performance of the work.
XIII–643; XVII–427, 492

To warrant the allowance of maximum rates for surveys of "exceptional" difficulty under the act of August 5, 1892, the lands must present increased difficulties of survey over and above those justifying the intermediate rates of mileage. XVII–536

Payment of the maximum rates should not be refused where the contract therefor was authorized by the Department on due showing. XVIII–606

A deputy surveyor can not claim additional compensation, on the ground that the land surveyed was of a different character from that represented in the field notes, unless it is shown that the field notes are incorrect and subject to amendment. XVIII–220

The mileage rate of compensation for, is regulated by statute, and can not be determined by the average mileage per day made during the period covering a survey. XXI–526

Survey—Continued.

I. GENERALLY—Continued.

Payment of increased rates not authorized except on conclusive showing of the plat and field notes. V–668

Special instructions with respect to the field notes should be given to deputy surveyors where maximum rates are claimed. XVII–536

Inspection of, in the field may be made after the work is returned. IV–270

Return of, a prerequisite to the acquisition of vested rights under the settlement laws. VIII–541

Until the township plat of, has been on file for three months final proofs should not be accepted for lands embraced therein. VI–633

Of township, how filed in local office. Instructions of October 21, 1885. IV–202

Due notice of filing of plat to be given. IV–202

Plat of, when filed in the local office, is notice to settlers that the lands embraced therein are open to entry. XVIII–214

Filings and entries allowed immediately after the reception of the plat of, at the local office, and prior to the regulations of October 2, 1885, are not invalid for the want of the previous notice of the filing of said plat required by said regulations. XIX–48

An entry should not be allowed of land included within an amendment to a plat of survey until due notice of the filing of said amended plat has been given. XIII–392; XIX–91

The rule requiring notice of the filing of a township plat of, prior to the allowance of entries of land embraced therein, is only applicable in the case of an approved plat of survey, or where an amendment thereto adds to the area of public lands included therein. XXVI–107

The requirement that thirty days' notice must be given before a plat of survey will be treated as officially filed in the local office, has no application to an amended plat filed for the purpose of showing subdivisions of public lands in a surveyed township rendered fractional by reason of the reservation thereof and the platting and disposition of adjoining public lands. XXX–468

Suspension of township plat need not necessarily prevent submission of the final proof where the lines of survey are not liable to change. V–540

Suspension of township, precludes the submission of final proof for land embraced therein. XII–633

Suspension of, pending settlement of a private claim excuses a homesteader from establishing residence under an entry allowed prior to the order of suspension. XV–215

An entry made while the plat of, is on file is not annulled by the subsequent withdrawal of the plat, but suspended during such withdrawal. XIII–297

Survey—Continued.

I. GENERALLY—Continued.

Life of entry does not run during suspension of plat. XXI–169

Where a new plat is required to include relinquished land, and prior thereto an entry is allowed in accordance with the original plat and patent issues thereon, the department has no authority to issue to a transferee new or amended patent for the additional acreage shown by the new survey. XIII–392

In case of a discrepancy between the plat in the local office and the one on file in the General Land Office an entry allowed in accordance with the former may stand with a view to its approval when the plat in the General Land Office has been corrected. XV–395

Increase of acreage in subdivisions on resurvey does not call for approximation of an entry covering such tracts properly allowed under the first survey. XV–449

Withdrawal of plat as affecting pending settlements. IV–333

Correction of duplicate plats. Circular of March 19, 1883. I–670

One holding under a purchase or location made in accordance with the plat of, may claim under the boundary lines thereof though a subsequent survey may show a conflict with a confirmed private claim; the question of ownership in such case must be judicially determined. XII–460

Where a conflict arises between two entries through a change of subdivisional descriptions on resurvey the superior right is with the prior entryman. XIII–219

An entryman who acquires a water frontage through an entry based on the recognized plat of, will not be deprived of such right by a subsequent survey that enlarges the acreage of the section. XIV–375; XVIII–328

Plats are to be kept at the surveyor-general's office and at the local and General Land Office for public information. II–849

Markings on the official plats, showing land as saline, swamp, mineral, or timbered, do not absolutely reserve it from claims if in fact it is proved to be not of the character described. II–847

A decision of the General Land Office, based on the plat of, holding certain tracts of land to be non-contiguous, must be treated as conclusive of the fact so found, in the absence of evidence showing error in said plat. XX–450

Copies of plats. (See *Fees.*)

The approved plat of an official, is conclusive as to the designation of tracts embraced therein, and must govern in the disposal of the lands covered thereby. XXIV–480

Official report as to the returns presumptively correct. I–568; VIII–440, 467; IX–458

Returns of, presumptively correct, but the presumption may be overcome. VII–562; IX–437

Survey—Continued.

I. GENERALLY—Continued.

Where the plat of, does not correspond with the field notes, it should be corrected so as to exhibit the subdivisions called for by the field notes. XXI–454

The field notes of survey are part of the permanent official records of the General Land Office, and as such may be resorted to upon any question, whereon they have bearing, arising in any case before the land department. XXVI–369

Amendment of field notes by deputy surveyor does not necessarily vitiate the survey. I–325

Returns of the surveyor-general not overcome by a private survey. VII–209

The returns of the surveyor-general and the record of work done under his direction constitute evidence that can not be overcome by a private survey. XIII–64; XVI–313

Accepted as showing the true area of land covered thereby, in the absence of proof to the contrary. VII–207

Sections, or fractional sections, as so returned, must be considered as containing the exact quantity expressed in the return. XVII–88

The conclusive effect of the surveyor-general's return, as to the quantity of land in a legal subdivision, is only operative while such subdivision remains public land. XXVI–369; XXVIII–187

A contract for the establishment of an initial point of, by means of a traverse line will not be approved where such point, when established, would be of doubtful certainty. XIII–710

Subdivisions of sections; circular provisions. V–699; XI–603

Subdivision of sections; see regulations of October 16, 1896. XXIII–375

Subdivisional descriptions not shown by, should not be employed in the issuance of patent. (See 16 L. D., 273.) XVI–424

Fractional sections to fall on west side of township. V–17

In closing a system of surveys progressing from west to east upon another system extending from a different meridian, deficiencies may be deducted from the eastern range of sections. VI–696

One system of surveys closed upon another (California), and the last range of townships was found to be about half the regular width; as they could not be otherwise surveyed, they are accepted as surveyed according to law. II–470

The line of ordinary high-water mark the limit of water boundary. I–213, 243

"High-water" mark on the shore of a bay fixed by running along the line of ordinary high water on the main coast line, cutting across the mouths of the streams which intersect the body of the peninsula. II–346; V–488

Survey—Continued.

I. GENERALLY—Continued.

The manual of surveying instructions requires the meander of a tide-water stream on both sides from its mouth up to the point where the tides cease. XXIII–393

Of lands bordering on navigable waters only extends to high-water mark. X–369

In the survey of land bordering upon a body of water the meander line is not run as a boundary, but for the purpose of ascertaining the quantity of land in the subdivisions rendered fractional by reason of their bordering upon the water. XXVIII–444

Field book should show all water courses. I–325

Character of streams that should be meandered. VIII–158

Of streams by meander lines limited to streams of specified width. XXI–7

Land excluded from the public, by the establishment of a meander line of an alleged body of water that in fact did not exist at the time of such survey, should be surveyed and disposed of under the public land laws. XXVII–119

Showing a meandered stream that does not in fact exist may be re-formed in accordance with the changed conditions. XII–73

The improper meander of a stream will not defeat an entry subsequently allowed for lands lying on both sides of said stream. XII–556

In the case of a, that is closed upon a meander line run for the purpose of separating arable lands from alleged swamp and overflowed lands, lying upon the borders of a lake, thus leaving a tract unsurveyed between the shore of said lake and said meander line, parties taking title to the lands so surveyed acquire no riparian rights to the unsurveyed lands lying beyond said meander line. XXV–199; XXX–521

A meander line, run along one bank of a stream for the purpose of a boundary between the public domain and a reservation, will not be treated, after the restoration of the reserved lands, as bringing said stream within the category of "meandered" streams, where it does not fall within the class of streams properly meanderable under the law. XVIII–135

On proper showing, hearing may be ordered to determine the existence or nonexistence of a stream that is represented on the plat as "meandered." XV–342

Meander lines of land that borders upon permanent bodies of water determine the quantity of land for sale, but the water line forms the true boundary. III–200; XIII–64

Survey—Continued.

I. GENERALLY—Continued.

Lines of, run along permanent bodies of water are run as meander lines, the water itself being the true boundary line of the land to be sold, and all accretions after survey and prior to patent pass under the patent when issued, and the government thereafter is not entitled to subsequent accretions. XXVI–453

Purchasers of lands bounded by an alleged meander line have no vested rights that will prevent the government from taking action to ascertain whether there was in fact a body of water existing upon which to base said line. XXVI–319

The purchaser of a meandered fractional tract takes to the water line, and if the Department has any authority thereafter to order a resurvey of such land, it should only be exercised in exceptional cases, on a clear showing of flagrant mistakes and disregard of regulations in the execution of the original survey. XXVII–330

The land lying between a properly established meander line of a lake and the shore line is not unsurveyed land, but forms an adjunct of the adjacent subdivision. XX–315

Meander lines in the survey of land bordering upon a body of water are run not as boundaries, but for the purpose of determining the quantity of land subject to sale. VI–555

The Department has no authority to order the, of a former river bed lying between lands that have been finally disposed of by the government. XXII–710

Proprietors bordering on streams not navigable, unless restricted by terms of their grant, hold to the center of the stream. VI–583, 637

The boundary of a tract bordering upon a body of water is the water line, and a patent for a tract thus bounded conveys all the land included by the meander line. VI–555

In the extension of, over lands lying between the meander and shore line of a shallow lake, where the government owns a portion of the lands adjacent thereto, the dry land should be surveyed in such manner as to leave the rights of riparian owners undisturbed. XIX–439

A final decision of the Department directing the survey of a tract as public land, precludes the subsequent consideration of a claim thereto based on riparian ownership. XIX–17

The jurisdiction of the land department is confined to public lands, and does not extend to lands that have passed into private ownership; hence if through mistake, or otherwise, a tract is surveyed as public land, when in fact it is private property, such survey will not change the status of the land so that the Department will thereafter be prevented from taking proper action to protect the rights of the private owner. XXVI–453

Survey—Continued.

I. GENERALLY—Continued.

Of a tract of land and the approval thereof do not preclude the Department from reëxamining the matter at any time before the legal title to the land has passed out of the United States, setting aside such approval, and annulling the survey, if the facts disclosed by the reëxamination demand such action. XXVI–453

A final judgment that the meander line of a lake is not properly established, and that a further survey of the lake boundary should be made, determines the status of the lands involved, is conclusive upon all persons, whether parties to the proceeding or not, and precludes further departmental action therein. XXI–344

The Department has the authority, after the tracts designated by a government survey as fractional, by reason of bordering upon a body of water, have been disposed of, to examine into the correctness of such survey, and if that examination demonstrates that there was no body of water to prevent the extension of the township, section, or subdivision lines, to cause the lands thus erroneously omitted from survey to be surveyed, and disposed of as public lands of the United States. XXIX–514

The United States does not, by the approval of a survey, part with its title to lands that are erroneously omitted from said survey. XXX–527

The United States has authority to examine into the correctness of a survey, and to cause lands erroneously omitted from survey to be surveyed and disposed of as public lands. XXX–521

The power to make and correct surveys of the public lands belongs exclusively to the political department of the government; and the Department of the Interior is the proper tribunal to determine whether lands were, at the date of survey, part of a lake or were public lands erroneously omitted from survey. XXX–527

Sudden change of a river's course does not affect title or boundary. I–213; XXIV–372

Where a sudden change occurs in the course of a navigable river that forms the boundary between a State and a Territory, the reliction lying within the State is not the property of the United States, or subject to, as such; but that portion of the abandoned bed of the stream lying within the Territory is the property of the United States and therefore subject to. XXVII–380

Segregation of swamp land does not render a township fractional. XV–16

Metes and bounds generally conclusive. V–98

In case of variance between general description and the field notes of boundary lines the latter control. III–521

Survey—Continued.

I. GENERALLY—Continued.

In the execution of, courses and distances must yield to natural monuments named in the description of the land. XIII–628

In running lines of a, where the monuments called for are on the ground, and there is found to be a variation between the calls in the field notes and the monuments, the latter must control; in the absence of monuments the surveyor must be guided by the field notes. XX–220

Should not be approved if the corners are not marked on the ground as indicated therein and as required by the regulations. XI–93

Rules for the restoration of lost and obliterated corners. I–671

Restoration of lost and obliterated corners; regulations of October 16, 1896. XXIII–361

Under government survey a tract may be identified by quantity. V–98

Appropriation for, confined to "lands adapted to agriculture and lines of reservations" is available for survey of a private claim the extent of which has been finally settled and a survey thereof directed. VIII–254

Subdivisional surveys in "No Man's Land" may be made from the appropriation of October 2, 1888, if such money is not required for the survey of townships occupied by actual settlers. VIII–613

Under the act of August 18, 1894, making an appropriation for public, the expenses of a hearing to determine the character of a survey alleged to be fraudulent may be paid from said appropriation, as well as the expense of such field work as may be necessary. XIX–301

The Commissioner has the authority to locate the boundary line of a patented private claim, if such action is necessary to close the surveys of the public lands, and to use for that purpose so much of the appropriation for the survey of the public lands as may be required. XVII–105

The cost of surveying public lands and properly marking the boundary line necessary to the segregation thereof from an Indian reservation is properly payable out of the appropriation for the survey of public lands, even though in making said survey, coincidentally, the boundary line of said reservation is surveyed. XVII–492

Special instructions may be issued *nunc pro tunc* to cover a survey of Indian allotments executed at the request of an allotting agent, though not authorized by the approved contract, it appearing that the survey was actually necessary and to the interest of the public service. XIX–457

Should be closed upon the lines of a complete grant. VI–347

Survey—Continued.

I. GENERALLY—Continued.

Where the Northern Pacific railroad has been constructed across unsurveyed land, and a survey of the public lands is thereafter made and approved, in which the lines of survey are extended across the railroad right of way, as though it were a mere easement, such survey will not be set aside and a resurvey made for the purpose of closing the lines of survey upon said right of way: it appearing that many tracts adjoining said right of way have been disposed of under the existing survey, that neither the interest of the United States, nor of the company, require such action, and that there is no difficulty in identifying the portion of each subdivision that remains subject to settlement and disposition as public land. XXVIII–412

Of public land not delayed on account of indefinite Indian claim. V–557

Extension of, for the adjustment of conflicting claims. V–369

Of township, if false or fraudulent, calls for resurvey, and pending examination in the field entries of the land can not be allowed. IX–14

Resurvey should be ordered where the work is found inaccurate. XIII–661

No action for the resurvey of a township should be taken during the pendency of an appeal from the rejection of the original. XIII–238

The Department has no authority to order the resurvey of a patented private claim while the patent is outstanding. XIV–557

A charge of fraud or irregularity in the matter of closing the public surveys on a patented private claim will not be investigated in the absence of a definite showing in support of such charge. XX–37

Lands outside the treaty boundary of a reservation not affected by a withdrawal of the township plat for the purpose of locating said reservation. III–303

Where, on claimant's application, a resurvey and an amendment of plats (California) was made and approved which gave him a full quarter section (160.64 acres), the matter will not be further disturbed. II–469

Survey of town grant will not be disturbed, the boundaries conforming to instructions. III–387

Of a townsite, duly approved and filed with the board of trustees, will not be modified in an *ex parte* proceeding. XVIII–154

Character of, required in case of warrant location. I–6

Claims based on fraudulent survey of former Indian reservation adjusted in conformity with correct description. III–288

Survey—Continued.

I. GENERALLY—Continued.

Of the exterior lines of an Indian reservation does not take the lands embraced within said reservation out of the category of unsurveyed lands. XVI–66

In the case of a military reservation established on surveyed land, where the outboundaries do not coincide with the lines of the public, and the fractional portions of the sections lying outside of the reservation are thereafter surveyed and lotted, the complements of said sections within the reservation, on the subsequent abandonment thereof, remain within the category of surveyed lands, as shown by the two plats of survey, which should be taken together and treated as the single official plat. XXII–596

Of a mining claim or town site is a "public survey" when the claim or entry passes into a patent. XIV–108

Of boundary line between Nebraska and South Dakota. Instructions of December 24, 1892. XV–594

If, under an application to purchase lands in Alaska, the survey is correctly executed in accordance with the terms of the contract and the rules and regulations governing such surveys, the surveyor should not be made to suffer a loss of the pay for the work done because the application must be denied on grounds for which the applicant is responsible. XXII–696

In Alaska the deputy surveyor, in isolated localities, may administer the requisite oaths to chainmen and others. XIII–608

There is no statutory authority under which a notary public can be recognized as a proper officer before whom a deputy surveyor can take the final oath on the completion of a; hence the survey of a townsite can not be approved where said oath is administered by such officer. XXVII–450

In the prosecution of, in the Indian Territory under the supervision of the Director of the Geological Survey the Secretary of the Interior may authorize oaths to be administered by any official who may be convenient to the persons in the field. XXI–386

The words "public lands adjacent thereto," in the act of June 4, 1897, directing survey of forest reservations, construed. XXIV–588; XXV–140

The United States surveyor-general of a State on the completion of the public, therein, and the consequent closing of his office, is required to deliver the plats and records of said office to the proper officer of said State; and thereafter, if it appears that the plat of any of such surveys is not found on file in the general land office, the Commissioner may procure from the proper State authority a certified copy of said plat. XXVII–47

Records of public, transferred to certain States. XXIII–375

Survey—Continued.

II. Deposit System. See *Certificate of Deposit.*

Circular instructions regulating surveys under the deposit system. I–665; III–350, 599; IV–488

Circulars and instructions with reference to deposit surveys prior to June 6, 1885, revoked. III–599

Application for, under the deposit system; circular of August 7, 1895, under the amendatory act of August 20, 1894. XXI–77

Survey on deposit made by railroad company; circular of April 8, 1899, under the act of February 27, 1899. XXIX–632

Deposit for, is an advance to the government for the survey of its own land. IV–431

Of township under deposit should not be allowed on the application of one settler. IV–451

Application for survey under section 2401, R. S., will not be entertained if not made in accordance with departmental regulations. XIII–455

The right to a, under the deposit system does not rest in the discretion of the Commissioner, but is a matter of right in the settlers whenever they have shown a full compliance with the law and regulations and the township is within the range of the regular progress of public surveys. VI–537

Applications for, under the deposit system, signed by all the applicants, is sufficient under the law and regulations, each settler not being required to sign a separate application. VI–537

Desert lands will not be surveyed under the deposit system without showing settlement. III–331

Railroad company can not procure, under section 2401 *et seq.* and act of March 3, 1879, as settlers. I–308

The right to make deposits not enlarged by the act of March 3, 1879. I–309

Where several, are embraced in one contract, with liability therefor payable from special deposits for the different surveys, no part of any deposit should be used in paying for a survey for which it was not intended. XIX–32

When the appropriation in the hands of the surveyor-general (California) is insufficient to complete the township surveys already contracted for, special deposits by settlers for said purpose may be authorized by the Commissioner. II–462

When the cost of survey exceeds the amount deposited an additional deposit must be made, and the township plat will not be filed until all costs are paid. III–184

The extension of a, which creates a liability in excess of the deposit made therefor, is at the risk and expense of the deputy doing the work. XIX–32

Survey—Continued.

II. Deposit System—Continued.

Authorized under the deposit system, though portions of the land are heavily timbered, if such lands are more valuable for agriculture than for the timber. X–577

Allowed to fix claimed boundaries of private grant on deposit of estimated cost. IV–430

The retracement of lines previously surveyed is not authorized under the deposit system. XIX–32

Money deposited for the cost of office work on a mineral survey and remaining unexpended may be applied on new. VIII–102

Claim for services should not be rejected where the work is performed in good faith on application sufficient under existing rulings. IV–451

A contract for the survey of "all lines necessary to complete the survey" of a township authorizes payment, at the contract rate, for the survey of the township exterior line, where the establishment of such line is necessary to the stipulated survey, though said line can not be surveyed without coincidently extending a meridian line. XIX–32

III. On Application.

Discretionary with the land department whether a survey of a specific tract will be allowed. XVI–513; XXI–454

Of a specific tract will not be ordered in the absence of notice to adverse claimants. XVI–513

Not ordered of the former bed of a meandered lake. (Overruled, 6 L. D., 639.) (See 12 L. D., 433, and 13 L. D., 588.) VI–20

May be allowed of land formerly covered by the waters of a shallow meandered lake that is subsequently drained by artificial means, and thus rendered valuable for agricultural purposes. XII–433

Of land covered by the waters of a meandered non-navigable lake where the adjacent lands have been sold by the government, not allowed, as the land covered by such lake belongs to the adjoining owners. XIII–588

Will not be authorized of land that lies between the meander and water line where the meandered tract has been sold by the government and the title thereto has passed to subsequent purchasers. XIII–64

If none of the lands contiguous to a former non-navigable meandered lake have been patented or applied for, the land previously covered by water may be surveyed. XIV–119

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Survey—Continued.

