

DECISIONS
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DECISIONS
RELATING TO
THE PUBLIC LANDS.

SUGGESTIONS TO HOMESTEADERS AND PERSONS DESIRING TO
MAKE HOMESTEAD ENTRIES.

CIRCULAR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., January 2, 1914.

1. Persons desiring to make homestead entries should first fully inform themselves as to the character and quality of the lands they desire to enter, and should in no case apply to enter until they have visited and fully examined each legal subdivision for which they make application, as satisfactory information as to the character and occupancy of public lands can not be obtained in any other way.

As each applicant is required to swear that he is well acquainted with the character of the land described in his application, and as all entries are made subject to the rights of prior settlers, the applicant can not make the affidavit that he is acquainted with the character of the land, or be sure that the land is not already appropriated by a settler, until after he has actually inspected it.

Information as to whether a particular tract of land is subject to entry may be obtained from the register or receiver of the land district in which the tract is located, either through verbal or written inquiry, but these officers must not be expected to give information as to the character and quality of unentered land or to furnish extended lists of lands subject to entry, except through plats and diagrams which they are authorized to make and sell as follows:

For a township diagram showing entered land only.....	\$1.00
For a township plat showing form of entries, names of claimants, and character of entries.....	2.00
For a township plat showing form of entries, names of claimants, character of entry, and number.....	3.00
For a township plat showing form of entries, names of claimants, character of entry, number, and date of filing or entry, together with topography, etc.....	4.00

Purchasers of township diagrams are entitled to definite information as to whether each smallest legal subdivision, or lot, is vacant public land. Registers and receivers are therefore required in case of an application for a township diagram showing vacant lands to plainly check off with a cross every lot or smallest legal subdivision in the township which is not vacant, leaving the vacant tracts unchecked. There is no authority for registers and receivers to charge and receive a fee of 25 cents for plats and diagrams of a section or part of a section of a township.

If because of the pressure of current business relating to the entry of lands registers and receivers are unable to make the plats or diagrams mentioned above, they may refuse to furnish the same and return the fee to the applicant, advising him of their reason for not furnishing the plats requested, that he may make the plats or diagrams himself, or have same made by his agent or attorney, and that he may have access to the plats and tract books of the local land office for this purpose, provided such use of the records will not interfere with the orderly dispatch of the public business.

A list showing the general character of all the public lands remaining unentered in the various counties of the public-land States on the 30th day of the preceding June may be obtained at any time by addressing "The Commissioner of the General Land Office, Washington, D. C."

All blank forms of affidavits and other papers needed in making application to enter or in making final proofs can be obtained by applicants and entrymen from the land office for the district in which the land lies.

2. *Kind of land subject to homestead entry.*—All unappropriated surveyed public lands adaptable to any agricultural use are subject to homestead entry if they are not mineral or saline in character and are not occupied for the purposes of trade or business and have not been embraced within the limits of any withdrawal, reservation, or incorporated town or city, but homestead entries on lands within certain areas (such as lands in Alaska, lands withdrawn under the reclamation act, certain ceded Indian lands, lands within abandoned military reservations, agricultural lands within national forests, lands in western and central Nebraska, and lands withdrawn, classified, or valuable for coal) are made subject to the particular requirements of the laws under which such lands are opened to entry. None of these particular requirements are set out in these suggestions, but information as to them may be obtained by either verbal or written inquiries addressed to the register and receiver of the land office of the district in which such lands are situated.

HOW CLAIMS UNDER THE HOMESTEAD LAW ORIGINATE.

3. Claims under homestead laws may be initiated either by settlement on surveyed or unsurveyed lands of the kind mentioned in the foregoing paragraph, or by the filing of a soldier's or sailor's declaratory statement, or by the presentation of an application to enter any surveyed lands of that kind.

4. Settlement is initiated through the personal act of the settler placing improvements upon the land or establishing residence thereon; he thus gains the right to make entry for the land as against other persons. A settlement on any part of a surveyed quarter section subject to homestead entry gives the right to enter all of that quarter section, but if a settler desires to initiate a claim to surveyed tracts which form a part of more than one technical quarter he should define his claim by placing some improvements on each of the smallest subdivisions claimed. When settlement is made on unsurveyed lands the settler must plainly mark the boundaries of all lands claimed. Within a reasonable time after settlement actual residence must be established on the land and continuously maintained. Entry should be made within three months after settlement upon surveyed lands or within that time after the filing in the local land office of the plat of survey of lands unsurveyed when settlement was made. Otherwise, the preference right of entry may be lost. Under the act of August 9, 1912 (37 Stat., 267), settlement right on not exceeding 320 acres of lands designated by the Secretary of the Interior as subject to entry under the enlarged-homestead law may be obtained by plainly marking the exterior boundaries of all lands claimed, whether surveyed or unsurveyed, followed by the establishment of residence, except as to lands designated under section 6 of said acts, where residence is not required, but where the settlement right is required to be initiated by plainly marking the exterior boundaries of the land claimed and the placing and maintenance of valuable improvements thereon.

5. Soldiers' and sailors' declaratory statements may be filed in the land office for the district in which the lands desired are located by any persons who have been honorably discharged after 90 days' service in the Army or Navy of the United States during the War of the Rebellion or during the Spanish-American War or the Philippine insurrection. Declaratory statements of this character may be filed either by the soldier or sailor in person or through his agent acting under a proper power of attorney, but the soldier or sailor must make entry of the land in person, and not through his agent, within six months from the filing of his declaratory statement, or he may make entry in person without first filing a declaratory statement if he so chooses. If a declaratory statement is filed by a soldier or

sailor in person, it must be executed by him before one of the officers mentioned in paragraph 16, in the county or land district in which the land is situated; if filed through an agent, the affidavit of the agent must be executed before one of the officers above mentioned, but the soldier's affidavit may be executed before any officer using a seal and authorized to administer oaths and not necessarily within the county or land district in which the land is situated.

BY WHOM HOMESTEAD ENTRIES MAY BE MADE.

6. Homestead entries may be made by any person who does not come within either of the following classes:

- (a) Married women, except as hereinafter stated.
- (b) Persons who have already made homestead entry, except as hereinafter stated.
- (c) Foreign-born persons who have not declared their intention to become citizens of the United States.
- (d) Persons who are the owners of more than 160 acres of land in the United States.
- (e) Persons under the age of 21 years who are not the heads of families, except minors who make entry as heirs, as hereinafter mentioned, or who have served in the Army or Navy during the existence of an actual war for at least 14 days.
- (f) Persons who have acquired title to or are claiming, under any of the agricultural public-land laws, through settlement or entry made since August 30, 1890, any other lands which, with the lands last applied for, would amount in the aggregate to more than 320 acres.

7. A married woman who has all of the other qualifications of a homesteader may make a homestead entry under any one of the following conditions:

- (a) Where she has been actually deserted by her husband.
- (b) Where her husband is incapacitated by disease or otherwise from earning a support for his family and the wife is really the head and main support of the family.
- (c) Where the husband is confined in a penitentiary and she is actually the head of the family.
- (d) Where the married woman is the heir of a settler or contestant who dies before making entry.
- (e) Where a married woman made improvements and resided on the lands applied for before her marriage, she may enter them after marriage if her husband is not holding other lands under an unperfected homestead entry at the time of the marriage.

8. If an entryman deserts his wife and abandons the land covered by his entry, his wife then has the exclusive right to contest the

entry if she has continued to reside on the land, and on securing its cancellation she may enter the land in her own right, or she may continue her residence and make proof in the name of and as the agent for her husband, and patent will issue to him.

9. If an entryman deserts his minor children and abandons his entry after the death of his wife, the children have the same right to make proof on the entry as the wife could have exercised had she been deserted during her lifetime.

10. The marriage of the entrywoman after making entry will not defeat her right to acquire title if she continues to reside upon the land and otherwise comply with the law. A husband and wife can not, however, maintain separate residences on homestead entries held by each of them, and if, at the time of marriage, they are each holding an unperfected entry on which they must reside in order to acquire title, they can not hold both entries. In such case they may elect which entry they will retain and relinquish the other.

11. A widow, if otherwise qualified, may make a homestead entry notwithstanding the fact that her husband made an entry and notwithstanding she may be at the time claiming the unperfected entry of her deceased husband.

12. A person serving in the Army or Navy of the United States may make a homestead entry if some member of his family is residing on the lands applied for, and the application and accompanying affidavits may be executed before the officer commanding the branch of the service in which he is engaged.

13. Second homestead entries may be made by the following classes of persons if they are otherwise qualified to make entry:

(a) By a person who commuted a former entry prior to June 5, 1900.

(b) By a homestead entryman who, prior to May 17, 1900, paid the Indian price of lands to which he would have been afterwards entitled to receive patent without payment under the "free-homes act." (31 Stat., 179.)

(c) By any person whose former entry was made prior to February 3, 1911, which entry has been subsequently lost, forfeited, or abandoned for any cause, provided the former entry was not canceled for fraud or relinquished or abandoned for a valuable consideration in excess of the filing fees paid on said former entry. If an entryman received for relinquishing or abandoning his entry an amount in excess of the fees and commissions paid to the United States at time of making said entry, or if he sells his improvements for a sum in excess of such filing fees and relinquishes his entry in connection therewith, he can not make a second entry.

(d) By persons whose original entries have failed because of the discovery, subsequent to entry, of obstacles which could not have

been foreseen and which render it impracticable to cultivate the land, or because, subsequent to entry, the land becomes useless for agricultural purposes through no fault of the entryman. There is no specific statute authorizing the making of second entries in these classes of cases, and such entries are allowed under the general equitable power of the Land Department to grant relief in cases of accident and mistake.

(e) Any person otherwise qualified, who has made final proof for less than 160 acres under the homestead laws, may make an additional entry for such an amount of public lands as will, when added to the amount for which he has already made proof, not exceed in the aggregate 160 acres. Residence, cultivation, and improvement must be performed as in the case of an original entry.

(f) Each application for second or additional entry must give the date and number of the former entry and the land office at which it was made, or the section, township, and range in which the land entered was located. Any person coming within paragraphs (a), (b), or (e) must also give date when the former entry was perfected. Any person coming within paragraph (c) must show by the affidavit of himself and some other person or persons the date when his former entry was lost, forfeited, or abandoned; that it was not canceled for fraud; and the consideration, if any, received for the abandonment or relinquishment. Any person coming within paragraph (d) must, in addition to the evidence above specified, show in his corroborated affidavit the grounds on which he seeks relief, and that he used due diligence prior to entry to avoid mistake.

(g) A person who has made, lost, forfeited, or abandoned an entry of less than 160 acres is not entitled to another entry unless he comes within paragraph (c) or (d) above. Such a person can not make another entry merely because his first entry contained less than 160 acres.

14. An additional homestead entry may be made by a person for such an amount of public lands adjoining lands then held and resided upon by him under his original entry as will, when added to such adjoining lands, not exceed in the aggregate 160 acres. An entry of this kind may be made by any person who has not acquired title to and is not, at the date of his application, claiming under any of the agricultural public-land laws, through settlement or entry made since August 30, 1890, any other lands which, with the land then applied for, would exceed in the aggregate 320 acres, but the applicant will not be required to show any of the other qualifications of a homestead entryman. See, however, instructions under the enlarged homestead act (par. 47).

15. An adjoining farm entry may be made for such an amount of public lands lying contiguous to lands owned and resided upon by the

applicant as will not, with the lands so owned and resided upon, exceed in the aggregate 160 acres; but no person will be entitled to make entry of this kind who is not qualified to make an original homestead entry. A person who has made one homestead entry, although for a less amount than 160 acres, and perfected title thereto, is not qualified to make an adjoining farm entry.

HOW HOMESTEAD ENTRIES ARE MADE.

16. A homestead entry may be made by the presentation to the land office of the district in which the desired lands are situated of an application properly prepared on blank forms prescribed for that purpose and sworn to before either the register or the receiver, or before a United States commissioner, or a judge, or a clerk of a court of record, in the county or parish in which the land lies, or before any officer of the classes named who resides in the land district and nearest or most accessible to the land, although he may reside outside of the county in which the land is situated.

17. Each application to enter and the affidavits accompanying it must recite all the facts necessary to show that the applicant is acquainted with the land; that the land is not, to the applicant's knowledge, either saline or mineral in character; that the applicant possesses all of the qualifications of a homestead entryman; that the application is honestly and in good faith made for the purpose of actual settlement and cultivation, and not for the benefit of any other person, persons, or corporation; that the applicant will faithfully and honestly endeavor to comply with the requirements of the law as to settlement, residence, and cultivation necessary to acquire title to the land applied for; that the applicant is not acting as the agent of any person, persons, corporation, or syndicate in making such entry, nor in collusion with any person, corporation, or syndicate to give them the benefit of the land entered or any part thereof; that the application is not made for the purpose of speculation, but in good faith to obtain a home for the applicant, and that the applicant has not directly or indirectly made, and will not make, any agreement or contract in any way or manner with any person or persons, corporation, or syndicate whatsoever by which the title he may acquire from the Government to the lands applied for shall inure, in whole or in part, to the benefit of any person except himself.

18. All applications by persons claiming as settlers must, in addition to the facts required in paragraph 17, state the date and describe the acts of settlement under which they claim a preferred right of entry, and applications by the widows, devisees, or heirs of settlers must state facts showing the death of the settler and their right to make entry, that the settler was qualified to make entry at the time

of his death, and that the heirs or devisees applying to enter are citizens of the United States or have declared their intentions to become such citizens, but they are not required to state facts showing any other qualifications of a homestead entryman, and the fact that they have made a former entry will not prevent them from making an entry as such heirs or devisees, nor will the fact that a person has made entry as the heir or devisee of the settler prevent him from making an entry in his own individual right if he is otherwise qualified to do so.

19. All applications by soldiers, sailors, or their widows, or the guardians of their minor children should be accompanied by proper evidence of the soldier's or sailor's service and discharge and of the fact that the soldier or sailor had not, prior to his death, made an entry in his own right. The application of the widow of the soldier or sailor must also show that she is unmarried and that the right has not been exercised by any other person. Applications for the children of soldiers or sailors must show that the father died without having made entry, that the mother died or remarried without making entry, and that the person applying to make entry for them is their legally appointed guardian.

20. Applications for entry must be accompanied by the proper fee and commissions. (See par 41.) A receipt for the money is at once issued, but this is merely evidence that the money has been paid and as to the purpose thereof. If the application is allowed and the entry placed of record, formal notice of this fact is issued on the prescribed form; if the application is rejected or suspended, notice of such action is forwarded to the applicant as soon as practicable.

RIGHTS OF WIDOWS, HEIRS, OR DEVISEES UNDER THE HOMESTEAD LAWS.

21. If a homestead settler dies before he makes entry, his widow has the exclusive right to enter the lands covered by his settlement. If there be no widow, the right to enter the lands covered by the settlement passes to the persons who are named as heirs of the settler by the laws of the State in which the land lies. If there be no widow or heirs, the right to enter the lands covered by the settlement passes to the person to whom the settler has devised his rights by a proper will; but a devisee of the claim will not be entitled to take when there is a widow or an heir of the settler. The persons to whom the settler's right of entry passes must make entry within the time named in paragraph 4 or they will forfeit their right to the next qualified applicant. They may, however, make entry after that time if no adverse claim has attached.

22. If a homestead entryman dies before making final proof, his rights under his entry will pass to his widow; or if there be no widow,

and the entryman's children are all minors, the right to a patent vests in them upon making publication of notice and proof of the death of the entryman without a surviving widow, that they are the only minor children and that there are no adult heirs of the entryman, or the land may be sold for the benefit of such minor children in the manner in which other lands belonging to minors are sold under the laws of the State or Territory in which the minors are domiciled.

If the children of a deceased entryman are not all minors and his wife is dead, his rights under the entry pass to the persons who are his heirs under the laws of the State or Territory in which the lands are situated. If there be no widow or heirs of the entryman, the rights under the entry pass to the person to whom the entryman has devised his rights by proper will, but a devisee of the entry will be entitled to take only in the event there is no widow or heir of the entryman.

23. If a contestant dies after having secured the cancellation of an entry his right as a successful contestant to make entry passes to his heirs; and if the contestant dies before he has secured the cancellation of the entry he has contested, his heirs may continue the prosecution of his contest and make entry if they are successful in the contest. In either case to entitle the heirs to make entry they must show that the contestant was a qualified entryman at the date of his death; and in order to earn a patent the heirs must comply with all the requirements of the law under which the entry was made, to the same extent as would have been required of the contestant had he made entry.

24. The unmarried widow, or, in case of her death or remarriage, the minor children of soldiers and sailors who were honorably discharged after 90 days' actual service during the War of the Rebellion, the Spanish-American War, or the Philippine insurrection may make entry as such widow or minor children if the soldier or sailor died without making entry, or failed to perfect an entry and was, at the time of his death, qualified to make another. The minor children must make a joint entry through their duly appointed guardian.

RESIDENCE AND CULTIVATION REQUIRED UNDER THE HOMESTEAD LAWS.

25. A homestead entryman is required to establish residence upon the land within six months after date of entry unless an extension of time is allowed, as explained in paragraph 35, and is required to maintain residence there for a period of three years. He may absent himself, however, for a portion of each year succeeding establishment of residence, as more fully explained in paragraph 26. Residence and cultivation in the case of an adjoining farm homestead or of an additional homestead entry for a tract contiguous to

an original homestead entry may be maintained either upon the original or additional farm.

26. During each year, beginning with the date of establishment of actual residence, the entryman may absent himself from the land for one period of not exceeding five months, but the law does not authorize a number of shorter absences aggregating this period. In order to be entitled to this absence the entryman need not file application therefor, but must at the time he leaves the land file, by mail or otherwise, at the proper local land office, notice of time of leaving, and upon returning to the land must notify said office of the date of his return. A second period of absence immediately following the first, though in different years of residence, is not permitted by the law; there must be some substantial term of actual continuous residence between the periods of absence.

27. (a) Cultivation of the land for a period of three years is required, and this must generally consist of actual breaking of the soil, followed by planting, sowing of seed, and tillage for a crop other than native grasses. However, tilling of the land, or other appropriate treatment, for the purpose of conserving the moisture with a view of making a profitable crop the succeeding year, will be deemed cultivation within the terms of the act (without sowing of seed), where that manner of cultivation is necessary or generally followed in the locality.

During the second year not less than one-sixteenth of the area entered must be actually cultivated, and during the third year, *and until final proof*, cultivation of not less than one-eighth must be had; these requirements are applicable to all homesteads, under the general law and under the enlarged homestead acts, excepting those under section 6 of said acts (see paragraphs 48 and 49); they do not apply to entries under the reclamation act or under the so-called Kinkaid Act, applicable to Nebraska.

(b) The Secretary of the Interior is authorized to reduce the requirements as to cultivation. This may be done, if the land entered is so hilly or rough, the soil so alkaline, compact, sandy, or swampy, or the precipitation of moisture so light as not to make cultivation of the required amounts practicable, or if the land is generally valuable only for grazing. An application for reduction upon the grounds indicated must be filed at the proper local land office on the form prescribed therefor, and should set forth in detail the special physical conditions of the land, on which claimant bases his right to a reduction.

A reduction may be allowed also if the entryman, after making entry and establishing residence, has met with misfortune which renders him reasonably unable to cultivate the prescribed area. In this class of cases an application for reduction is not to be filed, but

notice of the misfortune and of its nature must be submitted to the register of the local land office, under oath, within 60 days after its occurrence; upon satisfactory proof regarding the misfortune at the time of submitting final proof a reduction in area of cultivation during the period of disability following the misfortune may be permitted.

(c) The homestead entryman must have a habitable house upon the land entered at the time of submitting proof. Other improvements should be of such character and amount as are sufficient to show good faith.

(d) By paragraph 16 of the instructions of November 1, 1913, the Secretary of the Interior (under his statutory authority to reduce the requirements as to cultivation) has prescribed the following rule to govern action on proofs submitted under the new law, where the homestead entry was made prior to June 6, 1912:

Respecting cultivation necessary to be shown upon such an entry, in all cases where, upon considering the whole record, the good faith of the entryman appears, the proof will be acceptable if it shows cultivation of at least one-sixteenth for one year and of at least one-eighth for the next year and each succeeding year until final proof, without regard to the particular year of the homestead period in which the cultivation of the one-sixteenth was performed.

(e) Entries made prior to June 6, 1912, may be perfected either by showing compliance with the requirements of the three-year act of June 6, 1912, or with the provisions of the old homestead law. The former law required five years' residence, there being no specific provision regarding the extent to which the entryman might absent himself; it made no requirement of cultivation of a specific proportion of the area of the entry, but the claimant was obliged to show such cultivation as was reasonable under the circumstances of the case.

(f) Where a qualified person settled upon a tract of unsurveyed public land, subject to settlement, prior to the passage of the act of June 6, 1912, but made entry after its enactment or shall hereafter make entry, he may elect to submit proof under said act or under the law existing when he established his residence upon the land. The filing of a formal election is not required, but the designation of three-year or five-year proof, in the notice to submit same, may constitute such election.

28. A soldier or sailor of one of the classes mentioned in paragraph 5 who makes entry as such must begin his residence and cultivation of the land entered by him within six months from the date of filing his declaratory statement, but if he makes entry without filing a declaratory statement he must begin his residence within six months after the date of the entry. Thereafter he must continue both residence and cultivation for such period as will, when added to the time of his military or naval service (under enlistment or enlistments

covering war periods), amount to three years; but if he was discharged on account of wounds or disabilities incurred in the line of duty, credit for the whole term of his enlistment may be allowed; however, no patent will issue to such soldier or sailor until there has been residence and cultivation by him for at least one year, nor until a habitable house has been placed upon the land. If the soldier's military service was sufficient in duration to require only one year's residence and improvement upon the claim, the entryman must perform such an amount of cultivation as to evidence his good faith as a homestead claimant. If his military service was of such limited duration as to require more than one year's residence upon the claim he will be required to perform cultivation to the extent of one-sixteenth of the area of the entry, beginning with the second year thereof, and not less than one-eighth, beginning with the third year of the entry and thereafter until final proof.

No credit can be allowed for military service where commutation proof is offered.

29. A soldier or sailor making entry during his enlistment in time of peace is not required to reside personally on the land, but may receive patent if his family maintain the necessary residence and cultivation until the entry is 3 years old or until it has been commuted; but a soldier or sailor is not entitled to credit on account of his military service in time of peace. If such soldier has no family, there is no way by which he can make entry and acquire title during his enlistment in time of peace.

30. Widows and minor orphan children of soldiers and sailors who make entry based on the husband's or father's military or naval service must conform to the requirements specified for the soldier or sailor in paragraph 28.

31. Persons who make entry as the widow, heirs, or devisee of settlers are not required to reside upon the land entered by them, but they must improve and cultivate it for such period as, added to the time during which the settler resided on and cultivated the land, will make the required period of three years, and the cultivation must be to the extent required by the law under which the proof is offered. Commutation proof may, however, be made upon showing 14 months' actual residence and cultivation had either by the settler or the heirs, devisee, or widow, or in part by the settler and in part by the widow, heirs, or devisee.

32. Persons succeeding as widow, heirs, or devisees to the rights of a homestead entryman are not required to reside upon the land covered by the entry, but they must cultivate it as required by law for such period as will, added to the entryman's period of compliance with the law, aggregate the required term of three years. They are allowed a reasonable time after the entryman's death within which

to begin cultivation, proper regard being had to the season of the year at which said death occurred. If they desire to commute the entry, they must show a 14 months' period of such residence and cultivation on the part of themselves or the entryman, or both, as would have been required of him had he survived.

33. Homestead entrymen who have been elected to Federal, State, or county offices *after making entry* and establishing their actual residence on the land are not required to continue such residence during their term of office if the administration of their *bona fide* official duties necessarily requires them to reside elsewhere than on the land, but they must continue the improvement and cultivation of the land for the statutory period. Such officeholder can not commute his entry unless he can show at least 14 months' actual residence on the land preceding date of final proof. A person who makes entry or establishes residence *after* he has been elected to office is not excused from maintaining residence, but must comply with the law in the same manner as though he had not been elected. Persons holding appointive offices are not entitled to the foregoing privileges.

34. Neither residence nor cultivation by an insane homestead entryman is necessary after he becomes insane, if such entryman made entry and established residence before he became insane and complied with the requirements of the law up to the time his insanity began. Proof on the entry may be submitted by his duly appointed guardian or committee after the expiration of three years from its date. If the entryman is an alien and has not been fully naturalized, evidence of his declaration of intention to become a citizen is sufficient.

