DIGEST OF DECISIONS

OF

THE DEPARTMENT OF THE INTERIOR

AND

GENERAL LAND OFFICE

IN

CASES RELATING TO PUBLIC LANDS

VOLUMES 1 TO 10, INCLUSIVE.

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Will not be accepted if the preliminary affidavit is made while the land is under appropriation. II–269

For entry is barred by a pending application for re-instatement. II–43

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

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

V. PREËMPTION.

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

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

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

VII. TIMBER CULTURE.

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

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 tender of fees and commissions may be perfected by the heirs (widow) after applicant's death. II–546

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

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

VII. TIMBER CULTURE—Continued.

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

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 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. II–687, 689; III–535

The rule to be observed in case of simultaneous, under the timber-culture law. I–157

Where accompanying affidavit shows but a hundred, or a half acre of, trees confined to the margin of a stream, and the plats show a sparse growth of timber, the application must be accepted, subject to satisfactory proof of the character of the land. II–274

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

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

Filed before cancellation of an entry (after relinquishment in 1878), with fees and commissions, gave applicant no rights. II–49

With preliminary affidavit made while the land is under appropriation will not be accepted. I–164; III–320

Will be received during the existence of, and subject to, a preferred right of entry acquired by successful contest (against timber-culture entry). II–276, 321

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

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

Erroneous rejection of timber-culture application (because of existing preferred right) protects applicant; whether he tendered his oath and the fees is immaterial. II–321

Where applicant tenders fees and commissions, but application is erroneously rejected, his right of entry is not prejudiced, and inures to the benefit of his heirs. II–546

VIII. TIMBER LAND.

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

VIII. TIMBER LAND—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

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

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

The preliminary affidavit does not bar homestead entry pending publication, which, however, is subject to the rights of the prior claimant (timber) if established at final proof. II–333, 336

IX. WITH CONTEST.

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

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

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 a contest, reserves the land pending final action thereon. IX–161

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

IX. WITH CONTEST—Continued.

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

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

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

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

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

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

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

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

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. I–121

Approximation. (See *Entry.*)

Arid 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

Arkansas. (See *States and Territories.*)

Attorney—Continued.

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

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

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

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

Whether a power of attorney given to an attorney while disbarred may be used after his re-instatement *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

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. IV–336

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

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

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

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

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; in Dakota this is expressly prohibited by statute. II–212

As notary, may under the laws of Dakota administer oath to his client in the preparation of contest affidavit. IV–126

Not to act as notaries. IV–299

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

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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. IV–267

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

Introduction of frivolous matters by, during contest. IV–385

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

Speculative collusion suggested by alleged agreement. IV–268

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

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

Atherton-Fowler. (For applications of the doctrine, see *Settlement.*)

California. (See *School Land; States and Territories.*)

Cancellation. (See *Entry*, subtitle No. X; *Judgment.*)

Certificate.

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

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

Of entry at variance with application. IV–422

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

Final, issued without authority is void. VI–444

Certificate—Continued.

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

Certificate of Deposit.

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

On account of surveys is assignable. III–4

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

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 by 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 cover 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

Certification. (See *Patent.*)

Certiorari.

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

Petition should be accompanied by copy of decision complained of. IV–31; V–588; IX–648; X–159

Applicant for, must furnish copy of decision which he wishes to be reviewed or set out a specific recital of it. II–68; III–184

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

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

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

Certiorari—Continued.

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

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

Provided to cover cases where the Commissioner formally decides against the right of appeal. IV–314; 5–671

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

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

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 unless the right of appeal has been denied and such denial results in serious injury to the applicant. X–491

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

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

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

Not granted, if on the showing made it is apparent that the applicant's appeal if before the Department would be dismissed. VI–315

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

Will lie to review an order for a hearing. V–175

Certiorari—Continued.

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

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

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

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

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

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

Cherokee Nation.

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

Circulars. See *Tables of*, page 63; 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.

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 not be accepted in the absence of proof to the contrary. IX–173

Secondary evidence of, accepted. VI–631

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

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

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

Proof as to character of land must show the actual production of mineral. V–126

Proof that adjoining lands have produced coal not sufficient. V–126

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

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

Entry embracing non-contiguous tracts, made in good faith, under the existing practice, may be patented as made, or amended so as to take 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

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

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

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

Coal Lands—Continued.

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 abandoning the first. X–539

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

Only one entry allowed to the same person or association. VI–371; VIII–140

Each member of the 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

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

Entry of, made for the benefit of another is illegal and must be canceled. VII–422

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

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

Cash entry of, may be amended after patent, when the mistake was caused by the indistinct marks at section corners. VIII–303

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

Entry of, disallowed as inconsistent with original claim. V–224

Proximity to a city does not affect claim. V–126

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

Coal Lands—Continued.

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

Colorado. (See *School Lands; States and Territories.*)

Commissioner of the General Land Office. (See *Land Department.*)

Commutation. (See *Entry* and *Final Proof*, *Subtitles Homestead;* also *Homestead* and *Residence.*)

Contest. (See *Affidavit; Application; 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.

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

Pendency of, precludes disposition of the land on the application of a third party. II–55; IX–578

Local officers no authority to order a hearing involving an entry on which final certificate has issued. X–694

No rights secured under a hearing ordered by the local office without authority. X–694

Withdrawal of, by attorney, conclusive. IV–267

Initiation of, a waiver of pending appeal. V–350

I. GENERALLY—Continued.

Distinguished from proceedings on protest. II–581; III–399; VI–765

Should be re-instated where it was dismissed in the absence of the contestant and said absence was through the fault of the defendant. VII–60

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

An amicable agreement (division of the land) settling the controversy should not be overthrown by a technical violation of a rule of practice. II–257

Avoided by mutual concessions. V–119

Entryman must comply with the law during the pendency of. V–104; VI–688; IX–24; X–618

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 assúmed, to detriment of one complying with the law. II–57

Oppression under color of, not permitted. I–163

Is discontinued by agreement of counsel to indefinite postponement of hearing. X–459

Right of, defeated by simultaneous relinquishment with declaratory statement. IV-363; X–139

Not defeated by a previous extra judicial opinion expressed by the Commissioner on the partial and *ex parte* statement of the contestee. IX–182

Should be dismissed, where the contestant fails to appear, either in person or by counsel, on the day fixed for hearing. VII–252

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. VI–268

Should not be dismissed without notice. IV–488

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. II–68

Should not be dismissed if prima facie case is made out. V–3; VI–682

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

I. GENERALLY—Continued.

A charge of bad faith against a claimant finds corroboration in his unexplained failure to testify in support of his claim. IX–175

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

When 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

Party without interest may institute contest against forfeited or abandoned homestead or timber-culture claims, but not against preëmptions. II–219

II. FOR WHAT.

Right of, as against any statuatory claim to land. IX–332

Will lie against an entry of Kansas Indian trust land for non-compliance with law or other sufficient cause. IX–329

Purchase of homestead improvements gives no preferred right of contest. II–62

Not allowed to the holder of a relinquishment. V–5

Not required to call attention to irregularities in final proof, a protest sufficient. IX–495

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

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

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

III. CHARGE.

Affidavit of, in the nature of an information. VII–41

Affidavit of, in the nature of an information and not essential. VI–299

III. CHARGE—Continued.

Contest based on verbal information will not be dismissed where no objection was made at the hearing. III–310; IV–255

Jurisdiction not affected by want of formality in affidavit of contest. V–657

Affidavit of, is in the 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 a charge will not be considered if the question is not raised before the submission of testimony. IX–255

After the trial has closed the defendant can not take advantage of variance between the notice and affidavit of contest. I–114

The defendant only can object as to the sufficiency of the charge. III–57; V–639

Objections to the affidavit of, can only be raised at the hearing III–374; V–657

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

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, may be amended subject to intervening rights. II–210; VII–452

Affidavit of, may not be amended after the intervention of an adverse right. IX–18

May be properly rejected if the affidavit of, is not corroborated. VIII–446; IX–427

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

The charge in a contest should be specific. III–378; IV–369; VII–452

In matters not specifically charged the issue is solely between the entryman and the government. VII–408

III. CHARGE—Continued.

Failure of the specific charge leaves the issue as between the entryman and the government. IX–327

Not material that affidavit of, was executed before a person that subsequently represented the contestant. VII–42

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

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

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

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

May be rejected, if offered outside of the hours set apart for the filing of such papers. VII–504

Affidavit of, received through the mail, and placed of 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

If a few seconds intervene between two applications to contest an entry, precedence should be given to the one first actually received. VIII–241

In case of conflicting applications 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

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

The claimant not entitled to a dismissal of, on showing the contestant's death as the Department may proceed against the entry. VIII–598

V. DEATH OF PARTY—Continued.

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

Death of the entryman, after appeal by the contestant, does not deprive the Land Department of jurisdiction. VI–781

VI. INTEREST OF THE GOVERNMENT.

The government is a party in interest. I–77; II–95; IV–263, 462, 512; V–372, 395; VI–300; VII–394; X–19

Government has the right to appear in, and cross-examine witnesses, or have the case continued. VIII–2

Whether fraud, illegality, or noncompliance 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

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

On the withdrawal of a contestant the case is left as between the government and the entryman. X–133

Failure of the contestant to appeal will not preclude the Department from considering the evidence with the view to protecting the interests of the government. VII–177

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

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

The government may, while dismissing the, institute proceedings on its own motion. V–58

Rights of third parties will not be considered in the disposition of a withdrawal of suit filed by the contestant. III–301

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

Second not allowed till final determination of first. I–132, 155; II–295; IV–470

Second 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

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

Second, raising new question may be filed, but should be held for disposition of the pending case. IV–99, 234, 463, 529; VI–234

New charge by contestant must be held for termination of pending case. IV–121

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

Pending, attacked for fraud should be disposed of before proceeding with second. IV–504

Rejected for illegality, but pending on appeal, bars proceeding under second, though affidavit therefor may be filed. IV–583, 589

No rights required by second, if the prior pending suit results in cancellation. I–42

Second, not allowed on issues tried and determined in the first. III–390; VIII–444; IX–217, 584; X–232, 253, 318, 451

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

May be refused in the discretion of the Commissioner when the entry in question is under investigation by a special agent. VIII–139

VII. SECOND—Continued.

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

Suspended on account of pending proceedings by the government, takes effect as of the date filed on failure of such proceedings. VIII–579

Not barred by rejection of commutation proof by the Commissioner and the pendency of appeal from such action when the original entry was not held for cancellation. VI–833

Not allowed whilst 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

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 institution of a second, waives all rights that the contestant may have had under the first. VII–346

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

VIII. SPECULATIVE.

No rights required 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.

VIII. SPECULATIVE—Continued.

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.

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.

Against desert entries follows the practice in preëmption contests. VI–1.

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.

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.

X. HOMESTEAD.

Application for the land is not required. II–40, 65; III–209; IV–424, 462

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

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 in interest are not affected thereby. IX–308

Heirs of deceased entryman must be made parties defendant. VI–241

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

X. HOMESTEAD—Continued.

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

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

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

Based on a charge of noncompliance 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

For abandonment will not lie until the expiration of six months after entry, exclusive of the day of entry. II–151

For abandonment will not lie until the expiration of six months and one day after entry, exclusive of the day of entry. (Baxter *v.* Cross.) II–69

The rule in Baxter *v.* Cross governs in all cases after it was rendered. III–15

On the charges of abandonment, sale, and relinquishment not premature, though within less than six months after entry. V–262

A charge of abandonment will not lie against a homestead claimant prior to the allowance of his application to enter. X–510.

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

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

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

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

X. HOMESTEAD—Continued.

On the ground of abandonment should show that the alleged abandonment was prior to final entry. X–556

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

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

Of divorced wife against former husband's claim for abandonment permissible. I–89

Only the wife shall be heard to show her husband's desertion of her in proof of abandonment. II–81; VII–35

In a contest on the ground of fraudulent inception or abandonment, priority of settlement can not be considered. II–119, 620

Absence of entryman for five months prior to contest working at his trade, with occasional returns to the land, and a relinquishment executed, but not filed, are, in view of other evidences of good faith, not proof of abandonment. II–27

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

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

Question of abandonment under sec. 2297, R. S., is an issue between the government and the settler; on proof of, the land reverts to the United States; sec. 2, act of May 14, 1880, gives a preferred right to the successful contestant of an entry. II–60

Homestead entry not the proper subject of, seven years after date of entry. I–112

Will lie against homestead entry after the expiration of seven years from date of entry. III–136; V–229

May be entertained, though not begun until after the expiration of five years from date of entry. X–111

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

X. HOMESTEAD—Continued.

Against homestead entry for want of residence must follow sec. 2297 R. S. III–560

Must fail if the entryman in good faith cures his default before notice is served. VII–198; IX–299, 531

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. IX–153

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

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

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

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 date of entry warrants cancellation if the default is not cured prior to. IX–523

A homestead claim, set up to defeat the entry of another, will be canceled if the evidence shows noncompliance with law. VI–294

An honest settler's rights may not be defeated on technical and speculative grounds. II–163

Pending will not bar relinquishment and right to make new entry under the act of March 3, 1879. I–93

XI. PREËMPTION.

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.

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

By a preëmptor, to clear the record of a prior preëmption claim, will be allowed in exceptional cases only. II–583

XI. PREËMPTION—Continued.

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 preëmptor for non-compliance with requirements. II–596

Non-appearance under notice of intention to make final proof does not bar. III–142

On allegation of fraud a hearing will be had even after approval of final proof and allowance of entry. III–54

On death of preëmptor, with contest pending, the case will be disposed of as though the original parties were still existing. III–544

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

XII. SWAMP LAND.

Will lie against a selection of swamp land. V–31

Against a swamp selection, if successful, may secure a right of entry. IV–497

XIII. TIMBER CULTURE.

Forms for use in beginning. I–653

Rules governing homestead are applicable in timber culture. I–132

Must be against the heirs or legal representatives of a deceased entryman. III–592; V–398; VIII–452

The devisee of a deceased entryman a party defendant. VIII–452

Against the entry of a deceased entryman, where the decedent is made the sole party defendant, is a nullity and must be dismissed. X–152

Death of the 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

Right of amendment, on suggestion of the entryman's death, not defeated by an intervening. X–261

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 latter 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

XIII. TIMBER CULTURE—Continued.

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 proceedings. II–245

Second allowed, where first was dismissed under the rule in Bundy's case, with premission 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

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

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 that 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 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

A general allegation of non-compliance will not avail where the specific charge fails. VII–408

XIII. TIMBER CULTURE—Continued.

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

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 where the land was subsequently in good faith entered by another. X–59

For non-compliance with the law not entertained before the expiration of one year from entry. IV–241

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. 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

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

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

XIII. TIMBER CULTURE—Continued.

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

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

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

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

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

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

Should not be sustained unless substantial non-compliance is shown under a specific charge. IX–148

Clear preponderance of evidence required to warrant judgment of forfeiture. I–129, 153; VI–660; VII–373

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

The acts or omissions of the entryman after date of initiation of the contest do not affect the contestant's rights. II–280

XIII. TIMBER CULTURE—Continued.

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. X–190

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

Charging non-compliance with law must fail if it appears that the default is due to the wrongful possession of the land by the contestant. X–318

The contestant can not 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–585

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

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

Failure to break the full amount required the first year does not necessarily call for cancellation, if good faith is manifest. VI–829

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

Slight deficiency in breaking will not justify cancellation. VII–365, 441

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 innitiation 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

XIII. TIMBER CULTURE—Continued.

Failure to secure a growth of trees does not call for cancellation, if such failure is not due to negligence. X–591

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 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 non-compliance with law may be defended by an intervening entryman claiming under a relinquishment. X–302

Plea of sickness not a good defense against a charge of non-compliance 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

Proof of "plowing" is an answer to the charge of failure to "break." VI–669

Failure to cultivate second year's planting being shown, the entryman, in the absence of bad faith, permitted to amend his entry, which covered eighty acres, by relinquishing forty acres thereof. VI–689

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

Contestant. (See *Application; Contest; Relinquishment.*)

I. GENERALLY.

II. PREFERENCE RIGHT.

I. GENERALLY.

Right of, first regulated by the act of May 14, 1880. I–76; II–60

Generally must be a party in interest. II–219

Distinction between "protestant" and. VI–763

I. GENERALLY—Continued.

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

Must sustain the burden of proof VII–373

Right of the, dependent upon the successful issue of the contest. V–248; VIII–139, 357

Right of, dependent upon status of land at date of contest. IX–161

Right of the successful, rests upon the judgment and not upon the clerical act of cancellation. IV–248

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

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

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

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

Withdrawal of, on appeal will not prevent action of the Department on the evidence. V–40, 385

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

Failure to appear at hearing fatal to his contest. III–565

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

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 attorney, erroneously entered of record, is not notice to the. VI–509

I. GENERALLY—Continued.

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

No rights of, defeated by a relinquishment filed pending contest. IX–440; X–105, 302

Right of, not defeated by an intervening entry based upon a relinquishment filed pending contest. X–398

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

Right of, 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

With the death of, the right conferred by the act of May 14, 1880, terminates. IX–287

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

Qualification of, to enter not required in case of attack upon homestead entry. III–18; IV–185; V–259, 296

Contestant's failure to file affidavit as to qualification can not be set up for the first time on appeal. III–513

Rights of, 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

On 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. 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–408

I. GENERALLY—Continued.

Can not insist on cancellation, because of some default not charged. VII–89

Should not be deprived of the results of his contest unless there are controlling reasons why the entry should not be canceled. I–78

II. PREFERENCE RIGHT. (See *Homestead*, subtitle *act of June 15, 1880.*)

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

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

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

May be secured by contest against an entry of Kansas Indian trust land. IX–329

Not secured through a contest against a preëmption filing. II–581; IX–92

Acquired by successful attack upon swamp selection. IV–497

May be secured as to the land finally excluded from an entry, allowed for more than one hundred and sixty 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 preëmptor, 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

II. PREFERENCE RIGHT—Continued.

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

If sold may be filed without specific authority therefor from the contestant. V–294

Waived by withdrawal of contest. V–453

Where waived by an amicable and executed agreement with a third person, whose entry had been allowed pending the contest the entries thereunder may be allowed to stand. II–257

Whether the contestant is entitled to, is a question that can only arise on the attempt to exercise the right. IV–393; VI–238; IX–391

Under the act of May 14, 1880, is not secured unless the cancellation of the 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

Dependent upon success, and not to be defeated by relinquishment. III–546

Awarded without respect to the allegations on which the contest was initiated. I–145

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

Not secured through a speculative contest. V–358; VI–164, 288; VIII–248; IX–491; X–250

Can not be secured through a contest prosecuted in the name of another. VII–186

Not defeated because the entry was canceled on record evidence. IV–461, 517; V–404

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

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

II. PREFERENCE RIGHT—Continued.

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

Not defeated by a charge of having attempted to mislead the local office, where the charge was ignored by that office. VI–342

The right of a successful contestant against a timber-culture entry is not affected by the possession of the defaulting entryman. IV–508

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

Where a contestant has obtained judgment in his favor by the local officers or on appeal, which becomes final, his right of entry attaches at date said judgment becomes final, and, if duly exercised, bars a purchaser (act of June 15, 1880) upon application subsequently filed. II–164

Can not be defeated by purchase under the act of June 15, 1880, made pending contest. IV–580; V–230, 608; VI–446, 641; VII–381, 500; VIII–463, 579, 595; IX–18; X–111, 410, 678

Not dependent upon qualification at date of bringing the contest. IV–203

May be secured through contest against a homestead entry by alien if qualified when the entry is canceled. V–259

Can not be asserted by one who has disqualified himself to make entry prior to the final disposition of the contest. VII–542

Is not barred by relinquishment, and entry of another, pending the contest. II–265, 283

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

Where the record shows an intervening entry, made after expiration of, such entry should not be canceled without hearing. VI–509

II. PREFERENCE RIGHT—Continued.

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

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

Is lost by failure to use the same within the thirty days accorded by the statute. V–115; IX–70, 478; X–297

Failure of the 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 one hundred and sixty 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

Continuance. (See *Practice.*)

Costs. (See *Accounts; Fees; Practice*, subtitle *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

Cultivation. (See *Final Proof*, subtitles Nos. X, XII, and XIV; *Homestead; Preëmption.*)

Death. (See *Evidence;* subtitles 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

Decision—Continued.