III. On Application—Continued.

The government has no jurisdiction to order, when the land lies within the meander line of a non-navigable lake and the lands adjacent thereto have been patented or applied for. XIV–274, 637

Conceding that fraud or gross mistake in the original will warrant the extension of, over a meandered tract (shallow lake) where the adjacent land has been disposed of, such action should not be taken after the lapse of time in the absence of positive proof. XV–433

A hearing may be ordered, with a view to a resurvey of the boundaries of a lake, on a showing made that the original meander line did not conform to the shore line, but fraudulently excluded from said survey a large amount of land. XX–28

Where it is apparent from the record that in the, of a township, a large body of land adjacent to a navigable lake has been omitted through the establishment of a meander line between alleged swamp and dry lands, instead of at the true shore line of the lake, a survey of the lands so omitted should be made. XXIV–68

An order may properly issue for the, of a tract of land omitted from the original survey through the erroneous meander of a slough instead of a river proper. XXIV–392

May be ordered, in the exercise of a sound discretion, of land between the meander line and shore of a shallow lake where the government owns the land adjacent if the frontage is of sufficient extent and the recession has left a space large enough to warrant the extension of the lines. XVI–256

May be ordered of land improperly excluded as the bed of a lake when in fact no such body of water existed. V–369

An application for, of a small tract of land, lying between the meander line of a lake and the water's edge, will not be granted, where the original survey has stood for a number of years, even though the meandered boundary of the lake may not exactly indicate the true water line. XVII–568

The Department should not order the, of a small body of land lying between the water's edge and the meander line of a river, where the original survey has stood for a number of years, and the rights of riparian owners have intervened. XXI–290

Marsh lands excluded from original and subsequently reclaimed are subject to, under the regulations of July 13, 1874. VI–639

The revocation of the circular of July 13, 1874, will not defeat rights acquired thereunder. VI–639

Application for, along a stream of variable course will only be granted upon the most careful inquiry. IV–50

Survey—Continued.

III. On Application—Continued.

Survey of an island will not be made where it has not the fixed and permanent characteristics which make it a solid part of the earth's surface. II–456

Of an island in a stream not navigable denied where *prima facie* the island belongs to the owner of the land on the nearest main shore and such survey would be an interference with vested rights. VI–583, 637

Of an island not allowed where the title thereto appears to be in the applicant as riparian owner. VI–637; XXVII–65

An application for, of an alleged island in a navigable stream will not be allowed, where it is apparent that the tract in question belongs to the riparian owners. XXVII–60

Of an island in a non-navigable stream will not be granted. XIII–724

An application for, of an island lying in a meandered non-navigable stream will not be allowed. XXV–413

An application for, of an island, in a meandered non-navigable river, existing at the date of the township survey but omitted therefrom, must be denied, where the right of the riparian owners to the bed of the stream is recognized by the State in which the land lies. XXV–474; XXVII–380

A hearing should be ordered on an application for, of an island in a non-navigable stream alleged to be above high-water mark, and to contain more than three legal subdivisions, and to have been in existence at the date of the adjacent surveys, for if an island of such character was omitted from the public survey through fraud or mistake an order for its survey may properly issue. XXVI–24

An island, not above high-water mark, but subject to overflow, and situated in a navigable river, is not subject to, as land belonging to the United States, for the proprietorship of the shores and beds of navigable rivers below high-water mark, within the limits of the States, belongs to them by their inherent sovereignty. XXV–510

An order for, of an island in a meandered river, within an Indian reservation, may be properly made where it appears that said island existed at the date of the survey of the riparian lands as at present, and should have been included then in the official survey. XXI–290

Of an island will be denied where it appears that said island is embraced within the limits of a former survey and that the land as thus surveyed has been disposed of. XII–304, 681

Of an island formed in a river after the survey and disposition of the adjoining shore lands can not be ordered, as the land thus formed does not belong to the United States. XIV–433

Survey—Continued.

III. On Application—Continued.

Of an island should be allowed where such island has been omitted from the survey of adjacent land and has not been disposed of by the government. XIV–115; XXVII–68

An island is properly surveyed and returned as an independent tract where the lake within which it lies is made the boundary of the sections lying on the rim of said lake. XVII–88

May be properly allowed of an island in a navigable lake, where it appears that such island was in existence at the date of the original survey, but was omitted therefrom. XVII–326

On application for, of an island in a navigable lake in the State of Wisconsin, the adjacent shore owners are not entitled to notice, as under the law of said State such owners are without interest. XVII–326

Of an island in a meandered river may be properly ordered where it appears that said island existed substantially at the date of the survey of the riparian lands as at present and should have been included then in the public surveys. XVI–496

Extension of, over an island previously omitted is a departmental determination that the land belongs to the government, and on the subsequent entry thereof the adverse rights of riparian owners must be settled in the courts. XV–89

An order for, of an island and the sale thereof as an isolated tract is a final departmental adjudication that the land is the property of the United States, and the determination of alleged adverse rights of riparian owners must thereafter be left to the courts. XVII–578

Of an island may be granted on proper application though a former one has been rejected. IX–625

Riparian rights to be regarded in the case of the survey of an island situated in a river. III–561

The Department may properly decline to entertain an application for the survey of an island, where, in the opinion of the Secretary of War, the island should be retained by the government, with a view to its future occupation for military purposes. XXIX–638

When the meander line of a survey bordering on a lake was established at a time of extreme high water, and the recession thereof shortly thereafter leaves a large body of land between said line and the permanent shore line, such reliction should be included within the public survey. VII–527

Resurvey to include omitted lands ordered. III–446

Not granted for tract not claimed or classed as public lands. I–310

Of isolated tracts formed since the original survey denied by the Department where the Commissioner recommends such action and objection is made to the application, unless the denial deprives the applicant of a right. XII–137

Survey—Continued.

III. On APPLICATION—Continued.

Order for, and public offering of land as an isolated tract preclude the allowance of a preëmption filing therefor tendered by the applicant for survey and based upon an alleged prior settlement right. XII–397; XIV–458.

Extension of, as a rule, is restricted to townships within the range and progress of settlement. XVI–528

Desert lands only surveyed in the course of public survey except under section 2401. III–325, 331

Application of the State for, with a view to future selections may be allowed though the land is not settled upon nor fit for settlement and agriculture; but care should be taken that an undue proportion of the sum set apart for surveys is not thus used to the exclusion of the survey of townships occupied by settlers. XVI–528

An application of a State for, and reservation of a township under the act of August 18, 1894, must be denied, where, prior to such application, a survey of the township has been ordered for the benefit of settlers. XXIV–122

To determine the area of an alleged agricultural tract, made fractional by adjacent mineral claims, may be allowed on the *ex parte* application of a settler. XVIII–418

Surveyor-General. See *Land Department.*

Swamp Lands.

I. GRANT.
II. SELECTION.
III. INDEMNITY.
IV. CHARACTER OF LAND.
V. ADJUSTMENT.
VI. UNSURVEYED LANDS.
VII. CALIFORNIA.
VIII. CERTIFICATION.

I. GRANT.

The act of September 28, 1850, was a present grant, vesting in the State from the day of its date the title to all the swamp and overflowed land then not sold, and requiring nothing but determination of boundaries to make it complete. I–312, 320; II–472, 645, 670; IV–415; V–517; VII–256

The act of 1849 not merged in the later act. (See 17 L. D., 440.) V–517

Swamp Lands—Continued.

I. GRANT—Continued.

The act of September 28, 1850, removed the restrictions and exceptions in the grant of, made to the State of Louisiana by the act of March 2, 1849, and vested the title in said State to all the swamp and overflowed lands which remained unsold at the passage of said act of 1850. XVII–440; XXVI–5

By the act of March 2, 1849, all the, in the State of Louisiana were granted to said State, except lands bordering on streams, rivers, and bayous, which were treated by Congress as theretofore reclaimed from their swampy character, and falling within the provisions of the act of February 20, 1811. XXIV–231

At the date of the passage of the general act of September 28, 1850, there were no lands in the State of Louisiana subject to the operation of said act, as all of the, had, prior thereto, been granted to said State by the special act of 1849. XXIV–231

The State of Louisiana is not entitled to the purchase money received by the government from the sale of lands in the Maison Rouge grant, claimed by the State to be swamp, where such lands were in a state of reservation at the date of the swamp grants to the State, although such lands may have been swamp and overflowed at the date of said grants and sold subsequently thereto. XXX–472

Swamp grant compared with the school grant and same construction where the lands are embraced within a temporary reservation. VIII–310

Whether land does or does not pass under the grant is determined by the character of the greater part of each legal subdivision at the date of the grant. II–644; IV–416; V–682; VIII–555; XIV–247, 254

The grant of, to the State of Louisiana took effect upon lands of such character within Fort Sabine military reservation, created by prior executive order, subject to the right of the United States to use the same for military purposes during pleasure; and, on the subsequent statutory abandonment of said reservation, the title and right of possession in and to said lands vested in the State by virtue of said grant. XXI–357

The White Earth Indian reservation established by the treaties of May 7, 1864, and March 19, 1867, was not made in pursuance of any law enacted prior to the act of March 12, 1860, granting, to the State of Minnesota; hence, lands of the character granted, lying within said reservation are not thereby excluded from the operation of said grant. XXVII–418

Swamp Lands—Continued.

I. GRANT—Continued.

Fee of, passed to the State (Iowa) at the date of the grant, subject to the right of Indian occupancy, and the right of possession attached to the fee when such right of occupancy was extinguished. x–285

By the grant of, the State of Wisconsin acquired the title, the naked fee, to the swamp land embraced within the Lac de Flambeau reservation, subject to the right of Indian occupancy; and, while said right exists, no action should be taken under said grant looking toward a disturbance of the Indian right. XIX–518

The fee to, in the State of Wisconsin embraced within the right of Indian occupancy provided for by the treaty of October 18, 1848, passed to the State by the subsequent swamp grant; but the right of possession under said grant remained in abeyance until such time as the Indian right of occupancy should be surrendered, or otherwise ended by the United States. XXV–17

When by the treaty of February 11, 1856, the Indians ceded to the United States certain lands embraced within their right of occupancy, such relinquishment, as to the lands covered thereby, though for the expressed purpose of locating the Stockbridge and Munsee Indians and other Indians thereon, operated to remove the only obstacle to the merger of the right of possession with the fee that passed under the swamp grant, and entitled the State to receive patents under said grant. XXV–17

Lands temporarily reserved for the benefit of the government at the date of the grant are not excepted therefrom, but pass as of the date of the grant on being relieved from the reservation (Michigan). VIII–308

A temporary reservation of lands for a special purpose does not defeat the operation of the swamp grant but suspends the execution thereof, and on the removal of such reservation the adjustment of the grant may proceed. XVII–440

The act of March 2, 1889, providing for the restoration and disposition of certain lands in Louisiana, confers a preference right upon settlers on said lands, and to that extent contemplates a diminution of the swamp grant to said State; but as the rights of the State and of the settlers are derived from the same source, priority of grant must determine the priority of right. XVII–440

By the terms of the proviso to the act of March 12, 1860, extending the provisions of the swamp-land grant to the State of Minnesota, said grant is not operative as to any lands that, prior to selection by the State, have been "reserved, sold, or disposed of" pursuant to any law enacted prior to said act. XXII–388

Swamp Lands—Continued.

I. GRANT—Continued.

If in pursuance of a treaty with the Indians prior to the act of March 12, 1860, lands occupied by them are then regarded as reserved for their benefit, and are subsequently so treated, such lands are accordingly excepted from the operation of the swamp-land grant. XXII–388

The act of January 14, 1889, did not contemplate the disposition of any of the Indian lands opened to settlement thereby except in the manner and for the purposes therein provided, and it follows that the claim of the State to any of such lands under the swamp grant is inconsistent with said act. XXII–388

The status of the Seminole Indians, as occupants of public lands in the State of Florida, is too indefinite in character to receive recognition in patents issued under the swamp grant. XXVI–117

Issuance inadvertently of patent under the grant defeats confirmation of sale as provided by act of March 2, 1855. VIII–621

The original grant of, not enlarged by the act of March 3, 1857. X–393

Excepted from the grant by reason of previous reservation to the government are not confirmed to the State by the act of March 3, 1857. X–393, 394

As the erroneous certifications based on the original surveys had been corrected on the evidence of the resurveys prior to enactment of the confirmatory act of 1857, it follows that the original selections were not confirmed by said act. VII–514

Land disposed of by the government prior to approval of State selection not granted (Oregon). I–515

Included within the alternate sections reserved to the United States from the grant to the State for railroad purposes did not pass under the subsequent swamp grant.
IV–2; X–393; XIV–229; XXVIII–239

Included within the alternate sections reserved to the United States from the grant to the State (Ohio) for canal purposes did not pass under the subsequent swamp grant, and no indemnity can be allowed therefor. X–394; XXIV–522

Grant of, not defeated by location of private claim where such action is not definite. XIV–674

Claim for, not considered where the land has been certified to the State under railroad grant. I–509

A claim of the State under the swamp grant will not be recognized where the lands embraced therein have been certified to the State under other grants, and such certification has been accepted by the State and stood unquestioned for many years.
X–165; XXVI–685; XXVIII–455

Swamp Lands—Continued.

I. GRANT—Continued.

Where lands are patented to a State for the use of a railroad company, and the patent is accepted, the State is thereafter precluded from claiming any of said lands under the swamp grant, as against a purchaser under the act of March 3, 1887, whose purchase was made in good faith while the title was in the trustee for the benefit of the vendor. XXIX–321

If a tract of land was swamp and overflowed and unfit for cultivation at the date of the swamp-land grant to a State, such grant was a disposition of the land that excepted it from the operation of a subsequent grant to a railroad, even though no selection thereof was made by the State until after the attachment of rights under the railroad grant. XXX–312

The State by securing title to lands under the wagon road grant of July 5, 1866, is estopped from subsequently claiming the same lands under the prior grant of. XXV–10

Where a State, during the pendency of its appeal from the adverse action of the local office on a swamp-land claim, selects the tracts involved in said claim under other State grants, and such selections are approved, the action of the State in making such selections must be held a waiver of its claims under the swamp grant. XXVI–94

The Department is without jurisdiction to order a hearing, on the application of a State, to determine the character of lands claimed by it under the swamp grant, where, prior to any such claim, the lands have been certified or patented to the State for the benefit of a railroad grant. XXV–417

II. SELECTION.

Selection of record withdraws the land from entry or location (Louisiana). I–513

A *prima facie* valid claim under the swamp grant reserves the land covered thereby from sale or other disposition. VIII–644; XI–157; XV–121

A selection of, protects the interest of the State under the grant. IX–360

Pending the consideration of the State's claim entries may not but filings may be made. II–641

Selected and reported as such prior to date of railroad grant are excluded therefrom whether swampy or not (Louisiana). I–509

Character of selection properly a subject of investigation. IX–364

The right to contest selection of, is recognized as an aid in determining the true character of the land. IV–497; V–31; XII–64

Selections of, should not be contested during the pendency of government proceedings. XIII–259

Swamp Lands—Continued.

II. SELECTION—Continued.

Contest against a selection of, should only be allowed on *prima facie* showing that the land is not of the character granted. XIII–259

Until the legal title passes to the State, by the issuance of patent, the authority of the land department to inquire into the validity of a claim under a swamp grant does not terminate; and in the exercise of such authority the Secretary of the Interior may properly revoke his approval of swamp-land selections. XXVIII–390

Selections previously made and reported confirmed by the act of March 3, 1857, so far as the same were vacant and unappropriated. I–508, 509; V–516; X–45, 163; XIX–223

A list of selections finally rejected prior to the act of March 3, 1857, is not confirmed by said act. VIII–387

The act of March 3, 1857, did not confirm a certified list of swamp selections based on an erroneous survey, where, prior to the passage of said act, the certification had been corrected on evidence furnished by a resurvey. XXVI–98

The act of March 3, 1857, did not confirm, to the State where the grant had been adjusted as to any particular township, or townships, and such adjustment had become final and conclusive by the acceptance, on the part of the State, of a patent for the lands covered by such adjustment. XXVI–182

A list of swamp-land selections filed by the surveyor-general if not based upon proper data may be corrected by such officer through the filing of a second list, and thereafter the first list is not a pending list of swamp-land selections upon which the confirmatory provisions of the act of March 3, 1857, will operate. XXX–271

A cash entry of land claimed under the swamp grant, made after the passage of the act of March 2, 1855, and prior to the act of March 3, 1857, should be passed to patent under the terms of said acts, as against approved, but unpatented, swamp-land selections, the State not having, within ninety days after the passage of the former act, reported any sale or disposition of said tract. XXVIII–559

The failure of the State (Iowa) to include a tract (platted as a lake) in the list of selections did not release the title, which passed to her by a grant *in præsenti*. II–546

The failure of the State (Oregon) to make its selection within the time named in the grant does not defeat its title to lands of the character contemplated by said grant. XXI–242, 279

The failure of the State to select a tract as, that is returned as agricultural, within the two years after survey, will be held sufficient to preclude the subsequent assertion of such right in the presence of an intervening adverse claim. XXIII–305

Swamp Lands—Continued.

II. SELECTION—Continued.

The right of the State (Louisiana) to swamp lands other than those heretofore selected, which are not otherwise appropriated, can not be abridged by a subsequent survey. II–654

Selections (Louisiana) made after the location of a private land claim and approved subject to all valid objections passed no title unless it should be found on final adjudication that some of them are not required to satisfy the confirmation. II–393

Certain selections (Louisiana) having been made within the claimed limits of a confirmed private grant (Houmas) since survey was extended over part of it, but before its boundaries have been determined, should, together with the survey, be canceled. II–651

Directions given that the governor of Oregon be notified of all surveys that have been or may hereafter be completed and confirmed within the Klamath Indian reservation, and that the Indian Office be notified of any selections made by the State of swamp lands within said reservation. XXX–395

III. INDEMNITY. See *Scrip*.

Indemnity for, may be adjusted upon field notes. III–572

On claim for indemnity the alleged basis may be reëxamined in the field. V–236; XIX–126

In the examination of indemnity claims the testimony of the witnesses should accompany the report of the agent, but in the absence of any regulation to such effect, the failure of the agent to send in the proofs with his report should not in itself invalidate proofs taken in his presence. XIX–581

All testimony in support of indemnity claims should be taken in the presence of the agent, who should also be present when the proof is signed and sworn to. XIX–581

Basis for indemnity must appear to be land of the character granted. V–638

The swampy character of land forming the basis of a claim for indemnity should be shown in the same way, and by evidence of the same character, as required to entitle the State to lands under its grant. XXIV–231

The State (Michigan) not entitled to indemnity for lands that do not appear from the field notes of survey to be swamp land within the true intent of the grant. VII–243

Cash indemnity may be allowed for swamp lands sold between September 28, 1850, and March 3, 1857. III–571, 583

The State (Louisiana) is entitled to indemnity for lands sold between March 2, 1849, and September 28, 1850. V–464

Swamp Lands—Continued.

III. INDEMNITY—Continued.

The State of Louisiana is entitled to the benefits of section 2482, R. S., granting indemnity for lands disposed of after the act of 1850 and prior to that of 1857. III–396

The State of Louisiana is not included within the indemnity provisions made by the act of March 2, 1855, for said provisions were specifically limited to States included in the general act. XXIV–231

The State of Louisiana is entitled to the benefit of the indemnity provisions of the acts of 1855 and 1857. XXVI–5

Indemnity locations limited to the State in which the original selections were situated. I–504; IV–2

Claim of Illinois for indemnity outside of the State is *res judicata*. I–504

The claim of the State (Illinois) for indemnity for lands located with scrip or warrants may be adjusted. X–125

The provisions in the act of April 18, 1818, making donation to the State of Illinois of 5 per cent of the net proceeds of the sale of public lands therein, is a direct appropriation for the specific purposes named in the act and can not be made the basis of a charge against the State or of a set-off against its claim to swamp-land indemnity. XXX–128

Grant of, did not take effect on lands reserved to the government in reimbursement of lands granted by previous legislation, and, as such lands were not granted, indemnity therefor must be denied. VI–348

If located by warrant or scrip, section 2482, R. S., does not provide for cash indemnity. X–446

When the State (Missouri) has completed any part of its indemnity proofs they are to be filed in the local office and duly certified and forwarded to the General Land Office. II–644

When the State files a list of indemnity selections it signifies thereby its readiness to have its claim adjusted in accordance with existing regulations, and should not thereafter be heard to allege that its claim was considered before final proof was furnished. X–121

The character of all tracts on which proof is submitted for indemnity should be determined, but separate lists should be made of tracts sold for cash and those located with land warrants or scrip. X–121

Action on an indemnity list, in which the claim as to some of the tracts is allowed, amounts to a rejection of the claim as to the remainder. XXIV–231

A claim for indemnity must be rejected where it appears that the tracts of land employed as a basis therefor are included within a prior waiver of all claims thereto executed by a duly authorized agent of the county. XXIII–184

Swamp Lands—Continued.