35. (a) Where, for climatic reasons, or on account of sickness, or other unavoidable cause, residence can not be established on the land within six months after the date of the entry, additional time, not exceeding six months, may be allowed. An application for such extension must include the affidavits of the entryman and two witnesses acquainted with the facts, which may be executed before any officer authorized to administer oaths and having a seal of office, though outside of the county or land district where the entry is situated. The application should set forth in detail the grounds upon which it is based, including a statement as to the probable duration of the hindering causes and the date when the claimant may reasonably expect to establish his residence.

If the extension is granted, it protects the entry from contest on the ground of the homesteader's failure to establish residence within the first six-months' period, unless it be shown that the order for extension was fraudulently obtained. But the failure of the entryman to apply for an extension of time does not forfeit his right to show, in defense of a contest, the existence of conditions which might have been made, the basis for such an application.

(b) Leave of absence for one year or less may be granted by the register and receiver of the local land office to entrymen who have established actual residence on the lands in cases where total or partial failure or destruction of crops, sickness, or other unavoidable casualty has prevented the entryman from supporting himself and those dependent on him by cultivation of the land. Applications for such leave of absence must be sworn to by the applicant and corroborated by at least one witness in the land district or county within which the entered lands are located before an officer authorized to administer oaths and having a seal. Applications must describe the entry and show the date of establishing residence on the land and the extent and character of the improvements and cultivation performed by applicant. It must also set forth fully the facts on which the claimant bases his right to leave of absence, and where sickness is given as the reason a certificate signed by a reputable physician should be furnished if practicable.

COMMUTATION OF HOMESTEAD ENTRIES.

36. All original, second, and additional homestead, and adjoining farm entries may be commuted, except such entries as are made under particular laws which forbid their commutation.

The entryman or his statutory successor submitting such proof must show substantially continuous residence upon the land, and cultivation thereof, for a period of at least 14 months immediately preceding submission of proof or filing of notice of intention to submit same, and the existence of a habitable house upon the claim. Where the entry was made after June 6, 1912, the proof must show cultivation of at least one-sixteenth of its acreage.

A person submitting commutation proof must, in addition to certain fees, pay the price of the land; this is ordinarily \$1.25 per acre, but is \$2.50 per acre for lands within the limits of certain railroad grants. The price of certain ceded Indian lands varies according to their location, and inquiry should be made regarding each specific tract.

Where the entry was made after June 6, 1912, the claimant must show full citizenship, as in case of three-year proof; if the entry was made before that date, it is sufficient if the claimant has declared his intention to become a citizen.

The provisions of law explained in paragraph 27 (f) apply to commutation proof also.

Commutation proof can not be made on homestead entries allowed under the act of April 28, 1904 (33 Stat., 547), known as the Kinkaid Act; entries under the reclamation act of June 17, 1902 (32 Stat., 388); entries under the enlarged homestead acts (post, par. 43 et

seq.); entries allowed on coal lands under the act of June 22, 1910 (36 Stat., 583), so long as the land is withdrawn or classified as coal; additional entries allowed under the act of April 28, 1904 (33 Stat., 527); second entries allowed under the act of June 5, 1900 (31 Stat., 267); or second entries allowed under the act of May 22, 1902 (32 Stat., 203), when the former entry was commuted.

FINAL PROOFS ON HOMESTEAD ENTRIES.

37. Either final or commutation proof may be made at any time when it can be shown that residence and cultivation have been maintained in good faith for the required length of time and to the required extent. Proof under the act of June 6, 1912, must be submitted within five years after the date of the entry, while proof submitted under the law in force before that date must be made within seven years after the date of the entry. Failure to submit proof within the proper period is ground for cancellation of the entry unless good reason for the delay appears; satisfactory reasons being shown, final certificate may be issued, and the case referred to the board of equitable adjudication for confirmation. See also paragraph 27*e*.

38. (a) Final proof must be made by the entrymen personally or their widows, heirs, or devisees, and can not be made by agents, attorneys in fact, administrators, or executors, except as explained in paragraphs 8, 9, 22, and 34. Final proof can be made only by citizens of the United States.

(b) Where entries are made and proof offered for minor orphan children of soldiers or sailors the minors may be represented by their guardian.

39. *How proofs may be made.*—Final or commutation proofs may be made before any of the officers mentioned in paragraph 16 as being authorized to administer oaths to applicants.

Any person desiring to make homestead proof should first forward a written notice of his desire to the register and receiver of the land office, giving his post-office address, the number of his entry, the name and official title of the officer before whom he desires to make proof, the place at which the proof is to be made, and the name and post-office addresses of at least four of his neighbors who can testify from their own knowledge as to facts which will show that he has in good faith complied with all the requirements of the law.

40. The register will furnish a notice naming the time and place for submission of proof to the claimant, who must cause same to be published at his expense once a week for five consecutive weeks preceding submission of proof in the newspapers designated by the register.

The first day of publication must be at least 30 days before the date set for proof, and a copy of the notice must be posted in a conspicuous place in the office of the register for at least 30 days before said date.

The homesteader must arrange with the publisher for publication of the notice of intention to make proof and make payment therefor directly to him. The register will be responsible for the correct preparation of the notice.

On the day named in the notice the entryman must appear before the officer designated to take proof with at least two of the witnesses named in the notice; but if for any reason the entryman and his witnesses are unable to appear on the date named, the officer should continue the case from day to day until the expiration of 10 days, and the proof may be taken on any day within that time when the entryman and his witnesses appear, but they should, if it is at all possible to do so, appear on the day mentioned in the notice. Entrymen are advised that they should, whenever it is possible to do so, offer their proofs before the register or receiver, as it may be found necessary to refer all proofs made before other officers to a special agent for investigation and report before patent can issue, while, if the proofs are made before the register or receiver, there is less likelihood of this being done, and there is less probability of the proofs being incorrectly taken. By making proof before the register or receiver the entrymen will also save the fees which they are required to pay other officers, as they will be required under the law to pay the register and receiver the same amount of fees in each case, regardless of the fact that the proof may have been taken before some other officer.

Entrymen are cautioned against improvidently and improperly commuting their entries, and are warned that any false statement made in either their commutation or final proof may result in their indictment and punishment for the crime of perjury.

FEEES ON ENTRIES AND FINAL PROOFS.

41. *Fees and commissions.*—When a homesteader applies to make entry he must pay in cash to the receiver a fee of \$5 if his entry is for 80 acres or less, or \$10 if he enters more than 80 acres. And in addition to this fee he must pay, both at the time he makes entry and final proof, a commission of \$1 for each 40-acre tract entered outside of the limits of a railroad grant and \$2 for each 40-acre tract entered within such limits. Fees under the enlarged-homestead act are the same as above, but the commissions are based upon the area of the land embraced in the entry. (See par. 43.) Where an entry is commuted no commissions are payable, except in connection with certain ceded Indian lands, as to which inquiry must be made

specifically at the proper local land offices. On all final proofs made before either the register or receiver, or before any other officer authorized to take proofs, the register and receiver are entitled to receive 15 cents for each 100 words reduced to writing, and no proof can be accepted or approved until all fees have been paid.

In all cases where lands are entered under the homestead laws in Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming the commissions due to the register and receiver on entries and final proofs, and the testimony fees under final proofs, are 50 per cent more than those above specified, but the entry fee of \$5 or \$10, as the case may be, is the same in all the States.

Remittances of moneys to the local land offices must be made in cash or currency; but certified checks when drawn in favor of the receiver of public moneys on national and State banks and trust companies, which can be cashed without cost to the Government, can be used. Likewise, United States post-office orders are acceptable when they are made payable to the receiver and are drawn on the post office at the place where the receiver is located.

ALIENATION OF LAND BY HOMESTEADER.

42. The alienation of all or any part of the land embraced in a homestead prior to making proof, except for the public purposes mentioned in section 2288, Revised Statutes, will prevent the entryman from making satisfactory proof, since he is required to swear that he has not alienated any part of the land except for the purposes mentioned in section 2288, Revised Statutes.

A mortgage by the entryman prior to final proof for the purpose of securing money for improvements, or for any other purpose not inconsistent with good faith, is not considered such an alienation of the land as will prevent him from submitting satisfactory proof. In such a case, however, should the entry be canceled for any reason prior to patent, the mortgagee would have no claim on the land or against the United States for the money loaned.

Alienation after proof and before patent.—The right of a homestead entryman to patent is not defeated by the alienation of all or a part of the land embraced in his entry after the submission of final proof and prior to patent, provided the proof submitted is satisfactory. Such an alienation is, however, at the risk of the entryman, for if the reviewing officers of the Land Department subsequently find the final proof so unsatisfactory that it must be wholly rejected and new proof required, the entryman can not then truthfully make the nonalienation affidavit required by section 2291, Revised Statutes,

and his entry must in consequence be canceled. The purchaser takes no better title than the entryman had, and if the entry is canceled the purchaser's title must necessarily fail.

ENLARGED HOMESTEADS.

43. The acts of February 19, 1909, June 17, 1910, and June 13, 1912 (37 Stat., 132), extending the first-named act to North Dakota and California, provide for the making of homestead entries for areas of not exceeding 320 acres of public lands in the States of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, North Dakota, Oregon, Utah, Washington, and Wyoming, designated by the Secretary of the Interior as nonmineral, nontimbered, nonirrigable. As to Idaho, the act of June 17, 1910, provides that the lands must be "arid."

The terms "arid" or "nonirrigable" land, as used in these acts, are construed to mean land which, as a rule, lacks sufficient rainfall to produce agricultural crops without the necessity of resorting to unusual methods of cultivation, such as the system commonly known as "dry farming," and for which there is no known source of water supply from which such land may be successfully irrigated at a reasonable cost.

Therefore lands containing merchantable timber, mineral lands, and lands within a reclamation project, or lands which may be irrigated at a reasonable cost from any known source of water supply may not be entered under these acts. Minor portions of a legal subdivision susceptible of irrigation from natural sources, as, for instance, a spring, will not exclude such subdivision from entry under these acts, provided, however, that no entry shall embrace in the aggregate more than 40 acres of such irrigable land.

44. *Designation of lands.*—From time to time lists designating the lands which are subject to entry under these acts are sent to the registers and receivers in the States affected, and they are instructed immediately upon the receipt of such lists to note the same upon their tract books. In the order designating land a date is fixed on which such designation will become effective. Until such date no applications to enter can be received and no entries allowed under these acts, but on or after the date fixed it is competent for the registers and receivers to dispose of applications for land designated under the provisions of these acts in like manner as other applications for public lands.

The fact that lands have been designated as subject to entry is not conclusive as to the character of such lands, and should it afterwards develop that the land is not of the character contemplated by the above acts the designation may be canceled; but where an entry is

made in good faith under the provisions of these acts, such designation will not thereafter be modified to the injury of anyone who, in good faith, has acted upon such designation. Each entryman must furnish affidavit as required by section 2 of the acts.

45. *Compactness—Fees.*—Lands entered under the enlarged homestead acts must be in a reasonably compact form and in no event exceed $1\frac{1}{2}$ miles in length.

The acts provide that the fees shall be the same as those now required to be paid under the homestead laws; therefore, while the fees may not in any one case exceed the maximum fee of \$10 required under the general homestead law, the commissions will be determined by the area of the land embraced in the entry.

46. *Form of application.*—Applications to make entry under these acts must be submitted on forms prescribed by the General Land Office, and in case of an original entry on Form No. 4-003.

The affidavit of an applicant as to the character of the land must be corroborated by two witnesses. It is not necessary that such witnesses be acquainted with the applicant, and if they are not so acquainted their affidavit should be modified accordingly.

47. (a) Under section 3 of the enlarged homestead acts persons who have entered 160 acres or less of lands of the character described in the act and designated by the Secretary of the Interior thereunder, and who have not made final proof on their original entries, may enter adjoining designated lands which will not, together with the tract first entered, exceed 320 acres, and residence upon and cultivation of the original entry may be accepted as equivalent to residence upon and cultivation of the additional.

(b) Where a person has, prior to June 6, 1912, made entry under the general provisions of the homestead laws, and subsequently an additional entry under said section 3, the following rules govern the requirements as to the cultivation and residence to be shown by him, on submission of proof:

(c) He may show compliance with the requirements of the law applicable to his original entry, and that, after the date of additional entry, he cultivate, in addition to such cultivation as was relied upon and used in perfecting title to the original entry, an amount equal to one-sixteenth of the area of the additional entry for one year, not later than the second year of such additional entry, and one-eighth the following year and each succeeding year until proof submitted; however, the rules explained in paragraph 27 (d) are applicable to such cases. The cultivation in support of the additional entry may be maintained upon either entry.

(d) When proof is submitted on both entries at the same time, he may show the cultivation of an amount equal to one-sixteenth of the combined area of the two entries for one year, increased to one-

eighth the succeeding year, and that such latter amount of cultivation has continued until offer of proof. If cultivation in these amounts can be shown, proof may be submitted without regard to the date of the additional entry, i. e., the required amount of cultivation may have been performed in whole or in part on the original entry before the additional entry was made, and proof on the additional need be deferred only until the showing indicated can be made. Such combined proof may be submitted not later than seven years from the date of the original entry.

(e) In instances where proof is first made on the original entry meeting the requirement of the homestead law respecting residence, no further showing in this particular will be exacted in making proof upon the additional entry; neither will a period of residence be exacted in proof upon the combined entry in excess of that required under the original entry.

48. *Constructive residence on certain lands in Utah.*—The sixth section of the act of February 19, 1909 (35 Stat., 639), provides that not exceeding 2,000,000 acres of land in the State of Utah, which do not have upon them sufficient water suitable for domestic purposes as will render continuous residence upon such lands possible, may be designated by the Secretary of the Interior as subject to entry under the provisions of that act; with the exception, however, that entrymen of such lands will not be required to prove continuous residence thereon. This act provides in such cases that all entrymen must reside within such distance of the land entered as will enable them successfully to farm the same as required by the act; and no attempt will be made at this time to determine how far from the land an entryman will be allowed to reside, as it is believed that the proper determination of that question will depend upon the circumstances of each case.

Applications to enter under section 6 of this act will not be received until the date fixed in the order designating the lands as subject to entry under this section. Lists of lands designated under this section will be from time to time furnished to the registers and receivers, who will be instructed to note same on their tract books immediately upon their receipt. These lists will fix a date on which the designations will become effective. Applications under this section must be submitted on Form No. 4-003a.

During the second year of the entry at least one-eighth of the area must be cultivated, and during the third, fourth, and fifth years, and until submission of final proof, one-fourth of the area entered must be cultivated. Proof may be submitted on entries of this class within seven years after their dates.

Reduction in the requirement of cultivation may be allowed, as explained in paragraph 27 (b).

49. The sixth section of the act of June 17, 1910 (36 Stat., 531), provides for designation of 320,000 acres of land in the State of Idaho of the same character contemplated by section 6 of the act of February 19, 1909. The law as to entries for these lands and manner of perfecting title is the same, except in one respect, as that referring to the Utah lands, and the provisions of the last paragraph hereof apply to the Idaho act except on that point. The Idaho act provides that:

The entryman shall reside not more than 20 miles from (the) land, and be engaged personally in preparing the soil for seed, seeding, cultivating, and harvesting crops upon the land during the usual seasons for such work, unless prevented by sickness or other unavoidable cause.

It is further provided, however, by the act that:

Leave of absence from a residence established under this section may be granted upon the same terms and conditions as are required of other homestead entrymen.

50. *Officers before whom applications and proofs may be made.*—

The acts provide that any person applying to enter land under the provisions thereof shall make and subscribe before the proper officer an affidavit, etc. The term "proper officer," as used herein, is held to mean any officer authorized to take affidavits or proof in homestead cases.

CLAY TALLMAN,
Commissioner.

Approved:

ANDRIEUS A. JONES,
First Assistant Secretary.

ST. FRANCIS RIVER SUNK LANDS, ARKANSAS—STATUS—INFORMATION TO SETTLERS AND ENTRYMEN.

CIRCULAR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, January 2, 1914.

TO SETTLERS, ENTRYMEN, AND OTHERS:

On December 12, 1908, and February 27, 1909, the Department of the Interior adjudged those lands situated in Ts. 11 to 16 N., R. 6 E., and Ts. 12 to 17 N., R. 7 E., in Poinsett, Craighead and Greene Counties, Arkansas, which were left unsurveyed at the dates of the original surveys of those townships and which were meandered and shown on the township plats as the so-called "St. Francis River Sunk Lands," to be public lands of the United States (Vol. 37 Land Decisions, pages 345 and 462). The above referred to decisions were

made subject to a provision contained in the act of April 29, 1898 (30 Stat., 367), to the effect that the titles of persons who had purchased certain unconfirmed swamp lands within the aforesaid area, namely, the unsurveyed portions of the S. $\frac{1}{2}$, S. $\frac{1}{2}$ NE. $\frac{1}{4}$, and the S. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 28, and the N. $\frac{1}{2}$ of Sec. 33, T. 12 N., R. 6 E., and the unsurveyed portions of sections 2, 3, 4, 5, 8, 9, and 10, locally known as Bagwell's Lake, T. 17 N., R. 7 E., should not be disturbed. The information contained herewith does not apply therefore to said described lands. Subsequent to the above mentioned dates, the Department of the Interior has likewise adjudged those lands situated in Ts. 11 to 16 N., Rs. 9 to 13 E., in Mississippi County, Arkansas, which were left unsurveyed at the dates of the original surveys of those townships and which were meandered and shown on the township plats as Moon, Buford, Clear, Flat, Grassy, Walker, Carson, Hickory, Tyronza, and Campbell's Old Field Lakes, to be public lands of the United States. The original surveys were held to have been erroneous in that the unsurveyed areas were returned as "Sunk Lands" or "Lakes" when in fact they were, in whole or in part, lands in place when the surveys were made. Accordingly surveys thereof were directed and the plats were ordered to be corrected.

So-called Moon, Buford, Clear, Flat, Grassy, Walker, and Campbell's Old Field Lakes, have been surveyed and the plats of the townships within which those lands are situated have been corrected. The areas within the first mentioned so-called lake were opened to homestead entry June 16, 1910, and the areas within the other six so-called lakes were opened to homestead entry November 16, 1912. Of the government lands within the so-called sunk land area proper, those in T. 12 N., R. 7 E., have been surveyed and were opened to homestead entry July 2, 1913; those in Ts. 11 and 12 N., R. 6 E., have been surveyed and applications to enter were received, but suspended, on October 13, 1913.

The field work with reference to the surveys of the government lands within the areas of so-called Carson, Hickory, and Tyronza Lakes, and also of the so-called sunk lands within Ts. 13 and 14 N., Rs. 6 and 7 E., has been practically completed and the work of correcting the plats is progressing as rapidly as possible. The field work with reference to the surveys of the so-called sunk lands in Ts. 15 and 16 N., R. 6 E., and Ts. 15, 16, and 17 N., R. 7 E., has been started and the work is now ready for extension. The work will be completed at the earliest practicable date.

The status of the unsurveyed areas shown upon the original plats as so-called Big, Brown, Round, Golden, Mill, and Hudgens Lakes, all of which are situated in northeastern Arkansas, is now under consideration, in order to determine whether or not said areas come within the same category as the above referred to areas. Due notice

will be given of the rendering of decisions at the proper time. Investigations may be made from time to time in order to ascertain the rightful ownership of lands within other so-called lakes in the State of Arkansas. This office cannot, however, undertake to say at this time whether or not any of the above referred to lands with respect to which decisions have not been rendered, will be claimed by the government, nor can it say when decisions in the cases now pending will be rendered. The above information does not apply to any lands which may be similarly circumstanced and situated in the State of Missouri.

It is not to be implied from the foregoing description that the whole of each of the above enumerated townships was declared to be government land. On the contrary, only those portions of the several townships which were left unsurveyed at the dates of the original surveys thereof were involved in the above mentioned decisions. Nearly all of the lands which were originally surveyed have been patented to the State of Arkansas under the provisions of the swamp land grant of September 28, 1850 (9 Stat., 519), and the State has in turn conveyed her interests therein, so that the title is now within private ownership. The areas which were originally left unsurveyed and which the government now claims are, however, also claimed by private interests who allege title through purchase from the State or from the St. Francis Levee Board or from riparian owners. Suits have, therefore, been instituted by the Department of Justice on behalf of the United States in the Federal courts to quiet title in the United States to some of the lands in question. Similar suits may be instituted hereafter to quiet title in the government to other lands involved. Suits have also been instituted by individuals claiming title as or through riparian owners and through the State of Arkansas or the St. Francis Levee District. The United States is not a party to the last mentioned suits but has appeared merely to suggest the interest of the United States in the lands involved. A decision was rendered in one of these suits, *Little v. Williams*, by the United States Supreme Court on December 1, 1913.

In view of the pending suits, the Department of the Interior directed with respect to those lands which the United States now claims in Ts. 11 and 12 N., R. 6 E., and which had been advertised by the register and receiver of the United States land office at Little Rock, Arkansas, as subject to homestead entry on October 13, 1913, that homestead applications might be received but should be immediately suspended by the register and receiver pending the conclusion of the above referred to litigation or until further orders by the Department; also, that neither settlers nor other claimants should be permitted to denude the lands of timber or otherwise impair their value pending final determination as to title.

Accordingly, on October 13, 1913, the applications of settlers upon the government lands in Ts. 11 and 12 N., R. 6 E., were received by the register and receiver of the United States land office at Little Rock, Arkansas, and those officers in compliance with instructions immediately suspended all action thereupon.

The law permits settlers to enter upon the unsurveyed lands of the United States, requiring them to plainly mark the boundaries of their claims. When opened to entry *bona fide* settlers residing upon and cultivating the lands in good faith, will be given three months' prior right over all other persons to make applications for their claims. No entries or filings can be allowed for any of the aforesaid lands until after the surveys thereof have been completed and approved by the Commissioner of the General Land Office and the plats thereof filed in the United States land office at Little Rock, Arkansas. Full notice of the time when applications to enter may be presented will be given the public through advertisement and otherwise.

In view of the pending suits hereinbefore mentioned, involving the question of title to the above referred to lands, all persons who have settled thereupon or who shall hereafter settle thereupon must assume the risk of being ousted and also of losing their improvements should the courts finally decide that the lands do not belong to the United States.

Persons desiring diagrams showing entire portions of all or any part of the surveyed lands which adjoin unsurveyed areas may obtain township diagrams by sending postal money order for \$1.00 for each diagram desired to the Receiver, United States Land Office, Little Rock, Arkansas. Persons desiring photolithographic plats of townships showing the extent to which surveys have been made thereon, and also meanders which form the boundaries between lands originally surveyed and those portions of townships which were left unsurveyed at date of original survey, can obtain the same from the Commissioner of the General Land Office, Washington, D. C., by mailing 25 cents for each township plat desired. There are two plats for each township, the original survey of which has been extended or corrected. With reference to these, persons desiring plats should state whether they desire a copy of the original plat, or of the amended plat, or both. When the status of any lands is requested a description thereof by township, range and section number and sectional subdivision should be given.

At the present time parties claiming the aforesaid lands under the homestead laws may be divided into three classes, namely, (a) those who have already filed entries which have been allowed in the usual manner, (b) those whose applications to enter have been received but upon which action has been suspended, and (c) those who

have settled upon the lands, the surveys of which have not yet been completed. The same rule, however, will be applied to all of the above classes of persons with reference to the cutting of timber, that is, no person will be permitted to cut and remove timber from the lands, not even where the cutting and removal is for the purpose of clearance and cultivation, erection of buildings and other improvements upon the land, fuel, or for any purpose whatever. Settlers upon the aforesaid lands who are in good faith claiming under the homestead laws may continue to occupy the lands settled upon and claimed by them, provided that they do not commit waste upon the land.

Where persons who have already been allowed to enter the aforesaid lands and are forced to temporarily leave the same on account of the departmental instructions referred to above, or where persons whose applications to enter the aforesaid lands have been received and action thereupon has been suspended, are unable to continue to reside upon the lands or are unable to establish residence thereupon within six months after the date of the receipt of their applications, such failure on their part will not in itself be a sufficient ground upon which contest proceedings may be initiated by third parties. The period during which the suspension is in force will not count against an entryman, or prospective entryman, nor will it be counted for him as residence unless he has actually resided upon the land during the pendency of the suspension and has cultivated the land to an extent sufficient to meet the requirements of the homestead laws as in cases where there has been no suspension. The acceptance of residence upon an entry during the period of suspension is a question which will be determined upon its merits in each particular case at the proper time.