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

Declaratory Statement. (See *Filing.*)

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 St. 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

Deposition. (See *Evidence.*)

Desert Land. (See *Contest; Entry, and Final Proof*, subtitles Nos XII and XI; *Water Right.*)

Circular regulations, June 27, 1887. V–708

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

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

Land which, without irrigation, fails year after year to return even the seed, and which yields crops of grain of so poor a quality that they must be cut for hay, is. II–20

Though it may appear that the productiveness is increased by irrigation, such fact does not establish the desert character of land.

VII–425

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.

X–558

Desert Land—Continued.

The character of land embraced within an entry for lands lying along a stream a proper subject for investigation. VII–180

Land upon which there is a natural growth of timber is not. V–595; VII–425

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

Case of Rivers *v.* Burbank cited and distinguished. IV–165

Additional proof as to the character of land covered by an entry may be properly required by the Department. IX–379

Lassen County, Cal., lies in a section of the country designated by Powell as "the arid region." II–21

A small amount of non-irrigable land may be included in the entry. V–481; VI–23

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 80 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

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

Desert Land—Continued.

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 entered prior to survey. V–527

Only surveyed in the course of public survey except under sec. 2401 R. S. III–325, 331

Will not be surveyed under the deposit system, without showing settlement. III–331

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

Is not reclaimed unless water in sufficient quantity for cultivation is carried upon the land. I–26

The water conveyed upon the land must be in quantity sufficient to prepare it for cultivation. II–692

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

Price of, within railroad limits, may be properly fixed at double minimum. VII–436; VIII–368; IX–49; X–541

Price of, determined by the regulations in force at the time of the initial entry. VI–145

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

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 Officers. (See *Land Department.*)

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.

No entry allowed until after public surveys are made. II–446

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

II. OREGON AND WASHINGTON—Continued.

Heirs of donee must show compliance with the law on the part of the ancestor. III–469

Filing notification operates to segregate the land. I–303

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 avoided 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 is 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

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 held to constitute abandonment. III–469

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

Where alien claimant, having declared his intentions, died before naturalization, his possessory right descended to his heirs and patent properly issued to them; application by purchasers at administrator's sale to cancel patent denied. 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 three hundred and twenty acres, as a married man, if his wife dies before the period of occupancy has been completed, certificate can issue for but one hundred and sixty acres. VII–545

Where the claimant, as a married man, claimed three hundred and twenty acres he may be allowed to relinquish so as to approximate one hundred and sixty 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

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

II. OREGON AND WASHINGTON—Continued.

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 re-issue will be made in accordance with the official survey. III–139

Patent will not be re-issued 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

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

Entry. (See *Alienation; Application; Contestant, subtitle Preference Right; Equitable Adjudication; Final Proof; Relinquishment.*

I. GENERALLY.
II. EFFECT OF.
III. APPROXIMATION.
IV. JOINT.
V. AMENDMENT.
VI. SECOND.
VII. RE-INSTATEMENT.
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

I. GENERALLY—Continued.

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

Of record should not be expunged by the local office. IV–554

May not be changed by erasure on the record. VII–220

Must remain of record until relinquished or canceled (on contest or failure to make final proof) in regular proceedings. II–91

Right to make, not considered in the absence of an application for specific tract. IV–310; VII–254; IX–194

Entryman must take notice of the character of the land. IV–133

Must stand in the true name of the entryman. VI–329

Not invalid because allowed outside of office hours. VI–1

Local officers should use all means of knowledge at command in ascertaining validity of an entry. III–222

Local officers to consider objections to any entry. III–334

Strict enforcement of the law with reference to, in order to prevent abuses. III–152

Under homestead and preëmption law not consummated at the same time. IV–442

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 one hundred and sixty acres, when contiguous land may be included. II–289

Covering tracts of land upon the opposite sides of a meandered stream, allowed in accordance with existing practice, will not be disturbed. V–641; VIII–62

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

II. EFFECT OF.

Effect of, relates back to the proper initial steps. I–461

Of record and *prima facie* valid, reserves the land covered thereby from the operation of any subsequent law, grant, or sale. I–362

II. EFFECT OF--Continued.

A *prima facie* valid entry of record, operates as a reservation of the land. II–98; III–169, 217, 229; IV–210, 392, 441, 457, 586; 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

Valid entry segregates the tract, and it is not again subject to claim (preëmption) until the entry is lawfully canceled. II–294

A voidable entry while of record is an appropriation of the land. III–446, 506; V–118

Exceeding one hundred and sixty 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

III. APPROXIMATION.

A quarter section is, under the homestead laws, one hundred and sixty acres, and in fractional sections an entry must approximate one hundred and sixty acres as nearly as practicable. II–129

Must approximate one hundred and sixty acres in fractional sections. IV–92, 441

Of a "quarter section," as such, allowed under the preëmption and homestead laws. VI–797

May embrace a quarter section, platted as such, regardless of the actual area. VII–20; X–116

When the excess above one hundred and sixty 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 one hundred and sixty acres as nearly as practicable, without requiring a division of the smallest legal subdivision. VIII–205

Embracing tracts in different quarter sections is limited in acreage, and must approximate one hundred and sixty acres. VII–20; X–62, 524, 587

Rule of approximation applied only where the entry is of parts of different quarter sections. VI–797

III. APPROXIMATION—Continued.

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

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

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

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 sub-divisions. VI–138, 826

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

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

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

IV. JOINT—Continued.

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

Joint, allowed under section 2274, 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.

Circular 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

Amendment of, not allowed except for good reason shown. IV–365; VII–298

Where amendment is authorized, sixty days only are allowed for making it. II–206

Amendment of, not allowed in the local office. III–471

The written opinion of the local officers, as provided in section 2372, Revised Statutes, 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, Revised Statutes, may be properly required in entries not expressly included within said statute. VII–155

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 of, and second. 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. VII–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

V. AMENDMENT—Continued.

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

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

On amendment, may be allowed for one hundred and sixty acres where the first through mistake covered but eighty. VII–363

Amendment or new entry allowed in case of noncontiguous tracts. IV–33

Amendment allowed where the error arose through the fault of the local office. IV–112

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. III–157, 413

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 all intervening adverse claims made with a full knowledge of the facts. VII–387

Amendment allowed to correspond with occupancy and improvement. I–159

An entry made without examination of the land may not be amended. III–362; VII–219

Right of amendment defeated by an intervening adverse claim. II–38, 577; VII–428

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

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 claimants' settlement, and not that embraced within the final certificate. VI–834

Allowed for adjacent land whereon the entryman had accidently cut timber. II–808

V. AMENDMENT—Continued.

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 (preemption settlement and filing) 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

Allowed after contest commenced, where the tract was by mistake entered as an original instead of an adjoining farm homestead. II–38

Pending applications for amendment 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

VI. SECOND.

Right to make second, not considered without application for specific tract. IV–310, 451; VII–254

The right to make second, only allowed after careful scrutiny. III–161

On allowance of second, the first must be relinquished. VIII–429

On allowance of second, the entryman should be required to state under oath that the relinquishment of the first is not for the benefit of another. VIII–507

An application for lands not intended to be taken under the original entry is for the privilege of making a second entry and not for the right of amendment. X–207

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

Right 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 to the character and identity of a prior record claim. VI–362

Second, allowed for the same land, under changed departmental rulings affecting the status of the tract. IV–249

Second, not allowed though first was relinquished on erroneous advice of local office. IV–188

VI. SECOND—Continued.

Second, allowed where the first, through no fault of claimant, can not be carried to patent. VI–353, 645, 505

Right to make second, recognized where the first, through no fault of the entryman, was not for the land intended to be taken. VIII–429

Second, allowed where the 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 therefore were not discoverable by ordinary diligence. VIII–507

Where the right to make a second, rests on the non-inhabitable character 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

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

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

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, recognized where the first, made in good faith, was abandoned on account of conflict with the bona fide preemption claim of another. VIII–100

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

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

VI. SECOND—Continued.

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

Second, allowed where the first was made in good faith for land afterwards held not subject thereto, and accordingly canceled on relinquishment. VIII–137

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

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

Right to make second, under the act of March 2, 1889; circular of March 8, 1889. VIII–314

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

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

Second, under act of March 2, 1889, not allowed for a quantity that, added to the first, will exceed one hundred and sixty acres. X–661

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

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

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, allowed to stand as an amendment of the first. II–852

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

VI. SECOND—Continued.

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 non-compliance 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. RE-INSTATEMENT. (See *Railroad Lands.*)

Canceled on relinquishment filed under an erroneous ruling may be re-instated. VII–470

Canceled without notice may be reinstated for hearing. IV–397

Canceled portion of, under changed conditions may be reinstated in the absence of adverse claims. V–333

Of railroad lands, improperly canceled, may be re-instated 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 re-instated for the benefit of the heirs, though the entryman, in ignorance of his rights, made a homestead entry of the land which was afterwards canceled for failure to submit final proof. X–569

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 re-instated on the application of the entryman's heirs, made within a reasonable time after learning the facts. X–569

Re-instatement 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

Re-instatement 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

Canceled for bad faith will not be re-instated on the application of a transferee except on a statement of facts showing the good faith of the entryman. X–566

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 re instatement of A's entry, and it is allowed. II–657

Where a desert-land entry is duly relinquished and canceled, it will not be re-instated on the application of a stranger, though he claims to have purchased from the entryman a valuable interest in it. II–24

VII. RE-INSTATEMENT—Continued.

Of a timber-culture claim may be allowed where relinquishment of it was obtained from the claimant while drunk. II–325

VIII. SUBJECT TO PREFERENCE RIGHT.

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 entryman and action had thereon. IX–491; X–18, 41

When allowed subject to preferred right of successful contestant, and such contestant subsequently applies to enter the land, due notice thereof should be given the entryman, with opportunity to show cause why the contestant should not be allowed to perfect his entry. VI–643

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

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

IX. LAND RESERVED FROM.

An order suspending all action as to certain land defeats an entry made thereon pending such order. III–238

May not be made on a tract withdrawn for the purpose of a sale under section 2455, Revised Statutes. II–242

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

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

Not allowed of land held and actually occupied by the military, under direction of the War Department. IX–600

IX. LAND RESERVED FROM—Continued.

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

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

Where 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

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

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

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

Should not be allowed for land involved in a prior contest, pending an appeal. III–217; VIII–121

May not be made by a third person pending an appeal from the rejection of a prior application. II–270

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

Rejected application to file, pending on appeal, no bar to. IV–403

Not allowed on land improved by another and in his possession by color of law. II–44

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

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

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

IX. LAND RESERVED FROM—Continued.

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

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

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

Not canceled except on conclusive evidence. V–313

May not be canceled by local officers except under the act of May 14, 1880. III–567

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

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. VI–563, 700; VII–163; X–222

Cancellation of, takes effect as of the date when the decision is rendered. VII–163

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

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

XI. BY EMPLOYÉ OF THE GENERAL LAND OFFICE—Cont'd.

Local officers and their clerks can not make, in their own districts, except under section 2287, Revised Statutes. 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

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 office prohibited from making. IV–77

The disqualification to enter, provided in section 452, Revised Statutes, 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

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

XII. DESERT LAND.

Should be posted on tract-book in General Land Office. V–597

Under the desert-land law is a contract. VI–146

Application to make, must show personal knowledge of the applicant as to the character of the land. VII–312; VIII–96

XII. DESERT LAND—Continued.

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

Claim for, initiated by the application and not by settlement. VI–541

Entry for, in the interest of another not permitted. IV–445; VII–337, 378

The law restricts one person to an entry of one tract, in a compact form, not exceeding six hundred and forty 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

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 the 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

Rule as to compactness not rigid. V–4

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

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

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 three hundred and sixty 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

XII. DESERT LAND—Continued.

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. VI–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

One person can not take more than six hundred and forty acres, either as entryman or assignee. 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

Where one procured three others to make desert-land entries, aggregating 1,760 acres, and assign them to him, it was in fraud of the desert-land act, which restricts one person to six hundred and forty acres. II–22

May be allowed subject to the preference right of successful contest. 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 absence 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

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

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

XII. DESERT LAND—Continued.

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. X–313

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

XIII. HOMESTEAD.

(See *Mineral Land.*)

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; 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

Is voidable if the preliminary affidavit was executed before a clerk of court when residence had not been acquired, but the defect is cured by subsequent residence prior to the intervention of an adverse claim. VI–722

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

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. 1–449

Under section 2291, not allowed on proof, submitted in commutation of the original entry. VIII–86

XIII. HOMESTEAD—Continued.

Made under section 2293 Revised Statutes without the required settlement and improvement ratified by the subsequent enactment of section 2308 Revised Statutes. 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 townsite settlement. V–180

After final, the discovery of mineral on the land will not affect rights acquired thereunder. VII–570

Must only include contiguous tracts; and tracts "cornering" upon each other are not within the rule. V–683

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

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

Right 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

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

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 railroad 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.

XIII. HOMESTEAD—Continued.

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

Allowed as a homestead for land formerly claimed under the preemption law, notwithstanding certain alleged intervening adverse rights. III–313

By contestant of a timber-culture claim is confined to land in contest, unless less than one hundred and sixty 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

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

Of a portion of the land filed for and settled upon is an abandonment and relinquishment of the remainder. VI–356

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

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

XIV. PREËMPTION—Continued.

May be sent to the Board of Equitable Adjudication when allowed on proof made by a married woman who, prior to marriage, had complied with the law and tendered proof. VIII–433

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. 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.

Circular of February 1, 1882, with blank forms. I–638

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 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

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 defect can not be cured by amendment. IX–238

Should not be allowed upon application made while the land is covered by an uncanceled entry. III–320

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

Segregates the land covered thereby. I–52; V–174

XV. TIMBER CULTURE—Continued.

Regularly made, though for land not subject thereto, while of record, segregates the land. VI–819

Entry excludes subsequent claim founded upon settlement. III–565

But one quarter may be entered in a section. III–182, 311; V–173

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

Second in section prima facie void. IV–448

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

Under the law a person may make but one entry. III–185

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. III–361

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

Will not be allowed where there is a prior entry in the same section, though contest against it is pending. II–34

Land not reserved from, by unlawful inclosure. VI–608

Allowed subject to the alleged priority of preëmptor. V–173

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

XV. TIMBER CULTURE—Continued.

"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

No arbitrary rule can be adopted in determining whether land is subject to. IX–161

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

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

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

Rights acquired under former rulings as to the character of land subject to entry not disturbed. V–261, 696

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

Land not excluded from, by a scanty growth of brush lining the banks of a small stream that passes through the section. 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 there are but a hundred, or a half acre, of trees confined to the margin of a stream. II–274

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

XV. TIMBER CULTURE—Continued.

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

Married woman can not make. I–127

May be made by a deserted wife (with children) as the head of a family. II–311

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

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

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

Equitable Adjudication. (See *Timber and Stone Act.*)

I. GENERALLY.
II. DESERT LAND ENTRY.
III. HOMESTEAD ENTRY.
IV. MINERAL ENTRY.
V. PREËMPTION 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

I. GENERALLY—Continued.

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

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 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

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 provided applicable to desert-land entries. VI–799

Additional rules of, 31, 32, and 33. X–502

Entry on railroad land confirmed where company made default at hearing. I–465

II. DESERT LAND ENTRY. (See *Entry*, subtitle *Desert Land.*)

Additional rules. VI–799

II. DESERT LAND ENTRY—Continued.

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

III. HOMESTEAD ENTRY. (See *Entry*, subtitle *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

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

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, Revised Statutes. V–513

V. PREËMPTION ENTRY. (See *Entry*, subtitle *Preëmption.*)

In suspended preëmption entries, where the error arises from ignorance, accident, or mistake, and the land is held by a transferee. VIII–489

V. PREËMPTION ENTRY—Continued.

Reference to board suggested in case of entry canceled in 1849 for supposed conflict with a private claim. IV–187

VI. PRIVATE ENTRY. (See *Private Entry.*)

Rule 11 covers private entries erroneously allowed for tracts not offered. VI–518

Rules 11 and 13, prescribed by the board, not annulled by section 2457, Revised Statutes. VIII–95

Rule 13 considered in its application to private cash entries. VIII–410

Cash entry, voidable for want of restoration notice, confirmed in the absence of fraud. IV–157, 285

Rule 13 covers entries on lands that had once been offered, afterwards temporarily withdrawn, and then released from reservation. IX–536

VII. FINAL PROOF. (See *Final Proof*, subtitle *Equitable Action.*)

Case involving irregularity in final proof may be submitted for. I–484

Rule 10 applied where final proof, through no fault of claimant, was not submitted on the day advertised. VI–460

Rule 10 applied where final proof was not submitted on the day advertised, but no protestant appeared. VI–745

Equity.

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 known as against the pending prior application of another. IV–335, 353

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 lands acquired under a void patent. II–797

Where contest is dismissed for premature filing, and the contestant subsequently initiates another, he assents to the action, and is bound by it. II–69

Estoppel—Continued.

At an *ex parte* hearing, the local officers recommended cancellation of the entry; the defendants did not appeal, but the commissioner dismissed the contest, and the contestant appealed to the Secretary; the contestant is estopped from denying the complete jurisdiction of the Secretary. II–29

Evidence.

I. GENERALLY.
II. DEPOSITION.
III. RECORD.
IV. BURDEN OF PROOF.
V. SUFFICIENCY.
VI. PRESUMPTION.

I. GENERALLY.

Must be reduced to writing and signed by witness at the time when taken. III–105

Testimony taken in shorthand must be written out and signed by the witness before it will be accepted. III–121

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

As to character of land, submitted by the State under section 2488, Revised Statutes, 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

Action suspended in certain cases where the evidence had been taken before the attorney of record. III–98

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

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

I. GENERALLY—Continued.

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 re-opened for the submission of additional testimony. IX–252
Testimony available by copy in different cases. III–445
Taken in one case not to be considered in another. IV–274, 414
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
Local office must not exclude. I–106
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
The local officers have no authority to exclude, but may summarily put a stop to, obviously irrelevant questioning. IX–130
Obviously irrelevant matter excluded from the record. IV–385
Of little value where the witness declines to answer on cross-examination. IV–505
Testimony of witness who refuse to submit to proper cross-examination should not be considered. III–452; V–599
The local office has no authority to compel the attendance of witnesses. II–223

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
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
Testimony must be taken at the time and place named in the notice, and if taken without notice will not be considered. III–195
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

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

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 before the offices designated, under amended Practice Rule 35, the district officers can not thereafter receive supplementary testimony, but must consider the case on the evidence taken. III–145

May be secured through depositions taken on commission issued after hearing under Rule 35 of Practice. X–480

Taken before a commissioner must be sealed up and transmitted by mail or express. V–362

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 taking 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

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

II. DEPOSITION—Continued.

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 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 trials before the local office. X–433

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

Record facts can not be plead 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

Furnished in one case, may be accepted in a subsequent *ex parte* matter. VIII–233; IX–48

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

Matter of record not impeached by an unverified statement. VIII–294

Unauthenticated copy of a *procès verbal* not admissible as. V–577

IV. BURDEN OF PROOF.

In proceeding against an entry the burden of proof is upon the government. V–1, 22, 171, 371; VI–432; VII–374; VIII–526

Rule as to burden of proof not changed by the circular of July 31, 1885. V–372

In a hearing on a special agent's report the burden of proof is upon the government. IX–340

Burden of proof rests with the party attacking an entry. I–129, 146, 477; IV–62, 80; VI–142, 398, 432, 660

Contestee to proceed only after the establishment of a prima facie case. V–59

Burden of proof is upon one attacking the official return of surveys. VIII–440, 467, 555

IV. BURDEN OF PROOF—Continued.

Burden of proof on the party attacking returns of surveyor-general. V–280

Burden of proof is upon one alleging priority of right as against a subsisting entry. VIII–623

Burden of proof is with an applicant for re-instatement. I–77

On prima facie case made, the burden of proof shifts to the defense. V–363

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

V. SUFFICIENCY.

Should be confined to the charge as laid in the information. I–113, 470; IV–299, 424; VI–368

Must follow the charge as laid. V–177, 299, 329

Relevancy of, can only be questioned by the defendant. V–639

Admissibility of, dependent upon the charge under investigation. V–299

Established rules of, followed where fraud is charged. IV–64

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

Mere opinion not received as, where facts can be had. IV–292; VII–441

Ex parte testimony not considered. IV–89, 168, 201, 229; V–590

Affidavits filed after case is closed in the local office not considered except on motion for rehearing. V–425

Final proof not treated as, on hearing. IV–275; VI–285

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

Unsworn statement of special agent should not be admitted as. VI–265

V. SUFFICIENCY—Continued.

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

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 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

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

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

As to statements made by deceased affecting the validity of his entry not admitted. VI–30

V. SUFFICIENCY—Continued.

The statements of a party to his attorney are not admissible in evidence as against the interest of said party. VII–136

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

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

Fees. (See *Accounts; Payment; Practice*, subtitle, *Costs; Repayment.*

Circular instructions. I–517, 518, 519, 523, 524; II–660, 662, 665; III–58, 605; V–569, 577; IX–655

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

Fee bill 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

Fees—Continued.