II. INDEMNITY—Continued.

No limitations are imposed as to the time within which the claim of a State for swamp-land indemnity may be presented, aside from those contained in the instructions of September 19, 1891, and claims pending at the date of those instructions should not be rejected on the ground that they are stale. XXX–128

V. CHARACTER OF LAND.

Determination of the Department as to the character of land conclusive. IV–549; V–33

The Secretary has the power, and it is his duty, to determine what lands were of the description granted. II–668

The claim of the State to swamp land depends upon the character of the land at the date of the grant. III–468, 476; XIV–247, 254; XXI–537; XXIV–68; XXVIII–318

The classification of land as swamp and overflowed that is not at the present time of such character requires clear and convincing proof of its swampy condition at the date of the grant. XXII–156

Proof that land is at present swamp and overflowed is not sufficient to overcome the adverse return of the surveyor-general. XIV–247

Evidence as to the character of land since the date of the swamp grant is competent as tending to show whether the land was in fact swamp and overflowed at the date of said grant. XXVI–477; XXX–128

The grant of 1850 was for "all legal subdivisions the greater part of which is wet and unfit for cultivation;" when the character of the greater part of a legal subdivision has been ascertained by duly constituted authority the character of the whole of that subdivision is ascertained. II–472, 644; VIII–555; IX–386

If there is doubt as to the character of the land, the decision must be against the grantee. V–514, 681

Grant of, includes lands so "wet" as to be rendered thereby unfit for cultivation. IX–124, 640; XIII–344

Distinguished from "lands subject to periodical overflow." V–37

A periodical overflow that subsides in time for cultivation does not render the land subject to the grant. III–521; X–321; XIX–63

Land in a valley subject to overflow annually in the spring and fall, caused by melting snow and rains, but which afterward is fit for plowing or cultivation or hay-growing, is not swamp land. II–651; X–321

Lands can not be properly classed within the swamp grant that are subject to annual overflow, but are made thereby fit for cultivation, and without which crops can only be raised by irrigation. XXI–256

Swamp Lands—Continued.

IV. CHARACTER OF LAND—Continued.

Valley land subject to such annual overflow that the native grass growing thereon can not be harvested without diverting the water therefrom is within the terms of the grant. XIII–341

A claim should be rejected where the evidence shows that the chief value of the land will be destroyed by artificial drainage and that the State does not intend to drain the land. XV–428

Lands returned as swamp and overflowed without the words "made unfit thereby for cultivation" pass under the grant where the survey is made subsequently thereto. V–514

The approved formula "swamp and overflowed lands unfit for cultivation" employed in the returns of the surveyor-general follows the words of the statute, and must be taken as sufficiently indicating the character of the land, without the additional statement that the lands were swamp and overflowed at the date of the swamp grant. XXIII–230

Under the grant of, it is the duty of the Secretary of the Interior to determine what are "swamp and overflowed lands made unfit thereby for cultivation," and therefore subject to the grant. XXVIII–390

Land at the date of the grant which was unfit for cultivation by reason of its wet or swampy condition is of the character contemplated by the grant. X–121

Land that can not be cultivated to agricultural crops falls within the terms of the grant. XII–27[illegible]

Lands occupied and cultivated by Indians can not be held as of the character contemplated by said grant. XXVI–118

Survey made in 1880, showing certain lands in California as all swamp when part had become dry since 1850, approved. I–312, 320

The grant of, included such lands as were from their wet and swampy condition not cultivable without artificial drainage. X–315

Whether lands are swamp or overflowed is a question of fact of which the field notes on the plats are not conclusive evidence. II–849

If at the date of the grant a tract was covered with water of apparent permanent character, it would not pass under the grant though by subsequent recession of the water land of swampy character came into existence. I–321

A meandered lake which was at date of the grant covered by shallow water, mainly from surface drainings, was entirely dry in 1842 and again in 1850, and was largely drained by the county in 1864, passed to the State (Iowa) by the grant. II–544

Land covered by navigable waters of the State is not. IV–416

Swamp Lands—Continued.

IV. CHARACTER OF LAND—Continued.

Land covered by an apparently permanent body of water at date of the grant is not of the character granted.
XIV–253; XVII–571; XXI–397; XXVI–605

The effect of the decision in the case of Morrow *et al. v.* State of Oregon *et al.*, 17 L. D., 571, was to cancel swamp lists 30 and 31 and to annul all claims of the State and its alleged assignees to all of the tracts therein described for the reason that said lands were, at the date of the grant, covered by an apparently permanent body of water. XXIII–178

The claim of the State for lands included within the meander line of a lake, where it appears by subsequent official survey and investigation that such line was not properly established, and in fact included lands of the character granted, should be recognized.
XXI–184

A relinquishment by the proper officers of a State, of lands included in an approved swamp-land list, on the ground that said lands are not of the character contemplated by the swamp-land grant to the State, will be accepted as sufficient authority for cancelling, upon the records of the land department, the certification to the State of the lands in question. XXX–109

Any question as to the character of lands claimed by the State under the swamp-land act of September 28, 1850, which lands are covered by patents issued prior to any claim thereto by the State, is subject to inquiry only in the courts and by judicial proceedings.
XXX–626

V. ADJUSTMENT.

Circular of December 13, 1886, with respect to entries and filings on lands claimed by the State. V–279

Rules and regulations of September 19, 1891, adopted for the presentation and adjustment of claims. XIII–301

Act of February 17, 1897, making provision for sale and entry of lands embraced in Mississippi list No. 7; circular of March 22, 1897. XXIV–267

Before final action is taken on a claim the waiver as to further claims required by the regulations of September 19, 1891, must be furnished. XIV–533

The State will be held to have waived its claim where the special agent notes the claim as abandoned in his report, and such action appears to have been in accordance with the intention of the State at the time. XVIII–273

Swamp Lands—Continued.

V. ADJUSTMENT—Continued.

The State will not be heard to say that a decision on a claim for swamp indemnity is rendered without due notice that the claim "would be adjudicated in its then condition" where said State has waived its claim to a part of the lands, and repeatedly thereafter requested final action on the remainder. XIX–126

The claim of the State, while pending on adjustment, should not be considered as "waived" in the absence of a formal waiver filed with the record. XI–228

A waiver of the State's right to submit testimony in support of its claim by one authorized to examine witnesses on behalf of the State is conclusive in such matter as against the State, and it will not be heard to say thereafter that it had no opportunity to offer such testimony. XII–276

The State is concluded from asserting a claim under selection, where it fails to protest or ask for a hearing, after due notice from a homestead claimant who submits proof establishing his allegation that the land is not of the character granted to the State. XIX–180; XXI–256

The circular of December 13, 1886, requiring the State, after due notice, to present its objections to the allowance of entries of lands theretofore selected, is not applicable to a case wherein a hearing to determine the character of the land was ordered prior to the issuance of said circular and such hearing has not been held in pursuance of said order. XXII–168

Cases should be disposed of in accordance with the general rules of practice (Oregon). IV–225

The Commissioner of the General Land Office to determine whether the evidence as to the character of the land is satisfactory, and, if not so found, may order reëxamination in the field. V–236

The Commissioner must review the proceedings in the local office, whether an appeal is taken therefrom or not. III–474, 608; IV–226; XIII–341; XXI–279

Right of the State to be heard before the Department on the final adjudication of a claim recognized, though appeal was not taken from the adverse decision of the local office. VIII–64

The failure of the State to appeal from an adverse decision of the General Land Office as to the character of a tract of land is conclusive as to the rights of the State and parties claiming thereunder who had not disclosed their interest. XVIII–555

Persons who derive title through the State have a right to be heard and make any objection to the allowance of an entry thereof that might have been made by the State had she not parted with her claim. XXII–372

Swamp Lands—Continued.

V. ADJUSTMENT—Continued.

As between a homestead claimant and a transferee of the State under the swamp grant, a decision of the local office that the land is in fact not of the character granted should not be disturbed in the absence of appeal, where prior to the acquisition of the transferee's title the selection of the State had been finally rejected. XXII–440

When proof has been submitted by the State in accordance with the regulations then in force the General Land Office should render judgment thereon if found sufficient, and, if not, direct further investigation. X–121

Where the State presents its claim upon evidence alleged by its agent to be of the best and highest character obtainable, and such evidence, on investigation, is found unreliable, the case must rest on the record as made. XIX–126

The ascertainment of the tracts granted is a question of fact to be settled by the Secretary of the Interior. VII–514

In adjudicating claims for, the State alone is recognized as the beneficiary, and not counties. X–121

The manner of collecting evidence in the adjustment of the swamp grant not material. III–440

Plan of adjustment may be varied by the Secretary of the Interior. V–31, 236, 519

The grant of, may not be enlarged by any plan of adjustment. VII–514

An agreed plan of selection of swamp lands may be modified by the State with the consent of the United States. III–334

The decision of a commission mutually agreed upon that a certain tract is swamp land will not prevent the Department from reviewing such decision or considering other evidence. VIII–555; IX–385

The decision of a commission appointed by the State and General Land Office as to the character of a tract does not preclude the Department from resorting to other evidence. X–39

Though the State elected to furnish evidence, the Department may consult its records where the evidence is conflicting. III–476

To establish the claim of the State it must show that the greater part of the subdivision claimed is of the character granted. VIII–555; IX–386

A certificate of the surveyor-general that lands within a specified list are of the character granted is *prima facie* evidence as to the character of such lands at the date of the grant (Iowa). XIII–344

Government may institute inquiry as to the character of the land claimed. IV–497

Swamp Lands—Continued.

V. ADJUSTMENT—Continued.

State may submit proof in the absence of agreement to accept the field notes as the basis of adjustment. V–515

Acceptance of the field notes as to the basis of adjustment makes them *prima facie* evidence as to character of land. IV–481

Under adjustment by field notes the character of the land must be clearly apparent. V–514, 638

The field notes of survey are presumptively correct and must be taken as true until disproved by a clear preponderance of the evidence. VII–562

In the absence of an affirmative showing that a tract of land was swamp in character at the date of the grant, the Department will not order a hearing to determine its character, where by the field notes of survey it is returned as agricultural land. XXIII–305

Where the State accepts the field notes of survey as the basis of adjustment, and from such evidence a selection is duly made, the Department will not cancel the same in the absence of convincing proof of fraud or mistake in the survey. XXI–537

The burden of proof is with the State if the returns do not *prima facie* show the swampy character of the land. VIII–555; IX–386; XIII–341; XIV–247; XIX–126; XXVI–477

Departmental approval of a survey of lands does not conclusively fix the character of the lands with regard to the swamp grant, but has the effect of *prima facie* establishing their character as returned by the survey; and in case of the selection by the State of lands not returned as swampy in character, the burden is upon the State to show that they are of the class granted. XXX–120

The field notes of a survey made prior to the swamp-land grant are of but little weight in determining the character of the land; but where the State has elected to make the selection of swamp lands by its own agents in the field, the burden is upon it to show that the lands selected are of the character contemplated by the grant, if the field notes show otherwise. XXX–128

The correctness of an official report as to what is shown by the field notes will be presumed in the absence of evidence to the contrary. IX–458

Field notes of survey not conclusive except when showing the character of each smallest legal subdivision. V–681

Election of the State of Ohio to rely on field notes of survey recognized. III–390

In adjusting the grant on field notes of survey, where the intersections of the lines of swamp lands with those of the public survey alone are given, such intersections may be connected by straight lines to determine the character of the legal subdivisions. VII–424; IX–385

Swamp Lands—Continued.

V. ADJUSTMENT—Continued.

In adjustment under field notes of survey made before the grant the State is not entitled to lands returned as swamp and overflowed without all the descriptive words of the grant or words clearly of like import. v–514; ix–458; xiii–117; xv–73

If the survey is made before the grant and the field notes do not clearly show the land to be swamp, the claim of the State thereto on the field notes will not preclude a hearing to determine the true character of the land. xvi–90

Where the field notes of survey are made after the passage of the act of 1849, and with reference thereto, they will be held to entitle the State, *prima facie*, to lands returned as swamp and overflowed without the additional words "made unfit thereby for cultivation." v–514

If the field notes of the original survey, made prior to the grant, fail to disclose the real character of the land, and a resurvey, made after said grant, and with reference thereto, shows said land to be in fact swamp, the State, relying on the government survey, is entitled to file its supplemental list, with assurance of approval. xix–223

In a case arising between a homesteader and a State claiming under the swamp grant, a hearing may be properly ordered to determine the character of the land, where the said grant is adjusted on the field notes of survey, but the survey having been made prior to the grant, furnishes no satisfactory evidence as to the actual character of the land. xxvi–99

Field notes of survey made after the grant presumed to show whether the land is subject thereto. No such presumption attends survey made before the grant (Louisiana). v–514, 638

The falsity of the field notes of survey may be shown by a party in interest without requiring him to also show that the survey was fraudulent. vii–562

That the returns do not show the land to be of the character granted is not conclusive against the State even though the field notes of survey have been adopted as the basis of adjustment. x–39

Election of the State (Louisiana) to rely on the field notes accepted as basis of adjustment. v–598

The State having elected to take, by the field notes of survey is bound by them, as is also the government (Louisiana). iv–525

To pass by field notes, the description therein must be specific and show the lands to be of the character granted. iv–524; v–514, 638

Grant of, should be adjusted on field notes of survey in General Land Office (Arkansas). iv–295

Swamp Lands—Continued.

V. ADJUSTMENT—Continued.

Until the governor is invested with authority to consent to the adjustment of the grant in accordance with principles heretofore adopted by the Department no further action can be taken on the claim of the State (Arkansas). v–636

State bound by its election to adjust the grant on the field notes unless the survey is shown to be fraudulent. iv–480

Where the field notes of the survey of a township have been made the basis of a final adjustment of the swamp grant, and the State has accepted a patent thereunder, it is estopped, while holding the lands so conveyed, from claiming additional tracts under a resurvey which also shows that a portion of the lands patented were not of the character granted. xxvi–182

Though the field notes may show the land to be of the character granted, it will not pass to the State if the falsity of the returns is shown. iv–479; v–519; viii–179

The field notes of survey are *prima facie* evidence of the character of land; but it is always competent for any adverse claimant under the public land laws to assail the correctness of the returns. xviii–323

The adoption of the field notes of survey as the basis of adjustment will not estop the government from making inquiry as to the character of a tract although it may appear from the field notes to be of the character granted (Minnesota). vii–313, 562

The election of the State to be governed by the field notes will not preclude the allowance of a hearing to determine the character of tracts claimed under the grant but not shown to be swamp by the field notes. xiii–736

The field notes of survey having been accepted by the State as the basis of the adjustment of the swamp grant, the character of land for which the State asks indemnity may be determined thereby, except where a direct issue is made, in which case an investigation may be ordered and the character of the land determined on the evidence so submitted. xxvi–5

Where the State has elected to take, under the field notes a hearing will not be ordered on the application of the State to determine the character of a tract, except on *prima facie* showing that the land is of the character granted. xiii–736

The State may show by evidence outside of the field notes that the land claimed is swamp or overflowed. xiii–117

In the adjustment of the grant on field notes of survey the report of a State locating agent can not be accepted as showing the swampy character of a tract not so shown by the field notes; nor can a certificate of the surveyor-general based on such report be considered. xvi–90

Swamp Lands—Continued.

V. ADJUSTMENT—Continued.

The adoption of the field notes of survey as the basis of adjustment did not amount to a contract with the State (Michigan and Minnesota). VII–514, 562

The "notes of surveys on file" must be interpreted as meaning the notes finally approved (Michigan). VII–514

Passed to the State as such on field notes of survey though not selected (Michigan). I–514

State to furnish evidence where the field notes are not conclusive (Michigan). IV–415

In the investigation of claims the proceedings of a special agent should be in accordance with departmental regulations. XI–222

An adverse finding and report by a special agent is not conclusive against the State in the absence of final testimony submitted by the State. X–22

Claim should not be rejected on the report of a special agent, but a further investigation may be ordered thereon. X–121; XIV–175

In adjusting the grant of, sworn testimony of competent witnesses should not be ignored on a superficial examination in the field by a special agent. IX–124, 640

Concurrent reports of the State and government agents as to the swampy character of specific tracts at the date of the grant, based upon an investigation made by said agents in 1885, will not warrant favorable action by the Department in the absence of evidence furnished by the State as to the character of each subdivision. XXII–75

Specific charge that land was fraudulently returned as, will be investigated even after certification. VI–37

For fraud shown the returns may be attacked and vacated. IV–479; V–519

In conflict with settlement claim should not be disposed of without notice to the settler. V–99

Priority of preëmption claim recognized where the land is not returned as swamp by the public survey. I–515

Entry of, by preëmption not evidence in itself of fraud. IV–549

The exception of settlement rights in the act of 1857 is not applicable to the State of Florida. VIII–65

Claim of State to certain lands held by preëmptors and homesteaders waived by act of legislature (Oregon). IV–549

Claim for lands acquired from the Mille Lac Indians by the treaty of 1864 (Minnesota) can not be adjusted until the "further legislation" required by the act of July 4, 1884, has been enacted. V–102

The Department has no jurisdiction to inquire into an allegation that a certain tract is an accretion to other land that passed under the swamp grant. VII–255

Swamp Lands—Continued.

V. ADJUSTMENT—Continued.

If patent for, has erroneously issued to individual grantees, the remedy of the State is in the courts. X–393

The Department has no authority to enter into and determine controversies arising between adverse claimants for, under the statutes of a State. XXI–242, 279

Under the grant of, the legal title passes only on delivery of the patent, and until such title passes from the government, inquiry as to all equitable rights involved in the adjustment of said grant comes within the cognizance of the land department. XXVIII–558

VI. UNSURVEYED LANDS.

Selections of unsurveyed lands by estimated areas may be patented if they can be designated by an accurate description (Florida). VIII–65

It appearing that the unsurveyed body of lands lying within the State of Florida known as the "Everglades" is, and that a survey thereof is not practicable, patent may issue to the State, upon an estimated area designated by metes and bounds, the State to furnish a meander survey. XVIII–26; XIX–251

A patent may issue to the State of Florida under the swamp-land act for the unsurveyed tract known as the "Everglades," subject to the right of the State under its grant of school lands. XXIV–147

Selections of unsurveyed lands made in accordance with existing regulations and reported prior to the act of March 3, 1857, held to be confirmed by said act. VIII–65

Selections by estimated areas of unsurveyed lands permissible, in the absence of conflict with other claims, if the entire body of land is of the character granted. VIII–369

Selections of unsurveyed, must be governed by the facts in each case. VIII–369

VII. CALIFORNIA.

The return of the surveyor-general under the first clause of section 2488 conclusive except in case of fraud or mistake. V–99

Adjudication under the fifth clause of section 2488, R. S., final as against a mere allegation that the lands were not of the character granted. V–37

Under section 2488, R. S., the return of land as swamp and overflowed is conclusive evidence as to the character of the land so returned and represented on the township plat, and this provision is not defeated by the act of June 17, 1892, granting homestead rights in the Klamath River Indian reservation. XXIV–26

Swamp Lands—Continued.

VII. CALIFORNIA—Continued.

Under the first paragraph of section 2488, R. S., the return of land as swamp and overflowed by the U. S. surveyor-general for the State of California is conclusive evidence as to the character of the land so returned and represented as such on the approved township surveys and plats; and lands thus returned must be certified to the State as inuring thereto under the swamp grant. XXIII–230

Section 2488, R. S., relates to lands in California that were swamp at the date of the granting act. I–312

Under section 2488, R. S., the surveyor-general should describe the land that is swamp and overflowed according to the best evidence he can obtain. I–324

Testimony as to the character of land submitted by the State under section 2488, R. S., must be taken before the surveyor-general. VI–684

Where the State survey is not according to the rectangular system, amendment of the plats showing State swamp segregation is disapproved. II–470

The real object of the desired amendment is to secure the designation of lot 1 as swamp land; in this case the plat must be so amended, as the greater part of the forty was returned as swamp. II–471, 645

Segregation survey of, under State act of 1863, prior to application, is invalid. IV–371

Act of July 23, 1866, section 1, has no reference to swamp claims after patent thereunder to a purchaser from the State; it may not be again claimed under the swamp grant. II–643; IV–142

Only the fourth section of the act of July 23, 1866, refers to swamp lands, and under the first clause of said section the State has no right unless the land appears upon the approved township plat as swamp. III–521

Segregation survey under third clause of section 4, act of July 23, 1866, approved by the surveyor-general, is not conclusive. III–492

The title to land sold and segregated by the State as swamp prior to the act of July 23, 1866, is confirmed in the State by the second clause of section 4 of said act if the segregation conforms to the "system of surveys" adopted by the United States. XI–37

The supervision of the Commissioner of the General Land Office in approving township plats showing segregation surveys made by the State prior to the act of 1866 is limited to determining whether said surveys conform to the "system of surveys" adopted by the United States. *Semble*, if fraud is alleged, the Commissioner may refuse his approval. XI–37

Swamp Lands—Continued.