If the courts finally determine that the title to the aforesaid lands is not in the government, and the entries, which have already been allowed, shall be canceled or applications to enter which have been or which may hereafter be received by the register and receiver of the United States land office at Little Rock, Arkansas, shall be rejected for that reason, the rights of said entrymen and of said applicants with respect to making future entries of public lands under the public land laws will remain the same as if they had not made entries or filed applications to enter these lands, and those who have paid fees and commissions may then file with those officers applications for repayment of those fees and commissions as provided by section 2 of the act of June 16, 1880 (21 Stat., 287), in the former class of cases, and by section 1 of the act of March 26, 1908 (35 Stat., 48), in the latter class of cases. Repayments will thereupon be made if the parties appear to be entitled thereto.

This office cannot undertake to say when the courts will render their decisions in the above referred to cases, nor when the above referred to suspension will be removed, if at all, nor when the plats of those townships, the surveys of which have not yet been completed, will be ready for filing. Whenever these points shall have been determined, due notice thereof will be given.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved, January 2, 1914:

ANDRIEUS A. JONES,

First Assistant Secretary.

INSTRUCTIONS.

January 2, 1914.

INDIAN LANDS—TAXATION OF LANDS PURCHASED WITH TRUST FUNDS.

Lands purchased by Indians with funds derived from the sale of trust lands, and not released from government control, are charged with the trust and not subject to taxation during continuation of the trust period.

JONES, *First Assistant Secretary:*

The Department has received your [Commissioner of Indian Affairs] letter of November 14, 1913, submitting the question whether lands purchased by Indians with trust funds are subject to taxation.

As suggested in said letter, it frequently appears that in a sale by the wife of an Indian allottee of all or part of her lands, it is her avowed intention to expend the proceeds of such sale in the improvement of lands belonging to her husband. The practice in such cases is to require the husband, if he has not already done so, to convey a portion of his allotment to his wife in consideration of said expenditures. For further protection of the wife, a nonalienation clause is inserted in the deed from the husband or is indorsed thereon in connection with its approval, or both, which clause reads substantially as follows: On condition that the land conveyed shall not be alienated prior to the expiration of the trust period declared in her original or allotment patent without the consent and approval of the Secretary of the Interior.

It also sometimes occurs that an Indian is desirous of selling all or part of his allotment for the purpose of purchasing with the proceeds of sale unrestricted land or land not held in trust by the Government. The deed to the land so purchased is likewise made to contain a clause against alienation because of the purchase being with individual trust funds.

Special instructions, approved May 24, 1913, were issued to superintendents and disbursing officers throughout the Indian Service, directed particularly to the purchase by Indians of unrestricted lands with the funds arising from sale of their lands held in trust. The object was to protect the lands so purchased to the same extent and make them subject to the same restrictions and conditions as the original allotment. It was, accordingly, directed that the deed conveying the land purchased with these funds should contain a recital showing the trust nature of such funds. In addition an official certificate of notice was directed to be indorsed on the deed and recorded as part thereof also showing the trust nature of the funds invested on behalf of the allottee. As a further protection of the owner of the trust funds it was directed that the deed of conveyance to such owner of the land purchased should contain a clause providing against deed, lease, mortgage, power of attorney, contract to sell, or other instrument affecting the land purchased or the title thereto, executed by the owner or his heirs at any time prior to the expiration of the trust period designated in his original or allotment patent, without the consent of the Secretary of the Interior or his successors in office.

The question presented is whether lands, either restricted or unrestricted, purchased by Indians with trust funds become taxable after the deeds to them, executed as above, are approved by the Secretary of the Interior.

In the various acts for the individual allotment of lands to Indians, provision is made for the issuance of first or trust patents to the allottees in which it is declared, among other things, that the United States does and will hold the lands for specified periods in trust for the sole use and benefit of said allottees and their heirs. Under these patents the United States retains the legal title to the land. That such lands are exempt from taxation during the period of the trust thus declared is fully settled by the authorities. 19 Op. Atty. Gen., 161; *United States v. Rickert*, 188 U. S., 432; *Frazer v. Spokane County*, 69 Pacific Reporter, 779.

Sales of Indian allotted lands are provided for in numerous acts prior to the expiration of the trust period and such sales are, by the terms of said acts, made discretionary with the Secretary of the Interior; that is, they are to be made subject to his approval and on such terms and conditions and under such regulations as he may prescribe. For the purposes of these sales the Indians are in general deemed to be incompetent and sales by them are permitted only when such sales are shown to be for their best interests. Upon consummation of the sales patents in fee or approved deeds of conveyance, as the case may be, are issued to the purchasers and the proceeds are deposited in bank to credit of the Indian, subject to check

when approved by the agent in charge or the Commissioner of Indian Affairs, under the provision of law which directs that such proceeds shall be used during the trust period for the benefit of the allottee or his heirs. These proceeds are likewise held in trust by the United States for the same purpose as were the lands.

It is held in the case of *United States v. Thurston County, Neb., et al.*, 143 Federal Reporter, 287:

No change of form of property can divest it of a trust. The substitution of one kind of property for another, of goods for promissory notes, of lands for bonds, or of money for lands, does not destroy it. The substitute takes the nature of the original and stands charged with the same trust.

* * * * *

The lands and their proceeds, so long as they are held or controlled by the United States and the term of the trust has not expired, are alike instrumentalities employed by it in the lawful exercise of its powers of government to protect, support, and instruct the Indians, for whose benefit the complainant holds them, and they are not subject to taxation by any state or county.

As it is within the power of the Secretary of the Interior to attach conditions to the sales of Indian allotted lands, such power having been expressly conferred in the acts authorizing such sales, it follows that it is also within his power to supervise the disposal of the proceeds arising from the sales as such proceeds are held in trust the same as were the lands. This applies to the case of the sale of a wife's allotment, when the condition is attached, that the husband shall convey a part of his allotment to her in consideration of the expenditure of the funds arising from the sale of her land in the improvement of the remaining portion of his land. It is apparently immaterial in what light such a transaction is viewed, whether as a regular sale or otherwise, as the land passing to the wife is conveyed under trust—in fact the property involved of both parties is under trust. The funds from the sale of her allotment being held in trust, the power exists to supervise their disposal, which necessarily includes a determination of the consideration, the manner of expenditure and means for the future protection of any property that may pass to her in the transaction. In the latter is found the reason for the practice of inserting in the deed of conveyance from the husband to the wife a nonalienation clause, which is merely a continuation over the new land of the trust declared in the trust patent for the land embraced in her original allotment.

It is unnecessary to cite authorities in support of the doctrine that it is competent to insert in a deed or other conveyance a clause withholding for a time the power to sell or otherwise dispose of the property without repugnance to the granting of fee simple title.

Where it is desired to use the trust funds held to the credit of an Indian in purchasing unrestricted lands or lands not held in trust by the Government, sanction is given to the transaction in proper

cases and the deed is made to contain a nonalienation clause, just as in the case of the purchase of lands held in trust. The question is whether, in the purchase of unrestricted lands, involving as it does, lands that are taxable, such lands become impressed with the trust nature of the purchase money and are, thereafter, exempt from taxation so long as the trust period continues. The fact that the property was once taxable would seem to constitute no valid distinction. Under the decisions of the courts, funds derived from the sale of trust lands take the character of the lands and stand charged with the same trust. It is not seen why lands purchased with trust funds do not equally take the character of the *funds* and also stand charged with the same trust. It was said in the case of *National Bank of Commerce v. Anderson*, 147 Federal Rep., 87:

The statute provides that the lands may be sold with the consent of the Secretary. It thus permits a change in form of the trust property from land to money. This change may be effected only with the consent of the trustee represented in the person of the Secretary of the Interior. No citation of authority is needed to sustain the general doctrine that into whatever form trust property is converted, it continues to be impressed with the trust.

* * * * *

The property being held in trust by the United States for a period which had not yet expired and which period was subject to further extension by the President, the intention to terminate the trust must be found to be clearly expressed in order to warrant us in holding that the trust does not follow the property in its changed form.

There is no question under the authorities that the power of the Government over trust property continues until the expiration of the trust period regardless of the form of such property, unless an intention has been expressed to relinquish such power.

The same reasons exist against the alienation of unrestricted land purchased with trust funds without the consent and approval of the Secretary of the Interior as existed in respect to the original allotment, from the sale of which such funds are derived. The land so purchased with trust funds becomes none the less an instrumentality employed by the Government for the benefit of the Indian than where land *held in trust* is purchased and, hence for the like reason, should be exempt from taxation. The Indian continues in the incompetent class and is entitled to the same protection and supervision. All these conditions are imposed on the theory that they are for the best interests of the Indian wards of the Government, among other things to protect them from the improvident disposition of the lands and funds.

In a decision rendered by the Assistant Attorney General September 9, 1897 (13 Op. A. A. G., 109), relative to the approval of deeds from Shawnee Indians, it was held:

It frequently happens that one of these Indian patentees sells his land to another Shawnee Indian. That sale must receive the approval of this Depart-

ment to make the conveyance valid. The question now arises as to whether a conveyance by the Indian grantee in such a transaction must also be approved.

* * * * *

The Secretary may couple his consent with such conditions as he may see fit to make where the grantee is a Shawnee Indian and the grantee who accepts the conveyance subject to such conditions would then take the title encumbered therewith.

In my opinion the proper practice in the future would be in those cases where it seems proper to the protection of a Shawnee Indian grantee to insert in the approval of these conveyances such conditions or restrictions as to further conveyances as may be necessary. By this course notice would be given to all that this Department still retains control of the land as to future conveyances.

It was said in the case of *Jackson v. Thompson*, 80 Pacific Reporter, 454:

The government, from the necessities of the case, in consideration of the inexperience of the Indians, was compelled to insert these provisions in deeds which it issued to them, to prevent them from becoming the prey of sharpers and speculators, who would, for an insufficient consideration, obtain their lands, the ultimate result being that the Indians would become pensioners upon the government; and the mutual interests of the Indians and the government demanded some such regulations. It was certainly within the power of the government to place any restrictions upon the deeds which it issued to the Indians that it saw fit.

See also case of *Beck v. Flournoy Live-Stock and Real-Estate Co.*, 65 Federal Reporter, 30.

It was also held in the case of *Page v. Pierce County*, 64 Pacific Reporter, 801:

It does not necessarily follow that lands are subject to state taxation merely by reason of the fact that they have been conveyed by the government, or with its consent, to a purchaser. That this is true is shown, we think, in the case of *The New York Indians*, 5 Wall. 761. . . .

Applying the doctrine announced in the decisions of the supreme court of the United States to the case at bar, it would seem reasonably clear that the lands in question can not be taxed by the state so long as the government has an interest in them "either legal or equitable," or is even charged with the performance of some obligation or duty respecting them.

It happens, in many instances, that the United States, in carrying out its laws, purposes and policies in respect to the Indians, purchases personal property consisting of cattle, horses, and other property of like character which is issued to the Indians for use on their allotments. Notwithstanding the property was, prior to such purchase, subject to taxation, it is not thereafter subject to assessment and taxation, because such action would necessarily have the effect of defeating the purposes of the Government. *United States v. Rickert*, 188 U. S., 432; *United States v. Gray*, 201 Federal Rep., 291; *United States v. Fitzgerald*, 201 Federal Rep., 295.

It is evident that it would be impossible to realize or collect taxes without the power of sale or forfeiture. If in the transaction of

sale by Indians of their trust lands and the purchase of other lands with their trust funds, the property should thereupon become subject to taxation regardless of protective methods exercised by the Government in such transaction, then the instrumentalities for the execution of its duties and obligations with respect to its Indian wards would be destroyed.

It was held in the case of *Van Brocklin v. State of Tennessee*, 117 U. S., 151:

The power to tax involves the power to destroy; the power to destroy may defeat and render useless the power to create; and there is a plain repugnance in conferring on one government a power to control the constitutional measures of another, which other, with respect to those very measures, is declared to be supreme over that which exerts the control. The States have no power, by taxation, or otherwise, to retard, impede, burden, or in any manner control, the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the general government.

See also case of *United States v. Nashville, etc., Railway Co.*, 118 U. S., 120.

Congress has conferred upon the Secretary of the Interior authority to prescribe regulations and conditions to govern the sale of Indian allotted lands as well as the expenditure of the proceeds which implies an exclusion of all other authority. The lands and proceeds are held by the Government for a specified period in trust for the Indians, such trust being an agency for the exercise of a Federal power and therefore outside the province of State authority. It follows that trust land conveyed by a husband to his wife, or other trust land purchased with trust funds, as well as unrestricted lands purchased with trust funds, after deeds therefor containing restrictions against alienation have been approved, are not subject to taxation.

INSTRUCTIONS.

January 2, 1914.

RESTORATION OF LANDS—ACT SEPTEMBER 30, 1913—PREFERENCE RIGHT OF STATE.

Under the act of September 30, 1913, lands excluded from national forests or released from other withdrawals and restored to the public domain may be opened to settlement only for a definite period, not exceeding ninety days, and at the end of that time may be made subject generally to disposition under all the public land laws applicable; and where so opened, the preference right of selection conferred upon certain States by the act of March 3, 1893, operates for sixty days from and after the time the lands have been so declared to be subject to disposition generally under the public land laws.

RESTORATION OF NATIONAL FOREST LANDS—ACT OF SEPTEMBER 30, 1913.

The act of September 30, 1913, authorizes certain limitations and conditions to be imposed upon lands thereafter excluded from national forests, but confers no authority upon the land department to impose such limitations and conditions upon lands theretofore authorized by proclamation to be

excluded and restored to the public domain, which lands should be opened to disposition in accordance with the terms of the proclamation and the practice prevailing at the date the proclamation issued.

JONES, *First Assistant Secretary*:

I am in receipt of your [Commissioner of the General Land Office] letter of December 8, 1913, transmitting drafts of orders proposed to be issued in connection with the restoration of certain lands excluded from the Sioux National Forest in Montana and South Dakota and withdrawn for classification under the act of June 25, 1910 (36 Stat., 847).

In your said letter you refer to the act of March 3, 1893 (27 Stat., 592), according to the States of North and South Dakota and Montana a preference right over any person or corporation—

to select lands subject to entry by said States . . . for a period of sixty days after lands have been surveyed and duly declared to be subject to selection and entry under the general land laws of the United States: *And provided further*, That such preference right shall not accrue against *bona fide* homestead or preemption settlers on any of said lands at the date of filing of the plat of survey of any township in any local land office, of said States.

You also refer to departmental instructions of April 24, 1913, providing that in the matter of restoration of lands from the Custer National Forest the State shall have preference right of selection for sixty days from and after the date of restoration where the township has been previously surveyed or in the event of unsurveyed lands a preference right during sixty days immediately following the filing of the township plat of survey.

You suggest that this practice is not warranted by the law, particularly in view of the act of Congress of September 30, 1913 (Public, No. 15), which provides a method whereby lands restored from national forests may be made subject to homestead entry by actual settlers only, etc., for a period not exceeding ninety days, the unentered lands to be thereafter subject to disposition under applicable public-land laws. In brief, your view is that under existing law the lands may first be restored to settlement for a definite period and at the end of that time made subject to disposition under all public-land laws applicable, and that the preference right conferred on the States named operates for sixty days from and after the lands have been "declared to be subject to selection and entry under the general land laws of the United States."

I agree with this view, for the act of September 30, 1913, *supra*, clearly vests the President, when excluding lands from national forests or releasing them from other withdrawals, to provide for the opening of the lands by settlement in advance of entry, for a limited period; the lands, after the expiration of such period as may

be fixed, not exceeding ninety days, to be subject to disposition under all of the land laws which may be applicable to that particular area. This is not inconsistent with the act of March 3, 1893, *supra*, according a preference right to the States named therein, because that preference does not attach until the "selection and entry under the general land laws." Your recommendation for an amended form of order governing the restoration of lands in States to which the acts of March 3, 1893, and September 30, 1913, apply, is, therefore, approved.

I have not, however, approved the proposed orders for the restoration of land from the Sioux National Forest. The proclamations authorizing the exclusion of these lands from the forest were signed by the President June 30, 1911, and provide that the lands should "when compatible with public interest be restored to settlement and entry under the laws applicable thereto on such dates as shall be fixed by the Secretary of the Interior and after such notice as he may deem advisable."

The proclamations did not specifically authorize or direct the opening of the land by settlement in advance of entry, nor had the act authorizing the President to so provide in orders of restoration been enacted at that time.

As noted, the act of September 30, 1913, confers upon the President of the United States the authority to limit or provide specific methods of opening to settlement and disposition the lands excluded from national forests, and, therefore, in my opinion, this Department is without authority to prescribe limitations or conditions. The proclamations of June 30, 1911, imposed no such limitations or conditions and I am, therefore, of the opinion that I am without authority so to do and that the lands described in the proposed orders forwarded by you should be opened to disposition in accordance with the practice prevailing at date of issuance of the proclamations or that new proclamations should be submitted to the President for consideration amending or modifying those previously issued and providing the method and manner of restoration under the authority vested in him by said act of September 30, 1913.

INSTRUCTIONS.

January 2, 1914.

ABANDONED MILITARY RESERVATION—NATIONAL FOREST—ACT JUNE 11, 1906.

Lands in an abandoned military reservation included within a national forest are subject to listing and entry under the act of June 11, 1906, without regard to the act of July 5, 1884, providing for the appraisal and sale of lands in abandoned military reservations.

CONFLICTING INSTRUCTIONS AND DECISIONS OVERRULED.

Departmental instructions of November 29, 1910, not reported, and all decisions inconsistent herewith, overruled.

JONES, *First Assistant Secretary*.

The Mt. Whitney Military Reservation, California, was established by Executive order of September 20, 1883, and was turned over to this Department for disposal under the act of July 5, 1884 (23 Stat., 103), by Executive order of February 2, 1904.

A portion of said reservation was included within the Sierra Forest Reserve by proclamation of the President July 25, 1905. Another portion thereof was included in the forest by Executive order of April 20, 1908. The lands are now a part of the Kern National Forest as described in Executive order dated January 30, 1911.

In opinion dated March 31, 1908 (36 L. D., 342), the Secretary of the Interior reached the conclusion that the fact that lands within a former military reservation had been abandoned and turned over to the Department of the Interior for disposition under the act of July 5, 1884, *supra*, does not prevent their reservation for a national forest under section 24 of the act of March 3, 1891 (26 Stat., 1095). This opinion was supported by citation of decision of the United States Circuit Court of Appeals, Ninth Circuit, in the case of *United States v. Blendaur* (128 Fed., 910). The lands within the abandoned Mount Whitney Military Reservation included in the national forest by the proclamations hereinbefore mentioned, have, accordingly, since that time been regarded and administered as a part of the national forest.

In 1910 you [Commissioner of the General Land Office] advised that the Department of Agriculture had listed for homestead entry, under the act of June 11, 1906 (34 Stat., 233), certain lands within the common limits of the said abandoned military reservation and the national forest and asked for instructions as to whether the lands could be opened to entry, stating that same had not been appraised under the act of July 5, 1884, *supra*. You also requested instructions as to whether or not payment should be required in the event the lands were opened to entry.

Under date of November 29, 1910 [not reported], you were advised that while the right of the President to include the lands within the national forest had already been determined, such inclusion could not operate to defeat the application of the law governing the method of disposal of lands within abandoned military reservations "if and when the forest reservation might be discontinued." You were further advised that in the opinion of the Department the lands so listed should be appraised and the parties entering the same under the forest homestead law of June 11, 1906, required to pay

the appraised price. Appraisal was made and was approved by the Department December 8, 1911, and you were instructed to advise each homestead entryman and applicant as to the price fixed.

The act of August 23, 1894 (28 Stat., 491), authorizing the disposition under the homestead law of lands within certain abandoned military reservations theretofore turned over to this Department, has no application to this reservation, which was not abandoned until February 2, 1904.

Upon suggestion of this Department there was introduced into Congress a bill (S. 2815) which proposed to authorize the completion of all homestead entries heretofore made within the limits of the abandoned Mt. Whitney Military Reservation, without appraisement of the lands or payment of any purchase price therefor.

November 6, 1913, considering certain lists submitted by the Secretary of Agriculture, under the act of June 11, 1906, the Department expressed the opinion that lands within the abandoned Mt. Whitney Military Reservation, and others of like status also within national forests, are not subject to disposition under the act of June 11, 1906, *supra*, but can be disposed of only under the provisions of the act of July 5, 1884, *supra*.

I am now in receipt of proposed letter to the Secretary of Agriculture, wherein certain other lists are discussed and the suggestion made that all lands described therein which lie within the limits of the abandoned military reservation and the Kern National Forest, will not be restored under the act of 1906 but should be, through amendment, eliminated from the lists.

It is true that the act of July 5, 1884, provides a specific method for the disposal of lands within the limits of abandoned military reservations, which method includes appraisal and sale, at not less than the appraised value, a method inconsistent with disposition under the so-called free homestead law. It is also true, as already stated, that the act of August 23, 1894, modifying the act first mentioned as to certain military reservations theretofore opened, has no application to the lands here involved. However, under section 24 of the act of March 3, 1891 (26 Stat., 1095), the President is authorized to "set apart and reserve, in any State or Territory having public lands bearing forests, in any part of the public lands wholly or in part covered with timber or undergrowth, whether of commercial value or not, as public reservations," and this Department and the courts have held that under this authority he may withdraw lands in the public domain whether they be disposable under the general land laws or under some special and limited method. The case of *United States v. Blendaur*, hereinbefore cited, involved lands which it was contended were not "public lands" but had been previously set apart for a special purpose, but the court held that

the land was a part of the public domain and was public land of the United States within the intent and meaning of those words as used in the act of March 3, 1891, and when included in a national forest became a part thereof subject to administration and use as such. That this is correct would appear to require no extended argument.

The reservation of lands for national forest uses is a public purpose, and it is clear that the United States may devote to that purpose any of its lands whether previously subject to disposition under the land laws, or not. Accepting this as settled doctrine, and such has been the consistent holding since March 31, 1908, the lands in the former Mt. Whitney Abandoned Military Reservation became from and after their inclusion within the national forest an integral part thereof, to be held and administered in the same manner and under the same laws, rules, and regulations as were other lands within said forest, irrespective of what their status may have been prior to inclusion in the forest.

June 11, 1906, with the intent and purpose of making agricultural lands within the limits of national forests available for homestead entry, if this could be done without injury to the reserve, Congress passed the act commonly known as the forest homestead law (34 Stat., 233), which authorized the Secretary of Agriculture to list lands within permanent or temporary forest reserves "which, in his opinion, may be occupied for agricultural purposes without injury to the forest reserves, and which are not needed for public purposes and file the lists and descriptions with the Secretary of the Interior with the request that the said lands be opened to entry in accordance with the provisions of the homestead laws and this act." The act, as will be noted, is not one generally applicable to all public lands and reservations but is specifically applicable only to "permanent or temporary forest reserves." It does not undertake to limit, define, or describe the lands within the forests which are to be subject to its operation, other than that they shall be chiefly valuable for agriculture and that they may be occupied for agricultural purposes without injury to the forest reserves.

As already intimated, lands included within the boundaries of national forests may have, prior to such inclusion, occupied an entirely different status. Some were vacant public lands of the United States, subject to disposition under the general land laws according to their character; others were, through special enactment, disposable only under one of the public-land laws; others had been disposed of by the United States but were reconveyed to it under the act of June 4, 1897 (30 Stat., 11), and still others have been exchanged by States for indemnity lands outside of the reserves. Congress was aware of this condition, but, nevertheless, made no difference with respect to the prior status of the lands when it enacted the law of June 11, 1906,

the clear and evident purpose of the latter statute being to open to occupation and use agricultural lands within the national forests.

It is not necessary at this time to consider what status lands within abandoned military reservations or lands which prior to their inclusion in the forest were disposable only under one or more specific land laws, would occupy if the lands were eliminated from the national forest. The lands here involved have not been so eliminated, but, as stated, form a component part of the Kern National Forest. As such they are national forest lands, not only subject to use and administration under laws applicable to the forests but are clearly subject to the provisions of the act of June 11, 1906. They are, therefore, in the opinion of this Department, properly subject to listing thereunder and to homestead entry. They are, consequently, relieved from the conditions as to appraisal and disposition laid down in the act of July 5, 1884, and may be listed, entered, and patented under the homestead laws and the act of June 11, 1906, without appraisal and without payment of any appraised price heretofore fixed.