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

The fees provided in section 2238, clause 7, Revised Statutes, 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

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

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

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

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

Filing. (See *Application; Coal Land; Entry*, subtitle 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

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

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

Prima facie valid raises a presumption as to the fact of the claim and its validity. I–379; IV–402; X–645

Circular regulations with respect to "expired" filings under the preemption 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

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

Declaratory statement must be filed within statutory period to protect the settler. II–578; III–455; VI–391

I. GENERALLY—Continued.

Failure to make, within statutory period defeats the right of purchase in the presence of an intervening adverse claim. X–485

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

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 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

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

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

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

Of alien is invalid. I–445

I. GENERALLY—Continued.

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, Revised Statutes, will not be canceled if the requirements of said section are subsequently observed. VIII–60

Made during infancy is invalid, but the attainment of majority, prior to the inception of an adverse right, cures the invalidity. VI–602

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

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

May be allowed subject to the preference right of a contestant. VII–46

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

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 160 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

Where the settler relinquishes the land in the face of a homestead claim, he can not have his filing re-instated 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

II. AMENDMENT—Continued.

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

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-38

Second, allowed for the same tract in the absence of adverse claim (Overruled, 2 L. D., 854.) I-436, 439

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, Revised Statutes, 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

Second, may be allowed where, through no fault of the preëmptor, the first fails by reason of conflict with a prior adverse claim.

V-643; VI-168, 298, 611; VII-323

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

III. SECOND—Continued.

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

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 under the first 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

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

Second, allowed where the first was illegal for want of settlement, but good faith appeared in alleging settlement. VI–168

Second, permissible where the preëmptor is by armed violence compelled to abandon the land covered by the first. IX–85

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

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

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

Final Proof. (See *Alienation; Naturalization; Res Judicata.*)

I. GENERALLY.
II. NOTICE.
III. PLACE OF TAKING; OFFICER.
IV. WITNESSES.
V. TRANSFEREE.
VI. CONTINUANCE.
VII. PROTEST.
VIII. ADVERSE CLAIM.
IX. EQUITABLE ACTION.
X. COMMUTATION.
XI. DESERT LAND.
XII. HOMESTEAD.
XIII. OSAGE.
XIV. PRE-EMPTION.
XV. TIMBER CULTURE.

I. GENERALLY.

Rules to be observed in passing upon. V–426; IX–123
Circular of December 15, 1885, directing manner of. IV–297
Circular instructions of September 17, 1883. II–199
To be submitted on the new blank forms. Circular of November 2, 1886. V–220
Circular of February 21, 1887, amended. VIII–3
Circular of March 30, 1886, regulating preëmption and commutation. IV–473
Under section 2294, Revised Statutes, as amended, circular of June 25, 1890. X–687
(See also tables of circulars and instructions, page 63.)
The word "district," as used in the acts of March 3, 1877, and June 9, 1880, means *judicial* district, not land district. VI–138; VIII–509
Regularity of, should be determined by the regulations in force at the date of its submission. VIII–512
How made for land in two districts. I–438; II–90

I. GENERALLY—Continued.

Proceedings on, distinguished from contest. II–580; III–399
Should not be submitted pending contest. V–176; IX–279, 299, 322
When rejected because made during contest, the new proof, though confined to the same period as that embraced within the former, may be accepted and held to apply by relation to the date of the suspended entry. VII–175
Taken without authority or notice is void. III–363
False swearing in making, punished. IV–211
Though technically complete, not always received. V–52
On rejection, reasons to be indorsed on application. I–483
Suspension of, pending further compliance, is in effect a rejection of. VI–605
To be transmitted at once to the local office when taken elsewhere. V–220
Local office may require additional. IV–197
Decision on, must be rendered if the claimant refuses to submit additional. V–429
The local office should thoroughly scrutinize, and test the reliability of all proofs presented. III–211
Action of the local office in accepting, not conclusive on the government. VI–265
Rejection of, by the General Land Office, final in the absence of appeal or motion for review. V–421
Witnesses and claimants to be cross-examined. V–178
District officers should take cognizance of facts within their personal knowledge in passing upon final proof. III–223
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
A certificate of the officer before whom the proof was taken that the witnesses were duly cross-examined accepted under the circular of December 15, 1885. VIII–512
Not defeated by absence of jurat from cross-examination, when the testimony was evidently sworn to. VI–787
Must be clear and explicit, showing compliance with the law in all essential requirements. IV–253; VI–120, 549
Good faith an essential in all cases. V–207
No fixed rule can be formulated as to what constitutes good faith. VI–121, 310
Acts done on land prior to entry considered as indicative of good faith. V–238

I. GENERALLY—Continued.

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

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

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, should be required 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

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

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

I. GENERALLY—Continued.

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. (See 3 L. D., 46.) I–459

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

Offered pending suspension of township plat. V–540

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

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

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

Publication of notice and 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

II. NOTICE—Continued.

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; VII–467

New, required where the published notice did not properly describe the land. VI–6

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

Suspended for further notice in case of error in published description of land. IV–406

May be accepted as submitted after republication by the transferee, where the land was misdescribed in the published notice. VIII–415

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

Made upon publication in papers other than those nearest the land must be rejected. III–155

New publication and proof required where the publication was not made in the paper published nearest the land. VII–314

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

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

II. NOTICE—Continued.

Special notice of intention to submit should be given adverse claimants of record. III–196; IX–495

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

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

The necessity for republication where the proof is 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

Where the evidence of the witnesses is not taken before the officer designated it may be accepted, after republication, in the absence of objection. 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

II. NOTICE—Continued.

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

New publication of notice required where the testimony was not taken before the officer designated when, in the absence of protest, the proof submitted may be accepted. VI–622

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

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

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

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

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, Revised Statutes, 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

III. PLACE OF TAKING; OFFICER—Continued.

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

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

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, Revised Statutes. (See p. 224.) 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

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, Revised Statutes, must be made before a probate judge in Dakota acting as clerk, when at the county seat where the court is holden. II–224

III. PLACE OF TAKING; OFFICER—Continued.

Required by section 2262, Revised Statutes, must be made before the register or receiver, but if made before a clerk may be cured by a supplemental affidavit. II–622

(See subtitle No. II.)

IV. WITNESSES.

Witnesses must be disinterested. I–96

Witnesses must 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, means of knowledge. III–133

Dependence upon attorney for witnesses suggests collusion. I–96

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

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 by 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

V. TRANSFEREE—Continued.

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

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

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

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 final proof under protest. III–479

A protestant against final proof 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 counter-proof, 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

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

VIII. ADVERSE CLAIM.

During the pendency of contest proceedings, proof should not be submitted. IX–279, 299, 322

VIII. ADVERSE CLAIM—Continued.

Should not be submitted while questions involving the right to make the same are pending on appeal. IV–265, 394

Should not be received or considered while the land is covered by a pending indemnity selection. VII–149

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

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

Where final proof is not made within the time prescribed, right to make entry is cut off by an adverse claim. II–593

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

VIII. ADVERSE CLAIM—Continued.

A preëmptor, in the presence of an adverse claim, is not protected by an erroneous statement in the receipt as to the time within which he might make final proof. (See 1 L. D., 459.) III–46

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

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

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

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

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

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

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

IX. EQUITABLE ACTION—Continued.

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 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

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, 629.

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

IX. EQUITABLE ACTION—Continued.

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 confirmed. X–296

When taken before an officer not authorized to act in such proceedings the entry may be equitably confirmed, if otherwise regular. X–183

When taken at the time and place designated, but not before the officer named in the notice, the entry may be sent to the board of equitable adjudication. VIII–406, 411, 519

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–483

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

That the officer named in the notice was unauthorized to take, will not prevent equitable confirmation of the entry where the proof was made at the time and place designated but not before said officer. VIII–411

Entry submitted to the board of equitable adjudication, where nonmineral 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

IX. EQUITABLE ACTION—Continued.

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.

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

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

X. COMMUTATION—Continued.

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–651

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

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.

Circular 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

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

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

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

Reclamation may be established without showing crops. V–120, 151

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

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

Allowed after the expiration of the statutory period. IV–261

The Department can not extend the time within 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

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

(See subtitle No. IX.)

XII. HOMESTEAD.

The Department has no authority to extend the statutory period within which to submit. IX–291; X–400

XII. HOMESTEAD—Continued.

Entry will be canceled at the expiration of seven years if proof is not submitted after due notice. I–112

When final proof is not made within seven years from entry, notice to show cause why the same should not be canceled will issue. III–136

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

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

No statutory authority under which an administrator may submit and perfect claim of deceased homesteader. VI–573

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

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

New, may be made, where that submitted is found insufficient, but good faith is apparent. X–400

Proof under section 2291, Revised Statutes, may be made where commutation proof has been rejected with right to submit new proof. VIII–547

Supplementary proof explanatory of absences permitted. VI–809

(As to proof of non-alienation, see subtitle 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

XIII. OSAGE—Continued.

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

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

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

XIV. PREËMPTION. (See subtitles 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

Act of May 9, 1872, extended time for, in Minnesota one year. I–380

Is submitted in time if notice thereof is given within the statutory period. I–461

Statutory period for the submission of, can not be extended by the Department. IX–340

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

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

Failure to submit and make payment within thirty months after the expiration of the period fixed for filing declaratory statement, subjects the claim to the intervening right of another. X–216

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

XIV. PREËMPTION—Continued.

No penalty, in the absence of intervening settlement, for failure to make proof and payment for unoffered land within the statutory period. V–440

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. III–46. (See I–459)

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

Should not be submitted until after the expiration of three months from the filing of the township plat. VI–633

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

Heirs may submit, though the preëmptor died without executing the affidavit required in section 2262, Revised Statutes. 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

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

XIV. PREËMPTION—Continued.

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

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

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

Submission of, within the shortest period possible, not in itself sufficient to impeach the good faith of the preëmptor. X–119

The degree and condition in life of the entryman may be considered in determining whether he has shown good faith. VIII–645

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. X–340, 468

Showing in the matter of improvements satisfactory if good faith is made apparent thereby. IX–1

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

(As to proof of non-alienation, see subtitle 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

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

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

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

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–309, 328

Florida. (See *States and Territories; Swamp Land.*)

Fraud. (See *Contest*, subtitle II.)

Must be clearly established to warrant the cancellation of an entry. I-439; VI-225

Actual fraud shown on trial, though not charged, will justify cancellation. III-462

Charge of, will not be disregarded. III-57; V-180

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

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 to 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*, subtitle No. VII; *Private Entry.*)

Guardian. (See *Final Proof*, subtitle No. XII.)

Hearing. (See *Practice.*)

Homestead. (See *Alienation; Entry; Final Proof; Mineral Land; 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.
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I. GENERALLY.

Law must be construed as a whole. IV–400, 581

The right exhausted with one entry. III–57; V–124, 133

Where an entry is relinquished because of the ravages of grasshoppers, the homestead right is exhausted. II–141

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

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

Can not be made of land occupied in good faith by others. III–362

One who occupies public land for the purpose of "trade and business," prior to the entry thereof, is precluded from taking the same under the homestead law. VI–332

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.*) X–649

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 tract "cornering" upon another is not "contiguous" thereto within the meaning of section 2289, Revised Statutes. V–683

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. VI–766

Not allowed where the evident purpose was to wrongfully secure the improvements of another. V–377

Intention to wrong another evidence of bad faith. IV–158

Claim of one that fails in residence will not defeat a preëmptor that has not filed. V–188

Total failure to comply with the law not excused by poverty. IV–185

The right to submit proof, and receive patent in case of an entry by a single woman, is not defeated by her marriage and removal from the land after fulfilling the statutory period of residence. VI–140

Claimant that alleges residence before required must show the same. V–440

I. GENERALLY—Continued.

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

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

Entry must be canceled on death of entryman without heirs. III–384

Claim for land chiefly valuable for its timber should be carefully scrutinized. VIII–526

If the land is subject to, and the applicant is qualified the only question thereafter is compliance with the law. V–197

Claim secured through concessions made a conflicting settler. V–119

II. BY WHOM. (See subtitles, Nos. III and IV.)

Right to initiate a claim is conferred upon one "who has filed his declaration of intention" to become a citizen. VIII–289

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

Can not be made by a married women. II–112

Married woman, the head of a family, qualified to make. X–527

The entry of a single woman is not affected by her subsequent marriage. VII–470

Entry of single woman not affected by marriage before final proof. V–196; VI–140

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

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

By a minor, as head of a family. II–82

By the wife of an insane person, as head of a family, her husband being civilly dead. II–102

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 entry. IV–441

Right of one now in military or naval service to take, dependent upon his ability to comply with the requirements of the law. I–98

II. BY WHOM—Continued.

One in military service may take, on showing due compliance with the law. IV–399

Right of the entryman not affected by the fact that final certificate had not 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

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

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

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. X–543

Married women may, as heir of a deceased homesteader, file application, submit proof, and receive patent. VIII–286

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

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

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

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, Revised Statutes. II–100

III. WIDOW; HEIRS; DEVISEE—Continued.

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, Revised Statutes, to consummate the claim of a deceased homesteader. IX–268

Where entryman (prior to act June 15, 1880) devised the land to his daughter, 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, Revised Statutes, 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

Heirs of a deceased homesteader required to show cultivation and improvement until the expiration of the statutory period. VII–309

Widow or heir is not required to reside on the land. II–74

Heirs of deceased entryman must show cultivation for the statutory period. I–636

Widow and heirs required to cultivate but not to reside on claim. IV–433

Where the death of the homesteader is disclosed by the record, the patent should issue in the name of the heirs generally. IX–401

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

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

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

IV. DESERTED WIFE—Continued.

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 rules 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 instructions as to proceedings to be observed in case of Indian applying to make, under act of July 4, 1884. III–91

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

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

VI. ADDITIONAL. See subtitle 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. I–93

Limitations of right to additional, defined. I–29

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 80 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 80 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 80 acres. VIII–428

Under the act of March 3, 1879, only where the applicant was legally restricted to 80 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 80 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

VI. ADDITIONAL—Continued.

Where application for 80 acres was made in November, 1878, but, owing to a prior entry, entry was not made until June, 1879, entry for an additional 80 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 entry. I–100

The act of March 3, 1879, requires residence and cultivation for at least one year. I–100

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 pre-emptor 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

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, Revised Statutes, 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

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, Revised Statutes, requires residence on the original farm. II–38; X–579

Residence on the original farm prior to entry can not be computed as forming part of the requisite statutory period. I–68; V–172; X–488

Credit for residence prior to entry accorded under the act of May 14, 1880. 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

VII. ADJOINING FARM—Continued.

The right to make, not modified by the act of May 14, 1880. V–172

Original entry treated as adjoining farm, to save the rights of the entryman. I–71

VIII. SOLDIERS.

Soldier's declaratory statement, circular of December 15, 1882, with blank forms. I–648

The rule as to settlement, improvement, and entry of soldier's homestead changed by circular instructions December 15, 1882. III–301

Circular requirements of December 15, 1882, concerning soldier's declaratory statement, discussed. V–133

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

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

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

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

Right exhausted by the filing and abandonment of a soldier's declaratory statement. IV–562; V–133

VIII. SOLDIERS—Continued.

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 a declaratory statement does not, under the act of March 2, 1889, exhaust the homestead right. IX–145, 382

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

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

Application for minor 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

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

No rights were taken away by the enactment of sections 2304 and 2305, Revised Statutes. IV–399

Entry made through agent by a person in the naval service is within the provisions of section 2308, Revised Statutes. III–446

Residence, improvement, and cultivation for a period of one year at least must be shown to authorize patent. VII–362

Made under soldier's filing may be commuted. IV–399

VIII. SOLDIERS—Continued.

Patent not authorized unless it appears that the entryman is a citizen at date of final proof. VII–362

IX. SOLDIERS' ADDITIONAL.

(See subtitle, No, XIII, and *Indian Lands.*)

The right does not exist where the period of military service is less than ninety days. VII–287

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

Right of soldier not restricted to contiguous tracts. I–50; III–472

May not be made on a tract withdrawn, for purpose of a sale, under section 2455, Revised Statutes. 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

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

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

A certificate of the right of soldier's 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

IX. SOLDIERS' ADDITIONAL—Continued.

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

The right to make, is personal and non-assignable. IV–323; VII–565; VIII–608; IX–195

The practice in reference to assignments reviewed; the right is personal, and the assignment of a certificate will not be recognized; a purchaser takes it subject to all defects, and is not an innocent purchaser. II–235

Right is not assignable, but personal, and can be only 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

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–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

The transferee occupies no better position than the entryman if the entry is invalid for the want of due military service. VII–236

The right to make, does not extend to members of the Missouri Home Guard. II–235; VII–236; VIII–235

Where certificate has issued improperly to one (in Missouri Home Guards) 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 Guards, 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 Guards. VI–557

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 required under location where the original entry was canceled for failure to make final proof. V–10

The purchaser of the certificate, having made entry, may (in this case) buy the land under section 2, act of June 15, 1880. II–238

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

Without proof as to military service there is no right of entry. IV–323

Entry of land occupied for purposes of trade and business is illegal, and the subsequent withdrawal of the protest, filed on behalf of such occupancy, will not legalize said entry. X–691

The right to make soldier's 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

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

IX. SOLDIERS' ADDITIONAL—Continued.

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

X. COMMUTATION.

Right of, statutory. VI–311

Right to commute, extends to an entry made under section 2304, Revised Statutes. IV–399

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

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

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

Authorized on payment of the purchase price and due showing of residence, cultivation, and improvement. VII–231

Regulations under the preëmption law govern as to residence. IV–287, 347

Proof in, properly includes residence. IV–347, 384

Six months' residence required as an assurance of good faith. IV–287, 347, 384

Allowed though residence did not cover six months from entry. IV–287

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

X. COMMUTATION—Continued.

Under the act of May 14, 1880, residence may be computed from date of settlement. V–94

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

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

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

Right of successful, prior to the actual cancellation of the entry attacked. IV–287

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

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

A persisting 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

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, Revised Statutes, 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

Heirs must cultivate till the five years expire. III–465

"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 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–303; VII–537

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

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.