VII. CALIFORNIA—Continued.

The approval by the surveyor-general of a segregation survey made under section 2488, R. S., is of no legal force where the lands covered thereby were not in existence at date of the grant.

XIV–253

Lands segregated by the State as swamp before the act of July 23, 1866, by surveys in conformity with the system adopted by the government were confirmed to the State by said act. VIII–78

Proof as to the character of land at date of the grant should be required before approving a contract for a segregation survey.

XIV–253

Land to which no claim has attached prior to survey, and which is represented as swamp on the approved township plat, inures to the State irrespective of the actual character of the land.

XIII–129

The act of July 23, 1866, and section 2488, R. S., changed the manner of identifying swamp lands and laid down a rule of evidence by which the character of land shown, by an approved survey made under the authority of the United States, to be swamp and overflowed is conclusively established. XXX–570

The act of July 23, 1866, and section 2488, R. S., did not overthrow or restrict the authority of the Secretary of the Interior over surveys of the public lands, and whenever fraud or error exists in connection with the execution or acceptance of a survey he may prevent the disposition of public lands thereunder and take appropriate action to secure a correct survey. XXX–570

Under the swamp-land grant of September 28, 1850, patent is necessary to pass the full legal title, and if by the act of July 23, 1866, and section 2488, R. S., certification is, as to the State, substituted for patent, until such certification the land department has jurisdiction to determine whether a tract of land is properly identified as passing under that grant. XXX–570

VIII. CERTIFICATION.

The approval and certification of a list affirmatively determines the character of the lands embraced therein. V–33, 300

Certification of, not disturbed except on showing of fraud or mistake or alleged priority of right. V–31, 300; VI–87

When the field notes of survey show that land is swamp in character, and it is listed as such by the State, and the list approved, it will require positive evidence by witnesses thoroughly cognizant of the condition of the land at or near the date of the grant to justify revocation of the approval. XXIII–148

Swamp Lands—Continued.

VIII. CERTIFICATION—Continued.

The Department retains jurisdiction over, until the issuance of patent, and may revoke the approval and certification of lists when made upon a misapprehension of the facts. XII–565

The inadvertent certification of lands excepted from the grant does not deprive the Department of jurisdiction to correct the error. XIV–229; XXVI–118

State (Oregon) to show cause why certification procured through fraud should not be set aside. V–374

Investigation as to manner of procuring certification authorized (Oregon). V–300, 374

In the adjustment of the grant the government is not bound by a certification procured through a false and fraudulent report of its agent, and the Secretary of the Interior may cancel a certification thus procured. VII–572

The Secretary of the Interior is authorized to correct a certification based upon an erroneous survey. VII–514

If it is made to appear that lands have been erroneously included in a certified swamp land list, and patent has not issued thereon, the action of a preceding Secretary of the Interior approving such list may be corrected by his successor. XXVI–117

Where swamp lands (32,102 acres) were improperly certified to the State (Minnesota) under a grant for a railroad (Lake Superior and Mississippi) and conveyed by the State to the company, upon a reconveyance to the State by the company or its successors patents may issue to the State under the swamp grant. II–642

Although the lands may have been certified (1852) to the State (Louisiana) under a survey originally erroneous (as to character), as shown by a subsequent survey (1879), the certification was equivalent to patent, and the United States has no further ownership in or control over them until set aside by due course of law. II–652

An order revoking the approval of a, list embracing the lands in a specified county is ineffective as to a tract which for the major part lies outside of said county, and was regularly selected. XXVII–494

A certified copy of the record of a swamp land indemnity certificate may be issued in lieu of the original, where satisfactory proof of the loss thereof is furnished. XIX–257

Telephone Line. See *Right of Way.*

Tenant. See *Residence; Settlement.*

Tide Lands. See *Mining Claim; Scrip; States and Territories.*

Timber and Stone Act. See *Application*, sub-title No. VIII.

I. GENERALLY.
II. CHARACTER OF LAND.
III. PUBLICATION.
IV. ADVERSE CLAIM.

I. GENERALLY.

Circular of May 21, 1887. VI–114

Circular of September 5, 1889, revoking the ninety-day requirement. IX–384

Circular of October 12, 1892, under the amendatory act of August 4, 1892, with copy of the act. XV–360

Entry under, not included in the maximum amount of land that may be acquired under the limitation imposed by the act of August 30, 1890, as construed by the act of March 3, 1891. XIX–299

An applicant for the right of timber-land purchase must show that the land applied for is free from adverse occupancy and that he has made no other application to purchase under the timber-land act. XXIV–360

Until an application is finally allowed the applicant has no right to or control over the land. IX–335

Right to receive title complete on proof and payment made in good faith. V–38

The limitation of the right to purchase to "unoffered" lands is not removed or modified by the provisions of section 1, act of March 2, 1889. XIX–381

Lands which have been offered, but withdrawn from private entry, by the act of March 2, 1889, are not subject to entry under, as amended by act of August 4, 1892. XVI–326, 335

The withdrawal of offered lands in aid of a railroad grant abrogates the original offering, and brings them within the category of unoffered lands, and hence, subject to timber-land entry if restored to the public domain. XIX–513; XXII–96; XXIII–412

The right of entry under the act of June 3, 1878, and the act of August 4, 1892, amendatory thereof, does not extend to "offered lands," though the offering was made subsequent to the passage of the original act. XXI–460

It was the intention of Congress under the provisions of the acts of June 3, 1878, and August 4, 1892, to except from purchase lands which belonged to the class of "offered" lands at the date of application to purchase the same. XX–129

A purchaser erroneously allowed to buy "offered" timber-land takes nothing thereby; and if he cuts timber from such land is liable to the United States to the same extent as though the trespass had been committed upon any other part of the public domain. XXVIII–163

Timber and Stone Act—Continued.

I. GENERALLY—Continued.

Lands that have once been offered, subsequently raised in price, and not reoffered are of the class subject to entry under said act. XV–280

Authorizing entry of lands "which have not been offered at public sale according to law" includes lands that, at the date of the passage of said act, had not been offered at public auction at the price then fixed by law. XVII–332; XIX–381

Railroad lands restored to the public domain by the forfeiture act of September, 1890, are not subject to entry under the. XV–292

The water reserve lands restored to the public domain by the act of June 20, 1890, are subject to "homestead entry only," and hence are not subject to entry under the. XXIX–153

Tender of purchase price held equivalent to payment. V–38

An entry may embrace non-contiguous tracts. II–332

A timber-land entry may not embrace non-contiguous tracts. XIX–512; XX–450

Neither a married woman nor a minor may make entry. II–332

Lands may be purchased by married woman who by laws of the State is recognized as a sole trader. VI–32; XVI–404

Does not authorize purchase by married woman except with her separate money, in which her husband has no interest. XIV–125

Married woman in the State of California is not disqualified to make entry by the fact that her husband has made an entry under the act and paid for the land with community money. XI–371

Entry may be made by a married woman acting in her own interests if she possesses the requisite qualifications of citizenship. X–47

The restrictions imposed by the circular of May 21, 1887, are intended to prevent an entry by a married woman for the benefit of her husband, but not to limit the right of entry in any State or Territory in which the act is applicable and where title would not vest in the husband by virtue of marital rights. X–47

An entry made by a married woman and held by a transferee will not be canceled for want of the affidavit required of a married woman on final proof, where her sole interest is set forth in the preliminary affidavit, and in the final proof it is alleged that the entry is made for her sole use and benefit, and where she refuses to make such affidavit except on the payment of a further sum. XX–552

Entry made by an employé in the office of the surveror-general of the district in which the land is situated is illegal. X–97; XI–96

The right of entry, being acquired, may be completed by the heirs of the entryman. V–38

Timber and Stone Act—Continued.

I. GENERALLY—Continued.

The right to take lands chiefly valuable for the timber thereon under the settlement laws is limited to claims asserted in good faith for the purpose of securing a home. XXIV–352; XXVI–151

Does not exclude land from the settlement laws if the good faith of the claimant is clearly shown.
VI–691; VII–555; VIII–641; IX–139, 573; XXIV–310

Land covered by the *bona fide* settlement claim of a preëmptor is not subject to timber-land purchase; and the applicant for the right of purchase can not take advantage of irregularities in the assertion of the preëmption claim. XXIV–376

A settlement not made in good faith, but for the purpose of securing the timber, will not defeat the subsequent application of another to purchase under said act. XVI–490

Does not authorize entry of land included within a *bona fide* preëmption claim, and the right of the preëmptor is not limited in such case to the particular subdivision on which his improvements are situated. XI–145

Provisions of, do not exclude from homestead entry lands that are subject to sale under said act. XVI–108

Recognizes the right of preëmption on lands chiefly valuable for timber. XI–7, 145

Provides only for the sale of surveyed lands; hence an entry should not be permitted for lands within a known false or fraudulent survey. IX–12

Does not take effect upon lands selected for educational purposes. VI–696

Department may, on proper grounds, cancel an entry any time prior to patent, and this authority is not abridged by the claim of a transferee. IX–573

Until patent issues the Department may cancel an entry on sufficient proof that the land is not subject to such appropriation or that the entry is in fraud of the law. XI–484

The general authority of the Commissioner to determine the validity of entries is not abridged by the provisions of this act. XIV–617

Sale after entry does not show bad faith sufficient to justify cancellation. VI–33

Entries made for the benefit of others are in evasion of the law and fraudulent. III–84

An entry secured on proof and payment made in the name of the applicant, but in fact by and for the sole benefit of another, is an evasion of the law and fraudulent. XXIX–149

The sale of a timber-land claim after the acceptance of final proof and prior to the issuance of final certificate does not in itself warrant an attack on the entry. XX–24

Timber and Stone Act—Continued.

I. GENERALLY—Continued.

An agreement, made prior to final proof, to sell land embraced in a claim defeats the right of purchase. XVII–82

Timber-land entries made for a speculative purpose, and through a collusive arrangement by which the entrymen are induced to make said entries with a view to selling the lands embraced therein to the other party to such arrangement, are in violation of the statute and must be canceled. XVII–468

Timber-land entries made for speculative purposes are fraudulent and will be canceled. XIX–258

A timber-land entry held by a transferee will not be canceled upon the uncorroborated admissions of the original entryman, made out of court, that the entry was procured at the instance and for the benefit of the transferee. XXX–64

An entry under said act not made for the "exclusive use and benefit" of the entryman, but in the interest of and for the benefit of another, is in violation of said act and must be canceled. XIV–392

A relinquishment of a claim prior to final proof confers no rights on the person obtaining and filing it. II–333

Applicant who submits proof and makes payment, but subsequently acquiesces in a ruling that holds his claim subject to that of another, and withdraws the money paid, retains no right that can be enforced as against the intervening claim of a third party. XVI–173

An applicant in good faith who is unable to procure the purchase money at the time fixed for the completion of the entry may be permitted, on new notice and in the absence of adverse claims, to complete the purchase. XII–561

The right to make entry is not affected by the fact that the applicant prior thereto applied for a different tract, and, upon proper grounds, withdrew said application. XXIX–195

An entry for timber-land under said act exhausts the right of purchase thereunder, though said entry is made for less than 160 acres. XXIX–212

There is no authority for the submission of proof, under an application to purchase, at any place except at the local office. XI–545

No rights are lost by an applicant through delay in the submission of final proof, where such delay is due to the conditions of business in the local office, and the proof is submitted at the time fixed by the register. XVIII–216

Patent should issue in the name of the heirs generally where the death of the purchaser is disclosed by the record. (See 21 L. D., 377.) XVIII–542

Timber and Stone Act—Continued.

I. GENERALLY—Continued.

An entry should not be allowed in the absence of a personal examination of the land by the purchaser; but an entry made without such examination may be referred to the board of equitable adjudication if the defect is subsequently cured by the purchaser. XXIX–653

II. CHARACTER OF LAND.

Burden of proof as to the character of the land is upon the claimant. IV–164, 238

The burden of proof rests upon a timber-land applicant to show that the land has its principal value in the timber thereon, and is, moreover, unfit for cultivatien. XIX–513

The act was intended to allow timber entry of tracts in broken, rugged, or mountainous districts, with soil unfit for ordinary agricultural purposes when cleared of timber. II–632

Where the soil is a black loam and susceptible of ordinary cultivation except in minor portions, where it is rocky or steep, it is not subject to entry. II–653

The act does not contemplate that the lands must be wholly unfit for cultivation after removal of the timber, but that they must be unfit for ordinary cultivation and valuable chiefly for timber; cases suggested. II–336

To except land from entry under said act it must appear that crops can be raised profitably thereon. VIII–159

Purchase should not be allowed unless it appears that the land would be unfit for ordinary cultivation if it was cleared of timber. VII–140

Timbered land that is fit for cultivation by ordinary agricultural process when the timber is removed is not subject to entry. XI–484

The fact that land is more valuable for its timber than for agricultural purposes, is a circumstance to be considered as bearing upon the good faith of an agricultural claimant, but does not in itself require the cancellation of his entry. XXIX–606

Applicant under, must show affirmatively that the land applied for is not excepted from the provisions of the act. XV–321

A tract of land containing patches of arable soil, which, however, aggregate a less quantity than those parts unfit for cultivation, is properly subject to entry under said act. VI–630

The timber applicant must show that the land is uninhabited, unoccupied, and unimproved by others, and that it is unfit for cultivation and chiefly valuable for timber. II–632

Timber and Stone Act—Continued.

II. CHARACTER OF LAND—Continued.

In determining the validity of a timber entry the Department must ascertain whether the tract with the timber removed is unfit for cultivation. XII–503

Is applicable to unoffered land chiefly valuable for its timber where said timber is so extensive and dense as to make the land as a whole, at the date of the sale, substantially unfit for cultivation. XV–280; XVI–404; XVIII–216; XIX–258

The condition of land at date of purchase determines whether it is subject to purchase under said act. XVI–546; XXII–647

Land that is unfit for cultivation until the trees and stone are removed therefrom is subject to entry under said act. XV–564

Best evidence as to the character of the land from those engaged in tilling the soil in the vicinity. IV–238

Mesquite not regarded as timber. VI–662

The word "timber" as used in said act refers to such trees as are valuable for commercial purposes, and does not include trees that are valuable only as cord wood. XVIII–249, 306

Entries made in good faith prior to March 21, 1894, the date of the decision, wherein it was first held that trees suitable only for fuel were not "timber," may stand, though the trees on the land so entered are useful only for firewood. XXI–67

Mineral lands excluded from sale. I–600

The non-mineral affidavit usually required of agricultural claimants should be furnished by purchasers; but where an entry has been allowed on an affidavit that is substantially the same as that prescribed by the Department, a new affidavit need not be furnished. XX–6

The requirement that a timber-land applicant shall show that the land applied for contains no mining improvements, contemplates improvements on existing mining claims. Abandoned mineral workings on land not included in any existing location or entry are no bar to a purchase under said act. XXVI–10

Land containing stone suitable for making lime may be entered as a placer or purchased under this act. XVII–82

Land more valuable for the stone found thereon than for agricultural purposes is subject to entry under said act. XVII–144

A placer location of a tract valuable for building stone precludes the sale thereof to a subsequent applicant under the act of June 3, 1878. XXVII–680

The act of March 3, 1883, making special provisions with respect to the disposition of Alabama lands returned as valuable for coal or iron, is not repealed by the act of August 4, 1892, extending the provisions of the timber and stone act to all the public land States. XIX–389

Timber and Stone Act—Continued.

II. CHARACTER OF LAND—Continued.

Lands chiefly valuable for a deposit of slate and unfit for agriculture may be entered under this act. XII–100

If the character of the land is called in question, a hearing should be ordered. VIII–412

A contest against a timber-land entry on the ground that it embraces land of known mineral character, must be determined on the conditions existing at the date of the purchase, and not on developments subsequent thereto. XXVI–9

In a contest involving the character of land where the evidence is contradictory, and the land is returned "third rate, hilly, and rolling and very densely timbered with hemlock, fir, spruce, and cedar," the field notes may be accepted as conclusive. XVIII–321

III. PUBLICATION.

Final proof and payment not to be made until after the period of publication has expired. III–85; IV–282

Publication of intention to purchase prevents the land from being properly entered by another pending consideration of the application. IX–335

The departmental regulation requiring the submission of proof within ninety days from date of published notice may be waived where pressure of business in the local office requires such action. IX–335, 384

Entry may be referred to board of equitable adjudication where proof was not made within ninety days from date of published notice, due compliance with law in other respects being shown. VII–496

Entry may be referred to the board of equitable adjudication where the proof as to the character of the land was sworn to prior to the expiration of the period of publication. VI–719

The failure of an applicant to publish the notice of his intention to purchase, as posted in the local office, leaves the land embraced in his application subject to intervening adverse claims. XVIII–449

Republication of notice of intention to submit final proof will be required, where the witnesses who testify on behalf of the purchaser are not those named in the published notice. XX–6

The substitution of unadvertised witnesses, on the submission of final proof, does not call for the rejection of said proof, where the substitution was made in accordance with existing instructions from the General Land Office. XX–102

There is no authority to allow an applicant, who has published notice of intention to purchase a tract, to republish the notice, and thereafter make proof and payment, and thus in effect secure additional time in which to pay for the land. XX–559

Timber and Stone Act—Continued.

III. PUBLICATION—Continued.

The Department will not authorize the withdrawal from disposition of land applied for under the, beyond the day fixed for proof and payment; but if the applicant is then unable to make payment for the land, he may thereafter do so, after republication, in the absence of any adverse claims. XXI–492

The application of a timber-land applicant to readvertise, he having failed to submit proof and make payment in accordance with his first advertisement, can not be allowed, where, pending action thereon, an application to purchase the land is filed by an adverse claimant. XXVI–529

Under rule 1 of the rules relating to final proofs, approved July 17, 1889, a timber-land applicant may be allowed ten days after the date named in the published notice within which to make proof and payment. XXX–13

IV. ADVERSE CLAIM.

Claims initiated subsequent to the application are subject thereto. II–333; IV–177, 238, 282; VIII–412; IX–335

The "adverse claim" or the "valid claim" in section 3 of the act is one initiated prior to the application; it must be filed during the publication. II–334; IV–282

Affidavit based upon prior claim of record is an "objection" under section 3 of the act. IV–178

Adverse claims to be settled by hearing. IV–177, 282

A party not in interest may appear at any time alleging illegality in respect of the qualifications or proceeding of the applicant, the *bona fides* of his application, or the character of the land; the only issue is the legality of the application, and the burden of proof is on the timber applicant. II–336

The proviso to section 3 of the act contemplates a protest after entry against the issue of patent founded on an alleged priority of right. II–336

Prior to the issuance of final certificate under a timber-land application the local office has full jurisdiction to order a hearing on a protest, or adverse claim, filed against such application. XXIV–88

The allegation of a person (claiming a settlement right) that the land is chiefly valuable for agriculture does not properly constitute a "contest" in which the adverse claims of the parties are to be adjudicated; it is a protest putting that one fact in issue only. II–633

Timber and Stone Act—Continued.

IV. ADVERSE CLAIM—Continued.

Protest calls in question character of land or good faith of applicant. IV–282

A protest against a timber-land entry, on the ground that the land is not subject to such appropriation for the reason that it had been previously offered at public sale, states a sufficient cause of action. XXII–345

Right of protest not confined to adverse claimant. IV–238, 282

A claim initiated subsequently to the application confers no rights and may not delay entry on the required proofs; if the United States do not pass title, the subsequent claimant has the next best right to the land. II–334

Inhabited, improved, and occupied land not subject to purchase. IV–380

The existence of a valid settlement or improvement is fatal to the claim irrespective of the question of character of the land. II–336; XXIV–144

Bona fide occupation and improvement of land bars a subsequent application under the timber and stone act. II–336; XVIII–306

Land is not excepted from purchase under said act by the improvements of one who is not asserting a claim to said land under any law authorizing the occupancy thereof. XIV–415

An adverse claim based on settlement set up to defeat purchase under said act, will be limited to the technical quarter-section on which settlement and improvements are made, in the absence of an entry at the date of the timber-land application, or actual notice of the settler's intention. XVIII–356

Improvements on a tract of land will not exclude it from entry under said act if not made and maintained under a *bona fide* occupation. XIV–160; XXII–234

The right to purchase under, is not defeated by the prior adverse settlement claim of a homesteader, if such claim is not made and maintained in good faith by the settler. XVII–496

Prior occupancy of an alien defeats the purchase of another. IV–380

Right under, not allowed to defeat or impair prior valid preëmption claim. V–366

Filing without settlement no bar to purchase. IV–70

An entry is barred by a prior homestead settlement irrespective of the character of the land. II–172

Entry not allowed if the land contains mining improvements made and maintained by another in good faith. X–271

As between a purchaser under, and a placer claimant priority in the assertion of a legal claim must determine the rights of the parties. XVII–82

Timber and Stone Act—Continued.