Departmental decision of November 29, 1910, and other decisions inconsistent herewith, are hereby overruled and you will be governed by the rule herein laid down with respect to the listing and disposition of these and lands similarly situated. The Secretary of Agriculture has been furnished with a copy of this decision.

REGULATIONS UNDER TIMBER AND STONE LAW.

CIRCULAR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., November 30, 1908.
[*Revised and reapproved, January 2, 1914.*]

REGISTERS AND RECEIVERS,
United States Land Offices.

SIRS: The regulations under the act of June 3, 1878 (20 Stat., 89), and amendatory acts, commonly known as the timber and stone law, are hereby revised, modified, and reissued as follows:

PROVISION FOR APPRAISEMENT.

Any land subject to sale under the foregoing acts may, under the direction of the Commissioner of the General Land Office, upon application or otherwise, be appraised by smallest legal subdivisions, at their reasonable value, but at not less than \$2.50 per acre; and hereafter no sales shall be made under said acts except as provided in these regulations.

CHARACTER OF LANDS SUBJECT TO ENTRY.

All unreserved, unappropriated, nonmineral, surveyed public lands within the public-land States, which are valuable chiefly for the timber or stone thereon and unfit for cultivation at the date of sale, may be sold under this act at their appraised value, but in no case at less than \$2.50 per acre, in contiguous legal subdivisions upon which there is no existing mining claim or the improvements of any bona fide settler claiming under the public-land laws. The terms used in this statement may be defined substantially as follows for the purpose of construing and applying this law:

2. *Unreserved and unappropriated lands* are lands which are not included within any military, Indian, or other reservation, or in a national forest, or in a withdrawal by the Government for reclamation or other purposes, or which are not covered or embraced in any entry, location, selection, or filing which withdraws them from the public domain.

3. *Unoccupied lands* are lands belonging to the United States upon which there are no improvements belonging to any person who has initiated and is properly maintaining a valid mining or other claim to such lands under the public-land laws. Abandoned and unused mines, shafts, tunnels, or buildings occupied by mere trespassers not seeking title under any law of the United States, do not prevent timber and stone entries if the land is otherwise capable of being so entered.

4. *Nonmineral lands* are such lands as are not known to contain any substance recognized and classed by standard authorities as mineral, in such quantities and of such qualities as would, with reasonable prospects of success in developing a paying mine thereon, induce a person of ordinary prudence to expend the time and money necessary to such development.

5. *Timber is defined* as trees of such kind and quantity, regardless of size, as may be used in constructing buildings, irrigation works, railroads, telegraph and telephone lines, tramways, canals, or fences, or in timbering shafts and tunnels or in manufacturing, but does not include trees suitable for fuel only.

6. *Lands valuable chiefly for timber*, but unfit for cultivation, are lands which are more valuable for timber than they are for cultivation in the condition in which they exist at the date of the application to purchase, and therefore include lands which could be made more valuable for cultivation by cutting and clearing them of timber. The relative values for timber or cultivation must be determined from conditions of the land existing at the date of the application to purchase.

7. Lands may be entered under the timber and stone acts, except as denied by special laws, in all of the public-land States; but such entries may not be made in Alaska.

BY WHOM ENTRIES MAY BE MADE.

8. One timber and stone entry may be made for not more than 160 acres (*a*) by any person who is a citizen of the United States, or who has declared his intention to become such citizen, if he is not under 21 years of age, and has not already exhausted his right by reason of a former application for an entry of that kind, or has not already acquired title to or is not claiming under the homestead or desert-land laws through settlement or entry made since August 30, 1890, any other lands which, with the land he applies for, would aggregate more than 320 acres; or (*b*) by an association of such persons; or (*c*) by a corporation, each of whose stockholders is so qualified.

9. A married woman may make entry if the laws of the State in which she applies permit married women to purchase and hold for themselves real estate, but she must make the entry for her own benefit, and not in the interest of her husband or any other person.

METHOD OF OBTAINING TITLE.

10. *Any qualified person* may obtain title under the timber and stone law by performing the following acts: (*a*) Personally examining the land desired; (*b*) presenting an application and sworn statement, accompanied by a filing fee of \$10; (*c*) depositing with the receiver the appraised price of the land; (*d*) publishing notice of his application and proof; (*e*) making final proof.

11. *Examination of the land* must be made by the applicant in person not more than 30 days before the date of his application, in order that he may knowingly swear to its character and condition.

APPLICATION AND SWORN STATEMENT: DEPOSIT.

12. *The application and sworn statement must contain* the applicant's estimate of the timber, based on examination, and his valuation of the land and the timber thereon, by separate items. (See Form A, Appendix.) It must be executed in duplicate, after having been read to or by the applicant, in the presence of the officer administering the oath, and sworn to by him before such officer, who may be either the register or the receiver of the land district in which the land is located, a United States commissioner, a judge or a clerk of a court of record in the county or parish in which the land is situated, or one of these officers outside of that county or parish, if he is nearer and more accessible to the land than any other qualified officer and has his office or place of business within the land district in which the land is located. Each applicant must, at the time he presents his application and sworn statement, deposit with the receiver a filing fee of \$10.

13. *Applications by associations or corporations must*, in addition to the facts recited in the foregoing statement, show that each person forming the association or holding stock in the corporation is qualified to make entry in his own right and that he is not a member of any other association or a stockholder in any other corporation which has filed an application or sworn statement for other lands under the timber and stone laws.

DISPOSITION OF APPLICATION.

14. *After application and deposit have been filed* in proper form, as required by these regulations, the register and receiver will at once forward one copy of the application to the chief of field division having jurisdiction of the land described, who, if he finds legal objection to the allowance of the application, will return it to them with report thereon. The register and receiver will, if they concur in an adverse recommendation of the chief of field division, dismiss or deny the application, subject to the applicant's right of appeal; but if they disagree with his recommendation they will forward the record to the Commissioner of the General Land Office, with their report and opinion thereon, for such action as he may deem advisable.

If the chief of field division finds no such legal objection to the application, he shall cause the lands applied for to be appraised by an officer or employee of the Government. (Designation of Appraiser, Form B, Appendix.)

APPRAISEMENT: METHOD.

15. The officer or employee designated to make the appraisement must personally visit the lands to be appraised and thoroughly examine every legal subdivision thereof, and the timber thereon, and appraise separately the several kinds of timber at their stumpage value, and the land independent of the timber at its value at the time of appraisement, but the total appraisement of both land and timber must not be less than \$2.50 per acre. He must, in making his report, consider the quantity, quality, accessibility, and any other elements of the value of the land and the timber thereon. The appraisement must be made by smallest legal subdivisions, or the report must show that the valuation of the land and the estimate of the timber apply to each and every subdivision appraised. (See Form C, Appendix.)

APPRAISEMENT: MANNER OF RETURN: APPROVAL.

16. The completed appraisement must be mailed or delivered personally to the chief of field division under whose supervision it was made, and not to the applicant. Each appraisement upon which an

entry is to be allowed must be approved, respectively or conjointly, as provided in these regulations, by the chief of field division under whose supervision it was made, by the register and receiver who allow the entry, or by the Commissioner of the General Land Office.

APPRAISEMENT: DISAGREEMENT BETWEEN APPRAISING AND APPROVING OFFICERS: HOW DETERMINED.

17. The chief of field division will return to the appraiser, with his objections, an appraisal which he deems materially low or high, and the appraiser shall within 20 days from the receipt thereof, resubmit the papers, with such modifications or explanations as he may deem advisable or proper, upon receipt of which the chief of field division will either approve the schedule as then submitted, or forward the papers to the register and receiver, with his memorandum of objection. The register and receiver will thereupon consider the case. If they approve the appraisal, they will sign the certificate appended thereto, and advise the chief of field division thereof. If the register and receiver approve the objection of the chief of field division, they will so indicate, and if the appraising officer is an employee of the Interior Department, under the supervision of the chief of field division, they will return the papers to the chief of field division, who will thereupon order a new appraisal by a different officer. If, however, the register and receiver approve the objection of the chief of field division, when the appraiser is an officer of another bureau of this department, or of another department, they will forward the record of the case to the Commissioner of the General Land Office, who will then determine the controversy.

APPRAISEMENT: NOTATION AND EFFECT THEREOF.

18. *When the appraisal is completed*, the register and receiver will note the price on their records, and thereafter the land will be sold at such price only, under the provisions of the timber and stone acts, unless the land shall have been reappraised in the manner provided herein.

FAILURE TO APPRAISE: RIGHTS OF APPLICANT: HOW TERMINATED.

19. Unless the land department, as hereinbefore provided, or otherwise, as directed by the Secretary of the Interior, shall appraise any lands applied for under these regulations within nine months from the date of such application, the applicant may, without notice, within 30 days thereafter, deposit the amount, not less than \$2.50 per acre, specified in his application as the reasonable value of the

land and the timber thereon, with the receiver, if appraisalment has not been filed prior to such deposit, and thereupon will be allowed to proceed with his application to purchase as though the appraisalment had been regularly made. The failure of the applicant to make the required deposit within 30 days after the expiration of the nine months' appraisalment period will terminate his rights without notice.

NOTICE OF APPRAISEMENT: PAYMENT OR PROTEST.

20. If the appraisalment shows the land, or any subdivision thereof, to be subject to entry, the register and receiver will note its appraised price on their records, and will immediately inform the applicant that he must, within 30 days from service of notice, deposit with the receiver, either in lawful money, in post-office money orders payable to the receiver, in certified checks drawn in favor of the receiver which can be cashed without cost to the Government, or as provided in paragraph 36 hereof, the appraised price of the land, or of said part, and the timber thereon, or within said time file his protest against the appraisalment, depositing with the receiver a sum sufficient to defray the expenses of a reappraisalment (which sum, not less than \$100, must be fixed by the register and receiver and specified in the notice to the applicant), together with his application for reappraisalment at his own expense. (See Form D, Appendix.)

If the register and receiver reject the application as to part or all of the land, upon the ground that the appraisalment shows it not to be subject to entry, applicant may within said 30 days file his affidavit, corroborated by two witnesses, setting forth facts which tend to disprove the appraisalment, and thereupon a hearing shall be ordered to determine the facts, notice thereof being given to the chief of field division.

Notice must be given by registered letter and the envelope should be marked for return if not delivered within 30 days. If notice be returned after being held in the post office for 30 days, such proceedings will constitute constructive notice for 30 days.

After 30 days' notice has been had, if no deposit of the price has been made, or protest against the appraisalment has been filed as to lands found subject to entry, and no application for hearing, or appeal, has been filed as to lands found not subject to entry, the register and receiver shall close the case on their records, all rights under the application being terminated without notice.

OBJECTION TO APPRAISEMENT: APPLICATION FOR REAPPRAISEMENT.

21. Any applicant filing his protest against an appraisalment, and his application for reappraisalment, must support it by his affidavit,

corroborated by two competent, credible, and disinterested persons, in which he must set forth specifically his objections to the appraisalment. He must indicate his consent that the amount deposited by him for the reappraisalment, or such part thereof as is necessary, may be expended therefor, without any claim on his part for a refund or return of the money thus expended.

REAPPRAISEMENT.

22. Upon the receipt of a protest against appraisalment and application for reappraisalment conforming to the regulations herein, the register and receiver will transmit such protest and application to the chief of field division, who will cause the reappraisalment to be made by some officer other than the one making the original appraisalment. The procedure provided herein for appraisalment will be followed for reappraisalment, except the latter, if differing from the former, must, to give it effect, be approved both by the chief of field division and the register and receiver, or, in case of disagreement between them, by the commissioner of the General Land Office. (Form E, Appendix.)

NOTICE OF APPRAISEMENT.

23. When a reappraisalment is finally effected, the register and receiver will note the reappraised price on their records, and at once notify the applicant that he must, within 30 days from the date of notice, deposit with the receiver the amount fixed by such reappraisalment for the sale of the land, or thereafter, and without notice, forfeit all rights under his application. (Form F, Appendix.)

COST OF MAKING REAPPRAISEMENT.

24. The officer or employee of the United States making the reappraisalment shall be paid from the amount deposited with the receiver by the applicant therefor, the salary, per diem, and other expenses to which he would have been entitled from the Government, in the case of an original appraisalment, for his services for the time he was engaged in making and returning the reappraisalment. The receiver will, out of the money deposited by the applicant, pay such compensation including reasonable expenses for subsistence, transportation, and necessary assistants; and the officer will deduct from his expense account with the Government the amount which he has received from the receiver for such services. The receiver will return to the applicant the amount, if any, remaining on deposit with him after paying the expenses of said reappraisalment.

FINAL PROOF.

25. After the appraisalment or reappraisalment and deposit of purchase money and fee have been made the register will fix a time

and place for the offering of final proof, and name the officer before whom it shall be offered and post a notice thereof in the land office and deliver a copy of the notice to the applicant, to be by him and at his expense published in the newspaper of accredited standing and general circulation published nearest the land applied for. This notice must be continuously published in the paper for 60 days prior to the date named therein as the day upon which final proof must be offered. (Form G, Appendix.)

TIME, PLACE, AND METHOD OF MAKING FINAL PROOF.

26. Final proof should be made at the time and place mentioned in the notice, and, as a part thereof, evidence of publication, as required by the previous paragraph, should also be filed. If final proof is not made on that day or within 10 days thereafter, the applicant may lose his right to complete entry of the land. Upon satisfactory showing, however, explaining the cause of his failure to make the proof as above required, and in the absence of adverse claim, the Commissioner of the General Land Office may authorize him to readvertise and complete entry under his previous application. (See Form H, Appendix.)

FINAL ENTRY.

27. After an appraisalment or reappraisalment has been approved, the payments made, and satisfactory proof submitted in any case as required by these regulations, the register and receiver will, if no protest or contest is pending, allow a final entry.

GENERAL PROVISIONS.

CONTESTS AND PROTESTS.

28. Protest may be filed at any time before an entry is allowed, and contest may be filed at any time before patent issues, by any person who will furnish the register and receiver with a corroborated affidavit alleging facts sufficient to cause the cancellation of the entry, and will pay the cost of contest.

FALSE SWEARING—FORFEITURE.

29. If an applicant swear falsely in his application or sworn statement, he will be liable to indictment and punishment for perjury; and if he be guilty of false swearing or attempted fraud in connection with his efforts to obtain title, his application and entry will be disallowed and all moneys paid by him will be forfeited to the Government, and his rights under the timber and stone acts will be exhausted.

EFFECT OF APPLICATION TO PURCHASE.

30. *After an application has been presented* hereunder no other person will be permitted to file on the land embraced therein under any public-land law until such application shall have been finally disposed of adverse to the applicant.

31. *Lands appraised or reappraised* hereunder, but not sold, may, upon the final disallowance of the application, be entered by any qualified person, under the provisions of the timber and stone laws, at its appraised or reappraised value, if subject thereto.

32. *Lands applied for but not appraised* and not entered under these regulations may, when the rights of the applicant are finally terminated, be disposed of as though such application had not been filed.

33. *Any lands which have not been reappraised* may be reappraised upon the request of an applicant therefor under these regulations who complies with the requirements of section 21 hereof.

34. *An applicant securing a reappraisement* under these regulations shall acquire thereby no right or privilege except that of purchasing the lands at their reappraised value, if he is qualified, and if the lands are subject to sale under his application; and he must otherwise comply with these regulations, but shall not, in any event, be entitled to the return of any money deposited by him and expended in such reappraisement.

35. *The Commissioner of the General Land Office* may at any time direct the reappraisement of any tract or tracts of public lands, when, in his opinion, the conditions warrant such action.

36. *Unsatisfied military bounty land warrants* under any act of Congress and unsatisfied indemnity certificates of location under the act of Congress approved June 2, 1858, properly assigned to the applicant, shall be receivable as cash in payment or part payment for lands purchased hereunder at the rate of \$1.25 per acre.

37. These regulations shall be effective on and after December 1, 1908, but all applications to purchase legally pending on November 30, 1908, may be completed by compliance with the regulations in force at the time such applications were filed.

38. The forms mentioned herein and included in the appendix hereto shall be a part of these regulations.

ENTRY OF STONE LANDS.

39. The foregoing regulations apply to entries of lands chiefly valuable for stone, and the forms herein prescribed can be modified in such manner as may be necessary to the making of entries of stone lands.

FORMER REGULATIONS REVOKED.

40. All former regulations, decisions, and practices in conflict with these regulations are hereby revoked.

Revised January 2, 1914.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Revision approved January 2, 1914:

ANDRIEUS A. JONES,

First Assistant Secretary.

APPENDIX.

Acts relating to Timber and Stone Entries.

AN ACT For the sale of timber lands in the States of California, Oregon, Nevada, and in Washington Territory.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That surveyed public lands of the United States within the States of California, Oregon, and Nevada, and in Washington Territory, not included within military, Indian, or other reservations of the United States, valuable chiefly for timber, but unfit for cultivation, and which have not been offered at public sale, according to law, may be sold to citizens of the United States, or persons who have declared their intention to become such, in quantities not exceeding one hundred and sixty acres to any one person or association of persons, at the minimum price of two dollars and fifty cents per acre; and lands valuable chiefly for stone may be sold on the same terms as timber lands: *Provided,* That nothing herein contained shall defeat or impair any bona fide claim under any law of the United States, or authorize the sale of any mining claim, or the improvements of any bona fide settler, or lands containing gold, silver, cinnabar, copper, or coal, or lands selected by the said States under any law of the United States donating lands for internal improvements, education, or other purposes: *And provided further,* That none of the rights conferred by the act approved July twenty-sixth, eighteen hundred and sixty-six, entitled "An act granting the right of way to ditch and canal owners over the public lands, and for other purposes," shall be abrogated by this act; and all patents granted shall be subject to any vested and accrued water rights, or rights to ditches and reservoirs used in connection with such water rights, as may have been acquired under and by the provisions of said act; and such rights shall be expressly reserved in any patent issued under this act.

SEC. 2. That any person desiring to avail himself of the provisions of this act shall file with the register of the proper district a written statement in duplicate, one of which is to be transmitted to the General Land Office, designating by legal subdivisions the particular tract of land he desires to purchase, setting forth that the same is unfit for cultivation, and valuable chiefly for its timber or stone; that it is uninhabited; contains no mining or other improvements, except for ditch or canal purposes, where any such do exist, save such as were made by or belonged to the applicant, nor, as deponent verily believes, any valuable deposit of gold, silver, cinnabar, copper, or coal; that deponent has

made no other application under this act; that he does not apply to purchase the same on speculation, but in good faith to appropriate it to his own exclusive use and benefit, and that he has not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title which he might acquire from the Government of the United States should inure, in whole or in part, to the benefit of any person except himself; which statement must be verified by the oath of the applicant before the register or the receiver of the land office within the district where the land is situated; and if any person taking such oath shall swear falsely in the premises, he shall be subject to all the pains and penalties of perjury, and shall forfeit the money which he may have paid for said lands, and all right and title to the same; and any grant or conveyance which he may have made, except in the hands of bona fide purchasers, shall be null and void.

SEC. 3. That upon the filing of said statement, as provided in the second section of this act, the register of the land office shall post a notice of such application, embracing a description of the land by legal subdivisions, in his office, for a period of sixty days, and shall furnish the applicant a copy of the same for publication, at the expense of such applicant, in a newspaper published nearest the location of the premises, for a like period of time; and after the expiration of said sixty days, if no adverse claim shall have been filed, the person desiring to purchase shall furnish to the register of the land office satisfactory evidence, first, that said notice of the application prepared by the register as aforesaid was duly published in a newspaper as herein required; secondly, that the land is of the character contemplated in this act, unoccupied and without improvements, other than those excepted, either mining or agricultural, and that it apparently contains no valuable deposits of gold, silver, cinnabar, copper, or coal; and upon payment to the proper officer of the purchase money of said land, together with the fees of the register and the receiver, as provided for in case of mining claims in the twelfth section of the act approved May tenth, eighteen hundred and seventy-two, the applicant may be permitted to enter said tract, and, on the transmission to the General Land Office of the papers and testimony in the case, a patent shall issue thereon: *Provided*, That any person having a valid claim to any portion of the land may object, in writing, to the issuance of a patent to land so held by him, stating the nature of his claim thereto; and evidence shall be taken and the merits of said objection shall be determined by the officers of the land office, subject to appeal, as in other land cases. Effect shall be given to the foregoing provisions of this act by regulations to be prescribed by the Commissioner of the General Land Office.

* * * * *

SEC. 6. That all acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

Approved, June 3, 1878. (20 Stat., 89.)

AN ACT To authorize the entry of lands chiefly valuable for building stone under the placer mining laws.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person authorized to enter lands under the mining laws of the United States may enter lands that are chiefly valuable for building stone under the provisions of the law in relation to placer mineral claims: *Provided*, That lands reserved for the benefit of the public schools or donated to any State shall not be subject to entry under this act.

SEC. 2. That an act entitled "An act for the sale of timber lands in the States of California, Oregon, Nevada, and Washington Territory," approved June third, eighteen hundred and seventy-eight, be, and the same is hereby, amended by striking out the words "States of California, Oregon, Nevada, and Washington Territory," where the same occur in the second and third lines of said act, and insert in lieu thereof the words "public-land States," the purpose of this act being to make said act of June third, eighteen hundred and seventy-eight, applicable to all the public-land States.

SEC. 3. That nothing in this act shall be construed to repeal section twenty-four of the act entitled "An act to repeal timber-culture laws, and for other purposes," approved March third, eighteen hundred and ninety-one.

Approved, August 4, 1892. (27 Stat., 348.)

AN ACT To provide for the location and satisfaction of outstanding military bounty land warrants and certificates of location under section three of the act approved June second, eighteen hundred and fifty-eight.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in addition to the benefits now given thereto by law, all unsatisfied military bounty land warrants under any act of Congress, and unsatisfied indemnity certificates of location under the act of Congress approved June second, eighteen hundred and fifty-eight, whether heretofore or hereafter issued, shall be receivable at the rate of \$1.25 per acre in payment or part payment for any lands entered under the desert-land law of March third, eighteen hundred and eighty- [seventy-] seven, entitled "An act to provide for the sale of desert lands in certain States and Territories," and the amendments thereto, the timber-culture law of March third, eighteen hundred and seventy-three, entitled "An act to encourage the growth of timber on the Western prairies," and the amendments thereto; the timber and stone law of June third, eighteen hundred and seventy-eight, entitled "An act for the sale of timber lands in the States of California, Oregon, Nebraska, and Washington Territory," and the amendments thereto, or for lands which may be sold at public auction, except such lands as shall have been purchased from any Indian tribe within ten years last past.

Approved, December 13, 1894. (28 Stat., 594.)

AN ACT To abolish the distinction between offered and unoffered lands, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in cases arising from and after the passage of this act the distinction now obtaining in the statutes between offered and unoffered lands shall no longer be made in passing upon subsisting preemption claims, in disposing of the public lands under the homestead laws, and under the timber and stone law of June third, eighteen hundred and seventy-eight, as extended by the act of August fourth, eighteen hundred and ninety-two, but in all such cases hereafter arising the land in question shall be treated as unoffered, without regard to whether it may have actually been at some time offered or not.

* * * * *
Approved, May 18, 1898. (30 Stat., 418.)

AN ACT To amend the act of Congress of March eleventh, nineteen hundred and two, relating to homesteads.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That an act entitled "An act to amend section twenty-two hundred and ninety-four of the Revised Statutes of the United States," approved March eleventh, nineteen hundred and two, be, and the same is hereby, amended to read as follows:

"That section twenty-two hundred and ninety-four of the Revised Statutes of the United States be, and the same is hereby, amended so as to read as follows:

"Sec. 2294. That hereafter all proofs, affidavits, and oaths of any kind whatsoever required to be made by applicants and entrymen under the homestead, preemption, timber-culture, desert-land, and timber and stone acts, may, in addition to those now authorized to take such affidavits, proofs, and oaths, be made before any United States commissioner or commissioner of the court exercising Federal jurisdiction in the Territory, or before the judge or clerk of any court of record in the county, parish, or land district in which the lands are situated: *Provided*, That in case the affidavits, proofs, and oaths hereinbefore mentioned be taken out of the county in which the land is located the applicant must show by affidavit, satisfactory to the Commissioner of the General Land Office, that it was taken before the nearest or most accessible officer qualified to take said affidavits, proofs, and oaths in the land districts in which the lands applied for are located; but such showing by affidavit need not be made in making final proof if the proof be taken in the town or city where the newspaper is published in which the final proof-notice is printed. The proof, affidavit, and oath, when so made and duly subscribed, or which may have heretofore been so made and duly subscribed, shall have the same force and effect as if made before the register and receiver, when transmitted to them with the fees and commissions allowed and required by law. That if any witness making such proof, or any applicant making such affidavit or oath, shall knowingly, willfully, or corruptly swear falsely to any material matter contained in said proofs, affidavits, or oaths he shall be deemed guilty of perjury, and shall be liable to the same pains and penalties as if he had sworn falsely before the register. That the fees for entries and for final proofs, when made before any other officer than the register and receiver, shall be as follows:

"For each affidavit, 25 cents.