Right of purchase not personal. 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

Only land subject to entry may be purchased. IV–171

Intervening vested rights protected as against said act. I–69

Right of purchase extends only to entries made prior to the passage of the act. VIII–329

An attempted transfer subsequent to June 15, 1880, can not become effective, the act having relation to past transactions only. II–176

Right of purchase defined. IV–465

XIII. ACT OF JUNE 15, 1880—Continued.

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 successors 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

Right of purchase can not be exercised by one who has voluntarily relinquished the original entry. VIII–606; X–588

Alienation of land no bar to purchase. I–74

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

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

No right of purchase in transferee who became such after passage of the act. I–75; V–11

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

XIII. ACT OF JUNE 15, 1880—Continued.

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

The assignee of an erroneously issued and invalid certificate of soldiers' additional homestead right may (in this case) 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–75

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

Purchase allowed though entry was void at inception. I–25

May be allowed where the entry is void 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

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XIII. ACT OF JUNE 15, 1880—Continued.

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

Right to purchase not dependent upon residence or occupancy. V–333

Purchase under this act not the equivalent to residence and cultivation. V–10

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

Purchase authorized even after cancellation of original entry, if it does not interfere with the subsequent right of another. VII–281

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

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

XIII. ACT OF JUNE 15, 1880—Continued.

When judgment against the entryman has become final under the rules in the local office or on appeal, the contestant's preferred right of entry attaches, and if duly exercised bars the entryman's right of purchase on a subsequent application. II–164

Purchase defeated by order of cancellation following successful contest. V–606

The entryman has right of purchase while his appeal from the Commissioner's action is pending before the Secretary prior to the canlation 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

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Initiation of contest against the original entry suspends the right of purchase under section 2 of said act. IV–580; V–189, 229, 606; VI–641; VIII–463, 579, 595; IX–18; X–111, 410, 678

Purchase under said act pending contest good as against every one except the contestant. VII–194

That the purchase was made during the pendency of a contest, is an objection that can only be raised on behalf of the contestant. X–392

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

Purchase during the pendency of a contest is good as against every one except the contestant and may stand if his right is waived. IX–390

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 in Freise *v.* Hobson are not affected by the change of ruling announced therein. IX–75

XIII. ACT OF JUNE 15, 1880—Continued.

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

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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

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 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

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

The allowance of a purchase by direction of the General Land Office will not preclude a departmental determination as to its validity. VII–301

The term "homestead laws" used in the second section of said act in a generic sense. I–69

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

XIII. ACT OF JUNE 15, 1880—Continued.

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

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XIV. ACT OF MARCH 2, 1889.

Homestead right as enlarged by the act of March 2, 1889. (Circular of March 8, 1889.) VIII–314

Additional, made prior to the passage of the act of March 2, 1889, may stand, though unauthorized when made. IX–543

Entry of contiguous tract authorized by the act of March 2, 1889, if the original was for less than 160 acres, and the entryman still owns and occupies the land covered thereby. VIII–428

Entry of contiguous land may be made under section 5, act of March 2, 1889, 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

Additional, under the act of March 2, 1889, 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, act of March 2, 1889, may be based upon a homestead entry made in conformity with legal requirements. X–78

Right to apply for additional, under the act of March 2, 1889, treated as a preferred right in case pending at the passage of said act. VIII–474

Additional, may be made under the act of March 2, 1889, where the applicant has exhausted his rights under sections 2289 and 2306, Revised Statutes, without securing 160 acres of land. IX–388

Right to make additional, under the act of March 2, 1889, 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

Right may be exercised the second time by way of a transmuted preemption claim under the act of March 2, 1889, if initiated prior thereto. VIII–422; X–635

The phrase "had the benefit of such law," as used in the act of March 2, 1889, section 2, construed. X–635

Soldier's filing for one tract does not, under the act of March 2, 1889, preclude the entry of another tract. IX–145, 382

XIV. ACT OF MARCH 2, 1889—Continued.

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 the act of March 2, 1889, for the benefit of a transferee. X–79

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III. CONVEYANCE.

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Deed for, executed by Shawnee, does not convey title if not approved by the Secretary. X–606

IV. KANSAS.

Sec. 4, act 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

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V. MILLE LAC.

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V. MILLE LAC—Continued.

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VIII. OMAHA.

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Osage trust lands, circular regulations of April 26, 1887, with respect to entry of. V–581

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IX. OSAGE—Continued.

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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

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

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. VIII–173

Right to purchase Osage lands conditioned upon compliance with preëmption law in the matter of settlement. IV–340

Purchaser of Osage land must show a bona fide settlement. VII–277

Where one having the qualifications of a preëmptor makes a legal Osage filing he can not make a second. VII–30

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Cash paid on commuted homestead entry for trust lands to be placed to the credit of the Indians. IV–148

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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

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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

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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

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 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

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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

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Isolated Tract. (See *Public Sale.*)

Judgment.. (See *Jurisdiction; Res Judicat.a*)

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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

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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

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Extra-judicial 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

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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

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The question of, may be raised at any stage of proceedings, and upon slight suggestion in all tribunals. I–174, 237; VI–409

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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

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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

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Michigan. (See *School Land; Swamp Land.*)

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Mineral Land. (See *Coal Land; Patent; Mining Claim.*)

I. GENERALLY.

II. ALABAMA.

I. GENERALLY.

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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

Oil land held as mineral. IV–60, 284

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Coal is not, within the meaning of the act of June 3, 1878; see *Coal Land.* II–827

Is such land as will pay to mine by the usual methods. VII–265

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

The land being returned as agricultural, the burden of proof is with the mineral claimant. II–714, 721; III–234

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

One denying the prima facie agricultural character of a tract covered by a claim (homestead) must show, not that it is of little value for agriculture, not that adjoining or neighboring lands are mineral, and not, theoretically, that the tract may possibly develop minerals in the future, but that, as a present fact, proved by the actual production of minerals, it is mineral land. II–721

The burden of proof is upon an agricultural claimant for land returned as mineral. VII–265, 532

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

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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 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 claimants as no longer profitable. VII–265

The existence of mineral in such quantities as to justify expenditures in the effort to secure it should be established as a present fact in order to bring the land within the class subject to mineral entry. VII–71

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

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, Revised Statutes). II–712, 850

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Where a placer application has been filed on a homestead entry of land both claims may be suspended until after a hearing upon the character of the land. II–712

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The phrase "known mines" construed. VII–73

Found to be such after patent under railroad grant, does not affect the title. V–193

May be included within military reservation and while thus reserved is not subject to other appropriation. I–552

Townsite may be located upon, subject to rights of mineral claimants. I–556

So known would not pass under the townsite patent. IV–556; V–131

Known to be such excepted from the railroad grant (Central Pacific). V–193

Known to be such at date of survey, does not pass under school grant. III–233; IV–75; V–696; VI–412; VII–459; IX–408

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

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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

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

In Alaska, regulations concerning. IV–128

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 affected by said act. III–169, 172; IV–476; IX–635

II. ALABAMA—Continued.

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

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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

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

Entry of land reported valuable for coal prior to the act of 1883 (Alabama), without the prerequisite offering, may be suspended until after offered and then reinstated if not sold. IX–635

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

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

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

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One who settles on mineral land in 1871 acquired 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

Mining Claim. (See *Mineral Land; Patent.*)

I. GENERALLY.
II. BY WHOM.
III. LOCATION.
IV. RELOCATION.
V. APPLICATION.
VI. SURVEY.
VII. NOTICE.
VIII. ADVERSE CLAIM.
IX. PROTESTANT.
X. DISCOVERY AND EXPENDITURE.
XI. ENTRY.
XII. LODE.
XIII. PLACER.
XIV. MILL SITE.

I. GENERALLY.

Mining laws recognize prior local laws, rules, and regulations. I–588

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

In a hearing ordered to test the validity of, it rests with the protestant to overcome the legal presumption that the entry is valid and regular. IX–538

The Land Department will inquire into questions affecting compliance with the law. I–584

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

A judgment favorable to the applicant, in judicial proceedings instituted by an adverse claimant, is no bar to a subsequent investigation on behalf of the government to determine whether said applicant has in fact complied with the law. IV–314; VII–415; X–184

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

I. GENERALLY—Continued.

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

Assignments of interests in mining possessions are valid, even by parol transfer. I–595

Patent issued to applicant, after quitclaim, privity of parties being shown. III–340

Miners' rights not divested by subsequent appropriation of the land for a military reservation. I–552

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

Can not be entered by a citizen of the United States, acting as a trustee, for the benefit of an alien corporation. X–641

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

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Entry may be made by purchaser in good faith of the mineral location made by a register. II–754

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

Entry of deputy surveyor within the district for which he is appointed not illegal VI–105

III. LOCATION.

Under which the requirements of the law have been complied with confers a vested right. IV–476

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

A location on surveyed lands, since the act of 1872, must conform to the public surveys only so far as is reasonably practicable; it may be for 12,000 feet of the bed of a non-navigable stream in a cañon. II–764

Valid location can not be made on a possessory right acquired wrongfully. III–267

III. LOCATION—Continued.

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

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

Location and working for mining purposes segregates the land, and prevents utilization of a discovery within its limits. II–744

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.

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 a relocation, alleging that the claim was not subject to relocation, and the counter-charge that the right of the protestant had been finally excluded by adverse proceedings prior to said relocation. X–534

Abandonment is admitted if, after a 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 20 acres additional. II–763

Relocation of claims never adjusted to the public survey allowed. IV–225

V. APPLICATION.

Provisions of circular of May 11, 1885, extended to applications prior to December 4, 1887. V–468

V. APPLICATION—Continued.

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

In applicatlon for survey the location must be properly marked and recorded. I–581

Application for entry not properly followed up confers no exclusive rights. IV–30

Abstract to approximate date of application. IV–374, 515

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

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

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

Application for a water right, under guise of a placer claim, will be rejected. II–774

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 20 acres. II–763

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 containing deposits of borax, soda, alum, etc., in California, Nevada, Arizona, Utah, and Wyoming. II–708

VI. SURVEY.

Survey of, instructions. I–693; III–540, 542

No deposit is required to accompany an application for survey in the field, the applicant being free to contract as he pleases; for plotting or office work a deposit must be made. II–773

VI. SURVEY—Continued.

Money deposited for the cost of office work, and remaining unexpended, may be applied on new. VIII–102

Section 2334, Revised Statutes, was intended to protect applicants from unjust charges for survey and publication. II–773

Survey must follow the location notice upon which it is ordered. This rule applies to amended as well as original locations. VII–81

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

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

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 surveys. VII–475

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. X–173

Amended survey permissible when, through error of deputy surveyor, the connecting line was erroneously located, but the claim was sufficiently identified by the description given. After such amendment the entry may be submitted to the board of equitable adjudication. VI–718

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

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. VIII–361

VI. SURVEY—Continued.

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

Proceedings based upon a false survey and publication are invalid. I–593

VII. NOTICE.

In giving notice of application the required period of time must be covered by each form of notice. V–510

Exclusion of conflicting areas must appear in published and posted notices. I–543

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

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

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

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

Publication of notice in paper designated by the register sufficient. I–570

Each of the three concurrent details in publication of notice must be equally observed. I–573

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

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

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

VII. NOTICE—Continued.

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

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

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

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

VIII. ADVERSE CLAIM.

Adverse proceedings, circular of May 9, 1882. I–685

The adverse claim must be upon oath of the person or persons making it; may not be sworn to by an attorney. II–706

VIII. ADVERSE CLAIM—Continued.

Alleged delinquent co-tenants must protect their rights as adverse claimants. I–544

The right of a coöwner should be asserted as an adverse claimant. V–93

Tunnel location should be protected by adverse suit as other mining claims. I–584

Protest or adverse claim should be filed as against an application to protect rights under a prior town-site patent. IV–555

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

Adverse claim must be asserted within the period of publication. IV–30

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 comes on Sunday, an adverse claim filed on the succeeding Monday is in time. VIII–430

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

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

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

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 adverse claimant to institute suit places him in the position of a protestant. I–584

Failure of prior locator to file adverse claim is a waiver of his right. I–591

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

VIII. ADVERSE CLAIM—Continued.

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

An entry allowed prior to the final disposition of adverse proceedings must be canceled where such adverse claim remains undetermined. VII–83

Entry prematurely allowed pending disposition of adverse litigation permitted to stand on the withdrawal of the adverse claims. VII–336

Stay of proceedings warranted on allegation of adverse claim shown on plat filed. I–538

The stay of proceedings, 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 proceeding, though it may have been begun before the application for patent. VIII–437

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

Entry should be canceled where the certificate showing non-existence of suit was recalled. I–539

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

Extent and nature of adverse claim may be shown by means best practicable if survey can not be made. I–582

VIII. ADVERSE CLAIM—Continued.

Conflicting rights set up to defeat an application can not be recognized in the absence of an alleged surface conflict. VI–318

Waiver of adverse claim effective when filed in the local office without reference to pending judicial proceedings thereon. IV–117, 376

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

The adverse claimant may not, before suit commenced, file an application for the ground adversely claimed. II–723

An adverse claimant may not, after suit commenced, 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

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

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

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

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

Dismissal of suit by adverse claimant held a waiver of claim to ground in conflict, where the lode passed through the prior placer claim. IV–273

VIII. ADVERSE CLAIM—Continued.

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, Revised Statutes; 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

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 acquiesence 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

The applicant, adversed, may litigate the case, or relinquish the ground in conflict and take pa tent for the remainder, or dismiss his application for patent and r ely on his possessory title. II–744

IX. PROTESTANT.

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 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

A protestant has no standing before the Department as a litigant. II–743, 749

The burden of proof is upon the protestant. III–267

Allegations of protest should receive full consideration. V–29

Protestant can not rely on technicalties. I–578

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

IX. PROTESTANT—Continued.

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

X. DISCOVERY AND EXPENDITURE.

Circular of December 14, 1885, modifying the practice under the Good Return placer mine decision. IV–374

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 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

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

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

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 mining 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

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

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

Preliminary showing of expenditure necessary to maintain possession required on application. 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

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

X. DISCOVERY AND EXPENDITURE—Continued.

Failure to make the statutory annual expenditure renders the claim subject to relocation. VII–506

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, Revised Statutes. 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

Though the application cover several locations, proof of $500 expended on the claim, as applied for, is sufficient. IV–221, 374

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 the 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

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

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

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

A claim as amended is an entirety, and it is not necessary that the improvements should be upon a particular part thereof. VII–81

X. DISCOVERY AND EXPENDITURE—Continued.

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

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

XI. ENTRY.

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, Revised Statues; 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

Sections 2324 and 2325 should be construed together. I–544

Section 2324, Revised Statutes, has reference solely to title by right of possession, and does not conflict with titles acquired by purchase. II–771

In the absence of clear showing as to possessory right patent must be denied. VI–261

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

Requisite antecedent compliance with law presumed after entry. I–548

Preliminary proof for patent must show the claim valid at application. V–25

Mineral value of tract claimed to be shown. III–536

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

XI. ENTRY—Continued.

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, Revised Statutes, or have his name inserted in the certificate of entry; this regulation does not apply to proceedings under section 2326, Revised Statutes. II–725

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

Error in the issuance of the final certificate may be corrected. VII–415

Entry should not be canceled on the report of special agent. II–788; VI–231

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

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 25 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 25 feet on either side thereof. III–388

The 25 feet referred to in section 2333, Revised Statutes, is to be measured from the center of the lode. III–388

XII. LODE—Continued.

An out-standing 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

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

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

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

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

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 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 same ruling should apply to oil, *quære.* II–708

Water right can not be obtained under the guise of a placer claim. III–536

A vein or lode known to exist at date of placer application, and not included therein, must be excluded from the entry. IX–26

All known lodes at date of placer application are excepted from patent issued thereon, together with 25 feet on each side of said lodes. I–577

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–203

The formal location of a lode claim is not necessary to exclude the lode from a placer patent. IX–26

XIII. PLACER—Continued.

Hearing may be ordered to ascertain whether a vein or lode was known to exist at the date of placer application. IX–29

The validity of a placer patent, and its extent, as in conflict with an alleged known lode, are questions for judicial determination. X–200

XIV. MILL SITE.

Mill sites provided for and recognized by section 2337, Revised Statutes. I–557

Mill-site location made the same as mineral claim. I–557

Non-mineral character of land claimed as a mill site must be shown. VIII–195

A qualified corporation may obtain title to a mill site. X–194

Under the first class of mill sites there must be a lode or vein shown in connection therewith. I–557

Quartz mills and reduction works the only improvements on which a mill-site entry may be made under the last clause of section 2337, Revised Statutes. IX–460

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

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

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

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

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 non-mineral land, not contiguous to lode, protected from subsequent town-site appropriation. IV–212

In an application and entry for lode, may embrace one or more pieces of ground within the limits of five acres. II–755

Minnesota. (See *States and Territories; Swamp Land.*)

Mission Claim.

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

Missouri Home Guard. (See *Homestead*, subtitle *Soldiers' Additional.*)

Montana. (See *School Land; States and Territories.*)

Mortgage. (See *Alienation.*)

Mortgagee. (See *Practice*, subtitle *Notice.*)

Naturalization. (See *Alien.*)

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

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, Revised Statutes. 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

Declaration by the father during the minority of the son does not confer citizenship upon the son. IV–116

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

An honorable discharge from the U. S. Army is equivalent to a declaration of intention. II–195

May be shown by copies of original papers where final proof is made before an officer of a court of record. IV–210

Naturalization—Continued.

An alien immigrating during his minority and remaining until after his majority must file a declaration, under section 2165, Revised Statutes, or comply with the requirements of section 2167, Revised Statutes, before being qualified for entry. II–195

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

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. I–61

General statutes of, are not applicable to Indians. I–491

Relates back, in the absence of an adverse claim, to the date of settlement. IV–565; VII–229; X–475

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

Evidence as to filing declaration of intention, furnished with homestead proof, may be accepted in subsequent preëmption proof. VIII–233

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.*)

Obiter Dicta.

A ruling by the Department on a question not involved in the case under consideration will be treated as mere *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

Offering. (See *Mineral Land*, subtitle *Alabama; Private Entry; Public Sale.*

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

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

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.

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 of local, to make due record will not jeopardize the claimant's right. I–81

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

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

I. GENERALLY—Continued.

Matters pertaining to execution and delivery of, to be determined in the General Land Office. IV–375

The Secretary of the Interior no authority to direct the delivery of an incomplete. I–22

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 anyone; it is null and void. II–794; V–477

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

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

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

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 afterwards appear. II–772

Where alien donation claimant died after declaring his intentions and before naturalization, patent properly issues to his heirs. II–439

Authorized by section 2447, Revised Statutes, only in claims confirmed by statute and where the act made no provision for patent. VI–149

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 patent on a void entry. II–779

I GENERALLY—Continued.

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

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

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 a 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, Revised Statutes. 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

In town site and mineral, mutual clauses of reservation may be inserted. I–556

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

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. I–592; II–114, 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

II. EFFECT OF—Continued.

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

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

Issued within the jurisdiction of the Land Department may be voidable, but is not absolutely void. III–90

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

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. I–492; II–167, 497, 770; IV–117; V–39

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

Issued to a 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. IV–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

III. REISSUE.

Issued to correct mistake on surrender of the former, where it fails to properly describe the land. V–105

Should be surrendered for reissue to cover larger amount. V–336

III. REISSUE—Continued.

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

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

All jurisdiction of the Department over lands terminates on certification. VI–543

Though erroneously made, deprives the Department of further jurisdiction over the land. IV–137

V. VACATION.

Proceedings to vacate will not be advised, except on due showing. IX–83

To determine whether suit to vacate should be advised, a hearing may be ordered. IX–83

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

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 an 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

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

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

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

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 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–759

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

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

V. VACATION—Continued.

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

Receiver's duplicate receipt is merely prima-facie proof of payment. II–48

Military bounty-land warrants may not be received in payment of preëmptions. II–673

For the purpose of making payment for preëmption and commuted homestead entries, supreme court scrip is money. II–599

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 recognized such practice. VI–107; IX–615

Tender of, so far as the rights of the claimant are concerned, is equivalent to actual payment. V–38

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

Where 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

Certificates of deposit for the survey of a private land claim can not be used in payment of lands homesteaded 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

Payment—Continued.