IV. ADVERSE CLAIM—Continued.

Alleged settlement rights on timber lands should be closely scrutinized. VI–691; VII–555; VIII–641; IX–139, 573

Applicant under, may attack subsisting preëmption claim. V–366

Conflicting preëmptor should be cited by applicant. III–435

A prior invalid claim will not defeat an application to purchase under this act. III–210

Invalid preëmption claim no bar to purchase, but the burden of proof is upon the applicant to show the invalidity of the preëmption claim. III–435

Application hereunder for land covered by a preëmption claim only raises the question of the preëmptor's good faith and compliance with the law. III–258

A *prima facie* valid preëmption filing or other claim of record bars a timber application (unaccompanied by an impeachment of it.) II–633

Right of purchase not defeated by the intervention of an adverse claim where, through error of the local office, the applicant failed to appear on the day fixed for proof and payment. X–415

On application to purchase lands covered by prior preëmption claim the burden of proof is upon the applicant to show the invalidity of said claim. VI–691

In a hearing to determine the priority of right between an applicant and an alleged prior settler the character of the land may be also placed in issue. VIII–16

In contests between prior settlers and applicants under this act the character of the land may be taken into consideration in determining the good faith of the settler. VII–555

Hearing ordered, after proof was submitted, to determine the right of an adverse claimant who alleged want of notice. IV–177

The burden of proof that rests with the applicant is not shifted to a protestant who objects to the acceptance of final proof. XV–564; XVIII–356

The burden of proof that rests upon a timber-land claimant, in case of a protest against his right of purchase, requires at his hands an affirmative showing that the land is of the character contemplated by the act, and unoccupied, uninhabited, and unimproved; but does not require of him to show that none of the neighboring settlers are making claim to the land, when their actual settlements are in other quarter sections, and no improvements have been made on the quarter section claimed by him. XX–24

Successful contest against an entry under this act entitles the contestant to a preferred right of entry. XVII–151

Timber Culture. See *Application; Contest; Entry; Final Proof.*

I. GENERALLY.
II. BREAKING.
III. PLANTING.
IV. CULTIVATION.

I. GENERALLY.

Circular of February 1, 1882, with blank forms. I–638
Circular of June 27, 1887 (approved July 12, 1887). VI–280
Circular of April 27, 1891, under the repealing act of March 3, 1891, with a copy of said act. XII–405
The act of 1878 extended rights secured under the former acts. V–234
Entryman under act of 1874 became entitled to benefits of act of 1878 (as to area to be cultivated) at date of its passage. II–280
Requirements of the law are explicit and may not be waived or modified by the General Land Office. I–120
Requirements of the law like that of the preëmption law. I–142
Entry made in arid country at the claimant's risk. I–123; XIX–493; XXII–312
That the area cultivated in trees is in excess of 10 acres is not material. IV–90
Work may be done at any time within the required period. I–137
Work may be done by entryman, his agent, or his vendor. I–137; III–502; IV–493
Work may be done by an agent, but the entryman will be responsible therefor. I–120
Non-compliance with law not excused because the default resulted from the negligence of the entryman's agent. IV–493; X–341; XI–161, 289; XII–476; XXI–191
Agent of entryman may not take advantage of his own wrongful act to contest the entry. IV–494
Good faith of claimant may be taken into consideration in determining whether there has been due compliance with law. I–142, 148; IV–494; VII–331; IX–304, 567, 646
Whilst the requirements of the law must be carried out fully, nevertheless the object of the law, "to encourage the growth of timber," should always be kept in view in determining the question of compliance with them. II–306
Must show good reason in case of failure to fully comply with the law. V–363
Substantial compliance with the law in good faith held satisfactory. IV–205
Full area must be broken and cultivated to trees prior to final proof. VII–365

Timber Culture—Continued.

I. GENERALLY—Continued.

Failure to secure the requisite growth of thrifty trees warrants cancellation if such condition is the result of negligence and bad faith in the matter of cultivation. VIII–601

Slight deficiency in acreage will not justify cancellation. VI–755; VII–365; IX–567

Entry not canceled though but eight and one-half acres were in cultivation, the good faith of the claimant being apparent. III–365

An entry should not be canceled where, through mistake, a small portion of the area in cultivation is outside of the claim. IX–304

Where the failure to secure a growth of timber results from the want of ordinary diligence the entry must be canceled. XI–183

Failure to comply with the letter of the timber-culture law may be excused, if there is a reasonable compliance with said law, and good faith is manifest. XVIII–471

Failure to secure required growth not sufficient ground in itself to warrant cancellation of entry on contest, such failure not being due to neglect of the entryman. VI–491, 773; XII–502; XIV–423; XXIII–54

Failure to secure the requisite growth of trees does not call for cancellation where such result is not due to negligence in planting and cultivation, but to the character of the season and seed that proved defective. XI–468

Entrymen not held responsible for the results of incendiarism or destruction by floods. II–307; IV–164

The loss of trees by fire does not warrant the cancellation of the entry where no ordinary precaution could have prevented such loss. VII–11

In case of an entry held by a married woman, the wife can not be regarded as responsible for the failure of her husband to assist her in conforming to the requirements of the law. XVIII–118

Absence of a "fire break" not in itself evidence of bad faith. VII–11

Failure of seeds to grow not a cause of forfeiture in the absence of bad faith. III–584; VII–333

Non-compliance with law not excused on the plea that the land is too wet for the cultivation of trees if the character of the land was known at entry and no effort was made thereafter to improve its condition. VIII–511

Plea of sickness will not excuse non-compliance with law if the claimant was in default at the time he was disabled for further compliance with law. X–352

Drought may be accepted as an excuse for non-compliance with the law. IV–346; VII–331

Timber Culture—Continued.

I. GENERALLY—Continued.

Compliance with law must be shown pending application for amendment. v–349

A timber-culture claimant, who enters a tract covered by a swamp selection, is required to comply with the law, pending the right of the State to be heard in defense of the selection. XIX–484

Entrymen should comply with the law during the pendency of contest. III–486; V–104

Compliance with law must be shown during the pendency of a contest where an entry is irregularly allowed for land thus involved. XIV–431; XVIII–504

An entryman can not be required to show compliance with the law after his entry is canceled, and while the land is covered by the intervening entry of another. XXIII–54

During suspension of township plat the entryman is excused from compliance with law in the matter of cultivation and planting. XVI–403

The heirs of a deceased entryman must show compliance with the law. V–398

No statutory authority for a requirement that the trees should attain a particular height or size to warrant the issuance of patent. VI–624; VIII–191; IX–285

Amendatory act of March 3, 1893, provides for the submission of final proof without showing the quality and character of trees then growing on the land. XVI–346

That the trees have not reached a particular height or size will not warrant cancellation if the entryman has been diligent in cultivation. VIII–535

Trees of the poplar family regarded as timber trees. III–145

As late as 1879 the cottonwood was not classed among timber trees. I–166

The osage orange regarded as a timber tree when cultivated as such within the latitude where it attains its natural growth. VI–119; IX–3; X–409

Facts in relation to the growth and size of box elder, ash, and catalpa trees. II–310

II. BREAKING.

The entryman is entitled to a full year, exclusive of the day of entry, in which to break the first five acres. II–249

At the end of second year there must be ten acres broken. IV–303

The "breaking" required the first year is sufficient if the land is thereby rendered fit for cultivation "to crop or otherwise" the second year. VI–669

Timber Culture—Continued.

II. BREAKING—Continued.

The purpose of the law is attained by a thorough overturning of the entire area, whether by plowing or otherwise (grubbing), so as to fit it for cultivation. II–264

When one enters land with knowledge of its unfitness for tree culture he will be held to a strict compliance with the requirements of law (breaking). II–265

Breaking and planting may be done in advance of the required time. I–137; IV–175, 303; XII–502

Breaking done on land by a former occupant inures to the benefit of the entryman if properly utilized. I–137; III–482; IV–175, 543; X–322; XI–43, 460; XV–9

Credit allowed for breaking done by former entryman if such work has been utilized by the claimant. III–483; IV–542; VI–829

Credit for breaking and cultivation performed by a previous occupant may be allowed where the land is left in a proper condition for the growth of trees, and the entryman in such case is not required to make use of the same until the second year of the entry. XIII–304; XVI–300

An entryman may properly claim credit for breaking during the first year of his entry, though done by an adverse claimant without the knowledge or consent of the entryman. XVII–178

Failure to break the full acreage does not call for cancellation where good faith is manifest and the default is cured when discovered. XI–189

Where through mistake but eight and three-quarters acres were broken in the first two years the entry was not canceled. I–126; III–372

The statutory requirement as to breaking can not be waived even though the land will raise crops without breaking. XII–91

Failure to break not excused by reason of drought. I–141

Breaking in Colorado possible without irrigation. I–123

Failure to break and cultivate, where caused by the wrong of contestant, excused. III–486

Failure to break the requisite five acres may be excused on due showing that it was caused by threats of personal violence. XIV–65

Failure to break the second five acres within the statutory period does not call for cancellation of the entry where said failure is solely due to the continued ill health of the claimant, and good faith is clearly manifest. XVIII–118

Timber Culture—Continued.

III. PLANTING.

Planting of first five acres must be done third year. I–135

Planting before the time fixed by the law is compliance with its requirements if the land has been properly prepared. XI–460; XIX–172

Planting should be done when the ground is in proper condition. IV–174; V–364

Planting should be done when the ground is in such condition as will, under ordinary circumstances, be favorable to the growth of trees. XII–476

The entryman is justified in adopting a method of planting found to result successfully in that vicinity. VII–468

Sowing tree seeds broadcast not in compliance with law. V–8

Sowing tree seeds broadcast with grain is not a proper "planting." VI–716

Sowing tree seeds broadcast can not be accepted as in compliance with the timber-culture law. XII–476; XIV–98

Sowing tree seeds on frozen ground partly covered with snow can not be accepted as compliance with law, especially where it appears that the work might have been done seasonably and in good order. XI–289

A slight failure in planting the requisite area may be excused where the good faith of the entryman is manifest. VII–440

Failure to properly distribute the trees not cause for cancellation. IV–162

Unfavorable weather excuses the failure of the planting where diligence in remedying it was exercised. II–314

Replanting must follow when trees are destroyed. I–128

Failure to replant two acres destroyed by fire excused, it appearing that the entryman had the trees for such replanting under cultivation. IV–163

Extreme drought furnishes a sufficient excuse for a short delay in replanting where good faith is apparent. VII–331

One who has complied with the law, submitted proof, and received final certificate is not required to replant where the trees are subsequently destroyed. XI–566

Planting of previous entryman available. IV–291, 543

Entryman may utilize trees planted and cultivated by a previous occupant whose possessory right the entryman has purchased. XVI–522; XXVIII–245

The entryman is responsible for the negligence of his agent in planting. VII–63

Timber Culture—Continued.

IV. CULTIVATION.

Cultivation is such care and attention as will best promote the healthy growth of trees. I–117, 130

Acts of cultivation should show good faith. III–398; IV–174; V–40, 331

Character of soil and season, age and kind of trees, to be considered in passing upon question of cultivation. X–10

Method of cultivation varies with the locality. V–9

No fixed rule can be laid down as to what constitutes satisfactory cultivation. X–10

Failure to secure the requisite growth of trees calls for cancellation of an entry where the absence of good faith in the matter of planting and cultivation is apparent. XXVI–690

Due compliance with the law requires the land to be properly prepared for planting, the trees to be planted when the ground is in proper condition therefor, and such cultivation and protection given the trees thereafter as will best secure their healthy growth. XVIII–317

Requirements of the law call for irrigation of the land if trees can not be grown without irrigation. VIII–511; XVI–115

Such method of cultivation should be adopted as will secure the best results. IV–162

The law does not necessarily require that the trees planted one year shall be, in all cases, cultivated the following year. IX–148

The good faith of the entryman should be taken into consideration in determining whether acts of cultivation performed prior to the statutory time fixed therefor are a substantial compliance with law. XV–591

That the land is in a weedy condition will not justify a finding of bad faith if the requisite number of trees are in a healthy growing condition. IX–567

Inattention to trees after planting evidence of bad faith. IV–174

Replowing of five acres second year treated as cultivation. I–135

Mulching may be regarded as cultivation. I–130

Hoeing around young trees and permitting a growth of grass and weeds between them, which is necessary to insure their protection in a cold climate, satisfies the law. II–305

Want of cultivation not presumed from the small number of trees growing at the end of three years. I–127

The entryman must make adequate provision for the protection of the trees planted. XIV–98

Trees should be protected from inroads of cattle and horses. X–341

Though subsequent transplanting may be required to secure the requisite growth, such fact does not warrant a finding of bad faith or improper planting X–10

Timber Culture—Continued.

IV. CULTIVATION—Continued.

Failure to cultivate may not be taken advantage of by one employed to perform such act. IV–205

One who has control of the land for purposes of cultivation will not be permitted to take advantage of his own failure to cultivate in order to defeat the rights of the entryman. XVI–365

The time occupied in the preparation of the soil and planting the trees may be computed as forming a part of the statutory period of cultivation. II–309; III–260

The eight years of cultivation must be computed from the time when the required acreage of trees, seeds, or cuttings is planted. VI–624; VIII–191; IX–86, 284

Under entries made prior to the regulations of June 27, 1887, the time occupied in the preparation of the soil and planting the trees may be computed as part of the statutory period of cultivation. IX–86, 284, 624; X–409

The instructions of July 16, 1889, with respect to the rule to be observed in computing the period of cultivation did not change decisions that had become final or authorize the General Land Office to modify said decisions. X–93

The act of March 3, 1891, does not relieve the entryman from cultivating the quantity and character of trees specified in the act of 1878, nor repeal the requirement of 675 thrifty trees to each acre at final proof. XIV–434

Timber Cutting. See *Right of Way; Timber and Stone Act; Timber Trespass.*

Instructions of June 30, 1882. I–697

Protection of timber from fire. Circular of September 19, 1882. I–696

Circular of October 12, 1882, relative to cutting mesquite. I–695

Circular of December 15, 1885, as to the protection of timber. IV–289

Circular of August 5, 1886. V–129

Regulations of May 5, 1891, with respect to timber cutting on the public domain, as modified by act of March 3, 1891, and the amendatory act of the same date. XII–456

Rules and regulations governing the use of timber on the public domain. Circular issued under the act of March 3, 1891. XIII–149

Instructions of January 13, 1892, and approved form of letter to applicants with information as to limitation of privilege. XIV–96

Circular of June 29, 1897, with respect to, for purposes of exportation. XXIV–587

Export of public timber from western Wyoming into Idaho; circular of July 23, 1898. XXVII–276

Logging regulations with respect to ceded Chippewa lands. XXVI–84; XXVII–353, 724

Timber Cutting—Continued.

Rules and regulations governing the use of timber on non-mineral public lands in certain States and Territories, under the act of March 3, 1891 (26 Stat., 1093). XXVI–399

Rules and regulations governing the use of timber on public lands in the district of Alaska, under the act of March 3, 1891 (26 Stat., 1093). XXVI–404

Rules and regulations of August 11, 1898, under the act of July 1, 1898, authorizing the sale of timber on the portion of the Colville Indian reservation, vacated by the act of July 1, 1892 (27 Stat., 62.) XXVII–366

Reports of special agents; order of December 14, 1898. XXVII–682

The regulations under the act of June 4, 1897, with respect to the sale of timber on forest reservations, do not contemplate the subsequent sale, without further notice, of any timber for which a satisfactory bid is not received within the time designated in the published notice; but the adoption of regulations permitting such a sale is competent under said act. XXIX–382

Residents of towns near a forest reserve are within the purview of the act of 1897, with respect to the free use of timber and stone found upon such reservations. XXIX–382

Regulations of January 18, 1900, with respect to the use of timber on public *mineral* lands. XXIX–571

Regulations of February 10, 1900, with respect to the use of timber on *non-mineral* public lands, and revoking former regulations. XXIX–572

Instructions of March 20, 1901, under act of March 3, 1901, relative to the use of timber on non-mineral public land in Montana and Wyoming. XXX–540

Instructions of March 22, 1901, under act of March 3, 1901, relative to use of timber on non-mineral public land in California, Oregon, and Washington. XXX–542

The owner of a mining claim in the Colville Indian Reservation has the same right to use and remove the timber upon his own claim as the owner of a mining claim elsewhere. XXX–88

In construing the provisions contained in the two acts of June 3, 1878, and the act of August 4, 1892, with respect to timber cutting, it must be held that the first of said acts of 1878 (20 Stat., 88), relates to all mineral lands of the United States, but to none of any other character, and permits the cutting of timber on such lands for building, agricultural, mining, and other domestic purposes, but not for the purpose of sale or commerce, and that the second of said acts (20 Stat., 89), as amended by the act of 1892, relates to all non-mineral lands of the United States in all public-land States and prohibits the cutting of timber on such lands, except as therein otherwise provided. XXIV–167

Timber Cutting—Continued.

The act of June 3, 1878 (20 Stat., 88), with respect to timber cutting on mineral lands, applies to the States of Colorado, Nevada, Montana, Idaho, Wyoming, North Dakota, South Dakota, and Utah, the Territories of New Mexico and Arizona, and all other mineral districts of the United States. XXIX–349

Object of the act of June 3, 1878, to enable the inhabitants of the States and Territories to appropriate timber from land not subject to the settlement laws. I–600

Is not permitted by the act of 1878 for purposes of transportation beyond the State or Territory. I–597

Mineral districts outside of the States named are within the terms of the act of 1878. I–600, 616

Authorized by act of 1878 for any use within the State (or Territory) for the comfort or convenience of its people. I–597, 602, 618

The act of 1878 permits sale of timber within the State for domestic uses. I–597

Section 4, act of June 3, 1878, accords to the agriculturist and miner permission to use timber from non-mineral land. I–600, 602, 616, 618

The act of 1878 authorizes, on mineral lands of the United States for domestic uses. I–597

The act of 1878 provides for the use of timber in mining operations. I–597, 614

Cut prior to act of June 3, 1878, and such as by said act would be lawful after said date; proceedings will not be instituted. II–823

Miners and others inhabiting mining districts may cut or employ others to cut timber from mineral lands for domestic use. II–823

Where coal suitable for fuel exists in the neighborhood, timber for fuel should not be cut by a mining company. II–827

Coal lands are not mineral lands within the meaning of the act of June 3, 1878. II–827

Departmental decision of May 25, 1882 (1 L. D., 597), relates only to public mineral lands. I–599

Allowed for government use under a contract to supply a military post. I–613

Restricted to trees not less than eight inches in diameter. I–602

Removal of timber from land covered by homestead entry or preemption filing not permitted except for purposes of improvement or other domestic use. I–596, 599, 600, 604, 606

Until homestead entry is finally perfected the land belongs to the government; the settler may use the timber on the land for fencing or other needful purposes; a prior occupant has no right to rails or to other timber cut upon it. II–815

Timber Cutting—Continued.

Where the homestead settler cut on his land and sold certain posts and railroad ties under the supposition that he had a legal right to do so, and where it appears that he has taken and is holding his claim in good faith, the infraction of the rule against such timber cutting will be overlooked. II–815

A settler on unsurveyed land intending to make it a home and to take it under the settlement laws when surveyed is justified in doing whatever clearing is necessary to put in a crop, and may cut and sell the timber to aid him in so doing, or may sell timber for the support of his family while clearing the land and putting in a crop. II–817

The action of a homesteader in cutting and selling timber growing on the land covered by his entry should not be held sufficient to justify cancellation of the entry, on the ground of fraudulent intent in making the same, if the entryman is actually residing on the land and apparently expending the proceeds of the timber in the permanent improvement of his claim. XIV–454

Hereafter (December 7, 1883) special agents will make no report of timber cutting by homesteaders or preëmptors on their claims unless they find the entry to be fradulent (cases suggested), or unless it be conclusively established that the timber was not cut for clearing the land or for other legitimate purposes. II–819

Bona fide settler may dispose of the down and fallen timber on his claim for improvements and support while perfecting title. III–63

Down timber on the public lands may not be appropriated to private use. III–124

Actual settler on unsurveyed land may use down timber in the support of his improvements. III–137

Not permitted within limits of unconfirmed private claim. I–621

Rights within an unconfirmed private claim the same as recognized in a homesteader. I–622

Locator of scrip, until title has passed, may not remove timber except for improvement. I–620

Use of waste timber accorded to entryman. I–603

Indian allottee no authority to use timber except for improvement, etc. I–608

Indians may not lawfully cut timber from selections not approved by the Department, nor from approved selections, except for the purpose of improving the land. II–821

For railroad construction. Circular of March 3, 1883. I–699

In construction of railroad, timber may be taken from any of the public lands in the vicinity. I–610

Agent of railroad company may hire men to cut ties, but may not sell to other parties. I–610

Timber Cutting—Continued.