"For each deposition of claimant or witness, when not prepared by the officer, 25 cents.

"For each deposition of claimant or witness, prepared by the officer, \$1.

"Any officer demanding or receiving a greater sum for such service shall be guilty of a misdemeanor, and upon conviction shall be punished for each offense by a fine not exceeding \$100."

Approved, March 4, 1904. (33 Stat., 59.)

AN ACT Making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-one, and other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * *

No person who shall, after the passage of this act, enter upon any of the public lands with a view to occupation, entry, or settlement under any of the

land laws shall be permitted to acquire title to more than three hundred and twenty acres in the aggregate, under all of said laws, but this limitation shall not operate to curtail the right of any person who has heretofore made entry or settlement on the public lands, or whose occupation, entry, or settlement is validated by this act: *Provided*, That in all patents for lands hereafter taken up under any of the land laws of the United States or on entries or claims validated by this act, west of the one hundredth meridian, it shall be expressed that there is reserved from the lands in said patent described a right of way thereon for ditches or canals constructed by the authority of the United States.

Approved, August 30, 1890. (26 Stat., 391.)

AN ACT To repeal the timber-culture laws, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * *

SEC. 17. That reservoir sites located or selected and to be located and selected under the provisions of "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and eighty-nine, and for other purposes," and amendments thereto, shall be restricted to and shall contain only so much land as is actually necessary for the construction and maintenance of reservoirs, excluding so far as practicable lands occupied by actual settlers at the date of the location of said reservoirs; and that the provisions of "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-one, and for other purposes," which reads as follows, viz: "No person who shall after the passage of this act enter upon any of the public lands with a view to occupation, entry, or settlement under any of the land laws shall be permitted to acquire title to more than three hundred and twenty acres in the aggregate under all said laws," shall be construed to include in the maximum amount of lands the title to which is permitted to be acquired by one person only agricultural lands, and not include lands entered or sought to be entered under mineral-land laws.

Approved, March 3, 1891. (26 Stat., 1095.)

The 320-acre limitation provided by the above acts of August 30, 1890 (26 Stat., 391), and March 3, 1891 (26 Stat., 1095), applies to timber and stone entries. (33 L. D., 539, 605.)

[Form A.]

Application and Sworn Statement.

[TO BE MADE IN DUPLICATE.]

ACT JUNE 3, 1878, AND ACTS AMENDATORY.

DEPARTMENTAL REGULATIONS APPROVED NOVEMBER 30, 1908.

UNITED STATES LAND OFFICE,

—, 19—.

I, ———, hereby make application to purchase the ——— quarter of section ———, in township ——— and range ———, in the State of ———,

and the timber thereon, at such value as may be fixed by appraisement, made under the authority of the Secretary of the Interior, under the act of June 3, 1878, commonly known as the "Timber and stone law," and acts amendatory thereof, and in support of this application I solemnly swear: That I am a native (or naturalized) citizen of the United States (or have declared my intention to become a citizen); that I am _____ years of age, and by occupation _____; that I did on _____, 19____, examine said land, and from my personal knowledge state that said land is unfit for cultivation and is valuable chiefly for its timber, and that to my best knowledge and belief, based upon said examination, the land is worth _____ dollars, and the timber thereon, which I estimate to be _____ feet, board measure, is worth _____ dollars, making a total value for the land and timber of _____ dollars and no more; that the land is uninhabited; that it contains no mining or other improvements, nor, as I verily believe, any valuable deposit of gold, silver, cinnabar, copper or coal, or other minerals, salt springs or deposits of salt; that I have made no other application under said acts; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit; that I have not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself; that since August 30, 1890, I have not entered and acquired title to, nor am I now claiming, under an entry made under any of the nonmineral public land laws, an amount of land which, together with the land now applied for, will exceed in the aggregate 320 acres; that I am not a member of any association, or a stockholder in any corporation which has filed an application and sworn statement under said act; and that my post-office address is _____, at which place any notice affecting my rights under this application may be sent. I request that notice be furnished me for publication in the _____ newspaper, published at _____.

(Sign here, with full Christian name.)

I hereby certify that the foregoing affidavit was read to or by affiant in my presence before affiant affixed signature thereto; that affiant is to me personally known, or has been satisfactorily identified before me by _____ (give full name and post-office address); that I verily believe affiant to be a qualified applicant and the identical person hereinbefore described, and that said affidavit was duly subscribed and sworn to before me, at my office in _____ (town), _____ (county and State), within the _____ land district, this _____ day of _____, 19____.

(Official designation of officer.)

In case the applicant has been naturalized or has declared his intention to become a citizen, a certified copy of his certificate of naturalization or declaration of intention, as the case may be, must be furnished.

If the residence is in a city, the street and number must be given.

The newspaper designated must be one of general circulation, published nearest the land.

[Form B.]

Designation of Appraiser.

DEPARTMENTAL REGULATIONS APPROVED NOVEMBER 30, 1908.

_____,
_____, 19__.

SIR: You are designated to appraise the _____ quarter of section _____, township _____, and range _____, which embraces a total of _____ acres. This land has been applied for by _____, of _____, _____, under the timber and stone law. If you accept this designation, it will be your duty to personally visit and carefully examine each and every legal subdivision of the land, and the timber thereon, and to make a return through this office of the approximate quantity, quality, and the stumpage cash value of the various kinds of timber, the cash value of the land, and the total value of the land and timber. The total appraisement of the land and timber, however, must not amount to less than two dollars and fifty cents per acre for each acre appraised. Each legal subdivision must be separately appraised, or your return must show specifically that the appraisement applies to each legal subdivision.

Please inform me as soon as possible, and not later than _____, 19__, whether you will be able to do the work, and also advise me the approximate date the appraisal will be completed.

Very respectfully,

Chief of Field Division, General Land Office.

[Form C.]

Appraisal, Timber and Stone Lands.

ACT OF MARCH 3, 1878, AND ACTS AMENDATORY.

DEPARTMENTAL REGULATIONS APPROVED NOVEMBER 30, 1908.

Lot or quarter-quarter.	Kind of timber.	Quality of timber.	Board feet per tract.	Stumpage value per M.	Character of soil.	Value of land exclusive of timber.	Total value of land and timber per acre.	Value of land and timber per tract.

Logging:

Timber must be logged by _____ (wagon haul, flume, river driving, or railroad).

Distance logs or lumber are to be transported to market, _____ miles. Approximate cost per M for transportation of logs or lumber to market, _____ dollars. Accessible? _____ (yes or no). Manufacturing possible on the ground? _____ (yes or no). Will there be improvement in logging facilities

in the vicinity? — (yes or no). Will the demand for timber products be likely to increase in the neighborhood in the near future? — (yes or no). Nearest available quotations on stumpage for the species estimated —.

—, 19—.

STATEMENT BY APPRAISER.

I have carefully examined each and every legal subdivision of the — quarter of section —, township —, range —, and the timber thereon, and the estimates included in the above table and the foregoing statement were based on personal examination. I did not find any indication that the land or any part thereof contains any valuable mineral or coal deposits, and found no improvements or other evidence that any claim is being asserted under any of the public-land laws. I recommend that the application to purchase receive favorable action.

—,
Appraiser.

ACTION ON APPRAISEMENT.

I have carefully examined the within appraisal and find no reason to believe that it is improperly made.

It is therefore, accordingly, APPROVED.

—,
Chief of Field Division.

NOTE.—The approval of the appraisal by the chief of field division is final, and no action is required thereon by the register and receiver, except to note the appraised price on their records and to issue the necessary notices. The register and receiver will, in the event of a disagreement between the appraiser and the chief of field division, and their concurrence with the appraiser, sign the following certificate:

UNITED STATES LAND OFFICE,
—, —.

We have carefully considered the within appraisal and the objections thereto urged by the chief of field division, and, believing that the appraisal is not materially high or low, the same is hereby approved.

—, *Register.*

—, *Receiver.*

NOTE.—If the register and receiver concur in the adverse objections of the chief of field division, they will proceed in accordance with paragraph 17 of the regulations approved November 30, 1908.

SUGGESTIONS TO APPRAISER.

The appraiser should fill in each blank carefully and legibly. Under the head of kinds of timber he should state the species, such as "yellow pine," "white pine," "Douglas fir," "spruce," etc. If there are more than four leading species, all others should be under the head of "Miscellaneous," in the fifth space. The quality of the timber should be judged as far as possible at local sawmills, and should be indicated by such descriptive words as "excellent," "good," "fair," and "poor."

In the first column to the left the description of the land should be given.

[Form D.]

Notice to Applicant of Appraisalment.

DEPARTMENTAL REGULATIONS APPROVED NOVEMBER 30, 1908.

UNITED STATES LAND OFFICE,
_____,
_____.

SIR: You are informed that the land, and the timber thereon, embraced in your timber and stone application No. _____, filed _____, 19____, have been appraised in the total sum of _____ dollars.

You are therefore notified that your application for said lands will be dismissed without further notice, if you do not, within thirty days from service of this notice, deposit the appraised price of the land with the receiver of this office, or file your written protest against such appraisalment, setting forth clearly and specifically your objection thereto, which protest must be sworn to by you, and corroborated by two competent, credible, and disinterested persons. The protest, if filed, must be accompanied by your application requesting that the land be reappraised at your expense, and you must deposit with the receiver the sum of _____ dollars, to be expended therefor, and you must indicate your consent that the amount so deposited may be expended for the reappraisalment, without any claim on your part that any portion thereof, so expended, shall be returned or refunded to you.

If a reappraisalment is made under your application, you will secure no right or privilege, except that of purchasing the lands at their reappraised value, if they are subject to sale and you are properly qualified.

Very respectfully,

_____, Register.
_____, Receiver.

[Form E.]

Reappraisalment.

Form C may be modified so as to show that the action taken is a reappraisalment instead of an original appraisalment. The return of the appraising officer and indorsements by the chief of field division and the register and receiver must show that the action taken is a reappraisalment, and it must be approved conjointly by the chief of field division and the register and receiver.

[Form F.]

Notice of Reappraisalment.

DEPARTMENTAL REGULATIONS APPROVED NOVEMBER 30, 1908.

UNITED STATES LAND OFFICE,
_____,
_____.

SIR: You are advised that, pursuant to your application, the _____ quarter of section _____, township _____, and range _____, and the timber thereon, embraced in your timber and stone sworn statement, No. _____, have been reappraised, and

the price fixed at — dollars, which amount you must deposit with the receiver of this office within thirty days from service of notice hereof, or your application will be finally disallowed without further notice.

Very respectfully,

_____, *Register.*

_____, *Receiver.*

[Form G.]

Notice of Application to Purchase Under Timber and Stone Laws.

DEPARTMENTAL REGULATIONS APPROVED NOVEMBER 30, 1908.

UNITED STATES LAND OFFICE,

_____, 19—.

Notice is hereby given that _____, whose post-office address is _____, did on the _____ day of _____, 19—, file in this office his sworn statement and application No. — to purchase the _____ quarter of section _____, township _____, range _____, _____ M., and the timber thereon, under the provisions of the act of June 3, 1878, and acts amendatory, known as the "Timber and stone law," at such value as might be fixed by appraisal, and that, pursuant to such application, the land and timber thereon have been appraised, the timber estimated _____ board feet, at \$_____ per M, and the land \$_____, or combined value of the land and timber at \$_____; that said applicant will offer final proof in support of his application and sworn statement on the _____ day of _____, 19—, before _____, at _____. Any person is at liberty to protest this purchase before entry, or initiate a contest at any time before patent issues, by filing a corroborated affidavit in this office, alleging facts which would defeat the entry.

_____, *Register.*

Where notice is issued under section 19, the register will modify the blank so as to show the valuation placed on the land and the timber thereon was that made by the applicant when he filed his sworn statement, instead of being fixed by appraisal.

[Form H.]

Timber or Stone Entry.

(4-370a.)

(Departmental regulations approved by the Secretary of the Interior, November 30, 1908.)

U. S. LAND OFFICE, _____, _____, No. _____.

Receipt No. _____.

FINAL PROOF.

I hereby solemnly swear that I am the identical _____, who presented sworn statement and application, No. _____, for _____, section _____, township _____, range _____, _____ meridian; that the land is valuable chiefly for its timber, and is, in its present condition, unfit for cultivation; that it is unoccupied and without improvements of any character, except for ditch or canal purposes, and that it apparently contains no valuable deposits of gold, silver, cinnabar, copper, coal, salines, or salt springs.

_____,
(Sign here, with full Christian name.)

_____,
(Post-office address.)

I hereby certify that the foregoing affidavit was read to or by affiant in my presence before affiant affixed signature thereto; that affiant is to me personally known, or has been satisfactorily identified before me by _____; that
(Give full name and post-office address.)

I verily believe affiant to be a qualified applicant and the identical person hereinbefore described, and that said affidavit was duly subscribed and sworn to before me, at my office, in _____, _____, within the _____ land district,
(Town.) (County and State.)
this _____ day of _____, 19—.

(Official designation of officer.)

This form of proof can be accepted only where the land embraced in the application to purchase has been appraised or reappraised pursuant to the provisions of the Timber and Stone Regulations approved November 30, 1908, by the Secretary of the Interior.

Proof supporting applications to purchase under section 19 of the said regulations or under applications pending November 30, 1908, must be made by the applicant and two witnesses, as required by the regulations in force prior to December 1, 1908. (See Forms 4—370 and 4—371.)

WILLIAM DUFFIELD.

Instructions, January 9, 1914.

INSANE ENTRYMAN—ACT OF JUNE 8, 1880—DESERT LAND ENTRY.

The act of June 8, 1880, providing for completion of the claims of settlers and entrymen who become insane, has no application to desert land entries.

INSANE DESERT LAND ENTRYMAN—RELINQUISHMENT.

The relinquishment of a desert land entry executed by the guardian of the insane entryman under direction of a court of competent jurisdiction may be accepted and the entry thereupon canceled.

COMPLETION OF CLAIM OF INSANE ENTRYMAN—RELINQUISHMENT.

In the absence of charges against the homestead entry of one who becomes insane, the entry should as a rule be perfected and title taken under the act of June 8, 1880; but if it appear to a court of competent jurisdiction that the entryman has a doubtful right which should be sold rather than attempt proof to obtain patent, the judgment of the court in that respect should ordinarily be followed and relinquishment of the claim permitted.

CONFLICTING DEPARTMENTAL DECISION MODIFIED.

Departmental decision in *Dyche v. Beleele*, 24 L. D., 494, so modified that if there be a pending charge against the entry and reasonable doubt of the validity of the entry or of entryman's compliance with law to the time he became insane, relinquishment may be permitted, upon judgment of a court of competent jurisdiction, in order that the estate may realize the most possible out of the doubtful claim; but if no question exist in that respect, the entry should be perfected and patent issued to the entryman under the act of June 8, 1880.

JONES, *First Assistant Secretary*:

The Department is in receipt of your letter of October 22, 1913, respecting homestead entry of William Duffield, made June 6, 1908,

for lots 2, 3, 4 and SW. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 4, T. 138 N., R. 99 W., 5th P. M., Dickinson, North Dakota.

You state that Duffield made entry June 6, 1908, and October 25, 1911, proceedings were directed against the entry by your office under circular of January 19, 1911 (39 L. D., 458), charging:

1. That claimant was not qualified to make homestead entry, in that at date of filing he was hopelessly insane.
2. That entry was not made for the use and benefit of the claimant, but for the use and benefit of Gus Anderson and his wife Ellen L. Anderson.

August 7, 1912, relinquishment was filed, executed by Anton Anderson, guardian of William Duffield, entryman, with certified copy of letters of guardianship, dated October 31, 1911, of Anderson, guardian of Duffield, insane, but no authority by the court for the guardian to make relinquishment. Notwithstanding lack of such action of the court, cancellation of the entry was noted on your office records August 31, 1912. April 3, 1913, you called upon the local office for report upon claim of Alvin E. Haskins that he filed homestead application for the land, and August 9, 1913, the local office reported—

that on August 7, 1912, Anton Anderson, guardian of William Duffield, insane, filed a relinquishment of said entry, and on the same day, Alvin E. Haskins filed homestead application 018497 for the same land. That at said date adverse charges by the United States were then pending against said entry. Accordingly, the application of Haskins was suspended and the relinquishment transmitted to your office without action. The application remains suspended pending the acceptance of the relinquishment by your office.

You refer to decision in *Dyche v. Beleele* (24 L. D., 494), holding that a relinquishment executed by the guardian of an insane entryman under directions of a probate court is unauthorized by law and invalid, which, if followed, will necessitate rejection of the relinquishment and proceedings against the entry on charges preferred by the special agent, but in view of the recent departmental adjudication in *Bruington*, administrator of the estate of Marion A. Young, dated October 1, 1912, unreported, it was held that where a court of competent jurisdiction has passed on right of the administrator to sell the entryman's interest in the property involved and has directed that the right of decedent be sold for benefit of creditors and heirs, there is no reason why the Department should go behind the judgment of the court or why the relinquishment should not be accepted. Based on this decision you state that you believe the Department does not now entertain the view of the law expressed in *Dyche v. Beleele*, *supra*, as the reasons which justify acceptance of the relinquishment in the *Bruington* case apply equally as well in case of Duffield's entry. You, therefore, request instructions whether or not the decision in case of *Dyche v. Beleele* shall be followed in this and similar cases.

The act of June 8, 1880 (21 Stat., 166), provides that:

In all cases in which parties who regularly initiated claims to public lands as settlers thereon, according to the provisions of the preemption or homestead laws, have become insane or shall hereafter become insane before the expiration of the time during which their residence, cultivation or improvement of the land claimed by them is required by law to be continued in order to entitle them to make the proper proof and perfect their claims, it shall be lawful for the required proof and payment to be made for their benefit by any person who may be legally authorized to act for them during their disability, and thereupon their claims shall be confirmed and patented, provided it shall be shown by proof satisfactory to the Commissioner of the General Land Office that the parties complied in good faith with the legal requirements up to the time of their becoming insane, and the requirements in homestead entries of an affidavit of allegiance by the applicant in certain cases as a prerequisite to the issuing of the patents shall be dispensed with so far as regards such insane parties.

This statute applies only to preemption and homestead entries. It does not apply to desert-land entries which was the form of entry involved in Bruington's case, cited by the Commissioner of the General Land Office. At initiation of a desert-land entry the entryman pays 25 cents per acre to the Government and thereby acquires inchoate title. Such right to acquire title is property. The form of entry, however, requires proof of annual expenditures, and before it can be consummated requires proof of water right and actual or potential reclamation of the land. It might well be that an insane entryman would not have means from which to make annual expenditure, or to acquire water right so as to effect reclamation. Respecting such a property, the decision of October 1, 1912, in Bruington case was a proper one. The statute referred to had no reference to such a case, for reasons stated, and the interest of the entryman being a property right, capable of being perfected, might properly be sold under direction of the proper court having jurisdiction of estates of insane persons.

Coming now to the act of June 8, 1880, *supra*, it refers only to preemption and homestead entries. The construction proper to be given thereto is that it provides a concurrent remedy or relief for an insane entryman and not an exclusive one. If there is no charge against the entry and it be valid, the act of 1880, *supra*, provides that legal title may issue to him without further proof of compliance with the law. Obviously this is more valuable to the entryman than a mere claim of inchoate right. Therefore, in ordinary cases, the remedy given by the act of June 8, 1880, should be pursued as most advantageous to the unfortunate entryman.

If, however, there be question, as in this case, whether the entryman was qualified to make an entry or whether it was not attended by a fraudulent agreement, in such cases, obviously a relinquishment

should be allowed, for something may thereby be saved to the estate of the insane. Therefore, if it appear to the court having proper jurisdiction of the estates of insane persons that the doubtful right of an entryman should be sold rather than attempt proof to obtain a patent, in ordinary cases the judgment of the court in that respect will be followed and a relinquishment permitted.

The decision of *Dyche v. Beleele*, *supra*, is, therefore, so far modified that, if there be a pending charge, reasonable doubt of the validity of the entry or of the entryman's compliance with the law to time he became insane, relinquishment will be allowed, in order that the estate may realize the most possible out of the doubtful claim. If no question exists in that respect, title by patent will be granted to the entryman, rather than permit relinquishment, as full title will be more valuable than an inchoate claim.

RECLAMATION—OKANOGAN PROJECT—PAYMENT.

PUBLIC NOTICE.

DEPARTMENT OF THE INTERIOR,

Washington, January 16, 1914.

Whereas, under the acts of Congress approved June 17, 1902 (32 Stat., 388), and February 13, 1911 (36 Stat., 902), a stay of proceedings looking to the cancellation of entries or water-right applications for failure to make payments when due, was, on April 29, 1912 [41 L. D., 616], offered to landholders under the Okanogan project, Washington, and such stay of proceedings was in general accepted, and the conditions thereof complied with by such landholders; and

Whereas, it is the desire of many such landholders to secure patents or water-right certificates under the act of Congress approved August 9, 1912 (37 Stat., 265), which contains the provision that "no such patent or certificate shall issue until all sums due the United States on account of such land or water right at the time of issuance of patent or certificate shall have been paid";

Now, therefore, it is hereby ordered that for all lands under the said project, the entrymen or owners of which shall have validly accepted the stay of proceedings offered by the said order of April 29, 1912, in the manner and form therein prescribed, and shall be and remain in good standing thereunder by having made the payments required thereby, the charges for building, operation and maintenance which may have accrued or which would hereafter accrue against their lands under the provisions of public notices and orders theretofore issued shall be, and they are hereby postponed until further announcement by public notice or otherwise.

Nothing herein shall be construed as a waiver or release of any payment of charges for water or water rentals prescribed by the said order of April 29, 1912.

ANDRIEUS A. JONES,
First Assistant Secretary of Interior.

NORTHERN PACIFIC RY. CO. v. MORTON.

Decided January 17, 1914.

SETTLEMENT—UNSURVEYED LAND—ENLARGED HOMESTEAD.

The right acquired by settlement upon public lands under the act of May 14, 1880, is coextensive with the right of entry conferred by the homestead laws; and a settler upon unsurveyed land subsequently designated under the enlarged homestead act is, upon the filing of the township plat of survey, entitled to make entry of the land embraced in his settlement claim to the full area of 320 acres permitted by the enlarged homestead act.

CONFLICTING DECISION OVERRULED.

Cate v. Northern Pacific Ry. Co., 41 L. D., 316, overruled in so far as in conflict.

JONES, First Assistant Secretary:

Motion for rehearing has been filed on behalf of the Northern Pacific Railway Company of departmental decision of March 22, 1913, affirming a decision of the Commissioner of the General Land Office, dated February 5, 1912, canceling its indemnity selection for the N. $\frac{1}{4}$ NW. $\frac{1}{4}$, SE. $\frac{1}{4}$ SW. $\frac{1}{4}$, SE. $\frac{1}{4}$, Sec. 3, T. 4 N., R. 50 E., M. M., Miles City, Montana, land district.

The land is within the indemnity limits of the grant to the Northern Pacific Railroad, now Railway Company. May 1, 1909, the township was designated under the enlarged homestead act of February 19, 1909 (35 Stat., 639). March 8, 1910, the plat of survey was filed in the local office, and the railway company filed its list for these tracts. March 16, 1910, Dale Morton filed application to make homestead entry under the act of February 19, 1909, *supra*, for these tracts, together with the NW. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 2, and on March 21, 1910, filed his duly corroborated affidavit, alleging settlement in April, 1907; that he resided thereon each summer thereafter; that he has improved the land by constructing a fence around 200 acres, plowed and cultivated 35 acres to crop in section 3. October 3, 1911, hearing was had between the railway company and claimant, at which both parties appeared represented by counsel, and submitted testimony.