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. II–46

Where the excess payment in homestead entry would be less than one dollar, none is required. II–200

Plat. (See *Survey.*)

Practice. (See *Contest; Evidence; Judgment; Jurisdiction; Res Judicata.*)

I. GENERALLY.
II. RULES OF.
III. AMENDMENT.
IV. APPEAL.
V. CONTINUANCE.
VI. COSTS.
VII. HEARING.
VIII. INTERVENOR.
IX. NOTICE.
X. PROCEEDINGS BY THE GOVERNMENT.
XI. PROTESTANT.
XII. REHEARING.
XIII. REVIEW.

I. GENERALLY.

Before local offices not affected by State procedure. IV–346

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

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

I. GENERALLY—Continued.

Oral hearing not allowed without notice to all parties. IV–320

To hear a case orally is within the discretion of the Department. III–595

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

The advancement of cases is discretionary with the Commissioner. IX–530

Briefs containing scurrilous and impertinent matter will be stricken from the files. IX–130

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

Failure to file a motion in time not cured by notice thereof served within the proper period. V–262

Motion to dismiss a contest before the local office not required to be in writing. IV–207

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. VIII–395

Motion to dismiss for want of sufficient evidence treated as one for non-suit. VI–682

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 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

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

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

I. GENERALLY—Continued.

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. V–454

Irregularity waived by consent to the proceedings. I–474

All questions as to preference rights of settlers must be raised in and decided by the local office. V–659

After decision by the local officers they can take no action involving the disposition of the land until instructed by the Commissioner. VIII–559

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

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

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

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

I. GENERALLY—Continued.

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

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

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, page 65.

Rules adopted August 13, 1885. IV–35

Rule 56 amended. X–680

Rule 70 amended. IV–234

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

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

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

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

II. RULES OF—Continued.

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

None of the rules of practice deprive the Department of its supervisory powers. III–44; VIII–2, 423

III. AMENDMENT. (See *Application; 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

Granted where the record furnishes matter to amend by. IV–538

Allowed where the rights of the parties are not prejudiced thereby. IV–538

May be allowed where the charge is defective. X–181, 407

Where affidavit (against timber-culture entry) is executed prematurely, but filed at the proper time, it may be amended. II–249

Motion for review may be amended if no party in interest is injured thereby. VIII–248

Allowed on the day set for hearing if the charge is found defective. V–211; VI–268

Complaint may be amended after due notice, and evidence submitted thereunder. VI–791

May be allowed on suggestion of defendant's death. X–261

The right to amend defective pleadings is lost by failure to appeal, and can not be set up in a new contest after the interest of another has intervened. III–58

When containing new matter, and filed after the case has closed, must be treated as new contest and held for disposition of pending suit. VI–234

Of 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 should 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

IV. APPEAL.

Rules relative to, analogous to practice in the courts. I–472

Is the proper method of invoking the supervisory authority of the Secretary. V–613

In an appealable case is a waiver of pending motions. V–438; VI–218

Rules of practice with respect to, must be followed in case of hearing ordered under mineral circular of October 31, 1881. V–671

IV. APPEAL—Continued.

Withdrawal of an appeal leaves the decision final. II–395

Estops the appellant from denying the full jurisdiction of the appellate tribunal, even though the adverse parties are themselves chargeable with laches. II–29; III–562, 608

Right of, should not be denied before it is sought to be exercised. IV–53

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

Local office may not dismiss on the ground of its defective character. V–368

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

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

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 an appeal to the Secretary, questions properly requiring primary action by the Commissioner will not be considered. II–650

IV. APPEAL—Continued.

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 to, is a waiver of any claim to precedence under previous proceedings. III–180; V–263; IX–569

Rights lost through failure to, can not be set up after the intervention of an adverse claim. III–105, 473; IV–187, 414, 532

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

From Local Office.

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

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–99

Notice as to right of, must be given under rule 66 when an application to file or enter is rejected. V–377

IV. APPEAL—Continued.

From Local Office—Continued.

In the absence of, a decision of the local office, not within the exceptions to Rule 48, becomes final, and should not be reversed by the General Land Office. I–467; V–585; VIII–30

In the absence of, the decision of the local office is final as to the facts, unless the case is 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

In the absence of, the Commissioner may decide a case on its merits, where there were disagreeing decisions of the local officers. IX–138

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

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

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

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

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

IV. APPEAL—Continued.

From Local Office—Continued.

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

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 of the 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

From the General Land Office.

Estops the appellant from denying the jurisdiction of the Department. II–29; III–562, 608

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

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

Should not be dismissed by General Land Office if received without objection. V–205

Sufficiency of, from the General Land Office to be determined by the Department. V–251

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

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

IV. APPEAL—Continued.

From the General Land Office—Continued.

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

By Whom.

Party recognized by notice of decision entitled to be heard on appeal. IV–53

Appeal by a party not in interest will be dismissed. II–362

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 intervenor requires a disclosure of interest. X–111

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 intervenor. 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

Right of, should be accorded to the heirs of a deceased preëmptor from a decision awarding the land to an adverse claimant. VIII–405

Where two parties are adversely affected by a decision the appeal of one will not preclude motion for review by the other, nor will the denial of the motion affect the appeal. V–410

When Allowed.

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 the 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

Will not lie from an interlocutory order of the Commissioner. II–40, 580; IV–94; VII–404; IX–360, 633

IV. APPEAL—Continued.

When Allowed—Continued.

Will not lie from an interlocutory order of the local office. IX–252

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 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

A decision that amounts to the determination of a substantial right is not interlocutory and appeal will lie therefrom. X–111

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

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

Re-instatement 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

Will not lie from the refusal of the Commissioner to take up a case before reached in the regular order of business. IX–530

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

Does not lie from action of board of equitable adjudication. I–411

IV. APPEAL—Continued.

When Allowed—Continued.

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 its right of appeal from such action. IV–52

Time.

Right of, runs from date of notice of decision. IV–244, 279

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 allowed for, when notice of local officer's decision is sent through the mail. I–117, 118; VII–387

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

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

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

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 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 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

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

Allowed where date of notice is in doubt, and the default in filing, if any, but one day. I–110

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

IV. APPEAL—Continued.

Time—Continued.

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. (See 11 L. D., 439.) I–464; II–374

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

Specification Of Errors.

From Commissioner's decision must contain specification of errors. I–109

Should set forth briefly and clearly specific exceptions to the decision complained of. IV–343; IX–370

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

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

Rules 88 and 90, of practice 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

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

Notice Of.

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

IV. APPEAL—Continued.

Notice Of—Continued.

Notice and grounds of appeal must be filed within the time required in the rules of practice. III–134

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

Notice of, from the local office should be duly served upon the appellee. IX–252

Notice of, and specifications of errors may be filed at different dates. V–251

The words "I desire to appeal," with assignment of grounds and promise to file argument, is a sufficient notice of appeal (private claim). II–391

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

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 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

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

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 subsequent application for repayment. V–409; IX–643

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

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
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
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
On the ground of absent counsel or witness should be denied if diligence is not shown. VII–497
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
Agreement of counsel to an indefinite postponement of the hearing works a discontinuance of the case. X–459
To be ordered in pending cases on removal of local office. VII–527

VI. COSTS.

To be paid by contestant who seeks a preference right under the act of May 14, 1880. III–51; VI–763
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

VI. COSTS—Continued.

Equally apportioned in case of hearing ordered to ascertain in whom the right of entry exists. III–449

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 1889), the contestee is not required to pay the expense of cross-examining the contestant's witnesses. VI–660

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

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

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

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 then 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

VII. HEARING. (See *Attorney*, and subtitle herein, No. X.

The matter of ordering, discretionary with the Commissioner. VIII–444; IX–288, 379

Discretion of Commissioner in ordering, not controlled except a clear abuse thereof is shown. VIII–444; IX–217, 584; X–250

VII. HEARING—Continued.

The ordering of hearings is within the Commissioner's discretion, and may not be the subject of an appeal. II–40, 581

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

Authority of local office to order, fixed by Rule 5. I–481

Rule of Practice 5 applies to hearings between homestead claimants and between preëmption and homestead claimants. II–224

Local officers have no authority to order, in a case involving a final entry. X–694

May be ordered on the affidavit of the attorney. I–480

Local officers 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

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

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

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

Further hearing should be ordered in case of new issues arising on the trial that were not included in the original charge. I–113

VII. HEARING—Continued.

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

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

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

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 or final proof is not named in the notice, appearance on the day is sufficient. III–334

Local office may not cite contestants before other officers. I–474

VIII. INTERVENOR.

A stranger to the record not entitled to be heard as an intervenor without first disclosing his interest under oath. III–134, 278; V–603; VII–454, 480; VIII–578

General statement of the attorney, under oath, that the intervenor is the present owner of the land, not accepted under rule 102. IX–628

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

IX. NOTICE.

Circular instructions 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

Of contest, must be issued by the local office, but the service thereof rests with the contestant. II–230, X–268

May not be signed by a clerk; must be signed by one or both of the local officers. II–228

Should show the time as well as the place set for the hearing. II–227

IX. NOTICE—Continued.

That does not set forth the grounds of contest is defective and does not authorize proceedings thereunder. X–593

Misnomer in notice a fatal defect. III–418

Slight error in spelling of defendant's name will not defeat. VII–441

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

Jurisdiction not acquired in the absence of proper service. IV–397, 425, 440, 537; VI–234, 335; IX–75, 168

Ex parte proceedings without, will not warrant an order of cancellation. IX–522

Where there is no service of notice, and no waiver by contestee, all subsequent proceedings are wholly without effect. II–220

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

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

Must be by personal service, under Rule 10. IV–440, 537

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

That the original, instead of a copy, was left with defendant is no valid objection to the service. V–590

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

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

IX. NOTICE—Continued.

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

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

Issuance of new, without due showing of diligence and inability to serve the first is irregular, but does not defeat service thereunder. IX–68

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

Want of, to the defendant may not be pleaded by a stranger to the record. IV–127

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

Thirty days sufficient under Rule 35, though an earlier date is fixed therein for taking evidence. IV–540

Intervening entryman is entitled to notice of any action that necessitates cancellation of his entry. X–302

To the plaintiff's attorney of the day fixed for hearing is notice to the plaintiff. VII–252

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 an attorney's act imputed to the party he represents. V–439

Proceedings on a case reopened should not be 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

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

IX. NOTICE—Continued.

By Publication—Continued.

Publication not allowed except on showing of diligence to procure personal service. IV–84, 536

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

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

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

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

An allegation that "the present residence of A is to me unknown" is not a sufficient basis for notice by publication. II–50, 63, 288

Allegation that the address of claimant is unknown will not warrant publication of notice. 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

An affidavit that sets forth conclusions, and not facts, is fatally defective as a basis for notice by publication. VI–669

Subsequent affidavit will not cure defect in allegations made as basis for publication of notice. VI–669

The showing required to authorize publication must be made before issuance of the order therefor. VI–669; VIII–452; IX–218

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

IX. NOTICE—Continued.

By Publication—Continued.

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

In service by publication sending a copy by registered letter and posting are essentials. III–326; IX–75

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

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

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

A non-resident will not be heard to say that due diligence was not used to secure personal service. V–456

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

Heirs, Minors, and Insane.

Notice must be served on all heirs, and not on the administrator and one of them only. II–227

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

Diligence to ascertain the names and last known address of the heirs or legal representatives of deceased timber-culture entryman required. VIII–452

X. NOTICE—Continued.

Heirs, Minors, and Insane—Continued.

Of timber-culture contest should be served upon the heirs or legal representatives of deceased entrymen. VIII–452

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

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

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 transferee who has not filed in the local office a statement of his interest can not plead want of. X–446

Transferee can not plead want of, if he has not filed in the local office a statement showing his interest in the entry. IX–561

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

Effect of Appearance.

General appearance, without objection to service, waives defects therein. I–116; IV–378; VI–269, 335; IX–643

IX. NOTICE—Continued.

Effect of Appearance—Continued.

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

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

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

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

Of Decision.

Of decisions should be formal and in writing. I–477; IV–73, 591

Circular directions with respect to notice of decisions. III–140; V–204; VI–12

In the absence of, decision does not become final. I–366; VII–42

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

To the attorney of adverse decision sufficient. III–248; V–248; IX–170

Of decision to one of several attorneys representing the party is sufficient. I–119

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

IX. NOTICE—Continued.

Of Decision—Continued.

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 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

Of cancellation to the successful contestant not sufficient when given by unregistered letter. VII–335

Of cancellation, to a successful contestant, sent by unregistered letter is not sufficient. VIII–477

Of cancellation to an attorney, erroneously entered of record, is not notice to the contestant. VI–509

Of cancellation should be given to assignee if the fact of such interest is known. V–603

Of Appeal and Review.

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

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 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

X. PROCEEDINGS BY THE GOVERNMENT.

Instructions respecting the practice at hearings, for the purpose of inquiring into alleged fraudulent entries, ordered on the reports of special agents. II–807

Circular regulations 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

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

It is within the discretion of the Commissioner to order a second hearing in the interest of the government. VI–39

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

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 his assignee is entitled to be heard before the Department on the record as made. VIII–306

X. PROCEEDINGS BY THE GOVERNMENT—Continued.

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

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 subtitle herein, No. 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.

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 local office as to the requirements of the rules of practice. VI–236

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

Application for, should be made before the local office, if the grounds therefor are known while that office has jurisdiction. VI–9

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 the decision. IX–668

Motion for, before the local office should be taken up and disposed of promptly. III–539

XII. REHEARING—Continued.

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

Will not be ordered where the evidence proposed to be offered would be merely cumulative. II–721; VI–9, 32; IX–581

Will not be granted on the ground of newly discovered evidence where such evidence tends simply to discredit or impeach a witness. VII–136

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

Not awarded on the ground of newly discovered evidence, if such evidence was or ought to have been known before trial, and no good excuse is shown for not procuring it. IX–581

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

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

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

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

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

XII. REHEARING—Continued.

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

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

Failure to comply with the law since the decision is matter for new contest but not for rehearing. IV–185

Rehearing should not be allowed after default without excuse. III–247

XIII. REVIEW.

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

Due notice of application for, must be given to the opposite party. IV–145; V–382

Notice of a motion for, must be given within the time for filing the same. V–99

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

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

Motion should present some new question or evidence. III–557, 598; V–438; IX–580

Will not be granted in the absence of specific allegations of error. VI–781; VIII–331; X–43

XIII. REVIEW—Continued.

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

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

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

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 predominance 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

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 the trial. X–489

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

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

XIII. REVIEW—Continued.

In support of a motion for, testimony as to facts that occurred after the hearing can not be considered newly discovered evidence. X–43

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

Objection to the affidavit of contest will not be considered when raised for the first time on motion for. VII–497

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

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

Will be ordered where collusion between the plaintiff's attorney and the contestant prevented a hearing on the merits. VII–262

Secretary's decision dismissing a timber-culture contest, made on an imperfect record, will be reviewed, and any consequent error rectified. II–247

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

XIII. REVIEW—Continued.

XIII. REVIEW—Continued.

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 records. VII–13

Commissioner may review his predecessor's decision, where notice of such decision has not been given. VII–42

The Commissioner of the Land Office may reconsider the decision of a predecessor in a case where there has been no judgment on the merits. III–50

Second.

Motions for second consideration 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

A petition for re-review will not be granted unless it presents facts not previously discussed or involved in the case. IX–93, 588.

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

Preëmption. (See *Alienation; Application; Entry; Filing; Final Proof; 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

I. GENERALLY—Continued.

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

Assertion of claim under the law required to constitute a legal claim. I–453

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 preëmption laws," as used in section 2283, Revised Statutes, 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

Where rights and equities are equal the first in time has the better title. V–643

The first in time in the commencement of proceedings is the first in right if such proceedings are regularly followed up. I–404

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

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 do not preclude inquiry into the claim of the preëmptor by the Land Department. IX–316

I. GENERALLY—Continued.

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 office to act thereon can affect the same. III–172; VII–455; VIII–268

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

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 preëmption right. II–573

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

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

Claim finally concluded if unsuccessfully set up to defeat the final proof of another. V–260

Suspension 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

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

I. GENERALLY—Continued.

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 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

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

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

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

II. LAND SUBJECT TO. (See *Town Lots; Indian Lands.*)

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 Revised Statutes must be actual. III–282

The exemption, under the head of "known mines," is applicable only to conditions existing at date of sale. VI–393

Lands containing known mines excepted from. VI–393; VII–73

II. LAND SUBJECT TO—Continued.

The phrase "known mines," as used in the preëmption law, construed. VII–73

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

The possibility of one party taking the improvements of another is within the scope of the law. I–423

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

III. QUALIFICATIONS OF ENTRYMAN. (See *Naturalization.*)

Claimant must have the requisite qualifications at settlement. IV–116

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

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

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

III. QUALIFICATIONS OF ENTRYMAN—Continued.

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

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 right of purchase. III–384; IV–70; VII–280

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

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

Qualification of preëmptor not affected by the ownership of land as a trustee. I–462

The first clause of section 2260 Revised Statutes does not cover land held jointly by the preëmptor and his wife in Dakota. IV–432

The proprietor of three hundred and twenty acres can not render himself a competent preëmptor by the conveyance of one acre to his infant child. III–56

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

Claim of one who removes from land of his own to settle on public land in same State invalid. I–406; X–326

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

Removal from land held under contract of purchase is within the second inhibition of section 2260, Revised Statutes. VII–472

IV. SECTION 2260, REVISED STATUTES—Continued.

Joint ownership in land is sufficient under section 2260, Revised Statutes, 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, Revised Statutes. IX–605

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, Revised Statutes. V–413; VII–195

Removal from a homestead after submitting final proof therefor, though prior to the issuance of final receipt, is within section 2260, Revised Statutes. 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, Revised Statutes, is applicable though the removal is from land incumbered by mortgage. X–447

One who removes from his own home in a city is not disqualified under the second clause of section 2260, Revised Statutes. I–490; VI–407

In cases arising under the second clause of section 2260, Revised Statutes, the character of the land from which the removal is made, and the purpose for which it was used, may be considered. IX–512

Bar under second clause of section 2260, Revised Statutes, removed by deed, in good faith, from husband to wife. IV–355, 432

Deed from husband to wife, executed in good faith, prior to the establishment of actual residence, removes the bar under the second clause of section 2260, Revised Statutes. VIII–502

The second inhibition of section 2260, Revised Statutes, 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

The inhibition in the second clause of 2260, Revised Statutes, 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

In applying the inhibition contained in the second clause of 2260, Revised Statutes, 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, Revised Statutes. VII–69, 513; IX–463

IV. SECTION 2260, REVISED STATUTES—Continued.

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, Revised Statutes, 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

A subsequent sale of the homestead from which the preëmptor removed will not relieve him from the inhibition contained in section 2260, Revised Statutes. 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 2260, Revised Statutes. III–56; X–117

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, Revised Statutes. VI–287

The second clause of 2260, Revised Statutes, presumes an actual prior residence. IV–200

Filing and entry of one who removes from land of his own to settle on public land in the same State exhausts the right of. V–413

V. TRANSMUTATION.

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

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

Transmutation of a filing exhausts the preëmptive right. VI–103, 570, 602; X–188, 493

Right of transmutation is dependent upon the validity of the preemption claim. IV–561

Private Claim—Continued.