Railroad companies to be supplied under contract. I–612

Timber may not be taken from private claim for construction purposes under act of March 3, 1875. I–622

Authorized in the construction of telegraph line by duly organized and qualified company. I–625

Rejected lumber, if from mineral land, may be sold to miners and settlers. I–612

Authorized in construction of railroad ceases on completion of the road. I–609

Timber taken under act of March 3, 1875, for purposes of construction only. VI–449

Timber taken under the act of March 3, 1875, must be used in construction of road adjacent to the lands from which the timber is taken. VI–449

Use of timber for construction purposes limited to timber taken from adjacent lands. IV–23, 65; VII–541; VIII–41

Right of railroad company to use timber in the construction of depots, etc. IV–65

Agents of railroad companies to show authority before cutting timber. IV–24

Surplus or refuse timber cut (from mineral lands of the United States by a timber agent) for railroad construction may not be exported from the State or Territory. II–811

An agent cutting timber for railroad purposes is not entitled to the surplus or refuse timber cut from public lands, mineral or otherwise, without paying stumpage value for it. II–814

Permits to cut timber within the primary limits of the Northern Pacific grant will not be issued prior to an official survey of the lands. XXV–278

Permits will not be issued under section 8, act of March 3, 1891, to cut timber from unsurveyed lands within the primary limits of the Northern Pacific grant in the absence of a showing that the land is mineral. XIV–126

Permission for, under the act of March 3, 1891, on unsurveyed lands within the indemnity limits of a railroad grant, may be given, subject to the condition that such permit shall become inoperative as to any tract that may be thereafter selected by the company. XVIII–74

The sale of timber on unreserved public lands is not authorized by the act of March 3, 1891 (26 Stat., 1093). XXIX–322

A permit to cut timber obtained without due advertisement, as required by departmental regulations, and substantially changed by erasures and interlineations after the order therefor was granted, should be revoked. XVI–363

Timber Cutting—Continued.

Permission to place portable sawmills in the vicinity of dead and down timber, cut under the provisions of the act of June 7, 1897, for the purpose of manufacturing such timber into lumber, may be granted, where the applicant enters into a contract in the form prescribed by the regulations of September 28, 1897, and submits proof as to the present impracticability of marketing the timber. XXVI–86

Applications for permission to cut timber should not embrace above one quarter section; and no applicant will be accorded a second permit unless it satisfactorily appears that a most urgent necessity exists therefor. XXIV–504

Applications for more than a second permit, by the same applicant, to cut timber from the public lands will not be considered by the Department. XXV–333

Timber Lands. See *Reservation.*

Timber Trespass. See *Right of Way; Timber Cutting.*

I. GENERALLY.
II. RAILROAD LIMITS.
III. PURCHASER.
IV. LEGAL PROCEEDINGS.
V. COMPROMISE.
VI. CONDONATION.

I. GENERALLY.

By millmen, entrymen, etc. Instructions of October 24, 1881. I–701

Measure of damages for. Circular of March 1, 1883. I–695

Circular of August 5, 1886. V–129

On the public domain. Circular of May 7, 1886. IV–521

The government may protect its property from trespass the same as a private person. IV–392

General powers of the Department, with respect to the public land extends to the protection of the timber growing thereon. V–240

Unsurveyed lands will be protected from trespass. IV–65

A homestead entry does not authorize the entryman to dispose of the timber for any purpose inconsistent with the character of the entry. V–390

Any one who unlawfully cuts timber on the public lands, hires others to do so, or in any way encourages or promotes the same is liable therefor. I–619

Committed in boxing trees for turpentine. I–607; V–389

Damages from "boxing" for turpentine to include injuries present and prospective. IV–1

Timber Trespass—Continued.

I. GENERALLY—Continued.

Committed upon public lands formed by accretion subjects the offender to liability. I–596

Will not be excused when by reasonable diligence the ownership of the land might have been learned. III–346

Neither railroad companies nor settlers may take timber from school lands. I–609

On school lands in the Territories prosecuted. IV–392

Unlawful for millmen to cut timber from public non-mineral land for exportation. I–602

Fort Cameron, Utah, is abandoned, but not yet restored to the public domain; timber cutting on such reservations is within the jurisdiction of the land department; timber cut must be released to the United States. II–822

A homesteader who, by mistake, resided and cut timber without his lines and over more land than an entry could have covered may amend his entry so as to include the land he resided on, and so as to subject the government to the least loss; neither he nor those who bought the timber from him should be prosecuted. II–808

So long as the lands are occupied in good faith under the preëmption law the duty of protecting the timber does not rest on the government; otherwise where the land has been fraudulently obtained as a preëmption or homestead. II–810

Upon land within the entry of another does not concern the government. III–421

On land covered by preëmption entry not inquired into. IV–467

It is not an act of trespass for a homesteader to remove timber from his land in the preparation of the same for cultivation, nor should his vendee be held liable on a proposition of settlement therefor. XX–238

II. RAILROAD LIMITS.

The company (Northern Pacific) may not sell the timber on land within its indemnity limits which has not been selected; a selection, to become effective on title, needs the approval of the Department. II–802, 819

It is the duty of the government to protect the timber upon all the lands within the unsurveyed granted limits of the railroad (Northern Pacific). II–828

Right of recovery as against a railroad company for timber taken from odd sections within indemnity limits not defeated by a subsequent selection of the lands. VIII–359

Railroad company not liable for, on selected lands the title to which appears to be in said company. V–511

Timber Trespass—Continued.

II. Railroad Limits—Continued.

Not permitted upon unearned odd-numbered sections within a railroad grant. IV–58

Cutting timber, for the purpose of speculation, from land within the forfeited limits of the M. H. & O. R. R. Co., and in controversy between cash purchasers and actual settlers, should not be permitted pending determination of the legal status of the land. IX–542

III. Purchaser.

The owner of stolen property may reclaim it or demand full value from the purchaser notwithstanding the fact that the purchaser had bought it in good faith and had paid full value for it. II–837

A cut the timber and converted it into lumber, which he sold to B; B sold it to C, who was ignorant of the trespass; held that B and C may be held jointly responsible for the value as lumber. II–835

Purchasers of public timber must pay its stumpage value in case of unintentional trespass, but the full value where the trespass was willful. II–839

Where certain mill companies procured ignorant and irresponsible men to do the cutting, suits should be brought against the millmen. II–840

A purchaser who induced the trespass must pay the purchase price of the logs. II–841

IV. Legal Proceedings.

Must not be instituted against alleged timber depredators unless directed by the Attorney-General or until the special timber agent has been so instructed by the land department; but in cases of emergency, where immediate action is necessary to protect the government, he may apply to the United States attorney to institute proceedings. II–841

The United States may sue for the value of timber unlawfully cut. I–607

Cut before title to the tract passed from the government is not part of the realty and does not pass with it; its value may afterwards be sued for by the government. II–776

Action for, may be maintained subsequently to the sale of the land to other parties. I–620

Action for, not advised as against a railroad company in whom title appears to vest through indemnity selection. VI–190

The United States will not prosecute for, committed on railroad lands. I–611

Suits, civil and criminal, advised for, on land withdrawn under railway grant. IV–487

Timber Trespass—Continued.

IV. LEGAL PROCEEDINGS—Continued.

Civil and criminal proceedings advised where timber was taken by a railroad company prior to application for right-of-way privileges, and not for the purposes contemplated by law. VIII-374

Where the trespass is on an additional homestead claim the settler who fully complied with the law in his original entry has exclusive right to the timber and must himself bring action in the local courts. II-510

For trespass committed during the absence of the entryman, civil and criminal proceedings recommended. III-2

A trespasser on entered land is subject to both the suit of the entryman and the government. III-142

Suit advised in case of entries made through conspiracy for the purpose of securing the timber unlawfully. IV-469

The locator of a mining claim can prosecute for, in his own right. I-615

"Boxing" pine trees for the purpose of securing turpentine is an indictable offense. V-389

Action will not lie for timber cutting on land within the forest reservations created by the acts of September 25, and October 1, 1890, where such lands are covered by final entries made prior to the withdrawal under said acts. XII-83

Persons who have filed, for lands embraced within the forest reservations created by the acts of September 25, and October 1, 1890, and are cutting timber thereon are trespassers and should be removed. XII-83

Homesteaders within the reservations created by the acts of September 25 and October 1, 1890, who have not perfected title may be restrained from unlawfully removing the timber until the validity of their entries can be determined. XII-83

Under the proviso to section 4, act of June 3, 1878, action will not lie for timber cut from unsurveyed land and used by one in the improvement of his own land, and under the act of March 3, 1891, the fact of such use may be set up in defense to any civil or criminal action. XII-240

V. COMPROMISE.

A trespass that is not willful may be settled by payment of reasonable amount. III-348

The Department is authorized to receive the amount found due on account of depredation. V-240

The Secretary of the Interior is authorized to make compromise for, but no authority to release from liability without compensation. VI-72

Timber Trespass—Continued.

V. COMPROMISE—Continued.

There is no authority in the Department to accept in settlement of a, an amount less than that found due the government. XXIII–199

Agent not authorized to settle for, or receive money in settlement. I–613, 625

Duty of special agents in determining amounts due for. V–240

The settlement of the claim against Coe and Carter did not include trespass committed by their subcontractors. VI–725

Persons settling for, should pay keeper's charges *pro rata* prior to release of the timber. III–4

Where the trespasser was misled as to the character of the land and his rights the offer of settlement may be accepted. III–133

Where land was in a mining region, though not mineral, and the timber was used in building a smelting furnace and a new town, the lumber company's offer of $1.25 per 1,000 feet of sawed lumber, its value in the tree, may be accepted. II–824

Where the timber was cut on coal lands under the mistaken belief that they were open to such cutting, a proposition to pay stumpage rate of 75 cents per thousand feet of lumber may be accepted. II–828

For timber cut by a homesteader from his claim, which he abandons as soon as the cutting is done, the purchaser may settle by paying the purchase price. III–1

Stumpage for timber cut on land within homestead entry belongs to the government. I–624

Proposition of heirs to settle for trespass committed by entryman accepted. III–349

In the settlement of an unintentional trespass, the value of the timber at the time of its taking, or if it has been converted into another form, its then value, less what the labor and expense of the trespasser have added thereto, is the proper rule of damages. XX–238

The fact that an unintentional trespasser, in order to avoid prosecution, has offered a larger sum in settlement than that required under the rule adopted by the Department, is no reason why he should be held to such proposition, where it does not appear that he was acquainted with said rule. XX–238

VI. CONDONATION.

Section 1, act of June 15, 1880, provides that persons who committed trespasses on the public lands not mineral prior to March 1, 1879, may secure themselves against criminal and civil proceedings by purchasing the lands at the government price. II–829

Timber Trespass—Continued.

VI. CONDONATION—Continued.

The parties committed the trespass in November and December, 1877, were sued civilly, and on compromise in April, 1880, the suits were withdrawn; on November 9, 1880, they applied to purchase the land; held that as they were criminally liable at date of application, which was within three years from date of the offense (section 1046, R. S., and act of April 13, 1876), they were authorized to purchase the land. II–829

The trespasses were committed from 1870 to 1878, the land being then and now unsurveyed (California); on June 4, 1883, the trespasser offered to purchase the land under the act of June 3, 1878, which in terms applies to surveyed lands; held that the facts bring the case within the remedy of the act of June 15, 1880; that the delay in purchasing caused by the want of a survey does not render the law inapplicable when a survey is made, and that he should be allowed to have a survey under the special deposit system and to pay for the land under whichever of these laws is applicable. II–831

Where one mistakenly and, as alleged, after reasonable inquiry deemed the land not public, and buying a "possessory timber claim" on it, cut timber in 1880 and 1881, he may settle by purchasing the land. II–833

Where the trespasser purchases but part of the land trespassed on he is liable for the depredations on the remainder of them; if the purchase is made by other parties, his liability still remains. II–832

The act of June 15, 1880, does not embrace within its intent cases of, without color of excuse, on lands not purchasable nor open to entry. VI–725

The entry of unoffered lands not authorized under the first section of the act of June 15, 1880. VI–725, 738

Parties seeking the benefit of the act of June 15, 1880, must affirmatively show themselves entitled thereto. VI–738

No new privilege of entry granted by section 1, act of June 15, 1880, though the effect of patent after issue is enlarged thereby. VI–725, 738

The fact of trespass does not, under the act of June 15, 1880, give the trespasser the right to purchase lands otherwise excluded from sale. VI–725, 738

Section 1 of the act of June 15, 1880, relieves (1) from criminal liability in case of subsequent entry and (2) settlers and certain others from civil liability. VI–738

Subsequent purchase from the State of the land will not excuse trespass committed thereon. III–266

Timber Trespass—Continued.

VI. CONDONATION—Continued.

Trespass not excused by subsequent entry. III–415

Homestead entry for the purpose of obtaining the timber will not constitute a defense in suit for trespass. III–542

Toll Road. See *Right of Way.*

Town Lots. See *Town Site.*

I. GENERALLY.

II. IN OKLAHOMA.

I. GENERALLY.

Claimants of, are not required to give notice of intention to make entry, by publication under act of March 3, 1879. I–501

Notice to adverse claimants may be by personal service, or through the mails. I–501

Filing not necessary to entry under section 2382, R. S. IV–337

Declaratory statements are not required to be filed within three months after settlement. I–501

The term "actual settler" in section 2382, R. S., means actual resident: when one or two lots are entered, the entryman must actually reside on one lot. II–628; IV–337

Right of purchase restricted to the lot actually settled upon and one additional on which the settler has improvements. I–502; IV–337

Additional entry under section 2382, R. S., allowed on residence shown upon another lot. IV–337; V–56

Purchase under section 2382, R. S., of town lots confined to settlers having the qualifications of a preëmptor. I–502

The actual settler upon a lot has the preferred right of purchase. V–56

Land within the incorporated limits of a town, which it is not entitled to enter by reason of its population, and which is not actually settled upon, inhabited and improved, and used for business or municipal purposes, is subject to preëmption, by virtue of section 1, act of March 3, 1877. I–497

After town lots have been appraised and offered for sale under section 2381, R. S., there remains no authority for reappraisement, or reduction of the price fixed originally. XIX–308

There is no authority for the disposition of town lots at private entry, under section 2381, R. S., until after public offering thereof. XXI–425

Lands laid off and offered at public sale in accordance with the provisions of the special act of March 2, 1833, establishing the town of St Marks, Fla., are thereby removed from the operation of the general land laws, and are subject to private sale, as provided in section 2 of said act. XXII–15

Town Lots—Continued.

I. GENERALLY—Continued.

In the interest of the government and intending purchasers a sale of, under sections 2380–2381, R. S., may properly take place at the town-site, under the personal charge of the local officers. XXIV–405

The right to a deed for a town lot, in the case of a town-site entry in Alaska, made under the act of March 3, 1891, depends upon the claim and occupancy existing at the date of the town-site entry. XXIX–357

II. IN OKLAHOMA.

Circular of July 10, 1890. XI–24

Circular of May 8, 1891, amending paragraphs 13 and 23 of the regulations issued June 18, 1890. XII–612

Instructions of March 31, 1893, to trustees of, as to the disposition of deeds for lots. XVI–341

Instructions concerning the recognition of certificates issued by town-site companies in Oklahoma. XV–270

In contest cases arising in the allotment of Oklahoma town-site lots Rule 42 is modified. Circular order of August 18, 1890. XII–186

Rules of practice modified in Oklahoma cases. Instructions of August 21, 1890. XII–187

Sale of unclaimed lots in Oklahoma; instructions of April 18, 1894. XVIII–391

Regulations as to deposits to cover costs in contests involving town lots in Oklahoma; instructions of April 16, 1894. XVIII–391

Under the rules of procedure adopted for the disposition of claims presented before town-site trustees, an appeal from the Commissioner must be filed within ten days from notice of the decision. XIII–268

Under a proper construction of the act of May 14, 1890, the Secretary of the Interior is authorized to allow appeals from the decisions of the town-site trustees to the Commissioner of the General Land Office, even though said act does not expressly provide for an appeal in such cases. XIII–9

The failure of an applicant for town lots to properly present his claim before the trustees will not preclude the amendment of his application nor the subsequent initiation of contests against adverse claimants. XIII–263

Application for town lots in proceedings before town-site trustees should set forth specifically the claim of the applicant and show *prima facie* that he is entitled to the lots in question. XIII–263

An applicant for a town lot will not be permitted to take land that has been previously surveyed and set apart by the township authorities for a public purpose. XIII–268

Town Lots—Continued.

II. In Oklahoma—Continued.

The survey of a town site and approval of the plat effectually divests all prior settlement rights asserted by lot claimants to land that may be included in streets and alleys, and no authority exists in the trustees to deed land thus dedicated to the public use. XXII–505

The approved survey of a town-site showing a reservation for the purpose of a public park, precludes the allowance of a town-lot entry of any part of the land so reserved. XX–524

May be reserved for public use as sites for public buildings where the necessity therefor is duly shown. XX–268

Land embraced within an approved location of a railroad right of way is not subject to subsequent appropriations as a. XXI–482

The trustees have no authority to make a deed to a lot before the tract has been surveyed and platted, nor are they authorized to make a deed to any portion of a street or alley, or to execute deeds to lots otherwise than as they are surveyed and platted. XX–542

The law applicable to, contemplates a survey of the land into lots and blocks before deeds may be given. XXV–313

Town-site trustees should not execute deeds for fractional parts of a, but for the protection of separate interests therein may, on joint application, deed to the several parties jointly the entire lot according to their respective holdings. XXII–102

Adverse occupants in good faith of a, at the date of a town-site entry may be treated, in cases where priority of settlement does not determine their rights, as joint applicants and receive a deed jointly, according to their respective holdings, though such occupants may have filed separate and adverse applications. XXIV–565

While it is lawful to issue a joint deed to a, for the protection of separate interests such recognition should not he accorded an adverse occupant whose possession is secured through fraud and violence. XXII–505

A lease or contract from a town-site company will not support a claim for a, where it does not appear that said company has any right to convey said lot, or actual interest therein. XX–269

Claims based upon conveyances from a homesteader, who commutes his entry for town-site purposes, terminate necessarily with the cancellation of the entry. XX–267, 269

A deed for a, can not be secured by payment of the taxes thereon. XX–269

In the matter of citizenship, as an element of qualification to own and settle upon a, in Oklahoma, any citizen of the United States is so qualified. XXI–98

Town Lots—Continued.

II. In Oklahoma—Continued.

A purchaser of a possessory interest in a, who is at such time and at the date of the town-site entry receiver of a land office, is disqualified thereby from acquiring title to said lot. XX–310

One who enters the Territory of Oklahoma prior to the time fixed therefor is thereby disqualified as a, claimant in said Territory. XX–268

One who is within the Territory at the hour of the opening thereof, and occupying at such time a tract of land, is disqualified thereby to enter said land as a, even though within said Territory by lawful authority. XX–480

The presence of an agent in the Territory at the hour of opening will not operate as a disqualification if he did not thereby acquire an advantage for his principal over other applicants. XXI–522

The right of an assignee claiming through an occupant, who has complied with the law, to receive a deed is not affected by the fact that the application of such assignee is in the interest of one who was disqualified as an original lot occupant on account of being inside the Territory at the hour of opening. XXIII–384

Persons entering the Territory of Oklahoma prior to the time fixed therefor are disqualified as applicants for; and the improvement, or occupancy of such a person, or a certificate of right issued to him, invests him with no right. XXI–84

A certificate of right issued to a claimant by the municipal authorities puts an adverse claimant on his defense as to priority of occupation, but is not conclusive. (Oklahoma.) XVIII–547

The claim of one who holds a certificate of occupancy will not be recognized where it is apparent that his occupancy is a mere pretense. XX–267

A certificate of right, issued to a claimant by the municipal authorities, is *prima facie* evidence only of the claimant's right, where there is an adverse claim at the time the case is considered by the town-site board. XIX–363; XXIV–565

A duly verified and recorded application for the registration of a claim for a, wherein occupancy and improvement are alleged, constitutes such "paper evidence" of occupancy as the statute contemplates, and may be accepted for such purpose in the absence of any adverse claim or protest. XXII–115

An "occupant" as the word is used in the act of May 14, 1890, means one who is in open, exclusive, and adverse possession, under a claim of ownership, and the possession in such case must be notorious and unequivocal. XIX–290

The occupancy of a, may be maintained through the possession and actual occupancy of a tenant. XXI–98; XXII–177

Town Lots—Continued.