It appears from the evidence disclosed that Morton's original settlement was on what on survey proved to be the SE. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 3. In 1907 he dug a well thirty-three feet deep, planted some fruit trees and made hay upon the tracts. Not finding water thereon, he later put his buildings on what is now the NW. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 2. In the motion for rehearing, it is insisted that the settlement rights of claimant could not attach to more than 160 acres, and that he should

be required to elect which 160 acres he will retain, and that the balance should be subject to the selection of the railway company. As authority for said holding the company cites the case of *Cate v. Northern Pacific Railway Company* (41 L. D., 316). The right of claimant to enter 320 acres upon his settlement initiated in 1907 and prior to the passage of the enlarged homestead act of February 19, 1909, need not be considered. It appears, however, that at the time this land was designated claimant was a *bona fide* settler thereon, and that for nearly a year prior to survey he maintained such settlement claim to the entire tract. The rights of the railway company to said land did not attach until the date of the filing of their selection, and prior to this time claimant had designated the entire 320 acres as the land to which he claimed the right, and his settlement right attached and was co-extensive with his right to make entry.

Prior to the decision in the case of *Cate v. Northern Pacific Railway Company*, *supra*, it was uniformly held by the Land Department that the right acquired by settlement upon public lands under the act of May 14, 1880 (21 Stat., 140), was coextensive with the right of entry conferred by the homestead laws; a conclusion carried into the instructions of April 16, 1912 (40 L. D., 578). The act of August 9, 1912 (37 Stat., 267), was the recognition of a right already in existence under the plain terms of the act of May 14, 1880, *supra*, making certain requirements of the settler and providing for a forfeiture of the claim for failure to improve and cultivate the land. These requirements and the provision for forfeiture constitute the new legislation in the act and clearly modify a pre-existing right.

No good reason appears for denying claimant's right to make entry of 320 acres, under the facts disclosed in this record. Upon mature consideration of the question here presented, the Department is convinced that the rule laid down in the *Cate* decision is erroneous, and in so far as it conflicts with the doctrine herein announced, the same is overruled. The motion for rehearing is accordingly denied.

FREDERICK v. SNAWISE.

Decided January 28, 1914.

SILETZ INDIAN LANDS—REINSTATEMENT—ACT OF MARCH 4, 1911.

A homestead entry of record at the date of the filing of an application for reinstatement under the act of March 4, 1911, providing for the relief of homestead entrymen of Siletz Indian lands, is a bar to such reinstatement; and a pending application to make homestead entry, based upon settlement, suspended to await determination of a conflicting entry of record, is in like manner a bar to reinstatement under that act.

JONES, *First Assistant Secretary*:

April 10, 1901, Birt Frederick made homestead entry 0590, Portland, Oregon, series, for the SW. $\frac{1}{4}$, Sec. 27, T. 8 S., R. 11 W., formerly embraced in the Siletz Indian Reservation.

After hearing had upon adverse report and charges of a special agent of the General Land Office, the entry was canceled March 1, 1910, upon the ground that entryman had failed to establish and maintain residence upon the land as required by law. March 16, 1910, Clarence Higley made homestead entry 02486 for the same land but did not allege settlement thereon. April 5, 1910, Henry Snawise presented his homestead application 02529 for the land, alleging settlement thereupon October 26, 1908, and continuous residence upon the land thereafter to date of homestead application. April 26, 1910, the General Land Office directed the register and receiver to withhold disposition of the land and to advise as to the status thereof. The reason for this action was the introduction in the United States Senate of bill No. 7857 which proposed to require the issuance of patent to Birt Frederick upon his said claim. This bill did not become a law.

March 4, 1911 (36 Stat., 1356), Congress passed an act authorizing the reinstatement of canceled homestead entries within the former Siletz reservation, one of the conditions expressed in the law being that reinstatement may be made only "where at the date of the filing of such application for reinstatement no other entry is of record covering such land." Under the act last mentioned Frederick, March 25, 1911, filed application for reinstatement of the entry. This application was denied by the Commissioner of the General Land Office, which action was affirmed by this Department October 17, 1912, on the ground that there was an intervening entry of record barring reinstatement, and, further, that the evidence submitted by Frederick did not show such cultivation of the land as was contemplated and required by the applicable laws. Motion for rehearing of the latter decision was denied January 25, 1913.

July 19, 1913 [42 L. D., 244], the Secretary of the Interior considered and construed the so-called reinstatement act of March 4, 1911, and issued instructions thereunder to the Commissioner of the General Land Office. Subsequently thereto Frederick again presented his case to the Department under a motion for the exercise of supervisory authority, alleging that in the instructions of July 19, 1913, *supra*, the Department completely reversed the rulings of the Department in this and like cases and that Frederick is entitled either to a review of the original action in his case or to a reinstatement and patenting of his entry under the act of March 4, 1911.

Upon careful reconsideration of the record the Department is of the opinion that the cancellation of the entry was regular and was justified, under the laws then applicable, by the evidence submitted.

The instructions of July 19, 1913, referred to, dealt with and construed a later act, namely, the remedial or reinstatement act of March 4, 1911, which act materially modified the requirements of the exist-

ing law as to occupancy and cultivation required of entrymen upon these lands. Therefore, there is nothing in the record or in said act of 1911 which warrants this Department in vacating its previous order of cancellation.

Considering the case in connection with the reinstatement act of March 4, 1911, and departmental instructions of July 19, 1913, the Department is confronted by the fact that after the cancellation of Frederick's entry and before the order of suspension of April 26, 1910, or any other withdrawal or order of suspension, Clarence Higley made homestead entry 02486, Portland, and Henry Snawise presented his homestead application, alleging settlement and residence thereupon. Therefore, at the time of the enactment of the statute of March 4, 1911, and at the time of the presentation of Frederick's application for reinstatement there was of record a homestead entry, regularly allowed, and a homestead application, regularly presented but suspended because of prior entry of Higley pending determination between the latter and Snawise of the alleged prior rights obtained by Snawise by settlement and residence upon the land.

As already stated, the act of March 4, 1911, precluded reinstatement where there is an "entry of record" covering the land. Considering the conflicting claims of Higley and Snawise to the land, the Commissioner of the General Land Office allowed Higley to show cause why his entry should not be canceled because of conflict with the prior settlement claim of Snawise, and, upon default, after due service of notice, November 7, 1913, canceled Higley's entry deferring action on the pending homestead application of Snawise until final action should be taken by the Department upon the motion of Frederick for reinstatement.

Under the language of the act of March 4, 1911, the entry of Higley, regularly allowed so far as Frederick was concerned, and of record at the date of the filing of Frederick's application for reinstatement, constituted a statutory bar to the requested reinstatement. Its cancellation, which subsequently occurred, as related, was because of the prior rights and claims of Snawise, a matter in which Frederick was not involved. Aside from this bar to reinstatement, however, in the opinion of the Department the homestead application of Henry Snawise filed April 5, 1910, and suspended to await determination of the conflicting rights of Higley and Snawise, also constituted, under the act of March 4, 1911, a bar to the desired reinstatement.

According to the record, Snawise was a settler and resident upon the land at and after the cancellation of Frederick's entry and regularly presented his application to enter same under the homestead laws prior to Frederick's application for reinstatement. The suspension of his application could not affect his rights. He had done

all that was required of him to record his entry for the land, and, if allowed, his entry will have relation as of the time of filing his application he being at that time a prior settler upon the land.

This Department has in many cases held that a proper application, duly filed, for land subject to entry, is, so far as the rights of the applicant against other claimants is concerned, the equivalent of an entry. See departmental decision of September 18, 1913, in case of *Wagner v. Sampson*, and decisions therein cited. This is particularly applicable as between Snawise and the applicant for reinstatement, Frederick, and in the opinion of this Department the said homestead application constitutes a mandatory statutory prohibition against the allowance of Frederick's application for reinstatement.

The motion is denied, and, in the absence of other objection than that disclosed in the record now before the Department, the homestead application of Henry Snawise may proceed to entry.

COURTNEY v. HOSTETLER.

Decided January 28, 1914.

SILETZ INDIAN LANDS—REINSTATEMENT—ACT OF MARCH 4, 1911.

The instructions of July 19, 1913, concerning the reinstatement of homestead entries of Siletz Indian lands under the act of March 4, 1911, established a more liberal rule respecting occupation and cultivation, but did not contemplate any further action, in the absence of specific instructions from the Secretary, in cases closed under the rules, where reinstatement under that act was denied because of a valid intervening entry of record.

JONES, *First Assistant Secretary*:

A petition has been filed by counsel for Benjamin P. Courtney and certain other parties requesting that an order be issued vacating, recalling, and setting aside all orders, findings, or decisions issued since the issuance of the instructions of July 19, 1913 [42 L. D., 244], referring to entries sought to be reinstated under the act of March 4, 1911 (36 Stat., 1356), pertaining to lands within the former Siletz Indian reservation.

By decision of December 10, 1912, the Department affirmed the decision of the Commissioner of the General Land Office of December 11, 1911, denying the petition of Benjamin P. Courtney for the reinstatement of his homestead entry because of the intervening valid homestead entry of Henry A. Hostetler, and motion for rehearing filed by Courtney was denied March 3, 1913. Hostetler had, upon November 21, 1911, made commutation proof, and March 17, 1913, the Commissioner found his proof to be satisfactory and directed issuance of final certificate. Execution of the order of March 17, 1913, however, was suspended because of a petition filed on behalf of Courtney and

certain other Siletz homestead entrymen, the consideration of which resulted in the instructions of July 19, 1913.

Technically, the petition in the present case does not require any action, since no further order, finding, or decision has been made therein. At the oral argument before the Assistant Attorney General of this Department, however, counsel for Courtney contended that the prior rulings of this Department, to the effect that Hostetler's entry was a bar to the reinstatement of that of Courtney, were incorrect, and that the instructions of July 19, 1913, contemplated a readjudication as to that question.

The instructions of July 19, 1913, considered those departmental decisions, particularly that in the case of Conrad Boeschen (41 L. D., 309), which denied applications for reinstatement upon the ground that the entryman had not entered into actual occupation of the lands or cultivated them. The instructions pointed out that the act of March 4, 1911, did not permit of reinstatement where there was another entry of record covering such land, which provisions, it was stated, meant a valid pending entry. The conclusion of the instructions of July 19, 1913, was as follows:

I, therefore, conclude that those applications for reinstatement described in the petition, and other applications for reinstatement presented under the act of March 4, 1911, *supra*, where otherwise not barred by intervening contests or entries specified in the act, should not be denied because of the short or intermittent character of occupation or because of the limited area which the entryman may have cultivated. Departmental decision in the Boeschen case, *supra*, and other decisions, so far as inconsistent herewith, are revoked or modified, and all cases involving applications for reinstatement under the act of 1911, whether pending in this Department, before the General Land Office, or the local land office, will be adjudicated in accordance with the views herein expressed. Where an intervening entry has been finally adjudicated to be valid and a bar to reinstatement of a former canceled entry, such adjudication will not be disturbed except upon specific instructions from me.

From the above quotation it is apparent that the instructions of July 19, 1913, meant simply to lay down a more liberal rule as to the requirement of occupation and cultivation. Where an intervening entry had been held valid and a bar to reinstatement by decisions of the Department, which had become final under the rules of practice, the instructions of July 19, 1913, contemplate no further action, unless the Commissioner should be in receipt of specific instructions from the Secretary of the Interior.

Hostetler's entry has been twice held to be a valid intervening entry and a bar to the reinstatement of that of Courtney. No error is found in that finding and the present petition on behalf of Courtney is accordingly denied. The Commissioner will proceed to issue final certificate and patent upon the entry of Hostetler, in the absence of other objection, not here apparent.

ROSCOE L. WYKOFF.

Decided January 28, 1914.

FINAL PROOF—SUBSEQUENT COMPLIANCE—SUPPLEMENTAL PROOF.

Where final proof is rejected because of insufficient showing as to compliance with law, supplemental showing by *ex parte* affidavits may be accepted, without requiring new publication of notice, where the defect has since been cured and the government is satisfied of the entryman's good faith.

DEPARTMENTAL INSTRUCTIONS RECALLED AND VACATED.

Departmental instructions of August 9, 1913, in Belle L. Pennock, 42 L. D. 315, recalled and vacated.

JONES, *First Assistant Secretary*:

Roscoe L. Wykoff appealed from decision of January 29, 1913, by the Commissioner of the General Land Office rejecting the final proof submitted by him on his homestead entry, made November 18, 1908, for the NE. $\frac{1}{4}$, Sec. 27, T. 26 S., R. 10 W., N. M. M., Las Cruces, New Mexico, land district. The proof was submitted September 18, 1912, and final certificate issued.

It appeared that the entryman lived continuously upon the land from March 18, 1909, to the time of the submission of proof. He planted no crop in 1909. In 1910 and 1911 he planted about $\frac{1}{16}$ of an acre. In 1912 he had 20 acres under cultivation. The Commissioner held that the showing with reference to cultivation was not sufficient to meet the requirements of the act of June 6, 1912 (37 Stat., 123). That act requires cultivation of not less than $\frac{1}{16}$ of the area of the entry, beginning with the second year of the entry, and not less than $\frac{1}{8}$ beginning with the third year of the entry, and until final proof. Under departmental instructions of July 15, 1912, issued under said act, it was held that proof would be acceptable if cultivation of $\frac{1}{16}$ of the land for one year, and $\frac{1}{8}$ for the next year, and each succeeding year until final proof was shown, without regard to the part of the homestead period in which the cultivation of the $\frac{1}{16}$ was performed. This rule had reference to entries made prior to the said act of June 6, 1912, as was the one under present consideration.

Upon consideration of the present case, the Department, under date of October 20, 1913, addressed a letter to the claimant affording him opportunity to show the facts with reference to further residence and cultivation since the submission of final proof. He has now, in response to that invitation, submitted a duly corroborated affidavit showing that he has cultivated 20 acres of the land, that is, $\frac{1}{8}$ of the area of the entry, during the present year, 1913. He further states that since the submission of his final proof he has continued to live upon the land, with the exception of a leave of absence from December 28, 1912, to May 15, 1913.

In the case of Belle L. Pennock (42 L. D., 315), the Department under date of August 9, 1913, instructed the Commissioner of the General Land Office as follows:

Where final proof submitted under the act of June 6, 1912, upon a homestead entry made prior to that act, is rejected because of insufficient showing as to cultivation, *ex parte* affidavits as to subsequent cultivation will not be accepted; but in such case new final proof should be submitted.

The invitation to the claimant, above referred to, permitting him to make a supplemental showing, clearly contemplated action on the case, without requiring new publication of notice and in contravention of instructions above cited. It is observed that many cases are coming before the Department wherein the defect with reference to cultivation or residence is slight, and which has been cured since the offering of the proof under the published notice. It seems an undue hardship and expense to delay action and require new publication and new proof in such cases. No good reason is seen why such requirement should be made. The Department is therefore disposed to accept additional or supplemental affidavits to cure such proofs, without requiring new publication. In such cases the purpose of publication has been substantially met by publication as required by law, and the submission of proof thereunder in the formal way required, and where only some additional explanation or supplemental showing with reference to acts already performed or as to further residence or cultivation after submission of the formal proof is needed, such showing may be made by supplemental affidavit without new publication. However, this privilege will be extended only in cases where the Government is fully satisfied of entryman's good faith, and the right is reserved to require new proof in any such case where there is doubt. Accordingly, the instructions of August 9, 1913, *supra*, are hereby recalled and vacated.

As the record now shows sufficient residence and cultivation to meet the requirements of the act of June 6, 1912, and the instructions thereunder, the Commissioner's decision is vacated and the proof will be accepted in the absence of other objection.

EDWARD H. RIFE.

Decided January 28, 1914.

SOLDIERS' ADDITIONAL—ASSIGNMENT—POWER OF ATTORNEY.

Where a soldier entitled to an additional right under section 2306 of the Revised Statutes executed in blank a power of attorney to locate the right and to sell the land so located, with intent, in accordance with the practice then in vogue, to effect a transfer thereof, a subsequent attempted assignment by him of the same right to another is no bar to allowance of an appli-

cation to locate the right under the original power; but where the land department, without notice of a prior transfer, has satisfied the right by issuance of patent under a subsequent assignment by the soldier, the prior sale can not be recognized.

JONES, *First Assistant Secretary*:

July 10, 1913 [42 L. D., 219], the Department on motion for rehearing recognized the alleged assignment of William Temple, a soldier, as an equitable assignment, considered as a claim between the applicant and the soldier. The case arose upon the application of Edward H. Rife upon alleged assignments of William Temple for 40 acres, Samuel E. Harper for 40 acres, and certain other assignments, to enter under section 2306, Revised Statutes, the N. $\frac{1}{2}$ S. $\frac{1}{2}$, Sec. 7, T. 13 N., R. 101 W., Evanston, Wyoming, land district. The claim under the Harper right was denied because of prior location and patent. Rife claimed the Temple right through F. W. McReynolds, and McReynolds claimed through N. P. Chipman, who procured powers of attorney from Temple in 1875, authorizing him to locate the additional right of the soldier for 40 acres, and to sell the land to be located. The description of the land upon which the powers were to act is now contained in the powers, but it is shown satisfactorily by affidavits that the power was blank at the time of its execution as to the lands with reference to which action was to be taken thereunder, and that the description was subsequently inserted.

It was held in the case of H. B. Phillips (40 L. D., 448), and departmental decision of October 12, 1912, in this case, that such powers did not constitute evidence of assignment of the additional right. The later decision of July 10, 1913, which modified the former decision in this case, was based upon the supposition that the matter was one solely between the applicant and the soldier, and it was held that the soldier under the circumstances should be estopped from claiming further benefit from the additional right, especially in view of the additional evidence to the effect that the powers were blank as to the land, and were intended as a transfer of the right.

It now appears, however, that there is an adverse claim, based upon assignment from the soldier to Peter S. Keller, August 5, 1907, and from Keller to Walter L. Nettelhorst, August 20, 1907, and Nettelhorst has filed application to enter 40 acres of land, based upon said assignments. That application was filed prior to the application of Rife, and was pending in the files of the Department at the time the former action herein was taken, but was not considered, because the papers in the two cases were separated, and the claim of Nettelhorst was not observed.

It now becomes necessary to reconsider the case, in view of the adverse claim of Nettelhorst. The right has never been satisfied,

and the claim is still before the Department for adjudication. Therefore, it is proper to consider any evidence which may show the nature of the transaction of 1875, when the powers referred to were given, in so far as the intention of the parties, thus shown, may not be inconsistent with the written instrument. Parol evidence is admissible in explanation of a written contract to show the situation of the parties, the object in view, and the consideration. Beach on the Modern Law of Contracts, Par. 741; *Kelly v. Carter* (17 S. W., 706).

William L. Taylor was a witness to the execution of the powers given by William Temple and his wife under date of August 2, 1875. The said Taylor, under date of June 13, 1913, executed an affidavit to the effect that he had been well acquainted with the said Temple for forty-three years, and well remembered the sale by said soldier of his additional right in August, 1875; that Temple at that time executed the customary papers then used to transfer such a right and carry such a sale into effect, including a power of attorney, in blank, authorizing the sale of the land to be entered as his soldiers' additional homestead; that at that time such powers to sell were the means of transfer and the evidence of sale and purchase of such additional rights, direct assignments thereof being forbidden by the Interior Department; that affiant was fully acquainted with the terms and conditions of said sale by Temple of his additional right, and that said sale was absolute and unqualified and made in good faith for a valuable consideration; that the reason affiant knows all about said sale by said Temple is not simply because he witnessed said power to sell, but also because he, in his capacity as attorney, bought said additional right from said Temple for the firm of Chipman, Hosmer & Company, of Washington, D. C.

N. P. Chipman also swears that the additional right of Temple was purchased by his firm in 1875, through the powers of attorney above mentioned; that said transaction was a *bona fide* and absolute sale of the additional right; that no description of the land to be located was contained in the paper at the time of its execution, but was later filled in by affiant or by his direction; that the money paid the soldier for the right has never been returned. He swears that this was the customary method of securing transfers of soldiers' additional rights at that time. Numerous other affidavits have been submitted also purporting to show that this was the practice which obtained at that time in the purchase of soldiers' additional rights, because this Department did not then recognize the right of transfer.

The evidence is now sufficient to show that Temple transferred his additional right to Chipman and that Rife has by mesne conveyances become the holder of that right. Therefore, at the time Temple undertook to transfer the additional right to Keller, under which Nettelhorst claims, the said soldier had no right to convey, and this

attempted assignment offers no bar to the allowance of the application of Rife.

Counsel for Rife is also still urging his claim under the Harper right, which was rejected because the Department had issued patent to another assignee of Harper's additional right for the full area of the right. This latter feature of the case will also be considered.

Harper's original entry was for 40 acres, made August 17, 1869. On April 28, 1875, he executed powers of attorney authorizing Charles D. Gilmore to locate his additional right of entry under the laws embodied in section 2306, Revised Statutes, and to sell the land to be located, with release of all claim to the proceeds of such sale. The powers specified \$100 as the consideration therefor, allowed the right of substitution, and were made irrevocable. A description of the lands to be so located and sold now appears in the powers, but it is shown by affidavits of recent date that this description was inserted after execution of the powers.

The said Charles D. Gilmore was a member of the firm of Chipman, Hosmer & Company. N. P. Chipman, a member of this firm, went to the State of California in 1875, and located a number of soldiers' additional claims which the firm had acquired the right to locate and sell, and upon dissolution of the firm Chipman succeeded to all of the rights under such claims. On May 10, 1875, Chipman made entry in the name of Harper for the lands in California, according to the description which appears in the Harper powers. This entry was canceled March 23, 1885, because the original entry had not been perfected. This action was in accord with departmental rulings then in force.

June 11, 1898, Harper assigned his additional right under section 2306, Revised Statutes, to E. M. Robords, of Springfield, Missouri, and made affidavit that he had not theretofore in any manner disposed of such right. Robords assigned the right to Oscar Stephens who located it on 120 acres of land in Montana on September 2, 1898, and entry was made therefor and patent was issued thereon April 26, 1900.

Except some inquiry by the Sierra Lumber Company as to the status of the California lands which had been embraced in the entry of Harper, nothing more was done with reference to the old California location after the cancellation of the entry and closing of the case, until on March 13, 1900, when a firm of Washington attorneys, acting in behalf of the Sierra Lumber Company, transmitted to the General Land Office an application for reinstatement of the California entry, but as the records failed to disclose any interest of the company in the land, the attorneys were, on October 29, 1900, advised that the case could not be further considered without such showing. Under date of November 9, 1900, said attorneys transmitted to the

Commissioner an affidavit by the president of the company showing that the claim of the company was based upon the powers of attorney given by Harper to Gilmore on April 28, 1875, above mentioned, and mesne conveyances of the land to the company. The application for reinstatement was rejected by the Commissioner's letter of April 13, 1901, in the following language:

It thus appears that the alleged transferee allowed fifteen years to elapse since the cancellation of said entry No. 762, before taking any steps to bring to the notice of this office its claim of interest as a transferee of said Harper and that in the meantime the soldier has assigned his right of entry to another and that the assignment and evidence accompanying the same have been examined and the entry allowed and passed to patent.

Inasmuch as the right of additional entry of Samuel E. Harper has already been exhausted by the issue of patent for 120 acres of public land as additional to his original entry No. 6812 at Boonville, Missouri, the same having been allowed without any notice of the alleged interest of said company, as the assignee of said Harper, having been brought to the attention of this office, the application of the Sierra Lumber Company must be denied.

It is still insistently urged by counsel that the Department had sufficient notice to put it upon inquiry, which, if pursued, would have disclosed the alleged transfer of Harper's right by virtue of said powers executed by him in favor of Gilmore. This contention cannot be conceded. So far as disclosed by careful examination of the records, the first information given to the Department of the claim of assignment of the right of Harper, involved in the California location, was the communication of November 9, 1900, above referred to. Prior to that time the Department had satisfied the right by issuance of patent upon the Montana entry above described, upon an assignment appearing in all respects proper and legal. Furthermore, the said powers do not, of themselves, sufficiently evidence a transfer of the additional right, and the subsequent evidence furnished to show that said transaction was in fact a transfer cannot now be considered for the purpose of charging the Government with notice of something not disclosed by the papers themselves. On their face these papers are special. They purport to authorize the attorney in fact to locate the right upon a particular tract of land therein described. *United States ex rel. Walcott v. Ballinger* (35 Appeal Cases, D. of C., 392); *H. B. Phillips, supra*. It may be added that such powers not only utterly fail as notice of transfer of the additional right, but the very precise terms in which they are drawn make them affirmative notice that no claim of transfer of the right, as such, is made thereunder. The language used by the Department in the case of Henry Walker (25 L. D., 119), applies forcibly here:

The Department cannot, in any case where it appears that additional entry has already been allowed for lands to which the soldier was entitled, thereafter

recognize any claim by a purchaser from the soldier of his additional right, who purchased prior to the allowance of the entry, but of which purchase the Land Department had no notice when the entry was made. In all such cases it must be held that the entry once allowed, in the name of the soldier, his widow, or guardian for his minor children, in the absence of notice of a prior sale or purchase, exhausts the right. This is but simple justice, and it is the only way the government can be protected.