I. GENERALLY.

The extent of a, is limited to the lands 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

The lands within the exterior boundaries of a "floating grant" reserved until title vests. III–459; V–75

Grant of a, within larger exterior boundaries does not attach to specific tracts until after survey. III–180

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 re-issue 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

I. GENERALLY—Continued.

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 General Land Office has no authority to declare claims under foreign grants to be held by complete title. I–272

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

It is the duty of the Commissioner to see that the location follows the decree of confirmation as closely as practicable. I–213

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–179

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

II. SURVEY—Continued.

Secretary has authority to reverse the action of the Commissioner in the matter of a survey. V–483

The location of, within 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

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

Payment of the costs of survey and platting is required in all cases subsequent to act of July 31, 1876. II–463

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

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–168

The grant claimants held estopped by the settlement rights of others from disputing the correctness of the survey. IV–546

II. SURVEY—Continued.

Where parties interested had full opportunity to be heard, and no new matter of fact is presented, the question of approval will not be re-opened. 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

Where the applicants for survey (Louisiana) are meagerly described, but have been recognized and survey ordered, on objection amendment will be allowed. II–395

After survey and patent, corrections must be secured in the courts. I–229

The Higley survey accepted as defining the boundaries of the Moraga. III–'04; V–155

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 U. S. 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

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

II. SURVEY—Continued.

The act of 1864 contemplated final adjudication of all questions affecting boundaries and extent, on objections 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, 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

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

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

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

III. BOUNDARY—Continued.

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

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

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

IV. PATENT—Continued.

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

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

The act of June 6, 1874, only dispensed with the necessity of patents when the claimant was by law entitled to patent. III–179

V. ARIZONA.

In Arizona, under act of February 5, 1875, must be filed in the local office, and then brought before the Commissioner on the question of occupancy, before occupant can purchase; if decided adversely, the land is open to 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

V. ARIZONA—Continued.

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

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

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

VI. CALIFORNIA—Continued.

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

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

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

VIII. FLORIDA. (See subtitle, 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

IX. LOUISIANA.

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

IX. LOUISIANA—Continued.

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

Where sale was ordered without proof as to heirs, former proceeding, 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

Legal representative of 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 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

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

IX. LOUISIANA—Continued.

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

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 interest in such claim bequeathed to the city of New Orleans. VI–473

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

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

XI. NEW MEXICO—Continued.

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

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. V–705

Of Pueblo Tecolote, as confirmed by act of December 22, 1858, requires patent, as in ordinary cases to individuals. V–61

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

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

XII. SCRIP—Continued.

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

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

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

XII. SCRIP—Continued.

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

Private Entry. (See *Application*, subtitle No. VI; *Public Sale.*)

Public lands withdrawn from, by act of March 2, 1889. (Circular of March 8, 1889.) VIII–314

On one certificate, not to include a larger number of tracts than provided for in the form. V–30

Though illegally allowed is, while of record, an appropriation of the land. VIII–514

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

Must be equal opportunity for purchase to all persons. IV–311

Re-offering an essential prerequisite, where the lands once disposed of were restored to the public domain by a statute which provided for such re-offering. VI–451: VIII–189

Land offered at double minimum, and subsequently reduced, not subject to, without re-offering at the reduced price. I–634; III–129

Re-offering 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 re-offered 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

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

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

Private Entry—Continued.

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

Should not be allowed of land once included within a withdrawal, or covered by a filing, until after re-offering, 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 re-offering 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

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 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

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 laws." 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

Private Entry—Continued.

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, Revised Statutes, authorizing private entry by a preëmptor after expiration of the right of preëmption. II–856

The act of January 31, 1835, 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 re-offering 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

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, Revised Statutes, until after offering. VIII–514

Amendment of, allowed under statutory provisions in case of error. I–516

Protestant. (See *Final Proof*, subtitle No. VIII; *Mining Claim*, subtitle No. IX; *Practice*, subtitle No. XI.)

Public Land. (See *Survey.*)

I. GENERALLY.
II. PRICE.
III. ILLEGAL INCLOSURE.

I. GENERALLY.

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

I. GENERALLY—Continued.

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

Land formed by accretion belongs to the owner of the adjacent land. I–596; VI–20; VII–255

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

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

II. PRICE. (See *Repayment.*)

The term "minimum" means the least price at which lands are to be sold. IV–54

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

II. PRICE—Continued.

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

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

Lands not passing under a railroad grant but within its limits should be raised to double minimum. III–159

Even sections raised in price though reserved when the grant took effect. III–477

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

A tract of railroad land released under the act of June 22, 1874, is subject to entry at single minimum. I–327

Where a reservation is opened to entry the Commissioner of the General Land Office fixes the price of the land. V–269

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

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

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

Price of, within the limits of the withdrawal of August 13, 1870 (Northern Pacific), increased to double minimum. VII–495, 578

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

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

The grant to the Northern Pacific expressly limits the increase in price to the "reserved alternate sections," and such increase does not, therefore, extend to odd-numbered sections excepted from the grant. (Overruled, 12 L. D., 127.) VIII–58

II. PRICE—Continued.

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

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

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

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

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 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

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 surrounding such tracts. II–638

Injunctions will lie in the courts for unlawfully fencing the public lands. II–798

Public Sale.

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 of the Revised Statutes to order into market isolated tracts of unoffered land. X–615

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, Revised Statutes, it is not subject to soldiers' additional entry. II–242

Land chiefly valuable for timber will not be ordered into market as an isolated tract under section 2455, Revised Statutes. III–149

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

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; Homestead*, subtitle No. XIII; *Practice*, subtitle No. IX; *States and Territories*).

Railroad Grant. (See *Final Proof*, subtitle No. VIII; *Railroad Lands; Right of Way; Wagon-Road Grant.*)

I. GENERALLY.

Where the language of a grant is doubtful the construction must be against the grantee. I–331, 336, 362, 368; IV–216, 429

No rights are acquired or title passed by implication; the granting words must be explicit. III–243; V–49, 380

Rights under, must be asserted in accordance with established procedure. I–466

The construction and operation of a railroad is sufficient to put subsequent settlers on notice as to the rights of the road. VI–322

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

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

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

I. GENERALLY—Continued.

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

II. PLACE AND QUANTITY. (See subtitle 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 (Minn.), was one of quantity requiring selection. III–527; IV–232, 428

The grant of four additional sections by the act of March 3, 1865 (Minn.), 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 10-mile limit. VII–151

The words "to be selected within 20 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

III. CONFLICTING GRANTS. (See subtitle No. VIII.)

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

III. CONFLICTING GRANTS—Continued.

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

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

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

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

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 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

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. IV–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

III. CONFLICTING GRANTS—Continued.

Lands within the San Francisco, Cal., district did not inure to the Central Pacific, though 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

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

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

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

IV. DEFINITE LOCATION—Continued.

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. II–477; V–62, 140, 155, 277, 397; VI–356; IX–402; X–167

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. II–477; V–62; VI–356; VII–207, 223, 241

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 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 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 Saint Vincent Extension of the Saint Paul and Pacific (now Saint 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

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

IV. DEFINITE LOCATION—Continued.

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

Duplicate map of definite location treated as original, though filed after the time allowed for the completion of the road. II–107

V. WITHDRAWAL.

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

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

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

V. WITHDRAWAL—Continued.

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 Northern Pacific. 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

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

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 withd awal, it follows that land within such withdrawals was not excluded from entry. VII–244

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

An unauthorized indemnity withdrawal is no bar to a homestead application, and such application will defeat a subsequent selection. VIII–282

The act of July 27, 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

Lands within the indemnity withdrawal for the Atlantic and Pacific were excepted from the grant to the Southern Pacific. V–691

V. WITHDRAWAL—Continued.

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 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 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

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

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

V. WITHDRAWAL—Continued.

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

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

Valid subsisting preëmption claim excepts land from withdrawal, and upon its cancellation the land reverts to the United States. III–227

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

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

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. III–285; VI–756; VIII–21

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

V. WITHDRAWAL—Continued.

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

A valid and subsisting preëmption claim (settlement) at date of withdrawal excepted the tract from withdrawal. II–512

Where settlement (preëmption) was made on unsurveyed land after withdrawal, and on survey was found to be on 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

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

Entry within an existing withdrawal is invalid as against the grant. VIII–570

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

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

General Route.

When the map of general route (Northern Pacific) was filed the statute withdrew from sale or preëmption the odd sections within the designated 40-mile limits.

II–555; III–537; V–295; VI–11, 21; IX–155; X–662

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

V. WITHDRAWAL—Continued.

General Route—Continued.

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

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 a branch line will not reserve lands for the main line (Northern Pacific). VIII–365

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

A homestead entry record excepts the land covered thereby from, of on general route, and the subsequent cancellation of the entry leaves the land open to entry till definite location. III–490; X–307, 427

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

Where an entry (homestead) existed at date of filing map of general route (Northern Pacific), which was afterwards, but before definite location, canceled for voluntary relinquishment, the land became public and open to the first legal applicant, and is not to be held to await the definite location. II–536

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

V. WITHDRAWAL—Continued.

General Route—Continued.

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

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

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

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

Where after date of grant (Texas and Pacific) withdrawal (on preliminary line) was made, covering land for which had been filed an application to purchase (Sec. 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

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

V. WITHDRAWAL—Continued.

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

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

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

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, 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

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

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

V. WITHDRAWAL—Continued.

Revocation—Continued.

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

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

Revocation of, does not restore to the public domain land included within pending selections. IX–74

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

VI. INDEMNITY. (See subtitle *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; IV–256; VI–431, 615; VIII–23; X 504

The company (Northern Pacific) does not acquire title to the indemnity lands until actual selection of them. II–506, 510

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 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

VI. INDEMNITY—Continued.

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

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 erroneously 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

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 10 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

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

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 6 and 10 mile granted limits at the junction of the main and branch lines of the road. IX–483

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

VI. INDEMNITY—Continued.

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

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. VII–100

VII. SELECTION. (See subtitle No. VI.)

Until selection is made the title to indemnity lands is in the Government and subject to its disposal. III–306

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 of a railroad company to indemnity lands is acquired by selection and not by definite location. III–51

Right acquired by selection dependent upon the status of the lands at date of selection and not at date of withdrawal. X–504

The right of selection within indemnity limits is a preference right that may be asserted as against every one. V–658

Selections should be made from lands nearest the granted sections in which the loss is alleged. IV–90; VIII–373; X–147

Indemnity selections, circular instructions, August 4, 1885. IV–90

The validity of a selection can not be determined if the basis is not designated. IV–90; IX–370

In the absence of statutory direction the right of selection not governed by the coterminous principle. V–81

Selections of unsurveyed lands not allowed. VIII–307; X–214

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 p. 669). II–463

VII. SELECTION—Continued.

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

"Listing" or selection by the company in nowise affects the status of land within the granted limits. VII–358

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

The words "to be selected within 20 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 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 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

A tract is not excluded from indemnity selection by reason of its being within the primary 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

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

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

Under the act of June 2, 1864, the right of the company to even sections within the 6-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

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

VII. SELECTION—Continued.

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. VII–80; X–15

A selection by the company intact upon the records, although invalid (land not subject to selection), bars a homestead entry. II–504

A selection of lieu lands under act of June 22, 1874, invalid for want of a prior formal relinquishment, does not bar an entry (homestead). II–540

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

At date of the grant and withdrawal the land was within the boundariesof 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

Lands included within pending selections are not restored by the revocation of the withdrawal. X–317

Land covered by an uncanceled homestead entry is not subject to indemnity selection. VII–405

An existing homestead entry within indemnity limits, made before withdrawal became effective, bars selection by the company. III–304

A selection should not be allowed for land included within a pending homestead application. VI–649, 666; VII–244

A homestead settlement right existing at the date of indemnity selection excepts the land covered thereby from the operation of said selection. VII–182

Settlement claim precludes indemnity selection of lands excepted from withdrawal. V–566

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

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

Settlement of an alien no bar to the selection of. X–463

A selection 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

VII. SELECTION—Continued.

On application to select land covered by an expired filing, where it does not affirmatively appear that the preëmptor had in fact abandoned his claim, a hearing should be ordered to determine the status of the tract at date of selection. VI–613

An expired preëmption filing, under which no claim is asserted, does not exclude the land covered thereby from indemnity selection. IX–452

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

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

A selection, to become effective on title (Northern Pacific), needs the approval of the Department. II–820

Procedure in case of application to enter lands covered by an unapproved selection. X–504

It is discretionary with the Secretary whether he will permit the company (Northern Pacific) 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 a due regard to the company's rights. II–508

VIII. LANDS EXCEPTED. (See subtitles Nos. IV and V.)

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

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

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

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 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

VIII. LANDS EXCEPTED—Continued.

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

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

Land not free at definite location do not pass. V–138

Does not take land covered by homestead entry at date of granting act, though said entry is subsequently canceled. I–388

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

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

Homestead entry of single man made through an agent, while in naval service, held to defeat the grant. III–446, 479

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

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

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

The right of purchase under the act of June 15, 1880, defeats the operations of, at definite location. V–333, 529; VI–8

VIII. LANDS EXCEPTED—Continued.

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

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

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

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

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

VIII. LANDS EXCEPTED—Continued.

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

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

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

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

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. VI–520, 613

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

VIII. LANDS EXCEPTED—Continued.

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

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

Under the express terms of the grant to the Northern Pacific lands "occupied" by homestead settlers at the date when it becomes effective, are excepted therefrom. X–258, 386

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

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

Occupation by qualified preëmptor at date of withdrawal on preliminary line of Texas and Pacific excepts the land from the grant. III–164

Lawful possession under the settlement laws a valid appropriation of the land as against the rights of a grant attaching subsequently thereto. I–341

A settlement right existing at the date when the grant becomes effective excepts the land covered thereby from the operation of the grant. V–274; VI–151, 172, 224, 485; VII–182; VIII–58, 362, 365, 378; X–290

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

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

Settlement on unsurveyed land, within the granted limits, by intending homesteader, excepts the land from the grant. III–130

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

VIII. LANDS EXCEPTED—Continued.

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

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 lands free from such claims, and abandonment after filing does not affect the question. III–119

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

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

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

An existing settlement when the public land laws were extended over the Territory bars operation of the grant. IV–341

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

VIII. LANDS EXCEPTED—Continued.

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

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

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 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 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. 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 and 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

VIII. LANDS EXCEPTED—Continued.

Does not take effect upon land within the claimed limits of a private claim. V–691

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

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

Prima facie valid selection excepts land from the effects of. IV–438

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 pending application under section 7, act of July 23, 1866, does not except the land from the operation of a railroad grant and withdrawal thereunder (on preliminary line). II–548

A donation claim (New Mexico) void on its face (showing settlement subsequent to the time limited) does not except the land from the grant (Atlantic and Pacific). II–522

Where the land was reserved for the settler (donation) at date of definite location (Northern Pacific), it was excepted from the grant. II–440

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

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

The recognition of the Blanchard-Robinson 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 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

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

IX. MINERAL LAND.

The non-mineral character of free odd sections being shown, title thereto passes under the grant. (Central Pacific.) VIII–30

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

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

A decision of the local office holding certain tracts within the granted limits (Central Pacific) to be non-mineral, after hearing order to test that question, will be approved in the absence of appeal. VIII–30

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

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. 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

On the extinguishment of, the withdrawal under the grant becomes effective, and excludes the acquisition of settlement rights. II–519

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

XI. RIGHTS OF THE STATE—Continued.

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

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

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 subtitle, No. XIII.)

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, M. and M. Ry. Co.). 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

XII. RELINQUISHMENT—Continued.

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

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 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 Co.) 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

XIII. ACT OF JUNE 22, 1874. (See subtitle No. XII.)

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

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

Lieu selections may be made of either even or odd sections. II–562

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

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

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

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

Acceptance of relinquishment by the local office does not amount to an approval of the selections based thereon. VIII–472

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

XIII. ACT OF JUNE 22, 1874—Continued.

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

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 act of June 22, 1874, 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

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

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

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

XIV. ACT OF APRIL 21, 1876—Continued.

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, 21, 223

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 a 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

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 one. I–353, 354

The confirmatory provisions of section one 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

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 one. I–354

Entry after definite location, but prior to withdrawal therefor, confirmed by section one. 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 the act of April 21, 1876. III–277

Action will not be taken under the first section if patent has issued for the land involved. IV–344; V–144, 205

Section two takes effect upon all entries that have not been finally disposed of prior to passage of the act. IV–208

Entry re-instated and held to be confirmed by section two of said act, though application for repayment had been made after cancellation. I–387

XIV. ACT OF APRIL 21, 1876—Continued.

Section two 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 three of said act, as well as an entry. I–333

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

The clause "at a time subsequent to the expiration of such grant," in section three, 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 three 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 three of said act is not applicable. IX–246

Section three, 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.

Should be adjusted without delay under the act of March 3, 1887. VI–144

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 of March 3, 1887. VI–276, 544

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

XV. ADJUSTMENT—Continued.

Directions for the adjustment of selections and settlement claims on revocation of withdrawal. VI–84

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 Ry. and Navigation Co.) II–561; V–107

A formal declaration of adjustment not necessarily nullified by the subsequent approval of tracts found to be within the grant. X–610

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

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

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 patent 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

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

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 disposes of any question as to the construction of the road on the line of definite location. VI–54

XV. ADJUSTMENT—Continued.

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

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

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

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–459

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

The grant to Minnesota in aid of a road "from Stillwater, with a branch via 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 25 miles. V–459

By joint resolution of May 31, 1870, there was conferred upon the Northern Pacific a grant from Portland to Puget Sound. VI–400, 409

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

XV. ADJUSTMENT—Continued.

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

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

Under the joint resolution of April 10, 1869, the Central Pacific became entitled to the granted lands between Ogden and Promontory Summit. V–661

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

Title to the Western Pacific Company (and its successors), assignees of the Central Pacific, did not pass as of date of act March 3, 1865, which was merely a ratification of the assignment. II–479

The Central Pacific assigned to the Western Pacific the right to construct the road between San José 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

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

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 certify 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

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

XV. ADJUSTMENT—Continued.

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 later act destroys the continuity of the line provided for, or made possible, under the former grant. X–63

The grant to the Oregon Central was not limited to lands in the State of Oregon. VI–292, 677

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 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

The lands taken in excess on the north side of the line (B. & M., 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 (B. & M., 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

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 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 Chatooga Valley to the Georgia and Tennessee line. VIII–33

XVI. FORFEITURE.

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 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

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 Pac.). I–345

The grant to 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

XVI. FORFEITURE—Continued.

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

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 withdrawals 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

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 re-invest 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 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

XVI. FORFEITURE—Continued.

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

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 Sec. 2449, R. S. II–496

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

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 Lands.