II. In Oklahoma—Continued.

The claimant of a town lot is not required to maintain an actual personal residence as in case of a homestead; it is sufficient if he makes a settlement and improvements thereon, though the improvements be occupied by another as the tenant of the claimant. XV–210

Occupancy of a, as the tenant of another at the date of a town-site entry confers no right to a deed upon such occupant. XXIII–196

The possession of a, by a tenant is the possession of his lessor, and entitles the assignee of such lessor to a deed. XXII–121

The right to acquire title to a, in Oklahoma, under the act of May 14, 1890, is dependent upon occupancy, not residence, and such occupancy may be begun by an agent, and maintained thereafter through a tenant. XXI–522

The occupancy of a, by the agents of a town-site company confers no right that will defeat an adverse occupant of the remainder of said lot who is claiming the whole of it. XXIV–457

The possessory right acquired by the first occupant of a, is a proper subject of sale and transfer, and the delivery of actual possession to the purchaser before the prior occupant leaves the lot renders the date of his occupancy available to the purchaser if he continues his occupancy until the date of the town-site entry. XXII–649

The occupancy required by the act of 1890 must be in good faith, either for the purpose of residence, or for conducting some sort of legitimate business thereon. XIX–290

After occcupancy once begins, and actual possession of the lot is acquired, it must be maintained up to the date of entry by the town-site trustees. XIX–290; XX–480; XXIII–196

Actual occupancy of a, with valuable improvements thereon, at the date of the town-site entry, entitles the occupant to a deed. XX–269

May be taken either for business or residence purposes; and it is not a material fact that the claimant owns other lots and intends all of them together as a homestead, and is using the lot applied for as a garden. XX–495

The occupancy of a, as the tenant at will of another occupant does not invest such tenant with any right to a deed as against his landlord. XX–264

No right to a, can be based upon a wrongful possession, acquired in open violation of another's occupancy. XX–265; XXIV–558

One who takes possession of a, by force or fraud, or maintains occupancy as the tenant of another, is not thereby invested with a right to a deed, as against either his landlord or the rightful claimant. XX–542

Town Lots—Continued.

II. In Oklahoma—Continued.

As between two claimants for a, where one of the parties establishes and maintains his occupancy in accordance with the voluntary proposition of the other, such occupancy should be recognized as affording a proper basis of title. XX–483

As against the claim of one living in open adverse possession of a, another claimant, who has not openly asserted his claim, can not be heard to say that said adverse occupant was in fact the tenant of a third party. XXII–54

There can be no such thing as constructive occupancy of a town lot. The occupancy required is an actual bodily presence of the claimant, or some one for him, or a purpose to enjoy, united with or manifested by such visible acts, improvements, or inclosures as will give to the claimant the exclusive enjoyment of the possession thereof. XIX–363

Improvement and occupancy of a, subsequent to the date of the entry do not entitle the claimant to a deed. XX–202

The continuity of the occupancy of a town lot is not broken by absences caused by the illness of the claimant and the condition of his family. XIX–266

The right of a claimant is not defeated by his failure to maintain actual possession and occupancy, where such failure is due to threats of force and armed violence. XX–265

The right of a claimant, whose failure to maintain actual possession and occupancy is due to armed violence, will not be defeated by the intervening occupancy of an adverse claimant who acquires title with notice of the defect therein. XXII–31

Failure to improve a lot may be excused when due to the unwarranted interference of the municipal authorities of the town. XVIII–547

A claimant who vacates a lot in obedience to an award made by a citizens' committee can not be held by such action to have voluntarily abandoned his claim to said lot. XX–425

An inconspicuous stake neither on a corner nor line of a, is not such evidence of settlement and appropriation thereof as to defeat a subsequent settlement right acquired without actual notice of the prior settlement claim. XXII–505

The law does not prescribe the value of the improvements that town-lot settlers are required to make. Occupancy in good faith for purposes of residence or business is the test, and in passing upon the character and value of improvements, it is proper to consider both the financial and physical ability of the claimant. XX–252

A portable business stand established in the street in front of a, is not settlement upon, or occupancy of said lot. XXI–84

Town Lots—Continued.

II. In Oklahoma—Continued.

The possession and occupancy of the back part of a, entitles the occupant to a deed for the whole lot, in the absence of any qualified prior occupant of said lot. XXI–84

The occupancy and improvement of a, does not give the occupant an interest therein that can be reached by attachment. XX–264

A deed to a town lot issued by a town-site board in obedience to a judicial order terminates departmental jurisdiction in the matter, and the case, therefore, being finally disposed of, the money deposited by the successful party should be returned. XVIII–602

The Department has no interest in determining how cost levied in judicial proceedings, instituted to secure title to a town lot, shall be paid. XVIII–602

The board, in contest proceedings, may properly require from claimants a deposit to cover the cost and expenses of such proceedings. XX–202

An applicant for a deed to a, in Oklahoma is not entitled to receive credit for an unreturned deposit, due such applicant and made to defray the costs of a contest, as against the assessment levied on said lot by the town-site trustees. XXVI–637

The municipality may become a party to a contest between applicants for a, with a view to the assertion of its own rights under section 4, act of May 14, 1890. XXIII–196

Township Plat. See *Filing*, sub-title No. I; *Final Proof*, sub-title No. XIV; *Survey.*

Town Site. See *Final Proof; Mining Claim; Patent; Town Lots.*

I. Generally.

II. Oklahoma.

I. Generally.

Circular of July 9, 1886 (approved November 5, 1886), as to manner of acquiring title to. V–265

Entries in Alaska, section 24, regulations of June 3, 1891, amended. XXII–119

Entry in Alaska; regulations of June 3, 1891, with respect to appeal from trustee, amended. XXV–323

Paragraph 24, regulations of June 3, 1891, as to entries in Alaska, amended. XXVII–560

Declaratory statement not required except to save the rights of the town in the event of a public sale. I–503

Laws only refer to location of towns on public land. I–498; IV–586

Claims for, are in the nature of preëmptions. III–71; IV–54

Town Site—Continued.

I. GENERALLY—Continued.

Actual settlement for, is notice to preëmption and homestead settlers. III–30

Lands selected for, are not subject to agricultural entry. XIII–143, 399, 404, 562

Land included within the corporate limits of a town is not subject to preëmption though in fact not platted nor occupied for purposes of trade and business. XV–124

The right of, acting under territorial legislation, to include certain lands within corporate limits for municipal purposes, can not be recognized, if such lands were in fact at such time not subject to such appropriation. XXV–249

The inclusion of a part of an Indian reservation, established by treaty, within the corporate limits of a city, under authority of a territorial statute, is beyond the legislative power of the Territory and without effect. XXVIII–151

Lands within an abandoned military reservation opened to disposal under the act of August 23, 1894, are subject to entry under the provisions of section 2387, R. S., the lands when so entered to be paid for at the appraised value. XXIX–501

Land embraced within a claimed, not subject to settlement even though not actually occupied for the purposes of a. XV–324

Claim of, set up to defeat a homestead will not be recognized where the land was not occupied for town-site purposes at date of the homestead entry. XX–367

The extension of the corporate limits of a town to include land that can not be taken as a, and is not occupied for purposes of trade and business or laid out in streets and blocks, does not operate to segregate the land from the public domain. XVI–127, 397

The incorporation of a town with limits in excess of 2,560 acres will not bar preëmption entry within said limits on land not actually settled upon and used for business and municipal purposes. I–497; III–77

Settlement for, must rest on the principles applicable to other claims so begun. III–431

Informal settlement subsequently abandoned does not reserve land from homestead entry. III–282; V–180

Abandoned, may be taken up by the town-site settlers under the homestead law. XXI–104

Location of, under State laws, on land temporarily appropriated is a bar to subsequent homestead entry. V–475

Occupation of land within an Indian reservation for town-site purposes confers no right. III–356

Town Site—Continued.

I. GENERALLY—Continued.

Land reserved from preëmption settlement is equally reserved from town-site settlement. III–360

Selection of lands for, must be with authority. III–432

Plat filed by railroad company on land withdrawn under its grant will not strengthen the claim of settlers under the public land laws. IV–584

As between a town-site claimant and a preëmptor, their rights begin with their initiatory acts. III–358

Land settled upon and occupied as, should be entered for such purpose to protect the interests of those concerned. XIII–665

That the survey of a claimed town site embraces a certain area and a portion thereof is occupied by town-site settlers does not entitle them to enter the lands within said boundaries irrespective of the statutory limitation as to acreage. XIII–327

The extension of a town-site survey over a school section prior to the filing of the plat of public survey confers no rights upon the town-site claimants if said section is not settled upon by said claimants prior to the official survey. XIII–327

The right of a town to make entry with respect to acreage must be computed upon the basis of the number of occupants of the public lands. I–500

An entry cannot be allowed if the proof offered fails to show that the land is occupied for the purposes of trade and business or settled upon and occupied as a town-site. XXVI–214

In all cases, either of application to make original or additional entry, where the inhabitants of the land are less than 100 in number, it is a matter of executive discretion whether such entry will be allowed. XXVI–323

No specific number of inhabitants requisite to the right of entry. X–208; XV–209

The law does not prescribe the number of acres that may be taken for a town of less than one hundred inhabitants, but in the exercise of executive discretion the limit is fixed at the legal subdivisions actually occupied. VI–675

An application to make entry under section 2389, R. S., will not be allowed, where the number of *bona fide* occupants is not given, and it is not manifest that the occupants in fact desire in good faith to make such entry, and also where the application covers land apparently mineral in character and in close proximity to another town. XXIV–258

Four non-residents can not select and reserve an entire section. III–356

Town Site—Continued.

I. GENERALLY—Continued.

When the site for which application was made by the county judge was subsequently included within another county and the entry made by the judge of the latter county, it was allowed to stand on the agreement of the parties. III–13

In proceedings to secure, section 2387, R. S., confers authority upon judge of the county court or "corporate authorities." I–503

A probate judge in the Territory of Utah is the judge of a county court, and as such is the proper officer to perfect an entry for an unincorporated town in said Territory. XV–205

Entry of, by an incorporated town must be made by the corporate authorities of, duly authorized to take such action, and the official character and authority of the officer making such entry must be duly shown. XIII–4

In the absence of incorporation the selection must be made by actual town-site settlers to exclude preëmption and homestead settlement. III–358, 433

Private cash entry of offered land not within corporate limits may be made for town site without reference to the statutory limitation with respect to population. III–30

Claim concluded by homesteader's final proof after due notice. IV–586

The cancellation of homestead entries on offered land leaves it withdrawn from private entry and subject to disposal for town site as unoffered land. III–30

Land entered under section 2387 must be paid for as though purchased by a preëmptor. IV–54

A city founded and incorporated on private land is not entitled to make an additional entry under the act of March 3, 1877. XXI–71

Additional entry can not be allowed to a town that holds under its former entry more land than its present population would entitle it to enter. VII–143

Additional entry can not be allowed for non-contiguous tract. XVI–127

The right to make an additional entry only exists where the applicant has, prior thereto, made a town-site entry of public land, and is limited then to land contiguous to that embraced within the original entry. XXIV–526

The right to make an additional entry of lands that "may be occupied for town-site purposes" can not be exercised upon lands reserved or granted for school purposes. XIII–327

Actual occupancy of land for town-site purposes is a prerequisite to the right to make an additional town-site entry. XXVI–323

Town Site—Continued.

I. GENERALLY—Continued.

The exclusion of a portion of the land embraced within the boundaries of a town site on the adjustment thereof to the public survey confers no right to an additional entry if vested rights are not disturbed by said adjustment. XIII–327

The irregular allowance of a town-site entry prior to the submission of the final proof therefor does not make the entry for that reason void, but voidable only, and the defect being subsequently cured the entry must bear the date of the original action. XXII–165

An entry may be allowed to embrace non-contiguous tracts where the original application was for contiguous lands, and the subsequent non-contiguity is caused by the exclusion of mineral lands covered by said application. XXI–478

Proof required in entry of, and how made. I–503

If land is mineral, it is subject to location only under the mining law, without reference to its relative value for town-site purposes; this ruling was changed by circular September 22, 1882. II–717, 718

Procedure when the land applied for is alleged to be mineral regulated by the instructions of September 23, 1880, and October 31, 1881. I–504

Conflict with mining claim as to priority of occupation and use of the surface will be left with jury of neighborhood. IV–212

On mineral land subject to the rights of claimants therefor.

I–556; IV–212

Patent for, that covers land known to be mineral in character, will not pass the right thereto. IV–556; V–131; XXIX–89

Under a patent for, in which no portion of the surface ground is excepted from the land described therein, the departmental jurisdiction over said land terminates even though said instrument declares that no title to any mining claim shall be acquired thereby and it subsequently appears that it includes a lode claim known to exist at the date of the town-site entry. XII–686

Patent issued for a, that includes a known lode claim, based on a record location made prior to the town-site entry, should be vacated by judicial proceedings so far as in conflict with said claim. XII–686

Hearing may be ordered with a view to judicial proceedings where it is properly shown that a patent for, covers land that was known to be valuable for mineral prior to the entry and patent.

XII–513, 662

Patent issued for, that includes a known mining claim conveys no title to said claim; but such patent while outstanding removes the land and the title thereto from the jurisdiction of the Department and precludes the issuance of a patent for said claim.

XII–686

Town Site—Continued.

I. GENERALLY—Continued.

Though a patent for, conveys no title to a known lode or mining claim, it can only be invalidated by judicial proceedings, and with a view to such action a hearing may be ordered on due showing of such lode claim within a patented town site. XIII–369

Patent for, can not be attacked on the ground that it embraces land "known to be valuable for mineral," if such land was not covered under existing law by a valid mining claim or possession at the date of the town-site entry, or then known to be valuable for the mineral contained therein. XVIII–259

As between parties claiming lands under the town-site and mining laws, respectively, the phrases "lands known to be valuable for minerals," or "for mineral deposits," and "known mines," or "land containing known mines," are equivalent in meaning, and no title to such lands will pass under a town-site entry if they are known to be of that character when the entry is made. XXIX–426

The issuance of patent for land known at the date of the town-site entry to contain a valuable lode claim, does not pass title to such claim, but leaves it in the United States, subject to the jurisdiction of the land department. XXV–518; XXVI–144

Section 16, act of March 3, 1891, is not retrospective in its operation. XII–513, 662, 686

Entry made on mineral lands under the provisions of section 16, act of March 3, 1891, should not be allowed to include lands theretofore patented under the mining law. XXIX–21

A patent issued for a, under the provisions of section 16, act of March 3, 1891, will not disturb or impair rights under any valid mining claim or possession existing at the time of the town-site entry, or deprive the Department of jurisdiction to subsequently issue patent for any such mining claim or possession on due showing of compliance with the mining law. XXIX–21

Patent for, must issue subject to right of way easements. XXI–351

The right accorded by section 22, act of March 3, 1891, to enter as a, the tract specified therein is limited to a single entry. XIV–628

II. OKLAHOMA.

Entries in Oklahoma restricted by statute. Circular of April 1, 1889 VIII–336

Circular of July 10, 1890. XI–24

Circular of July 18, 1890. XI–68

Section 4 of the instructions of July 18, 1890, modified. XIII–700

Regulations of November 30, 1894, provided by the Secretary of the Interior for the guidance of trustees in the execution of their trust. XIX–334

Town Site—Continued.

II. OKLAHOMA—Continued.

Regulations of November 30, 1894, with respect to the commutation of homestead entries for town-site purposes, under section 22, act of May 2, 1890. XIX–348

Compensation of trustees; see circular of October 7, 1895. XXI–288

The act of March 2, 1889, with respect to entries under sections 2387 and 2388 does not extend to a corporation seeking to locate and enter prospective town sites. VIII–425

Circular with respect to entries in the Territory of Oklahoma. X–604, 666

The effect of the act of July 7, 1898, abolishing town-site boards in Oklahoma, is to render operative within said Territory, and the Cherokee Outlet therein, the provisions of section 2387, R. S., permitting the corporate authorities of a town, or the judge of the county court, to enter land for town-site purposes. XXIX–528

Under the act of May 14, 1890, the Secretary may allow appeals from the decisions of the town-site trustees. XIII–9

In the disposition of claims arising before the board of trustees an appeal from the Commissioner must be filed within ten days from notice of the decision. XIII–268

The action of trustees may be reviewed by the Commissioner of the General Land Office under the rules governing contests before the local land offices. XXV–313

The Attorney-General will be requested to direct the proper district attorney to appear on behalf of the trustees where judicial proceedings are instituted to control their action in the disposition of title. XIV–295

A board of trustees should not be discharged from any portion of the trust imposed upon it, until the whole purpose of the trust is accomplished, or until such time as it may be relieved entirely from its duties. XXIV–582

The transfer of a case from one board to another during the trial will not affect final action where all the evidence is before the latter at the time of its decision. XXIII–578

Money derived from the assessment of lots, and left in the hands of the trustees on the completion of their trust, should be returned in just proportion to the persons from whom it was collected. XXI–52

In the disposition of, under the act of May 14, 1890, an additional assessment, for the legitimate purposes of the act, is authorized where such action operates uniformly upon all lots alike; but there is no authority for such an assessment where the burden falls upon the unclaimed lots alone. XXIV–366

Town Site—Continued.

II. OKLAHOMA—Continued.

The authority of a town-site board to levy assessments is limited to matters necessarily attendant upon the execution of the trust growing out of the allowance of the entry, and does not extend to expenses incurred by the town-site applicants prior thereto in securing the right of entry as against adverse claimants. XXVII–614

The act of May 14, 1890, empowers trustees in Oklahoma to approve surveys of, made prior thereto; and the limitation as to the acreage that may be included in a public park, under section 22, act of May 2, 1890, is not applicable to a survey so adopted. XXV–313

A survey of a, made by the provisional authorities of a municipality, becomes operative from and after its execution and approval by said authorities, when subsequently adopted by the town-site trustees after entry. XXV–313

The survey of a, duly approved and filed in the office of the board of trustees, will not be modified in an *ex parte* proceeding. XVIII–154

Entry by trustees is made for the benefit of occupants the same as though made under section 2389, R. S. XV–270

The issuance of patent to trustees is not a disposition of the government title, but a conveyance thereof in trust, to be held under the direction of the Secretary of the Interior. XIV–295; XXII–367

Entries within the lands open to settlement on April 22, 1889, must be made through a board of trustees. Section 17, act of March 3, 1891, does not change nor repeal the acts of May 2 and May 14, 1890, in this respect. XVI–74

Probate judges are not invested with power to make entries within the Cherokee Outlet. The provisions of the act of May 14, 1890, made applicable to said lands by the joint resolution of September 1, 1893, require the disposition of such entries through the means of town-site boards. XVIII–122; XXIV–580

Entry can not be allowed where it is apparent that the application is in the interest of a fraudulent speculation. XII–653

On the application of trustees to make entry a charge of abandonment, as against the town-site settlers, may be properly entertained, and notice to said trustees of the hearing ordered thereon is notice to lot claimants. XXIV–468

Entry in Oklahoma can not be allowed in the interest of those who entered said Territory in violation of law. XII–654

The law does not prescribe the number of acres that may be taken as the site of a town containing less than one hundred inhabitants. In such cases the extent of the acreage is a matter of executive discretion, and is restricted to the land actually occupied for town purposes by legal subdivisions. XVIII–223

Town Site—Continued.

II. OKLAHOMA—Continued.

Under the act of May 14, 1890, one hundred people, or more, may select 320 acres for a, although they may not, at the date of the act or selection, use each smallest legal subdivision for municipal purposes. XIII–690

That some of the settlers violated the terms of the statute and the President's proclamation in entering upon the land does not prevent the remainder from perfecting an entry under the act of May 14, 1890. XIII–404

An application to enter 320 acres in Oklahoma under the act of 1889 is not limited by the acreage actually occupied. The same rule as to occupancy is applicable to entries under the act of May 14, 1890. XIII–404

An entry under the act of May 14, 1890, is for the use and benefit of the occupants of the land at the date of the entry; and priority of possession or occupancy can only be material in case of conflicting claims of occupancy existing at such time. XXIX–175

Land set apart for court-house purposes and included in a tract patented to town-site trustees under the act of May 14, 1890, may be conveyed by the Secretary of the Interior to the person or persons having official charge of such matters on behalf of the county. XVII–335

The Secretary of the Interior is without authority to grant permission to the citizens of Alva, Okla., to erect a post-office building on lands set apart for a "court-house site" in pursuance of the President's proclamation. XXIX–335

Town-site settlers may properly set apart a portion of the land covered by their entry for burial purposes. XVIII–223

The reservation of land for park purposes is made obligatory upon town-site trustees, and the occupancy of land by town-site settlers prior to the passage of said act, confers no right upon said occupants as against the reservation thereof under a survey and entry made after the passage of said act. XXII–190

The amount of land reserved by a town-site settlement may be properly limited to the legal subdivision on which actual settlement is made where the town-site claim is for the purpose of securing an entry of lands additional to a prior town-site settlement. XXIII–74

The provisions of section 22, act of May 2, 1890, contemplate the issuance of patents for reservations within town-sites directly to the municipalities, after their organization as such, and not to the town-site trustees. XXII–367

Town Site—Continued.