See also Lorenzo D. Chandler (25 L. D., 205).

Accordingly, the claim under the Harper right is denied.

The following principles of law seem applicable, with reference to the claim of Rife, to show the distinction between his rights under the Harper claim and under the Temple claim, respectively, and to sum up in a few words the entire case, to wit: Notice of prior assignment is essential to hold a debtor liable for payment made to the assignor or his subsequent assignee, and, if, without such notice, payment be made to the assignor or his subsequent assignee, the debtor is discharged from the debt; but, if before payment, the debtor be notified of the prior assignment and the debt arrested or attached in his hands, payment to the assignor or his subsequent assignee claiming adversely, will not discharge the debt.

Applying these principles to the facts in this case, Rife's claim under the Harper right must fail, while his claim under the Temple right must be recognized.

The conclusion reached in the decision of July 10, 1913, in this case is reaffirmed.

HERBERT W. COFFIN.

Decided January 29, 1914.

REPAYMENT—FEES AND COMMISSIONS ON SOLDIERS' ADDITIONAL ENTRIES.

The fees and commissions prescribed by law for homestead entries are properly chargeable upon soldiers' additional entries under sections 2306 and 2307 of the Revised Statutes; and entrymen under those sections are not entitled to repayment of the fees and commissions paid by them on the ground that such fees and commissions are not required by law.

JONES, First Assistant Secretary:

Herbert W. Coffin has appealed from the decision of the Commissioner of the General Land Office, dated May 5, 1911, denying his application for the repayment of the fees and commissions upon his soldiers' additional homestead entry for the NE. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 26, T. 58 N., R. 7 W., Duluth, Minnesota, land district.

The question presented by this appeal is: Are the fees and commissions prescribed by law for homestead entries applicable to entries made under sections 2306 and 2307, Revised Statutes? Because of the importance of the inquiry and the insistence of counsel, in

oral argument and in their briefs, the matter has received careful reconsideration notwithstanding the fact that such fees and commissions have been uniformly held to be collectible in connection with soldiers' additional entries.

Section 2306, Revised Statutes, was taken from section 2 of the act of June 8, 1872 (17 Stat., 333), which reads as follows:

That any person entitled, under the provisions of the foregoing section, to enter a homestead who may have heretofore entered, under the homestead law, a quantity of land, less than one hundred and sixty acres, shall be permitted to enter, under the provisions of this act, so much land contiguous to the tract embraced in the first entry as, when added to the quantity previously entered, shall not exceed one hundred and sixty acres.

The original homestead law of May 20, 1862 (12 Stat., 392), provided for the entry of one quarter section or a less quantity of unappropriated public lands, or 80 acres or less of double minimum lands, and the right was exhausted by the making of an entry, whatever the area embraced therein.

The first section of the act of June 8, 1872, *supra*, now section 2304, Revised Statutes, extended to soldiers and sailors of the Civil War the right to enter upon and receive patents for not more than 160 acres or one quarter section of public land, irrespective of the price of such land.

It will be seen, therefore, that the purpose of the act of June 8, 1872, both in the first and second sections thereof, was to create a special privilege and benefit under the homestead law on behalf of soldiers and sailors who had served for ninety days in the Union Army or Navy. As carried into the Revised Statutes, section 2 omitted the requirement that the land should be "contiguous to the tract embraced in the first entry," that condition having been removed by the act of March 3, 1873 (17 Stat., 605).

The history of what is now section 2306, therefore, clearly establishes its right to be incorporated among the homestead laws as compiled in the Revised Statutes.

Entries made under sections 2306 and 2307 have been uniformly held by the Department to be homestead entries, and the forms provided by the regulations for homestead entries have been employed with respect to entries made under those sections. It is true that, in certain decisions relied upon by the appellant and hereinafter referred to, soldiers' additional entries have been held not to be such homestead entries as were contemplated under the special laws considered in those decisions.

Not only are soldiers' additional entries made under the provisions of a statute originally enacted as part of a homestead law and codified as such in the Revised Statutes, not only has section 2306, Revised Statutes, been, as before stated, construed by the Department

to be a homestead law, but Congress has recognized it as such, in subsequent legislation. For example, in the act of April 23, 1904 (33 Stat., 254), providing for the opening to entry of lands in the Rosebud Reservation, and the numerous other acts of like character with reference to the opening of Indian lands, Congress provided that they should be subject to homestead entry by actual settlers only. At the time of the passage of said acts, the only homestead entries that could have been made for these Indian lands, except by actual settlers, were entries under sections 2306 and 2307. It can not be doubted that the legislative branch of the Government had in mind the fact that the opening of the reservations to unrestricted entry under the homestead law would result in a large number of soldiers' additional entries and that the several acts were purposely so worded as to prevent such a result.

Section 1 of the act of June 16, 1880 (21 Stat., 287), provided for the repayment of "fees and commissions and excess payments," collected from entrymen under section 2306 of the Revised Statutes, whose entries were subsequently canceled because fraudulent and void. While this act did not in terms authorize the collection of fees and commissions on soldiers' additional entries, it clearly recognized the fact that fees and commissions and excess payments were exacted on the making of such entries, and, in providing for repayment only in another contingency, Congress must have determined that repayment of such fees and commissions should not otherwise be made.

In the acts of May 14, 1898 (30 Stat., 409), and March 3, 1903 (32 Stat., 1028), the homestead laws were extended to Alaska. The act of 1898 provided:

That the homestead land laws of the United States and the rights incident thereto, including the right to enter surveyed or unsurveyed lands under provisions of law relating to the acquisition of title through soldiers' additional homestead rights, are hereby extended to the District of Alaska.

In the act of 1903 is a provision—

that not more than one hundred and sixty acres shall be entered in any single body by such scrip, lieu selection or soldiers' additional homestead rights.

It is argued, on behalf of the appellant, first, that, if the right under section 2306 is a homestead right, it was only necessary to provide that "the homestead land laws of the United States and the rights incident thereto" should be extended to Alaska, and, second, that the classification of soldiers' additional rights with scrip and lieu selections, in the act of 1903, shows that soldiers' additional rights are not homestead rights. The first contention of counsel is undoubtedly correct. The language of the act of 1898, however, can bear no other possible construction than that Congress therein expressly held that the right to acquire title to land under section 2306

was a right incident to the homestead land laws of the United States. It is reasonable to suppose that Congress was advised of the fact that title might be acquired under the homestead law by two methods, to wit, by residence, cultivation, and improvement, and by virtue of the rights created under sections 2306 and 2307, without residence, cultivation, or improvement. The language used in the statute, therefore, was by way of assurance, to remove any doubt that it was the purpose of the law to extend all general homestead laws to Alaska. The argument made by counsel, with reference to the language quoted from the act of 1903, is entirely met by the fact that the law stamps the right under consideration as a soldiers' additional homestead right.

In support of their contention that fees and commissions collected upon soldiers' additional entries should be repaid under the act of March 26, 1908 (35 Stat., 48), for the reason that such fees and commissions are not required by law, counsel call attention to many departmental decisions, wherein it was broadly stated that soldiers' additional entries are not, in fact, homestead entries. Among these cases, are Cornelius J. McNamara (33 L. D., 520), William M. Wooldridge (33 L. D., 525), Thomas A. Cummins (39 L. D., 93), and Jacob Jenne (40 L. D., 408). The language used in these cases must be construed in connection with the issue presented for departmental consideration. While unfortunately capable of a wider interpretation than the facts of the cases warranted, the decisions alluded to must be limited, in their application, to the propositions that soldiers' additional entries can not be made for lands subject to appropriation by actual settlers only, and that, when it shall clearly appear that such was the purpose of Congress, the term "homestead entry" will be interpreted to mean an entry accompanied by residence, cultivation, and improvement.

The question presented in this case was undoubtedly born of the unnecessarily broad language employed by the Department in the line of cases above referred to, but for which, it is believed, it would have never occurred to any one to doubt that a soldiers' additional homestead entry was a homestead entry.

The decision appealed from is affirmed.

BERTRAM C. NOBLE.

Decided January 29, 1914.

HOMESTEAD ENTRY—RESIDENCE—DEATH OF ENTRYMAN—CULTIVATION BY HEIRS.

In view of the long-continued and uniform practice of the land department allowing a homestead entryman six months from date of entry within which to establish residence, and the fact that such practice had many

times received legislative recognition, and had become a rule of property, the departmental decision in *Fisher v. Heirs of Rule*, 42 L. D., 62, 64, departing from such long-established practice, and also departing from the well-established and uniform ruling that upon the death of a homestead entryman his heirs are not required to reside upon the land, but may complete title by cultivation for a sufficient time to make up the five-year period, is overruled.

JONES, First Assistant Secretary:

Bertram C. Noble has appealed from decision of January 25, 1913, by the Commissioner of the General Land Office, holding for cancellation homestead entry made by him July 24, 1912, for the N. $\frac{1}{2}$ SW. $\frac{1}{4}$, SW. $\frac{1}{4}$ NW. $\frac{1}{4}$, NW. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 10, T. 50 N., R. 65 W., 6th P. M., Sundance, Wyoming, land district. November 25, 1908, Sarah E. Mitchell made homestead entry for the W. $\frac{1}{2}$ NE. $\frac{1}{4}$, NE. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 15, SW. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 10, in the township above referred to. She died less than two weeks from date of entry, and, so far as shown, she never established residence on the land. It appears that Noble is the son and only heir of the said Mitchell, and that he cultivated the land after the death of the entrywoman, and, about September 1, 1912, established residence thereon and began the construction of a house which he has since completed, and has continued to reside on the land with his family. His entry was made under section 3 of the act of February 19, 1909 (35 Stat., 639), known as the enlarged homestead act, and was made as additional to the entry theretofore made by his mother. He relies upon the decision of the Department in the case of the Heirs of Susan A. Davis (40 L. D., 573), wherein it was held:

Upon the death of a homestead entrywoman prior to completion of her entry her heirs are entitled to make additional entry of contiguous land under section 3 of the enlarged homestead act of February 19, 1909, provided they reside upon and cultivate the original entry.

The Commissioner held that as it was not shown that Noble was a settler on the land embraced in the original entry, he did not come within the purview of said decision, and was not entitled to make the additional entry based upon the original entry. Noble has since filed a showing to the effect that he has placed valuable improvements upon the original entry and that he established residence, as above stated, about September 1, 1912, which has since been maintained. This showing would qualify him to maintain the additional entry under the decision above cited, but there is a further question requiring consideration.

It was held in the case of *Fisher v. Heirs of Rule* (42 L. D., 62, 64):

The homestead law contemplates that its benefits shall be confined to actual settlers and their statutory successors; and where an entryman dies without having established residence, the entry thereupon terminates and his heirs succeed to no rights under the entry.

If this be the correct rule, then Noble cannot be allowed to perfect said original entry nor to maintain the additional entry, without residence thereon. He would be compelled to reside upon the additional entry, or else amend same to include land embraced in the original entry and perfect title not as heir of the former entry-woman, but in his own right. However, the Department is convinced that the rule announced in the Fisher case was unwarranted. It overruled the well-established practice of this Department which had prevailed for decades.

Section 2291, Revised Statutes, provided that in case of the death of a homestead entryman his widow, or, if there be no widow, his heirs may complete title by showing the necessary residence or cultivation. It has been uniformly held that upon death of the entryman the heirs are not required to reside upon the land, but may complete title by cultivation for the time sufficient to make up the five years period. *Stewart v. Jacobs* (1 L. D., 636); *Swanson v. Wisely's Heirs* (9 L. D., 31); *Brown v. Naylor* (14 L. D., 141); General Circular, January 25, 1904, page 15.

It has also been a well-established and uniform rule that a homestead entryman is allowed six months from date of entry within which to establish residence. *McLeoud v. Weade* (2 L. D., 145); *Campbell v. Moore* (3 L. D., 462); *Brown v. Naylor* (14 L. D., 141); *Paxton v. Owen* (18 L. D., 540); *Allen Clark* (35 L. D., 317); *Vening v. Colwell* (35 L. D., 356); General Circular, January 25, 1904, page 14.

It is to be observed also that these decisions cover not only a long period of time, but were rendered both before and after the decision of the Supreme Court in *Moss v. Dowman* (176 U. S., 413), which was referred to and relied upon in the decision of July 19, 1913, denying motion for rehearing in *Fisher v. Heirs of Rule*. So that, without regard to whether the ruling of the court in *Moss v. Dowman* was or was not correctly applied in the Fisher case, it is manifest that for many years it had been differently construed and applied by this Department and such departmental construction has in effect become a rule of property.

And, furthermore, there have been a number of legislative provisions enacted by Congress since the date of the Moss-Dowman decision pointedly recognizing this departmental rule, and extending the time still further for the establishment of residence in certain areas and at certain seasons. In these enactments the six months' period was referred to as "the period in which they are required by law to establish residence." Joint resolution February 2, 1907 (34 Stat., 1421); Act January 28, 1910 (36 Stat., 189); Act February 13, 1911 (36 Stat., 903).

The law of June 6, 1912 (37 Stat., 123), specifically grants six months to homestead entrymen in all cases for the establishment of residence, and this provision was enacted at the suggestion of this Department because it desired some clear legislative authority for what it deemed a wise and needful rule. So that we now have clear statutory authority for the rule which had for years rested upon regulations and practice of the Department in accordance with its view of the intent and purpose of the homestead laws.

Although still inclined to the opinion that the establishment of the rule was the result of, to say the least, a very doubtful construction of the homestead law, yet, in view of the long existence of this rule, recognized by Congress, and which remained undisturbed until the Department of its own volition revoked it, I am convinced that the propriety of the rule should not have been considered upon its merits as an original proposition, but should have been recognized as an established practice of general recognition, and as having force in the nature of a rule of property. This is especially true considering that the act of June 6, 1912, *supra*, provided such a rule, and any change by the Department of its prior rule could only have retroactive application and affect entries theretofore allowed. After full consideration of all of these matters, I am of opinion that the revocation of the rule was ill-advised, especially as applied retroactively to the disadvantage of persons acting thereunder.

The decision in the Fisher case, *supra*, is hereby overruled, and any decisions not in harmony with the views above expressed will no longer be followed.

For the reasons herein stated, the entry under consideration will be allowed to stand, and the decision appealed from is accordingly reversed.

SOUTHERN OREGON RY. CO.

Decided January 29, 1914.

RIGHT OF WAY—RAILROADS—PROFILE MAPS.

The requirement in the regulations of May 21, 1909, under the act of March 3, 1875, that the map required by that act, showing the profile of the road, shall be accompanied by a certificate that the survey represented thereon has been adopted by the company as the definite location of its road, has no application where the route of the road is wholly over unsurveyed lands; the filing of profiles showing rights of way over unsurveyed lands, for general information, being governed by paragraph 14 of said regulations, which does not require such certificate.

RIGHT OF WAY OVER UNSURVEYED LANDS—PROFILE MAPS.

Profiles of rights of way over unsurveyed lands should conform as nearly as practicable with the requirements governing profiles of routes over surveyed lands.

JONES, *First Assistant Secretary*:

The Southern Oregon Railway Company has appealed from the decision of the Commissioner of the General Land Office, dated May 22, 1911, refusing to accept for filing a profile of its line of road over the Siskiyou National Forest.

As grounds for his action, the Commissioner held:

The regulations require that a certificate attached to a map filed under the above act (March 3, 1875) shall state that the survey represented thereon has been adopted by the company filing it as a definite location of its road, and it is on the approval of such a map that the company acquires right of way in advance of construction. As the map in question does not comply with the requirements of the regulations in this respect, it is now rejected.

The regulations referred to by the Commissioner relate to the profile required by section 4 of the act of March 3, 1875, to be filed when the route of the road is over surveyed land. The land affected by the profile under consideration is unsurveyed and the regulations quoted do not, therefore, apply.

Paragraph 14 of the regulations of May 21, 1909 (37 L. D., 787, 791), permit the filing of maps of lines of route or plats of station grounds lying wholly on unsurveyed lands, for general information. The profile under consideration was tendered for filing under said paragraph 14, and should have been accepted.

The filing of profiles showing rights of way of railroads actually constructed or to be constructed over unsurveyed lands, while not required by law, is obviously a wise and proper act from the standpoint of good administration. The value of such a profile will depend upon its accuracy and the applicant for the right of way should therefore endeavor to conform the profile as nearly as may be with the requirements with reference to profiles of routes over surveyed public lands.

The decision appealed from is reversed and the profile will be filed for such information as it may convey.

EAST TINTIC CONSOLIDATED MINING CO.

Decided January 29, 1914.

LODE MINING CLAIM—DISCOVERY.

A discovery of ore in commercial quantities is not necessary to a valid lode location; but it is sufficient if a vein be found bearing mineral in such quantity and of such quality as would justify a person of ordinary prudence in making further expenditures of money and labor with a reasonable prospect of success in developing a valuable mine.

EXPENDITURES AS BASIS FOR PATENT—DRILL HOLES.

Expenditures for drill holes for the purpose of prospecting and securing data upon which further development of a group of lode mining claims held in

common may be based are available toward meeting the statutory provision requiring an expenditure of \$500 as a basis for patent as to all of the claims of the group situated in close proximity to such common improvement.

PRIOR DEPARTMENTAL DECISION VACATED.

Departmental decision herein of September 5, 1912, 41 L. D., 255, vacated.

JONES, *First Assistant Secretary*:

This is a petition, filed by the East Tintic Consolidated Mining Company, praying the exercise of the supervisory authority of the Secretary in the matter of its mineral entry (now canceled), 03220, for the Great Eastern No. 1 and thirteen other lode mining claims, surveys 5740 and 5883, situate in the Utah (unorganized) mining district, Salt Lake City land district, Utah.

This entry was allowed, June 17, 1910, and embraced the Great Eastern Nos. 1, 2, 3, 4, 5, 6 and 7, the Sunbeam Nos. 1, 2, and 3, Great Irish Change, Snow Bird, September and September Fraction claims. Upon considering the record, the Commissioner, by decision of March 20, 1911, held that two Keystone drill holes, situated upon the Great Eastern No. 6, an undivided one-seventh of whose total cost, given as \$3,527, was sought to be accredited, in satisfaction of the statutory expenditure of \$500, to that and the September, September Fraction, Great Irish Change and Great Eastern Nos. 1, 2, and 7 claims, were not available as common improvements for their benefit, and directed that the claimant be notified that it would be required to show other and sufficient expenditures upon or for the benefit of the September, September Fraction, and Great Eastern Nos. 1, 2, and 7 claims, the other two of said seven claims having available individual improvements sufficient in value to satisfy the requirements of the law. The Commissioner also found that the showing as to discovery upon each of the claims embraced in the entry was insufficient to satisfy the requirements of paragraph 41 of the mining regulations and ruled the claimant to make a further and satisfactory showing in this regard.

From the action of the Commissioner holding the drill holes to be unacceptable as a common improvement for the benefit of the claims to which their value was sought to be accredited, the claimant appealed. It also filed an affidavit, by the mineral surveyor who surveyed the claims, with a view to showing a discovery upon each of the claims, as required by said paragraph 41 of the mining regulations. Upon considering the case, the Department, by decision of September 11, 1911 (40 L. D., 271), found and held that the record failed to show a sufficient discovery upon any of the claims embraced in the entry and, for that reason and without regard to the objections raised as to the availability of the drill holes as common improvements, directed that the entry in its entirety be canceled.

A motion for rehearing was filed by the claimant and therewith was submitted a somewhat elaborate showing, consisting of affidavit by J. Fewson Smith, a mining engineer, and Benjamin F. Tibby, a mineral surveyor, who surveyed the claims, said affidavits having been executed, respectively, November 4 and November 10, 1911. Upon further consideration of the case, the Department, by decision of September 5, 1912 (41 L. D., 255), found and held that the later showing, considered in connection with the previous decision, failed to establish the existence upon any of the claims of such a discovery as could be accepted as fulfilling the requirements of the law. The previous decision of the Department was, accordingly, adhered to and the motion denied. The entry was canceled September 30, 1912.

Upon further consideration after elaborate reargument of all the questions involved, in connection with the petition for the exercise of supervisory authority of the Secretary, of the showing filed by the claimant in support of its motion for rehearing, the Department is convinced that such showing sufficiently and satisfactorily establishes the existence upon each of the claims embraced in the entry of a discovery of a lode or vein of mineral-bearing rock in place, and that the same should have been and may now be held to afford a proper basis for a mining location. It is true that such veins at the point of discovery do not contain mineral in commercial quantities, but the Department did not, in its decision of September 11, 1911, *supra*, hold or intend to hold that ore in commercial quantities must be discovered before a valid location could be made.

In *Castle v. Womble* (19 L. D., 455), decided nearly twenty years ago, the following general rule was laid down:

A mineral discovery, sufficient to warrant the location of a mining claim, may be regarded as proven, where mineral is found, and the evidence shows that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

In the later case of *Henderson et al. v. Fulton* (35 L. D., 652), decided January 29, 1907, there is an exhaustive review of the history of the mining laws and the decisions thereunder, departmental, State, and Federal, and the following propositions held to be fairly deducible therefrom:

(1) That to determine whether lands containing a given mineral deposit are of the class subject to location and patent under the law applicable to vein or lode claims, resort is to be had to the language of the statute, rather than to definitions of the terms "vein," "lode," and "ledge" given by geologists from a scientific viewpoint.

(2) That the statute is to be construed in the light of the prevailing and commonly known use of the terms "vein," and "lode," as defined by miners—the result of practical experience in mining, so as to avoid any limitation in

the application of the law which a scientific definition of the terms might impose, and as well in the light of the general purpose and policy which Congress had in view, namely, the protection of *bona fide* locators of the mineral lands of the United States, and the development of the mineral resources of the country. The definitions by the courts are not the definitions of geologists; and the terms are to be considered as used in the signification which they convey to the practical miner, and not in the sense generally used by the scientific man.

In Jefferson-Montana Copper Mines Company (41 L. D., 320), decided September 5, 1912, after quoting the above given passages from *Castle v. Womble* and *Henderson et al. v. Fulton*, together with excerpts of similar tenor from Judge Hawley's decision in *Book v. Justice Mining Company* (58 Fed., 106), and the Ninth Circuit Court of Appeals in *Shoshone Mining Company v. Rutter* (87 Fed., 801), it was said:

After a careful consideration of the statute and the decisions thereunder, it is apparent that the following elements are necessary to constitute a valid discovery upon a lode mining claim:

1. There must be vein or lode of quartz or other rock in place;
2. The quartz or other rock in place must carry gold or some other valuable mineral deposit;
3. The two preceding elements, when taken together, must be such as to warrant a prudent man in the expenditure of his time and money in the effort to develop a valuable mine.

It is clear that many factors enter into the third element: The size of the vein, as far as disclosed, the quality and quantity of mineral it carries; its proximity to working mines and location in an established mining district, the geological conditions, the fact that similar veins in the particular locality have been explored with success, and other like facts, would all be considered by a prudent man in determining whether the vein or lode he has discovered warrants a further expenditure or not.

Tested by this rule and accepting as true the showing made by the claimant, there can be no question as to the sufficiency of the discovery upon each of the claims. The decision of the Department of September 5, 1912, on rehearing, is accordingly vacated.

This presents for consideration the Commissioner's objection as to the availability and acceptability of the drill holes situated on the Great Eastern No. 6 location as a common improvement for the benefit of that and the six other locations to which the value thereof is sought to be accredited.

It is contended by the claimant that the expenditures for these drill holes, which are twenty feet apart and driven in solid rock to a depth of 180 and 235 feet at a cost of \$1,530 and \$1,997 (total \$3,527), respectively, are good and sufficient patent expenditures and available for the common benefit of said seven claims, the good faith of the claimant and the advisability and reasonableness of the development plan, of which the drill holes are alleged to be a part,

having been shown. The question as to the availability of drill holes as patent expenditures, with respect to placer locations, has been considered by the Department in the unreported decisions of April 11, 1905, in *Vance v. Dennis*, and April 11, 1907, in *Vance v. Calaveras Gold Dredging Company*, and, in both decisions, held to be properly accreditable to such claims. In the case of *C. K. McCornick et al.* (40 L. D., 498), it was held, after a somewhat elaborate review of the decisions of the courts and the Department, that the expenditures made upon a drill hole, if placed upon a lode mining claim in good faith with a view to prospecting such claim or in order to secure data upon which further development work might be performed, are available toward meeting the statutory provision requiring an expenditure of \$500 as a basis for patent to such claim.