I. GENERALLY.

II. ACT OF MARCH 3, 1887.

I. GENERALLY.

Land within the limits of a grant, but excepted therefrom, is open to entry without restoration notice. IX–213

Certain lands in Washington Territory withdrawn for the Northern Pacific, restored to entry. V–193

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

I. GENERALLY—Continued.

I. GENERALLY—Continued.

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

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

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

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

II. ACT OF MARCH 3, 1887.

Opinion of Attorney-General Garland on the proper construction of sections 3, 4, and 5. VI–272

Circular instructions issued November 22, 1887, and modification thereof. VI–276, 544

Circular instructions of February 13, 1889, under the act of March 3, 1887. VIII–348

Procedure preliminary to suit under the act of March 3, 1887. X–610

On adjustment of, demand to be made under act of March 3, 1887, for reconveyance of any lands improperly passed under the grant. VI–54

Demand for reconveyance under the act of March 3, 1887, will not be made until after notice to the company to show cause why proceedings should not be instituted under said act. VI–544

The act of March 3, 1887, 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

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

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 can not consider the fact that the lands have passed into the hands of a bona fide purchaser in directing suit under the act of March 3, 1887. IX–221; X–54

It is no defense to an action under the act of March 3, 1887, that the 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

II. ACT OF MARCH 3, 1887—Continued.

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 of March 3, 1887, not authorized, where, long prior to said act, the grant had been declared, by competent authority, to be adjusted. X–610

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 of March 3, 1887, for the recovery of title to lands improperly patented to the Burlington and Missouri River Railroad in Nebraska. VI–589

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

The act of March 3, 1887, 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

A certification of land excepted from the grant is erroneous, and warrants proceedings for the recovery of title. X–54, 568, 575

Proceedings for the recovery of title should be instituted under the act of March 3, 1887, in the case of certified lands opposite the uncompleted portion of the Marquette, Houghton and Ontonagon Railroad. X–29

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 of March 3, 1887. IX–649

Proceedings authorized under the act of March 3, 1887, for the recovery of lands erroneously certified. X–166

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

Applicants for the right of purchase must show under oath the facts of settlement, improvement, and requisite qualifications. VI–750

The act entitles a settler to perfect a homestead entry for the entire tract originally applied for notwithstanding the issuance of patent to him under the homestead law for a part of said tract. VIII–382

II. ACT OF MARCH 3, 1887—Continued.

If part of an entry has been erroneously canceled on account of a railroad grant, it should, under this act, be re-instated, and patent issued thereon if the settler has shown due compliance with law. VIII–318

Section 3 of said act authorizes re-adjudication where an application to file or enter has been erroneously rejected by the local office. VIII–382

The right to re-instatement conferred upon the settler is superior to that of a bona fide purchaser from the company. VIII–382

The right to re-instatement under said act is defeated by a voluntary abandonment of the claim before the grant attached. VIII–588

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, act of March 3, 1887, defined. VI–272

Plea of *res judicata* will not bar re-instatement under section 3, act of March 3, 1887, if the entry was erroneously canceled on account of a railroad grant. X–307

Abandonment of land under a decision of the local office, is not the "voluntary abandonment" that precludes re-instatement of the entry under section 3, act of March 3, 1887. X–264, 307

Section 4 of the act of March 3, 1887, confers a preference right upon purchasers in good faith from the company. VIII–570

The right to issue patent under section 4, act of March 3, 1887, does not arise until the land shall have been legally determined to belong to the United States. VI–272

The right of purchase under section 4, act of March 3, 1887, 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

The right of purchase under section 5, act of March 3, 1887, extends to indemnity lands as well as those within the granted limits. VI–272

Limitations of the right of purchase under section 5, act of March 3, 1887, specified. VI–272

The right of the purchaser under section 5, act of March 3, 1887, is defeated by the settlement of another made after December 1, 1882, whether the purchase was made before or after said date. VI–750

The existence of a settlement right acquired after December 1, 1882, defeats the right of a purchaser from the company. IX–199

Method of procedure and proof required under application for the right of purchase as provided in section 5, act of March 3, 1887. VIII–27, 348

Receiver. (See *Land Department.*)

Records. (See *Evidence.*)

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 rights of the parties. V–400

A stranger may not inspect the papers in a case in the General Land Office, except as the attorney of record. II–222

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

Registers and receivers of other than consolidated offices may not furnish abstracts from the records for private use and charge therefor, except in the case of plats and diagrams. II–655

Register. (See *Land Department.*

Rehearing. (See *Practice.*)

Re-instatement. (See *Entry.*)

Relation.

The doctrine of, can only be invoked to preserve a right, not to create one. IV–117; VI–100; X–464.

Relinquishment.—(See *Application*, subtitle No. X; *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, 195, 506; VII–561; X–139

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

Should be received when presented and entry canceled. V–451

After relinquishment the land is subject to the first legal application. III–320

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.

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

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

The voluntary maker of a, must abide the consequences of the act. III–181

Ineffectual so far as releasing the land until filed. III–224; VI–246; IX–445

Made by the entryman after he has parted with his interest in the land is null and void. VI–512; VIII–641

Will not defeat the right of a prior purchaser holding under sale of the final certificate. IX–97

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

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

Must be intentionally and voluntarily made; one obtained through misrepresentation, deceit, or duress, is void. II–135; III–376; IV–281; VIII–192

Obtained while the entryman (timber-culture) was in a drunken stupor is fraudulent; application for reinstatement of entry is allowed. II–325

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

Refusal of local office to act upon, should be followed up by appeal to preserve rights claimed thereunder. IV–532

Improperly rejected on account of form in the matter of acknowledgment. III–546

Relinquishment—Continued.

Purchaser of, acquires no right to the land as against the United States. II–133; VI–246; VII–560; IX–269

It is competent for the Department to investigate the circumstances attending the execution and filing of. V–365

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*, subtitle 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

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

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 section 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

The failure of a contestant to pay to the claimant (preëmption) an alleged contract consideration for his relinquishment, duly filed, will not be considered. II–621

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 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

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

Relinquishment—Continued.

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

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; ratification may be shown by failure to take possession of or improve the land, or give notice to the government of her intention to claim it, and by silence whilst another begins settlement and improvement. II–138

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

Does not inure to the benefit of a contestant unless it be found that it was the result of the contest. VIII–357

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 pending contest is presumptively the result thereof, though such presumption may be overcome. II–283; VII–442; IX–440, 461

Inures to the benefit of the contestant, if the result of the contest, though the charge as laid therein may be insufficient. X–105

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

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

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

Repayment—Continued.

The law authorizing repayment does not provide for return of the money to persons who have voluntarily abandoned or relinquished their entries. II–692

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 proofs from denying its character; repayment denied. II–693

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–529, 531; V–527

Not allowed on relinquishment made for the sole purpose of recovering the purchase money where the entry may be confirmed. I–40

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

The transferee holding the present interest in the land to which title has failed is the party entitled to. VIII–636

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

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 (timber-culture) 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 (timber-culture) could not be amended because of intervening adverse rights. II–255

Allowed for fees and commissions charged on additional homestead entries made under the act of March 3, 1879. I–525

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

Repayment—Continued.

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

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 (San Francisco district) 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

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

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

Allowed for double minimum excess paid on land afterwards found not to be within the limits of a railroad grant. V–437

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

No authority for the return of the excess where the land was improperly sold as double minimum. V–316

Allowed in case double minimum price has been paid for land afterwards found not to be within the limits of a railroad grant. VII–29

Repayment—Continued.

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

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

Where a desert-land applicant failed for three years to comply with the requirements of the law (reclamation, alleging inability to obtain water), and relinquished voluntarily, repayment of the purchase money (first installment) is denied. II–691

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

Of the first installment paid on a desert entry not allowed on the ground that water can not be obtained for irrigation if no effort toward reclamation is shown. X–12

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

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

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

Where hearing was ordered on allegations impeaching the good faith of the entryman (preëmption), 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, Revised Statutes, as forfeiture of the purchase money is a statutory result. II–683, 685; IX–160

Repayment—Continued.

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

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

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, Revised Statutes, if he elects to make cash entry. IX–261

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

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

Repayment—Continued.

Where a person was misled as to the character of the land, by a private survey, and relinquished his claim (desert-land), 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

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

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

Not authorized where the purchase price of land has been twice paid. V–114

Refused where the failure to secure title is clearly the fault of the applicant. IV–262

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 limits 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.

Where entry has been made by scrip assigned by a fraudulent holder (Louisiana), 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 (timber-culture), 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 assignee of a canceled warrant location made under fictitious name. III–458

A decision denying the right of, and long acquiesced in, will not be re-opened. VIII–134

Application for, pending appeal from order of cancellation is a waiver of the appeal. V–409; IX–643

Reservation.

I. GENERALLY.
II. INDIAN.
III. MILITARY.

I. GENERALLY. (See *Railroad Grant*, subtitle No. V.)

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

The President in setting apart land is regarded as acting under authority of Congress. I–30

The power of the President to create extends to any unappropriated public land. I–30, 553

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

Made by competent authority, reserves the land from appropriation under the public land laws. VI–585

I. GENERALLY--Continued.

For a public purpose should be distinguished from a, for the benefit of a railroad grant. V-49

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

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

Land embraced within a preëmption filing may be set apart at any time prior to final proof and payment. I-30, 450, 451

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

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

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 preemption or homestead claims, and upon relinquishment are regarded as a distict 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

I. GENERALLY—Continued.

Under consideration in section 2364, Revised Statutes, 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

II. INDIAN. (See *Indian Lands; Railroad Grant*, subtitle No. X.)

As effected by order of the President withdrawing land for the use of Indians. V-432

Permanent Indian, defined, as well as "common Indian title" and the distinction noted. I-101; V-138, 343

An entry of record excepts the land 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

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

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

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

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

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

Fond du Lac, Minn.; Indians may not cut timber on it except to improve the land, and only after approval of their selections. II-821

II. INDIAN--Continued.

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

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

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

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

Of land for military purposes, directed by the War Department, precludes the allowance of an entry therefor while occupied under such authority. IX–600

III. MILITARY—Continued.

Made by order of commanding general, subsequently approved by the President, takes effect, by relation, as of the date of said order. VI–657

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

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

Action of the War Department in fixing boundary line of military, conclusive, being the final act of the Executive. I–168

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

Purchasers of lands within the former reservation of Fort Larned are required to show compliance with the preëmption law in matters of settlement of 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

Fort Brooke, Florida, duly relinquished to the Secretary of the Interior on January 4, 1853, 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

III. MILITARY—Continued.

On the abandonment of the White River military reservation 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 act of July 15, 1882; held that under the act one who had cultivated and improved part of a forty 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 to sale and entry. VI–657

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 to the public domain on acquisition of the country by the United States, but to special governmental 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

Boundaries of Fort Meade, modified. III–574

Recommended for Fort Custer and national cemetery. V–226

On relinquishment of military, the land must be disposed of by Congress. VI–19

The act of July 5, 1884, is general, applying to 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

Settlement prior to January 1, 1884, protected within abandoned military, by the act of July 5, 1884. V–632; VI–16

Act of July 5, 1884, does not legalize settlements made with the full knowledge that the lands were reserved. X–489

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

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

III. MILITARY—Continued.

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–602

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

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

Residence. (See *Abandonment; Settlement.*)

I. GENERALLY.
II. HOMESTEAD.
III. COMMUTED HOMESTEAD.
IV. PREËMPTION.
V. OSAGE LAND.

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

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

Begins with the first act of settlement where such act is followed by an actual inhabitancy of the land in good faith. VII–410

Acquired where presence upon the land is with the intent to make it a permanent home to the exclusion of one elsewhere. VIII–248

The place of one's domicil determines the place of his residence. IV–200, 330

The law requires residence in person; one can not establish a residence by proxy (by a woman not a member of entryman's family). II–146

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 home of a married woman is presumptively with her husband. X–30

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 land is the entryman's home, if he established residence on it, so long as his family occupy it. II–82

The entryman having established a personal, it may be maintained by the residence of the family. III–21

I. GENERALLY--Continued.

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

As the tenant of another confers no rights under the public land laws. III–257

Occupation through a tenant is not the maintenance of residence requisite under the public land law. IV–412

Maintained as the employé of another, who asserts a possessory right to the land, confers no rights under the settlement laws. X–276

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

And presence on land not convertible terms. VII–144; IX–266

In acquiring, the former residence of the settler must be abandoned. V–179

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

Not acquired by one who goes upon public land with the fixed intention of leaving the same, after colorable compliance with the law, and in the meantime substantially maintains a home elsewhere. 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

Must be both continuous and personal to justify a claim of good faith. IV–200

And occupation is notice of the settler's claim which others are bound to recognize. IV–308

The quality of, not considered before final proof is made. IV–389

Laws requiring improvement and residence not satisfied by occupation for business purposes. I–456

Claim of, not consistent with apparent evasion of the law. V–273

Intention to leave the land after making final proof may be compatible with good faith. VIII–508

I. GENERALLY—Continued.

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

On a tract covered by the entry of another is unavailing if it is abandoned prior to the cancellation of said entry and not resumed until after the intervention of an adverse right. VIII–584

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

Failure in residence not excused by bringing suit in the courts for possession. III–370

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

Conclusive presumption of abandonment not raised by the fact that the claimant, while absent on account of sickness, voted in the precinct where he had been taken for treatment. VIII–353

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. IX–139

Mistaken location of house outside of the claim will not defeat the good faith of the residence. IX–175

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

Dwelling house may be partly on land not claimed and not defeat the claim of residence. III–321; IV–62

May be maintained in the upper story of a building erected for other purposes. III–562

Can not be maintained for separate tracts and under different laws at the same time. IV–26, 462; VI–792; VII–225; IX–63

Two separate residences may not be maintained upon public land under two separate laws either of which exacts a continuous residence. II–622; III–506

Being an essential in both, precludes the assertion of a homestead and preëmption claim at the same time. V–403; VI–831

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

I. GENERALLY—Continued.

Leave of absence granted under section 3, act of March 3, 1889; circular of September 19, 1889. IX–433

Leave of absence permissible under the act of March 2, 1889 (circular of March 8, 1889). VIII–314

Nature of claim or relations of the 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

Having been established, and good faith appearing, the excuses for absence will be accepted. III–110; IV–167

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–545, 564; IV–56, 62, 80, 200, 260; VII–249, 345; VIII–60; IX–266

After establishment of, temporary absences, not inconsistent with an honest intention to comply with the law, are accounted a 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 pretense 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

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. VI–154, 170; IX–150; X–492

Poverty justifies temporary absences for the purpose of obtaining means wherewith to improve a homestead. II–149

I. GENERALLY—Continued.

Absences will not be excused on the plea of poverty where good faith is not apparent. III–543; VII–467

Total want of, not excused by poverty. IV–186, 303

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

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

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

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

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–110, 147; III–6; VI–668; VII–88; VIII–85; IX–525

Claimant is excused from residing on the land where residence was established, but can not be maintained because of official duties elsewhere. II–74

If not first acquired in good faith, later absences 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

Of a postmaster presumed to be within the delivery of his office. V–155

I. GENERALLY—Continued.

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

If once established, the continuity thereof is not broken by absence caused by judicial restraint. V–6; VII–532; X–551

Continuity of, not broken by forcible ouster from the land and subsequent compulsory absence therefrom. IV–335; VIII–593

Failure to establish and maintain, when occasioned by duress, can not be construed as abandonment. II–152; IV–378; VI–616

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

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

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 been already established in good faith. II–602

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

Building and occupation (peaceable) of a house by a young man within 25 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

Want of, excused in case of continued suspension of plat. IV–333

II. HOMESTEAD.

Residence under the homestead law begins from date of entry. I–94; III–506; IV–462; V–406

Not required prior to the allowance of application to enter. X–510

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. VI–688

After a period of five years the entryman is not required to show further inhabitancy. VI–143

II. HOMESTEAD—Continued.

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

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 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

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 the 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

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

No credit for, while the land is covered by the entry of another. I–37, 46, 52

II. HOMESTEAD—Continued.

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

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

Establishment of, within six months from entry not a statutory requirement, but a rule based on the provision in section 2297, Revised Statutes, authorizing cancellation on proof of change of residence or abandonment for more than six months. VI–567

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

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

Actual service of soldier in the U. S. Army equivalent to residence, under the provisions of section 2308 Revised Statutes. I–362

Service in the regular Army since the close of the rebellion not equivalent to. I–98

Actual length of military service should be deducted from required period of. V–630

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

Military service not construed as, during the time of such service, when no residence has been established. VI–788

Under 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

II. HOMESTEAD—Continued.

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

Not required under an entry made by a guardian for the benefit of the minor orphan child of a deceased soldier. X–528

Widow can not, under entry in her own right, claim for, during the lifetime of her husband. I–36

On original farm will not be held as, on adjoining farm prior to entry thereof. I–68

On the original farm, prior to adjoining farm entry, can not be credited as part of the statutory period of inhabitancy under an adjoining entry. X–488

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 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, Revised Statutes, 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

Must be established and maintained under additional entry where the original was purchased under the act of June 15, 1880. I–29

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–148

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–573

III. COMMUTED HOMESTEAD—Continued.

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 purpose 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

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

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 preemptor'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

IV. PREËMPTION—Continued.

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

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

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*, subtitle 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

Res Judicata.

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

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

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

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

Res Judicata—Continued.

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

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

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

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

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

Res Judicata—Continued.

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

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

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

Plea of, not good when the tribunal had no jurisdiction over the subject decided. IV–460

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

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

Res Judicata—Continued.

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

The question of the right of purchase under section 2, act of June 15, 1880, was decided, and, there having been no appeal, is eliminated from consideration. II–94

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

An extra-judicial 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*, page 58.)

Were the legislative declaration of the law when adopted. IV–7
Adoption of, did not annul former constructions IV–7

Right of Way and Station Grounds. (See *Timber Trespass; Timber Cutting.*)

Instructions of August 29, 1885, with respect to the use of timber and other material. IV–150
Act of March 3, 1875, grants but the use of land for the purposes specified. IV–526
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
The act of 1875 only requires approval of map on surveyed lands. I–397
Locations may be disapproved where the intent of the act is not secured. IV–525
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
Entries of public land crossed by right of way are subject to prior location of. IV–523
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
A map of definite location not required to secure, if a road has been actually constructed by a company which has observed the preliminary requirements. VIII–115
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
Privilege does not attach on the filing and acceptance of the articles of incorporation and proofs of organization, but on definite 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

Right of Way and Station Grounds—Continued.

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 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 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

Timber may not be taken from lands adjacent to one part of the road for the purposes of constructing another part. VIII–41

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

Each station as located must represent its particular section of 10 miles. IV–525

Depots, station houses, etc., not included in the term "railroad." VIII–41

River.

(See *Survey.*)

Saline Land and Salt Springs. (See *States* and *Territories; Mineral Land.*)

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

School Land.

I. GENERALLY.
II. INDEMNITY.

I. GENERALLY.

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 mean time retaining control of the land (W. T). 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 legal title remains in the government, the land being only reserved for a prescribed purpose (Utah). I–632

Distinction noted between the "grant" made to California and the "reservation" for Utah. I–632

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

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

Title to, does not pass by an irregular survey, apparently inaccurate, and subsequently set aside (California). VII–459

Mineral lands excepted from the grants to California. VI–494

A partial survey, declared final, showing all or part of a school section within a grant is the final survey contempleted in section 6 of the act of July 23, 1866. III–306

Settlement upon, when the grant therefor takes effect defeats the claim of the State. III–229

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

A prior settlement claim can not be set up against a selection of, except in the interest of such settler. X–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. IX–554

A purchase after survey of the possessory right of one who settled prior thereto, confers no right as against the grant. VIII–495

I. GENERALLY—Continued.

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

Settled on at survey and subsequently abandoned vests in the State as of the date of survey. 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

On failure of settler, prior to survey, to perfect his claim, the title to the land vests in the State (California) as of the date of survey. I–403

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

Intent of legislation for Washington Territory in line with the general law with respect to settlement at survey. VI–74

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–554

Settlers upon, under act of 1853, should submit final proof within reasonable time after survey. III–233

Claim of homesteader, where settlement was made after survey sent to the board of equitable adjudication. III–383

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

Order of March 24, 1885, suspending action on mineral applications for school lands revoked. IV–531

Circular regulations of November 16, 1888, with respect to Wyoming school lands. VII–585

Irregularity in the form and place of section 16, arising from the survey of the township, will not defeat the grant. VIII–560

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

Lands selected for educational purposes are reserved from the operation of the timber-land act of June 3, 1878. VI–696

The Department has no authority to permit land reserved for the use of schools to be used for cemetery purposes. IX–333

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

I. GENERALLY—Continued.

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 (W. T.) 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

Grant of, compared with the swamp grant and a similar rule of construction held applicable. VIII–310

II. INDEMNITY.

Indemnity selections, circular instructions of July 23, 1885. IV–79

Circular of July 29, 1887, cited in full with approval. VI–702

The right to select lieu lands vests immediately upon the legal ascertainment that a school section is reserved for public use. III–327

The State acquires no right to land as school indemnity prior to the selection thereof. IX–139

Where the fee is in the government at survey but the land is so incumbered that title can not fully vest in the State (Colorado), 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

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

A selection of indemnity under act of February 26, 1859, recorded and uncanceled, appropriates the land and reserves it from other disposal. II–626

Approved indemnity selections are as fully reserved as the sections in place. V–216

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

II. INDEMNITY—Continued.

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

Basis of indemnity selection to be indicated. IV–79

Selection made upon a basis defective in part is invalid as to the entire selection. VI–699

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 secured. VI–699

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

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

Indemnity not allowed for losses alleged in an unsurveyed township. VI–824

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

A selection defective in part is invalid as a whole upon the face of the record (California). IV–76

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–32

Where the basis would have been double minimum, if it had not been reserved for school purposes, the State (Minnesota) is entitled to select double minimum land. VIII–31

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

Twice the amount specified in section 2276, Revised Statutes, will be allowed for deficiencies where two sections to each township were granted to the State. VI–696

II. INDEMNITY—Continued.

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 (W. T.). V–216

The State is entitled to indemnity in lieu of land covered by settlement claims at date of survey. V–218, 543; VII–270

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 Territory is not bound to select indemnity for land covered by settlement at survey, but may await the action of the settler (W. T.). VI–71

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 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 (W. T.) 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

II. INDEMNITY—Continued.

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

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

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 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

Informal notation on the record of the words "set aside" does not constitute a rejection of the selection. V–352

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

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

Invalid selection, approved and certified, can only be canceled on the judgment of a court. IX–106

Certification on indemnity selection of land to which a prior adverse right had attached is null and void. I–494

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

II. INDEMNITY—Continued.

Alabama—Continued.