II. OKLAHOMA—Continued.

A town-site patent issued to the board of trustees is not a final disposition of the government title, and if such a patent erroneously embraces lands reserved for municipal uses it may be recalled for correction. XXII–367

Land can not be taken for, that is reserved for school purposes. XIII–640

Entry in Oklahoma under section 37, act of March 3, 1891, should not be allowed in the absence of due showing that a majority of the lot occupants or owners desire such action. XVI–82

Entry under section 37, act of March 3, 1891, allowed without any showing as to the desire of the lot owners and occupants for such action, may stand where it appears that said owners and occupants approve the action taken. XVI–82

A protest against the location of a, on the ground that action was taken on erroneous information, will not warrant favorable consideration by the Department, where said town-site is designated in the proclamation of the President, and a town-site settlement has been made in accordance therewith. XIX–331

The personal qualifications as an entryman of one who makes an entry under the act of 1891 can not be considered, as he acts only as the agent of the parties entitled to perfect their claims to lots. XVI–82

In making an entry under section 37, act of 1891, the fact that some of the lot claimants entered the Territory prior to the time fixed therefor should not be considered, but left for subsequent action on the adjustment of individual claims. XVI–82

In commutation of Oklahoma homestead for a, the purchaser must pay for the land embraced in the streets and alleys. XXI–426

Applicant for the right of, under section 22, act of May 2, 1890, must give notice and submit evidence as to his qualifications to perfect title under the homestead law before the plat is approved. XIII–700

Plat of, submitted under the second proviso to section 22, act of May 2, 1890, should show accurately the exterior boundaries, width of streets, and measurement and location of parks and reservations. XIV–505

In the survey of a town-site under section 22, act of May 2, 1890, reservations for public purposes are limited to twenty acres in the aggregate. XIX–43

In case of addition to, under section 22, act of May 2, 1890, the streets should conform to those already established and the surveyor's certificate show such fact. XIV–505

Town Site—Continued.

II. OKLAHOMA—Continued.

The party filing plat and application is the proper party to receive notice of action thereon. XIV–628

The right to the purchase money paid on the commutation of a homestead entry for town-site purposes can only be recognized on behalf of an independent municipal organization. XXV–556

Evidence of organization to be furnished by a municipality that applies for the purchase price of a, under section 22, act of May 2, 1890 (Oklahoma). XV–335

The proof of organization required of a municipality that applies for the proceeds of a cash entry under section 22, act of May 2, 1890, may be accepted as satisfactory where it shows the organization of the village to which the money is payable, and the consolidation of said village with another municipality, although the previous organization of the latter is not shown. XVIII–474

The proceeds of a purchase of land for town-site purposes under section 22, act of May 2, 1890, will not be paid to the alleged municipal authorities of a town in the absence of satisfactory proof of the legal incorporation thereof. XIX–40

Section 22, act of May 2, 1890, contemplates the payment to the town, for school purposes, only such sums as may be paid in commutation of homestead entries for town-site purposes on the purchase of the land at the rate of ten dollars per acre. XX–507

The jurisdiction of the Secretary of the Interior over money derived from the sale of land for town-site purposes, under section 22, act of May 2, 1890, terminates when the money is paid to the authorities of the town. XXI–133

Where an application is made under section 22, act of May 2, 1890, on behalf of an incorporated town for the money paid on a commuted town-site entry, the evidence of the incorporation of the town and its municipal organization, may be accepted, if the fact of incorporation is shown by a certified copy of the order made by the county board of commissioners, and it appears that the officers elected did effect an organization, though certain directory provisions in the statute, under which the town was incorporated, were not complied with in the manner prescribed. XXVIII–469

The act of May 11, 1896, provides an exclusive mode for the disposition of public reservations within vacated town-sites and additions thereto, where "patents for the public reservations in such vacated town-site, or additions thereto, have not been issued:" First, a preferred right of purchase is accorded the original entryman; second, if such right is not exercised the land then becomes subject to disposition under the laws regulating the disposal of isolated tracts. XXX–352

Tram Road. See *Right of Way.*

Transferee. See *Alienation; Final Proof; Practice*, sub-title No. IX.

Trespass. See *Public Land; Settlement; Timber Trespass.*

Umatilla Lands. See *Indian Lands.*

University Lands. See *States and Territories.*

Wagon Road Grant. See *Railroad Lands*, sub-title No. I.

Of July 5, 1866, one of quantity, to be selected within certain limits, and without selection no right attaches to any specific tract.
V–650; X–456; XII–331; XIII–51, 61; XX–259

Under the wagon-road grant of July 5, 1866, it is the duty of the Secretary of the Interior to see that the selections made in satisfaction of the grant are confined to lands described in the granting act, but as between different sections, equally subject to selection under said grant, and the order of withdrawal, the Secretary cannot say which shall be taken. XXVI–356

Does not attach to any specific tract by definite location or construction of the road. X–456; XII–331

Within the prescribed limits on each side of the road, as constructed under the grant of July 5, 1866, the company has the right of selection from any of the designated sections, save such as had been reserved to the United States before the passage of the granting act; and such right of selection is not terminated by the subsequent inclusion of said lands within the limits of a forest reservation established by executive order. XXIX–344

In a grant of quantity within boundaries determined by the construction of the road (Willamette Valley and Cascade Mountain Wagon Road) rights do not attach without selection. V–650

Definite location and construction of road does not effect a withdrawal of the land under a grant of quantity or cause it to attach to any specific tract without selection. V–650; X–456

While no rights are acquired as against the government by settlement on land withdrawn in aid of a congressional grant, and entries of lands so reserved should not be allowed, yet, under the withdrawal for the benefit of the Willamette Valley grant, wherein no rights to specific tracts are acquired prior to selection, and entries or filings have been allowed, based on settlement prior to selection, in violation of said withdrawal, the Department may, in the exercise of its supervisory authority, require the selection of other tracts, if it appears that the grant can be fully satisfied from the remaining lands; and to this end entries or filings of such character may be suspended to await the adjustment of the grant. XXII–654

Wagon Road Grant—Continued.

An executive order of withdrawal made in aid of a congressional grant, where there is no statutory prohibition against such action, rests upon the general authority of the Department, and no rights, either legal or equitable, can be acquired by settlement or entry in violation of such order. XXVI–356

The departmental order, given in the case of Peter Clemons against the Willamette Valley company, directing the cancellation of all entries allowed after withdrawal, modified. XXII–654

Executive withdrawal in aid of, does not take effect on land covered by valid settlement claim. X–456; XIX–490

Mere occupation or use of a body of unsurveyed public land of indefinite area, without intent to acquire title to the particular portion thereof in controversy, is not such an appropriation of that portion as to except it, or the subdivision of which it is a part, from the operation of a. XXIV–202

A mere allegation of settlement, as set forth in a preëmption declaratory statement filed after an order of withdrawal, is not sufficient to establish the fact of settlement so as to except the land covered thereby from the operation of the withdrawal. XVIII–491

Lands embraced within the terms of the grant, and covered by the right of Indian occupancy at the date thereof, are not excepted, but pass thereunder subject to such right; and the certification of such lands after the extinguishment of the Indian right of occupancy, is duly authorized. XVIII–60

Lands found within the limits of a technical Indian reservation, at the date when the grant becomes operative, are excepted from said grant; and proceedings should be instituted for the recovery of title where lands occupying such status have been certified or patented under said grant. XVIII–60

The act of March 2, 1889, does not deprive the Department of jurisdiction over lands within the grant of July 5, 1866, or bar the issuance of patents for lands excepted from said grant. X–456; XIII–51

The suit instituted by the government under the provisions of the act of March 2, 1889, was for the purpose of determining whether the rights of the company under its grant had been forfeited for failure to comply with the terms thereof, and the decision therein adverse to the government does not preclude an inquiry on behalf of the United States as to whether a specific tract was actually embraced in said grant. XXII–170

During pendency of suit under the act of March 2, 1889, no patents will be issued to the company or its assignee. X–459

Filing allowed within limits of indemnity withdrawal for wagon-road grant subject to the company's right of selection. I–389

Wagon Road Grant—Continued.

A claim based upon settlement and residence existing when the grant of July 2, 1864 (Oregon), became effective excepts the land covered thereby from said grant. XII–362

Failure of the company to respond to a settler's notice of intention to submit final proof for land included within a previous executive withdrawal precludes its subsequent objection to the allowance of the settler's entry. XIII–61

The company is not entitled to special notice of a settler's intention to submit final proof if it has no specific claim of record for the tract claimed by the settler. XIII–174; XIX–490

No rights, either legal or equitable, as against the grantee can be acquired by settlement on or entry of lands withdrawn by executive authority in aid of a congressional grant, and the failure of a grantee in such case to respond to the published notice of a settler's intention to submit final proof can not operate to defeat the grantee's right of selection. XX–259

An indemnity selection, canceled on the relinquishment of the company, may be reinstated for the protection of a purchaser holding under a sale of the land made by the company prior to selection. XVIII–401

A selection made on behalf of a wagon-road company, and thereafter relinquished, can not be reinstated for the benefit of a purchaser from said company, if it appears that said company has already received an amount of land in excess of its grant. XXVI–440

The grant to The Dalles road by the act of February 25, 1867, is a grant in place, and the rights of the road thereunder attach on definite location. XXII–599

Under the terms of the grant made by act of February 25, 1867, the occupancy of land at the date when the grant becomes effective does not except the land covered thereby from the operation of the grant. XXVII–478

Lands within the overlapping limits of the Northern Pacific railroad and The Dalles military road, granted to the former company by the act of July 2, 1864, and withdrawn on map of general route for the benefit of said company, were excepted from the subsequent grant to the latter company; and such lands, falling within the terms of the act forfeiting lands opposite the unconstructed portions of the Northern Pacific road, reverted to the public domain. XVII–432

As to lands within the limits of that portion of the Northern Pacific grant made by the act of July 2, 1864, and forfeited by the act of September 29, 1890, and also within the limits of the wagon-road grant of February 25, 1867, no right existed under the earlier grant, at the date when the later became effective, that served to defeat the operation thereof. XXX–19

Wagon Road Grant—Continued.

Under the provisions of the act of March 3, 1887, proceedings should be instituted for the recovery of lands excepted from a, but erroneously patented. XVII–432

The departmental order of May 13, 1893, allowing entries upon the unpatented lands in the overlapping limits of the Northern Pacific and Dalles military, will remain in force. XVII–432

Action suspended on all entries allowed for lands within the conflicting limits of the grants for The Dalles Military Wagon Road Co., and the Northern Pacific R. R. Co., pending a judicial determination of the status of said lands. XXIV–332

Directions given that due notice be served upon the Willamette Valley company that it will be allowed ninety days from date of service of such notice within which to complete its selections, and that at the expiration of such time the order of withdrawal will stand revoked and the lands unselected will be disposed of as other public lands. XVIII–25

Directions given for the restoration of lands withdrawn for the benefit of the grant to the Willamette Valley road, and not included in pending selections. XXVI–356

An incomplete list of lands claimed by a company, and filed by it for the information of the local officers, who at such time were not in possession of a diagram showing the limits of the grant, is not a waiver of the company's right to lands omitted therefrom, as a list filed for such purpose is not a requirement of the grant. XXII–271

The terminal limits of a grant are ascertained by drawing a line through the terminus of the road at right angles to the general direction of the last section of the road. XXII–271

A diagram showing the limits of a, that has stood unquestioned for a long term of years, and under which rights have vested, will not be disturbed. XXIII–94

The act of June 22, 1874, providing for the relinquishment of granted lands and the selection of lands in lieu of those released, while in terms applicable only to railroad grants, is remedial in character, and may be treated as applicable to wagon-road grants. XIX–591

An entry of land embraced within the limits of a, is not confirmed by section 1, act of April 21, 1876, for the reason that when allowed the diagram on file did not show said land to be within the grant, if, by the terms of the grant in fixing the terminus of the road, the fact that said land fell within the grant was apparent. XXIII–339

Wagon Road Grant—Continued.

The right on the part of the government to institute suit for the recovery of title to lands erroneously certified on account of a, exists independently of the act of March 3, 1887, which is limited to railroad grants, and suit for such purpose may therefore be commenced without the preliminary demand required by said act. XXII–170

The provisions of the act of March 3, 1887, apply only to land grants for railroad purposes and can not be invoked for the protection of a purchaser under a. XXIII–579; XXX–619

The title of a purchaser in good faith from a wagon-road company of lands previously certified thereto, is confirmed, in the absence of adverse claims, although by the true construction of the grant to said company said lands were excepted therefrom; and in such case the only remedy left to the government is by way of suit against the wagon-road company to recover the value of said lands. XXV–390

Confirmation of title in a *bona fide* purchaser, of lands previously certified under a, is not defeated by an application to enter tendered long after such certification, nor by the erroneous action of the local office in allowing such application to go of record. XXIX–82

Waiver. See *Practice*, sub-titles Nos. IV and IX.

Presumed on failure to assert claim. IV–194

Of claimed right as preëmptor held from subsequent application for the land as homestead. IV–233

To be operative, must follow an agreement resting upon a valuable consideration. IV–332

Not a, unless the act is such as to estop the party from taking advantage thereof to the injury of another who has acted upon it. IV–332

The application of a party for the exercise of a right to which he is not entitled can not be held a, of his actual rights where no one is induced to take action in the premises by reason of said application. XXI–26

Warrant. See *Scrip*.

I. GENERALLY.
II. VIRGINIA MILITARY.

I. GENERALLY.

Circular of February 2, 1895, under the act of December 13, 1894. XX–95

Circular of February 18, 1896, with respect to location and assignment of military bounty land. XXVII–215

Warrant—Continued.

I. GENERALLY—Continued.

Circular of July 6, 1898, with respect to military bounty land, amending rule 11 in circular of February 18, 1896. XXVII–234

Not assignable in blank. IV–172

Assignments of military bounty land, will not be recognized by the land department unless made in accordance with the regulations established by said department governing such assignments. XXX–190

The Commissioner of the General Land Office may properly determine, in advance of location, whether the assignment of a bounty land, has been made according to the prescribed form and regulations. XXVIII–1

On file in the Pension Office to be returned to the General Land Office. I–1

Is canceled by location and issue of patent. IV–172

An order of the General Land Office directing the location of a, on a specific tract segregates said tract from the public domain though the local officers fail to enter said order of record as directed. XVI–296

Application to locate a military bounty, upon a specific tract, duly filed with the Commissioner of the General Land Office, reserves the land specified for the benefit of the applicant. XIV–278

Loss of, and fees accompanying application to locate a specific tract, by the Commissioner, will not defeat the right of the applicant, though on account of said loss no record of the location is made in the local office. XIV–278

Location inadvertently noted constitutes no appropriation of the land covered thereby. V–202

Military bounty, not certified in advance of offer to locate. V–178

The public has a right to rely on the long-standing ruling of the Department that a military bounty land warrant in the hands of a *bona fide* purchaser, without notice, may not be canceled on the ground that it was issued under misapprehension. III–101

Commissioner of General Land Office to determine as to the *bona fides* of holders. I–1

Purchaser of, issued in the name of one deceased without heirs or of a fictitious person, not an innocent holder. I–1

Military bounty, in the hands of innocent assignee may not be canceled by the Commissioner of Pensions. I–1

Are receivable only in the form of locations, and not in payment of preëmption entries; manner of locating them explained. II–673

In case of dispute as to which one of two applicants for the right of substitution is the real "party in interest," patent may issue in the name of the original locator and be delivered to a trustee named by the parties. VI–375

Warrant—Continued.

I. GENERALLY—Continued.

Where the right of substitution is dependent upon a determination as to which one of two applicants is the rightful "party in interest," and that matter can only be settled in the courts, no award of the right will be made. VI–375

In the case of a valid entry and objection to the, patent may issue on filing a substitute therefor. VI–375

No relief for unperfected location where the land has passed from the jurisdiction of the Department. IV–172

Being lost and no effort made to procure duplicate, the location is canceled in favor of parties holding under the locator. IV–192

Deposits, on the substitution of cash for warrants, will be made through the proper local office. III–146

Where a military, is used in payment for land, and said warrant is subsequently canceled on the ground of a fraudulent assignment thereof, a *bona fide* assignee of the entryman may be permitted to substitute cash in lieu of the canceled warrant. XX–341

Location of, issued by the State (California) in satisfaction of the internal improvement grant confirmed by the act of July 23, 1866. VII–543

Issued by the State of Louisiana in satisfaction of the internal improvement grant afford no basis for the selection of lieu lands. XV–314

Military bounty land, can not be used in commuting a homestead entry in Oklahoma under section 21, act of May 2, 1890. XVI–160

Military bounty, can only be located on land subject to private entry or used in payment for a settlement claim. XXI–47

II. VIRGINIA MILITARY.

The act of May 27, 1880, cures no defects originating under the act of March 3, 1885. I–3, 11

Locations of Virginia military, surveyed and returned before March 3, 1857, recognized. I–3, 11, 17

Patents provided by the act of May 27, 1880, for certain entries made under Virginia military. I–3, 5, 11, 17

History of legislation with respect to location of, in Virginia military district, Ohio. I–5, 11

The third section of the act of May 27, 1880, in effect a new grant. I–5, 11

Section 3, act of May 27, 1880, extends the time for the survey of warrant locations in the Virginia military district of Ohio where the entry was made prior to January 1, 1852, and provides for the issuance of patent thereon, and rights acquired by compliance with said statutes are not divested by the act of August 7, 1882. XIII–584

Warrant—Continued.

II. VIRGINIA MILITARY—Continued.

The grant of one-third additional bounty by the State act of October, 1780, was intended only for the benefit of those officers for whom a provision for bounty land had been previously made. II–12

A major-general was entitled to fifteen thousand acres under the State act of October, 1780, and to one-sixth additional for each year's service beyond the term of six years, under the act of May, 1782. II–14

Warrants issued in June, 1783, to amount of seventeen thousand five hundred acres, for seven years' service as major-general, ending May 30, 1783, were in full satisfaction of the claim. II–9

The decisions of the officers of the State charged with the duty of issuing the warrants are final, and bind the parties and their privies. II–13

A claim for the issue of scrip for five thousand eight hundred and thirty-three and one-third acres additional founded on a warrant issued in 1832 will not be entertained. II–14

Claims allowed by Virginia prior to March 1, 1852, entitled to recognition without respect to the time when the warrant issued. V–531

Certain lands reserved for location of Virginia scrip. V–533

The attempted location of a Virginia military, and sale of the tract by the locator does not vest in the purchaser nor in his grantees the right to receive scrip under act of August 31, 1852, in lieu of said warrant. XV–383

The act of the Virginia State legislature directing the delivery of certain military warrants to John Milliner does not operate to validate said warrants or make them subject to exchange for scrip if they were not valid subsisting claims allowed prior to March 1, 1852. XV–127

Assignment of all interest in the location of a Virginia military, and the survey thereunder executed after abandonment of such location and survey and subsequent to January 1, 1852, does not vest in the assignee ownership of the warrant, so as to entitle him to receive Revolutionary scrip in exchange therefor. XVI–453

Washington. See *States and Territories.*

Water Right. See *Mining Claim*, sub-title No. XIV; *Right of Way.*

Application for a water right under guise of a placer claim will be rejected. II–774; III–536

Acquired by priority of appropriation and protected under sections 2339 and 2340, R. S. I–27; V–191

Title to water used for reclamation of desert land must be by *bona fide* prior appropriation. I–27

Water Right—Continued.

Acquired by appropriation relates back to the beginning of work thereunder if such work is prosecuted with reasonable diligence. IX–6

The sale of a, confers upon the purchaser all the rights acquired by the vendor through a prior appropriation thereof. IX–6

An adverse claim as against an alleged prior appropriation will not be recognized if it appears that undisturbed possession has been maintained under such appropriation for a period sufficient to establish title by prescription. IX–6

The land department has authority to determine questions pertaining to the appropriation of water for the reclamation of desert land. IX–6

Sections 2339 and 2340, R. S., do not authorize the Department to reserve land for reservoir purposes. X–171

Not necessarily in conflict with mill-site claims, as both may be located on the same land. V–190

Not patentable as such. V–191

Water Frontage. See *Survey.*

Words and Phrases Construed. See *Statutes.*

Wyoming. See *School Land; States and Territories.*

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