The legislation subsequent to the enabling act (Alabama), 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 (Alabama). VI–493

California.

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

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 of the United States resumed ownership of the bases. VI–302, 552

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

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

II. INDEMNITY—Continued.

California—Continued.

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

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 (Col.) 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 (Col.) entitled to indemnity for, within the Ute reservation. VI–412

Scrip. (See *Private Claims; States and Territories.*)

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

Attorney in fact must show authority for assignment of. I–302

Two pieces for one hundred and sixty acres each may issue in lieu of one for three hundred and twenty acres. I–303

Where there is a discrepancy in the spelling of names, affidavit as to the true orthography and identity of persons is required. II–430, 431

Returned if the entry, made by specific location fails. I–533

Returns from local office on location; circular of December 4, 1889. IX–657

Scrip—Continued.

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

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

Transfer of Sioux half-breed, effected through powers of attorney will not be recognized. VIII–207

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

Sioux half-breed, may not be located on land withdrawn for a railroad (Northern Pacific) while an Indian reservation and afterwards released. II–520

Porterfield, may be located upon offered or unoffered land and upon land within the incorporated limits of a town. I–497

No merely *de facto* appropriation will defeat a Porterfield location. I–497

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

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

Right to locate Valentine scrip on lake front in Chicago *res judicata.* V–382

Valentine, not locatable upon unsurveyed lands within the Territories 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

Scrip—Continued.

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

Secretary of the Interior. (See *Land Department.*)

Selections. (See *Railroad Grant; School Land; States and Territories; Swamp Land.*)

Seminole Lands. (See *Oklahoma; 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; Residence.*)

I. GENERALLY.

II. HOMESTEAD.

III. OSAGE LAND.

IV. PREËMPTION.

I. GENERALLY.

Date of, is question of mixed law and fact. I-445

Actual date of settlement may be shown on contest or in final proof. I-444; III-380

In contest the true date of, may be shown, though it be earlier than alleged in the application. III-103

Priority of, is protected only under legal assertion of right. IV-387

A legal claim of settlement does not amount to a grant. III-318

Rights extinguished by Executive order creating reservation. I-30, 450, 451; VIII-502

Not followed by residence confers no right under any of the settlement laws. IV-339

Is a personal act, and prior to such an act neither the ownership of the improvements, nor residence, cultivation, or improvement by an agent, can have any legal effect. II-188

Rests on acts performed in person by the party claiming the benefit thereof. VIII-623

A settler is a person who, intending to initiate a claim under any law of the United States for the disposition of the public domain, does some act connecting himself with the particular tract claimed, said act being equivalent to an announcement of such intention, and from which the public generally may have notice of his claim. II-628

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. III-294; X-582

1. GENERALLY—Continued.

Effected by one, who goes upon public land with the intention of making it his home, and does some act in execution of that intention sufficient to give notice thereof to the public. VIII–176; X–25

Consists in substantial improvement, permanent in character, with intent to appropriate the land. III–162, 295

Must be made in person upon unappropriated land. III–380

"Picking" a small patch of ground and erecting a cross are not acts of. III–162

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

Not effected by the arrangement of a few logs in the form of a square. II–26; III–449

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

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

Acts done as an agent (digging a ditch) are not acts of settlement. II–173

Acts done by an agent (plowing and hauling lumber) are not acts of settlement. II–175

No one can acquire a settlement right on public land through acts performed by an agent. VI–521

Residence, cultivation, and improvement by an agent, prior to personal settlement, are of no legal effect. II–188

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 rights to the claimant. II–560

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 rights and improvements of another. VIII–623; IX–329

Purchase of improvements by a prior settler does not make his date of settlement available to the vendee. II–188

I. GENERALLY—Continued.

Sale of improvements by one holding a possessory claim while conferring no right under the settlement laws is not in violation thereof. IX–139

The purchase and repair of improvements made by a prior settler constitute a good settlement. III–354

Purchase of improvements equivalent to making.
III–100; IV–56; V–239

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

Rights to the detriment of one in possession under color of title can not be acquired by acts of trespass. VII–68, 92

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

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

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

Made without violence, within the unlawful inclosure of another, is valid and will not be defeated by said unlawful occupancy.
VII–340; IX–455

The Atherton-Fowler doctrine applies to a case where a bona fide homestead entry and improvement (of which the adverse claimant had notice) of a quarter section of surveyed land gave a legal possessory right, which the entryman continuously asserted under color of law, even after relinquishment of the entry (in 1878) 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

I. GENERALLY—Continued.

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 rights. III–192

Under contract with supposed owner not trespass. V–239

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 on land formerly covered by railroad indemnity withdrawal recognized after revocation of the withdrawal. VI–382

On land withdrawn for indemnity purposes confers no right. VI–543; VIII–355, 570; X–85

No rights of, acquired on lands reserved by competent authority. X–513

Not effective if made on land covered by an entry or otherwise appropriated. I–52; III–344, 553; V–147, 238; VIII–243

No rights are acquired by settlement while the land is within a reservation (Indian or military). II–521, 604

On military reservation with knowledge of the existing reservation not legalized by the act of July 5, 1884. X–489

On appropriated tract no basis for claim to adjoining unappropriated land. V–289

On abandoned homestead claims, uncanceled, gives no rights; settlers must exercise diligence in ascertaining the fact of cancellation of the entries. II–89

Upon land covered by a homestead entry confers no right so long as the entry remains uncanceled. III–562

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

Upon land covered by the entry of another confers no right as against the entryman who complies with the law. VIII–227

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

Priority of, on land not subject thereto, may be considered as between claimants therefor. IX–89

I. GENERALLY—Continued.

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

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

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

Right of one residing 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

Status of adverse existing settlement in case of simultaneous relinquishment and application. IV–125

A settled (preëmption) 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

On cancellation of an entry under contest a bona fide settler then on the land is entitled to the right of entry as against every one except the successful contestant. VIII–597

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

Acts of, performed while the land was not subject thereto may be considered in determining the question of good faith. VI–636

Prior to survey confers no vested interest in the land. VIII–541

Priority of, before survey when marked by boundaries will be protected as against subsequent settlers. I–414

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 surveyed 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

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 in which said improvements are found by the survey to be. II–588

And improvement before survey on land included within the known settlement right of another are invalid as against the prior settler. VIII–630

I. GENERALLY—Continued.

Conflicting rights acquired prior to survey adjusted through agreement of the parties. VIII–536

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

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

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

Of an alien confers no right under the public-land laws. I–489; IV–139; VI–485; X–463

Of an alien becomes valid from the date of filing declaration of intention to become a citizen. VI–485

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 one becoming qualified to make, while on the land, dates from such time. I–444

A settler is bound to take notice of established priorities. IV–170, 306

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 claims is the same. VI–152

Right can not be acquired or maintained on different tracts at the same time. VIII–96, 200, 461; IX–63

Rights under the homestead and preëmption laws can not be maintained for different tracts at the same time. X–419

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 lands 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

Not necessarily speculative or fraudulent because made near prospective town site. III–134

I. GENERALLY—Continued.

Taking possession of and improving land, relying upon the erroneous statement of an attorney, without initiating legal claim to it, gave 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

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

Not required of desert-land applicant and confers no right under the desert-land act. III–326, 331

II. HOMESTEAD.

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, Revised Statutes. 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 is protected as against later settlers for three months only, after which period the next settler in point of time, who has complied with the law, is entitled to priority. V–624

Of homesteader only protected by the act of May 14, 1880, for the statutory period, as against intervening settlement rights. VI–306

Of a homesteader on unoffered land protected as against other and later settlers for the period of three months only by section 3, act of May 14, 1880. VII–537

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

On a tract afterwards covered by a homestead entry which (upon contest, rejected for want of corroborating witnesses) was relinquished, takes effect immediately upon relinquishment under section 3, act of May 14, 1880, when there have been occupation and homestead application. II–117

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

A person resident on and intending to take as a homestead land covered by an uncanceled entry, upon cancellation, has three months within which to file his claim. II–123

II. HOMESTEAD—Continued.

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

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; he can not have them considered in a contest by him on the ground of fraudulent entry or abandonment. II–119, 620

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 may make joint entry. II–585

Where there was improvement by two settlers on the same 40-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

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

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

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

IV. PREËMPTION—Continued.

Under the preëmption law there is a recognized distinction between settlement and residence. VIII–503

Date of, is a matter of proof without respect to allegation in declaratory statement. I–444

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

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

On segregated land confers no right of preëmption. V–289

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

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

Though insufficient to support a filing, may be made good subsequently in the absence intervening adverse claim. VI–232

IV. PREËMPTION—Continued.

Where the claimant abandoned the subdivision on which he had settled, and thereafter failed to connect himself with the 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

Sioux Indian Lands. (See *Indian Lands.*)

Soldiers' Homestead. (See *Homestead.*)

Special Agent. (See *Practice*, subtitle, *Proceedings by the Government.*)

Stare Decisis.

The doctrine of, recognized and followed in departmental action. I–239; V–92; X–396

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

States and Territories. (See *School Land; Swamp Land.*)

ALABAMA. (See *Mineral Lands.*)

Vested rights under mining laws not affected by the act of March 3, 1883 (Ala.). IV–476

The State's selection of university lands should be admitted subject to the legal claims of settlers. III–315

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

CALIFORNIA—Continued.

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

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

Applicant 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. VIII–144, 279

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

CALIFORNIA—Continued.

The right of purchase under section 7 dose 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 parties who 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: query. III–401

Right of purchase under section 7, act of July 23, 1866, not defeated by the fact that the deed under which a claimant holds an undivided interest in a Mexican grant does not describe the land 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

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 (California). VIII–144

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

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

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

CALIFORNIA—Continued.

The holder of a certificate of purchase from the State, not yet entitled to a patent, cannot claim the protection extended to the "purchaser for a 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

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

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

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

KANSAS.

Under act admitting to the Union, is entitled to 5 per centum 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

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 acts 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

Statutes—Continued.

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

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

The Department will not consider the constitutionality of. I–335

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 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 most strongly against the grantee. I–331, 365; III–243; IV–216, 429; V–381

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Provisions of, directory when not of the substance of the things provided for. I–226

Statutes—Continued.

The law (section 2294, Revised Statutes) is permissive and beneficial, and, its purpose being to faciliate 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

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

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 word "children," in section 2168, R. S., is used in its natural sense and is not qualified by reference to minority. II–611

"As near as practicable," in section 2331, Revised Statutes means as nearly as is reasonably practicable. II–764; VI–227

Statutes—Continued.

"Actual settler," in section 2382, R. S., means actual resident. II–628

"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–308

"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, mean sold and title alienated. II–641

"Homestead laws" considered as a generic term, embracing other settlement laws. I–71; V–591; VI–45

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

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, 373

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

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

STONE ENTRY.

(See *Timber and Stone Act.*)

Survey. (See *Mining Claim; Private Claim.*)

I. GENERALLY.
II. DEPOSIT SYSTEM.
III. ON APPLICATION.

I. GENERALLY.

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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

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Of lands bordering on navigable waters only extends to high-water mark. X–369

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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

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Proprietors bordering on streams not navigable, unless restricted by terms of their grant, hold to the center of the stream. VI–583, 637

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Sudden change of a river's course does not affect title or boundary. I–213

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

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Survey of town grant will not be disturbed, the boundaries conforming to instructions. III–387

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II. DEPOSIT SYSTEM. (See *Certificate of Deposit.*)

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II. DEPOSIT SYSTEM—Continued.

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

Application 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

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

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

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

Money deposited for the cost of office work on a mineral survey, and remaing 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

That the amount claimed for services is in excess of the amount of the estimated liability on the contract, or that the work is not performed within the time specified therein, does not invalidate the claim, though the rate of payment may be affected. IV–451

III. ON APPLICATION.

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 ordered of land improperly excluded as the bed of a lake, when in fact no such body of water existed. V–369

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

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

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

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 land. I–310

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. V–517

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

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

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

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 (Illinois) for railroad purposes, did not pass under the subsequent swamp grant. IV–2; X–393

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

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

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

Selections of, subject to contest at the discretion of the Department. IV–497; V–31

Selections of vacant lands, reported to the General Land Office prior to the act of March 3, 1857, were confirmed by said act. I–508, 509; X–45, 163

II. SELECTION—Continued.

Selections previously made and reported confirmed by the act of March 3, 1857, so far as the same were vacant and unappropriated. V–516

A list of selections finally rejected prior to the act of March 3, 1857, is not confirmed by said act. VIII–387

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 præseni.* II–546

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

III. INDEMNITY.

The act of March 3, 1857, does not provide for indemnity. VII–243

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

Basis for indemnity must appear to be land of the character granted. V–638

Indemnity dependent upon the date of the grant (Louisiana). V–464

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

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

Indemnity locations limited to the State in which the original selections were situated. I–504

Claim of Illinois for indemnity outside of the State is *res adjudicata.* I–504

Not allowed to locate indemnity scrip outside of its limits (Illinois). IV–2

The claim of the State (Illinois) for indemnity for lands located with scrip or warrants may be adjusted. X–125

III. INDEMNITY—Continued.

Grant of, did not take effect on lands reserved to the government in reimbursement for 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

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

IV. 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–476

The State required to show the character of the land when the swamp grant took effect. III–468

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

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

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

IV. CHARACTER OF LAND—Continued.

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

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

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

V. ADJUSTMENT.

The grant of, may not be enlarged by any plan of adjustment. VII–514

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

Land Office to review testimony though no appeal is taken from the finding of the local office (Oregon). IV–226

Commissioner should review testimony as to character of the land. III–474, 608

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

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

V. ADJUSTMENT—Continued.

Plan of adjustment may be varied by the Secretary of the Interior. V–31, 236, 519

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

Government may institute inquiry as to the character of the land claimed. IV–497

State may submit proof in the absence of agreement to accept the field notes as the basis of adjustment. V–518

Acceptance of the field notes as 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

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

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

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

V. ADJUSTMENT—Continued.

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

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

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

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 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 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

V. ADJUSTMENT—Continued.

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

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

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

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

Circular of December 13, 1886, with respect to entries and filings on lands claimed by the State. VI–279

In conflict with settlement claim should not be disposed 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 (Minn.) 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

Claim for, not considered where the land has been certified to the State under railroad grant (La.). I–509

If patent for, has erroneously issued to individual grantees the remedy of the State is in the courts. X–393

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

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

VI. UNSURVEYED LANDS—Continued.

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. VII–369

Selections of, 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 (Cal.). 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

Section 2448, 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 (California) 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 (Cal.) IV–371

Act of July 23, 1866, section 1, has no reference to swamp claims, after patent thereunder to a purchaser from the State of California; 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

Lands segregated by the State (California) 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

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–37

VIII. CERTIFICATION—Continued.

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

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

Tenant. (See *Residence; Settlement.*)

Tide Lands. (See *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

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

Tender held equivalent to payment. V–38

Entry should be based upon personal inspection of the land. VII–10

An entry may embrace non-contiguous tracts. II–332

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

I. GENERALLY—Continued.

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

Entry made by an employé in the office of the surveyor-general of the district in which the land is situated is illegal. X–97

The right of entry being acquired may be completed by the heirs of the entryman. V–38

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

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

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

A relinquishment of a claim prior to final proof confers no rights on the person obtaining and filing it. II–333

II. CHARACTER OF LAND.

Burden of proof as to the character of the land is upon the claimant. IV–164, 238

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–633

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

II. CHARACTER OF LAND—Continued.

A tract of land containing patches of arable soil, which, however, aggregate a less quantity than those parts unfit for cultivation, is proper subject to entry under said act. VI–630

The timber applicant must show that the land was uninhabited, unoccupied, and unimproved by others, and that it is unfit for cultivation and chiefly valuable for timber. II–632

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

Mineral lands excluded from sale. I–600

If the character of the land is called in question a hearing should be ordered. VIII–412

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

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 proceedings 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

IV. ADVERSE CLAIM—Continued.

The allegation of a person (claiming a settlement right) that the land is valuable chiefly 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

Protest calls in question character of land or good faith of applicant. IV–282

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

Bona fide occupation and improvement of land bars a subsequent application under the timber and stone act. II–336

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

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

IV. ADVERSE CLAIM—Continued.

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–161

In contests between 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

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

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

That the area cultivated in trees is in excess of ten 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

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

I. GENERALLY—Continued.

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

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

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

Entryman not held responsible for the results of incendiarism or destruction by the 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

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

Compliance with law must be shown pending application for amendment. V–349

Entryman should comply with the law during the pendency of contest. III–486; V–104

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

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

I. GENERALLY—Continued.

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

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

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

Credit allowed for breaking done by former entryman if such work has been utilized by the claimant. III–483: IV–542; VI–829

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

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

III. PLANTING.

Planting of first five acres must be done third year. I–135

Planting should be done when the ground is in proper condition. IV–174; V–364

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

III. PLANTING --Continued.

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

Planting of previous entryman available. IV–291, 543

The entryman is responsible for the negligence of his agent in planting. VII–63

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

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

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

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

Failure to cultivate may not be taken advantage of by one employed to perform such act. IV–205

IV. CULTIVATION—Continued.

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 are 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 a 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

Timber Cutting. (See *Right of Way; 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

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

Timber Cutting—Continued.

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 8 inches in diameter. I–602

Removal of timber from land covered by homestead entry or preëmption 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

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

Hereafter (December 7, 1883) the special agents will make no report of timber cutting by homesteaders or preëmptors on their claims unless they find the entry to be fraudulent (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

I. GENERALLY—Continued.

General powers of the Department even 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

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–121

On land covered by preëmption entry not inquired into. IV–467

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–819, 820

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

II. RAILROAD LIMITS—Continued.

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

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

IV. LEGAL PROCEEDINGS—Continued.

Suits, civil and criminal, advised for, on land withdrawn under railway grant. IV–487

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–810

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

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–725

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 was 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

V. COMPROMISE—Continued.

For timber cut by a homesteader from his claim, which he abandons as soon as the cutting is done, the purchaser must 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

VI. CONDONATION.

Sec. 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

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, Revised Statutes, 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

Town Site—Continued.

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

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

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 left with jury of neighborhood. IV–212

On mineral land subject to the rights of claimants therefor. IV–212

Entries in Oklahoma restricted by statute; circular of April 1, 1889. VIII–336

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 (Oklahoma). VIII–425

Circular instructions with respect to entries in the Territory of Oklahoma. X–604, 666

Transferee. (See *Alienation; Final Proof; Practice*, sub-title, No. IX.)

Trespass. (See *Public Land; Settlement; Timber Trespass.*)

Wagon-Road Grant.

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

Does not attach to any specific tract by definite location or construction of the road. X–456

Executive withdrawal in aid of, does not take effect on land covered by valid settlement claim. X–456

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

During pendency of suit under the act of March 2, 1889, no patents will be issued to the company or its assignee. X–459

Wagon-Road Grant—Continued.

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

Filing allowed within limits of indemnity withdrawal for wagon-road grant subject to the company's right of selection. I–389

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

Warrant. (See *Scrip.*)

I. GENERALLY.
II. VIRGINIA MILITARY.

I. GENERALLY.

Not assignable in blank. IV–172

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

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