In this case, numerous affidavits were presented by the claimant with a view to showing the purpose of the drill holes sunk on the land and their efficiency as a means of prospecting and developing the ground. Among said affidavits is one by J. C. Jensen, a mining superintendent and manager of mines, who had charge of the development of the claims here involved. Among other things, he avers:

The work was done in good faith, to the best of our ability and knowledge, according to the circumstances, in fairness to our stockholders and the mining industry. These drill holes were made for the purpose of and do tend to the prospecting and development of the seven claims to which they have been applied. The information gained from them and other work that has been done and may be done in the future, will assist us and is absolutely necessary in the determination and location of our permanent workings in the future, whether shafts or tunnels. . . . The expenditure of the \$3,520 in driving the two drill holes as placed, has given more information and tended to the greater development of the claims to which they are sought to be applied than would the expenditure of \$500, required by the statute, on each of the seven claims individually, whether in shaft, drill, or drift work. . . . One of the chief reasons for driving these drill holes was to supplement our knowledge of the geology of these claims, and to enable us to more intelligently and more judiciously locate our permanent workings for these seven claims—a matter of first importance in successful mining.

In his return of improvements, the United States Mineral Surveyor reports as follows concerning these drill holes:

These improvements, in the nature of vertical drill holes made with a Keystone drill, have been sunk for the purpose of prospecting the earth for valuable minerals. The economic ore bearing members of the district in which these claims lie are of limestone which at certain points, principally in the vicinity of the producing mines but also a short distance to the east of these claims, outcrop at the surface. The limestone is, within the area embraced by these claims, covered by a surface flow of rhyolite of undetermined depth and at no place so far as known does the limestone appear at the surface. The ore bodies are irregular in their mode of occurrence, being found as replacement deposits in the limestone and even where the limestone is exposed there is very often no surface indication as to the position of the ore bodies. The prospecting of

these claims by drill holes is a conservative and recognized method of prospecting as is shown by the policy followed in the great low grade copper deposits of the United States as well as in the lead and zinc districts of Missouri and elsewhere. The penetration of the rhyolite capping in order to determine the position and depth of the limestone below the surface and the possibility of tapping ore bodies represents a sane and economical method of mining development within this area. The seven claims which are in the immediate vicinity of these drill holes are prospected and improved by reason of this development.

It appears that these holes, which were twenty feet apart, were sunk at points not exceeding 500 feet from any of the claims to which their value is sought to be applied. The Department is of opinion, upon the showing made, that the reasons stated in the decision in *C. K. McCornick et al., supra*, permitting drill holes to be accredited to a mining claim as individual improvements, applies equally to a case such as this where credit is sought for improvements of that character as common to claims situated in close proximity to such improvements as are those here in question. The Commissioner's decision of March 20, 1911, declining to accept said drill holes as common improvements for the benefit of the seven claims to which their value is sought to be applied is, accordingly, reversed and the value thereof held to be properly creditable to said claims in satisfaction of the statutory requirements as to expenditures for their benefit.

A motion to reinstate the entry accompanies the petition. In view of the foregoing, the entry will be reinstated, in the absence of valid and subsisting adverse claims to the area embraced therein initiated since the cancellation of the entry and, if the proceedings be found to be in other respects regular, passed to patent.

CARRIE RADCLIFFE RENZE.

Decided January 29, 1914.

INDIAN ALLOTMENT—TRUST PATENT—ACT OF APRIL 23, 1904.

In instances where the Secretary of the Interior may, in the interest of an Indian allottee, permit him "to take another allotment," under authority of the act of April 23, 1904, he may cancel the trust patent issued upon the first allotment, without specific authority of Congress, notwithstanding such allotment may not have been erroneously made and notwithstanding there may have been no mistake in the description of the land inserted in the patent.

RELINQUISHMENT OF ALLOTMENT—SECOND ALLOTMENT.

Where the land embraced in an allotment to an Indian minor under section 4 of the act of February 8, 1887, upon selection made for the benefit of the minor, and for which trust patent has issued, is so rough, rocky, and hilly as to be practically worthless for any purpose, the Secretary of the

Interior, under authority of the act of April 23, 1904, may, upon the allottee becoming of age, accept a relinquishment of the allotment, cancel the trust patent, and permit the allottee to take another allotment for other land.

JONES, First Assistant Secretary:

The Department has received your [Commissioner of General Land Office] letter of January 7, 1914, transmitting a relinquishment by Mrs. Carrie Radcliffe Renze, formerly Carrie Radcliffe, of her allotment No. 135, together with her application for a new allotment to cover another tract.

October 21, 1891, Sarah Radcliffe applied to have allotted to her minor daughter, Carrie Radcliffe, a member of the Wintu Tribe or Band of Indians, the SW. $\frac{1}{4}$ of Sec. 22, T. 35 N., R. 4 W., Redding series, under the provisions of the fourth section of the act of February 8, 1887 (24 Stat., 388), as amended by the act of February 28, 1891 (26 Stat., 794). Trust patent was issued to the daughter upon said tract August 7, 1893.

The reasons assigned by Mrs. Renze for wishing a new allotment are that the land embraced in her present allotment is so very rough, rocky and hilly that she can make no use of it; that it is not even suitable for grazing purposes; that she was only two years of age when the land was selected for her by her mother and that since growing up, having examined the same, she considers it is absolutely worthless.

Your office recommends that the trust patent covering the tract above described, issued in the name of Carrie Radcliffe, be canceled; that her application for the NW. $\frac{1}{4}$ of Sec. 10, T. 34 N., R. 4 W., Sacramento series, be approved, and that your office be authorized to issue new trust patent in the name of Carrie Radcliffe Renze for said land under the provisions of the act of April 23, 1904 (33 Stat., 297).

In section 2 of the act of October 19, 1888 (25 Stat., 612), the Secretary of the Interior is authorized, in his discretion, whenever he shall consider it to be for the best interests of an Indian to permit him to relinquish his patent for cancellation and take other land in lieu of that covered by the relinquished patent.

It is also provided in the act of March 3, 1909 (35 Stat., 781, 784), that if any Indian has received an allotment embracing lands unsuitable for allotment purposes, such allotment may be canceled and other lands allotted to him upon the same terms and conditions and with the same restrictions as the original allotment.

But these acts refer to the surrender of allotments made on reservation lands and do not cover allotments made to Indians on the public domain under the fourth section of the act of 1887.

The act of January 26, 1895 (28 Stat., 641), authorizes the Secretary of the Interior, among other things, to cancel conditional or trust patent issued to an Indian by mistake or where it erroneously described the lands intended to be conveyed, "whenever in his opinion the same ought to be canceled for error in the issue thereof or *for the best interests of the Indian.*"

The act of April 23, 1904 (33 Stat., 297), amends and supersedes said act of January 26, 1895. It is comprehensive legislation and provides in the body of the act that the Secretary of the Interior may rectify and correct mistakes in cases where "a double allotment of land" had been made to an Indian or where there has been an erroneous description of the land inserted in the patent, and may cancel any patent which may have been so erroneously and wrongfully issued to an Indian allottee "whenever in his opinion the same ought to be canceled for error in the issue thereof." That act contains the following proviso:

That no conditional patent that shall have heretofore or that may hereafter be executed in favor of any Indian allottee, excepting in cases hereinbefore authorized, and excepting in cases where the conditional patent *is relinquished by the patentee or his heirs to take another allotment*, shall be subject to cancellation without authority of Congress.

It will be observed from the foregoing the body of this act specifies two classes of cases only where the Secretary of the Interior may correct a mistake in the issuance of and cancel a patent upon an Indian allotment, (1) where the allotment was wrongfully or erroneously made, and (2) where a mistake has been made in the description of the land inserted in the patent. The language of the proviso above quoted would seem to establish a still further class of cases in which the Secretary of the Interior is authorized to act—namely, where the patent is relinquished by the patentee or his heirs to take another allotment. While the office of a proviso is ordinarily to limit something which has gone before and which appears in the body of the statute, the letter of the proviso here in question seems to authorize the conclusion that it refers not only to the two kinds of cases mentioned in the body of the statute but that it establishes another and additional kind of case wherein the jurisdiction of the Secretary of the Interior may be invoked. Many matters of affirmative legislation regarding Indians have from time to time been embodied in provisos. There would seem as much reason for allowing such cancellation where the allotment was taken on the public domain as where taken in a reservation if for the best interests of the Indian. Thus construed the last above-cited act warrants the conclusion that in instances where the Secretary may in the interest of the Indian allottee permit him to relinquish "to take another allotment," he may cancel the patent without specific authority of Congress not-

withstanding such allotment may not have been erroneously made and notwithstanding there may have been no mistake in the description of the land inserted in the patent.

As it appears that the relinquishment in question was made for the purpose of taking another allotment, and it being for the best interests of this Indian to accept the relinquishment, the recommendations of your office herein are affirmed. The relinquishment of Mrs. Carrie Radcliffe Renze of her original allotment should be attached to the trust patent issued to her thereon and appropriate record made thereof in your office.

SALE OF KIOWA, COMANCHE, APACHE, AND WICHITA LANDS.

INSTRUCTIONS.

DEPARTMENT OF THE INTERIOR,

Washington, January 31, 1914.

The COMMISSIONER OF THE GENERAL LAND OFFICE.

SIR: The Department has considered your letter of January 20, 1914, in which it is recommended that paragraph 3 of departmental regulations of November 3, 1913 [42 L. D., 604], under the act of June 30, 1913 (38 Stat., 77, 92), be revoked. You express the opinion that, under said paragraph, it would be possible for either a preference-right claimant or a purchaser at the sale to make default and thereafter buy the land at \$1.25 per acre.

Paragraph 3 refers only to lands offered for sale and not sold; and as you report that all of the lands scheduled for sale under said departmental regulations were sold, the paragraph has no application whatever.

Under the authority vested in the Department by said act of June 30, 1913, the following additional regulation is adopted to meet the contingency to which you have directed my attention:

In case of default by a preference-right claimant in the payment of the appraised price or by a purchaser of the purchase price of any tract of the Kiowa, Comanche, Apache, or Wichita lands scheduled for sale under the regulations of November 3, 1913, such tract shall thereafter be subject to purchase at private sale for a sum equal to the highest bid therefor at the public sale.

Respectfully,

A. A. JONES,
First Assistant Secretary.

**ALLOTMENTS TO INDIANS AND ESKIMOS IN ALASKA—ACT OF
MAY 17, 1906.****CIRCULAR.**

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., January 31, 1914.

REGISTERS, RECEIVERS, AND UNITED STATES SURVEYOR GENERAL,
Public Land Service, Alaska.

(This circular supersedes that of April 29, 1909, 37 L. D., 615.)

SIRS: The act of May 17, 1906 (34 Stat., 197), provides:

That the Secretary of the Interior is hereby authorized and empowered, in his discretion and under such rules as he may prescribe, to allot not to exceed one hundred and sixty acres of nonmineral land in the District of Alaska to any Indian or Eskimo of full or mixed blood who resides in and is a native of said district, and who is the head of a family or is twenty-one years of age; and the land so allotted shall be deemed the homestead of the allottee and his heirs in perpetuity and shall be inalienable and nontaxable until otherwise provided by Congress. Any person qualified for an allotment as aforesaid shall have the preference right to secure by allotment the nonmineral land occupied by him, not exceeding one hundred and sixty acres.

1. This proceeding will be initiated by a written application to the register and receiver, signed by the applicant and describing the approximate location and extent of the tract applied for. If the signature is by mark, the same must be witnessed by two persons.

2. The applicant must also file his or her affidavit of his qualification under the statute, and if claiming under the preference-right clause, the date of the beginning of his occupancy must be given and its continuous nature stated.

3. This must be corroborated by an affidavit of two witnesses, who may be Indians or Eskimos. A nonmineral affidavit must also be filed by the applicant, sworn to only on personal knowledge and not on information and belief.

4. The affidavits may be sworn to before any officer authorized to administer oaths and having a seal. If the application is made by a woman, she must state in her affidavit whether she is single or married, and if married must show what constitutes her the head of a family, as it is only in exceptional cases that a married woman is entitled to an allotment under this act.

5. The register and receiver will number applications for allotments made under this act, in accordance with the circular of June 10, 1908 (37 L. D., 46), and retain them in their files. All such applications should be noted on the schedules forwarded at the end of the month, as required by said circular, noting in the "Remarks" column the date of transmittal.

6. You will assist the applicants in any feasible manner, and as the act makes no provision for any fees for filing you will make no charge in any of these cases.

7. In order to administer the provisions of said act and of previous regulations thereunder with due regard to efficiency and precision of land boundaries, and with a view to the more complete observance of the rights guaranteed to Alaskan natives by the same, it is now further required that allotments taken by natives shall be subject to the same requirements as to methods of survey, cardinal courses, and permanent marking of boundaries as tracts surveyed under other United States laws in Alaska.

8. The filing of an allotment claim, with the papers prescribed in sections 2 and 3 above, confers a right of settlement and occupation, subject to correction of boundary found necessary by reason of incomplete or erroneous original description allowed under section 1. This refers to claims already initiated, as well as those filed under this circular. But allotments can not be secured on tracts found to be reserved by the United States as shore tracts, under act of March 3, 1903 (32 Stat., 1028). As the act seems to intend that allotments may be taken for unsurveyed lands, as accurate a description, as possible by metes and bounds and natural objects of the land applied for will be required in the application.

9. The act of May 17, 1906, authorized and empowered the Secretary of the Interior "to allot not to exceed 160 acres, under such rules as he may prescribe." An indispensable feature of every allotment is the definite boundary and record thereof. In the United States, allotments to Indians have been surveyed at the cost of the Government; and those authorized for Alaska appear subject to the same condition.

10. The register and receiver shall forward to the surveyor general a copy of the original application and affidavit of the allottee, certified as such, which shall be deemed also an application for survey of the claim, and shall receive his consideration and action; and if found by him to justify such action he will notify the supervisor of surveys for his district of the necessity for a survey thereof.

11. Such surveys may be made by authorized surveyors under salary, designated by the surveyor general or supervisor. The errors of a preliminary survey or description will be corrected in the final one, and before executing the latter the surveyor shall satisfy himself as to the good faith and qualifications of the allottee at that time, to hold the same, and shall report thereon in his returns; and if the native be found no longer entitled under said law, the surveyor general will notify the register and receiver, who will then require the allottee to show cause within 60 days why the allotment should not be canceled by the department.

12. The returns of allotment surveys will be transmitted to the General Land Office for consideration before final approval, together with a copy of the original application for allotment.

13. The applications, when found correct in form, without valid adverse claims, and completed by proper survey, will be listed on a schedule which will be submitted to the department for approval; and thereafter, as no provision is made for issuing patents, the same will be kept on file in this office; and a certificate of the approval of the allotment will be issued by this office and transmitted to the register and receiver for immediate delivery to the allottee.

14. Hereafter the register and receiver will require each person applying to enter or in any manner acquire title to any lands in your district, under any law of the United States, and each person who applies for the right to cut timber, to file a corroborated affidavit to the fact that none of the lands covered by his application are embraced in any pending application for an allotment under this act, or in any pending allotment, and that no part of such lands is in the bona-fide legal possession of or is occupied by any Indian or native except the applicant.

Appropriate forms for the use of the applicants under said act have been prepared and are herewith transmitted.

Very respectfully,

CLAY TALLMAN,
Commissioner.

Approved, January 31, 1914.

ANDRIEUS A. JONES,
First Assistant Secretary.

HARRY LIPPMAN.

Instructions, January 31, 1914.

ABANDONED MILITARY RESERVATION—PUBLIC SALE—ALIEN.

Persons who have declared their intention to become citizens of the United States may purchase public lands offered at public sale in all cases where the right of purchase is not limited by statute to native-born or naturalized citizens.

JONES, *First Assistant Secretary:*

I herewith return, without my approval, the letter prepared in your [Commissioner of General Land Office] bureau, directed to the register and receiver at Los Angeles, California, waiving the requirement of a showing of naturalization in the matter of the application of Harry Lippman, 019856, for lot 8, Sec. 19, T. 10 N., R. 4 E., S. B. M. It appears that Lippman, an alien who has declared his

intention to become a citizen, was the highest bidder for said tract at the public sale thereof, on August 15, 1913, under the provisions of the act of July 5, 1884 (23 Stat., 103).

No reason is suggested for the action proposed that would not apply, with equal force, to the purchaser at any public sale. The requirement that a purchaser, under the act of July 5, 1884, *supra*, be a native born or naturalized citizen is in harmony with the regulations of December 18, 1912 (41 L. D., 443), governing the sale of isolated tracts.

In the case of Andrew Rafshol (38 L. D., 84), the Department, after calling attention to the fact that one who has declared his intention to become a citizen may purchase public land under the mining, timber and stone, and homestead laws, held that public policy did not require a greater restriction with reference to the sale of isolated tracts. Pursuant to the directions of the Rafshol decision, the regulations governing the sales of isolated tracts were amended (38 L. D., 255, 256) and the amendment was carried into the regulations of June 6 and 7, 1910 (39 L. D., 10, 18), and of January 19, 1912 (40 L. D., 363, 369); but the regulations of December 18, 1912 (41 L. D., 443), permitted the purchase of an isolated tract only by citizens of the United States.

The Department is of the opinion that the rule announced in the Rafshol case was a proper one and that it should be applied to all purchases at public sale where the right to purchase is not limited by the statute to native born or naturalized citizens. You are, therefore, directed to prepare and submit, for departmental approval, regulations in harmony with this view, and to so adjudicate all pending cases.

ABSALOM A. LUSK.

Decided January 17, 1914.

KINKAID HOMESTEAD—SECOND OR ADDITIONAL ENTRY—ACT OF AUGUST 24, 1912.

Where one who had made entry under the Kinkaid Act and received patent thereon was permitted, prior to August 24, 1912, to make another entry under that act for an amount of land which added to the area embraced in his first entry aggregated 640 acres, such second or additional entry, although not authorized by law at the time made, was validated by the act of August 24, 1912.

JONES, *First Assistant Secretary:*

Absalom A. Lusk has appealed from decision of March 12, 1913, by the Commissioner of the General Land Office, holding for cancel-

lation his homestead entry made August 28, 1911, for the W. $\frac{1}{2}$ SE. $\frac{1}{4}$, SW. $\frac{1}{4}$, W. $\frac{1}{2}$ NE. $\frac{1}{4}$, E. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 32, T. 18 N., R. 33 W., 6th P. M., North Platte, Nebraska, land district, aggregating 400 acres.

Said entry was made under the act of April 28, 1904 (33 Stat., 547), commonly known as the Kinkaid Act. Lusk had made prior entry under that act for the E. $\frac{1}{2}$ NE. $\frac{1}{4}$, and the SE. $\frac{1}{4}$, Sec. 26, T. 12 N., R. 31 W., containing 240 acres, which was patented April 5, 1911.

It appears that after making the additional entry first above described the entryman wrote a letter to the Commissioner of the General Land Office, asking whether his first entry was a bar to the making of the additional entry, and he was advised by Commissioner's letter of November 25, 1911, that the said prior entry did not disqualify him from making entry under section 3 of the Kinkaid Act.

In the decision appealed from the Commissioner held that the advice thus given the entryman was erroneous, and that, inasmuch as Lusk had made one entry under the Kinkaid Act, the additional entry under section 3 of the same act was erroneously allowed. The Commissioner's view is correct as to the law which he considered, but under date of August 24, 1912 (37 Stat., 499), the following legislation was enacted:

That the qualifications of a former homestead entryman who has heretofore been permitted to make an additional or another entry under the act entitled "An act to amend the homestead laws as to certain unappropriated and unreserved public lands in Nebraska," approved April twenty-eighth, nineteen hundred and four, shall be determined by the qualifications, except as to citizenship, possessed on the date of his first entry in all cases where the rights of third persons shall not have intervened and the additional or second entry has not been canceled.

This legislation was not adverted to by the Commissioner in his decision, and it is therefore assumed that it was not considered. Said act was passed at the suggestion of this Department with the object of validating homestead entries which had been allowed by the land officials through erroneous construction of the Kinkaid Act with reference to the qualifications of entrymen. This case appears to be within the letter of the curative act, but even if, through refined reasoning, it were difficult to construe the law so as to validate this entry, it would still appear that inasmuch as said act is remedial in character and should, therefore, be liberally construed, such liberal interpretation would justify the application of this law in the present case, so as to validate the entry. The decision appealed from is accordingly reversed.

OSCAR A. OLSON.

Decided February 7, 1914.

REPAYMENT—COMMUTATION PROOF REJECTED—RELINQUISHMENT.

Where commutation proof is rejected for insufficient showing of residence and cultivation, and the entry held intact subject to future compliance with law, and the entryman thereupon relinquishes the entry and applies for repayment, repayment may be allowed under the act of March 26, 1908, in the absence of fraud or attempted fraud in connection with the rejected proof.

JONES, *First Assistant Secretary:*

Oscar A. Olson has appealed from decision of January 6, 1913, by the Commissioner of the General Land Office, rejecting his application for repayment of purchase money paid in commutation of his homestead entry for the SW. $\frac{1}{4}$ SE. $\frac{1}{4}$, SE. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 6, and NE. $\frac{1}{4}$ NW. $\frac{1}{4}$, lot 1, Sec. 7, T. 161 N., R. 101 W., Williston, North Dakota, land district.

The entry was made April 23, 1908, and commutation proof was submitted November 11, 1909, and cash certificate issued thereon.

Adverse report was made on the entry by a special agent and a hearing was directed, upon the charges that entryman did not reside upon the land continuously for the time required to make commutation proof and that he had not made permanent improvements on the land nor cultivated the same.

Hearing was accordingly had and the local officers held that it had been shown that the claimant had not resided upon the land 14 months continuously prior to proof and had not cultivated the land as required by law, and they recommended that the commutation proof be rejected and the final certificate canceled, but owing to the fact that no fraud had been charged or proven, they recommended that the original entry be left intact, subject to future compliance with law. The entryman thereupon filed relinquishment of his entry, together with application for repayment. He states, in support of his appeal, that, although he had been given opportunity to return to the land and make new proof, he found it impossible to do so, owing to sickness and bad luck.

The Commissioner held that inasmuch as entry had not been canceled for conflict, or erroneously allowed, the application for repayment did not come within the provisions of section 2 of the act of June 16, 1880 (21 Stat., 287), and he accordingly rejected the application.

The act of March 26, 1908 (35 Stat., 48), provides for repayment where the applicant has not been guilty of any fraud or attempted

fraud. In the case of Margaret E. Scully (38 L. D., 564), it was held (syllabus) :

Where the proof submitted on a timber and stone claim is challenged by the land department and the claimant notified that unless he applies for a hearing his claim will be rejected, and to avoid the expense of a hearing he relinquishes the claim and applies for return of the purchase money, repayment may be allowed under section 1 of the act of March 26, 1908, in the absence of fraud or bad faith, the action of the land department amounting to a rejection of the proof within the meaning of that section.

It is observed that the special agent in reporting on this case stated that, from investigation, he had found that while the improvements, cultivation and residence were insufficient for the proof submitted, yet no bad faith or intention to defraud appeared and that in his opinion the claimant should be allowed further time in which to make compliance with the law, subject to new proof.

The testimony taken at the hearing shows that claimant was absent to some extent from his land, but it is believed that the evidence justified the finding of the local officers, and the report of the special agent, to the effect that there was no fraud or attempted fraud in connection with the proof. Upon this record it is a close question whether claimant had not earned title to the land, and it is believed that there was in the proof insufficient departure from the facts upon which to predicate a charge of fraud. In fact, no fraud was charged. In the case of Otto Westfall (39 L. D., 152), it was held (syllabus) :

Where the cash certificate issued upon commutation proof is canceled and the proof rejected, on the ground that the entryman had not sufficiently complied with law to entitle him to commute, and the entry is permitted to remain intact subject to future compliance with law, the entryman is not entitled to repayment of the commutation purchase money paid upon his entry and the only relief to which he is lawfully entitled is that, upon subsequently showing proper compliance with law, he may have the money paid in connection with his first application to commute credited upon a second such application.

That decision was based upon the case of August Polzin (8 L. D., 84), which held :

Repayment, with the right to thereafter submit the ordinary homestead proof, cannot be accorded to a homesteader who has made commutation proof, which is found insufficient; but he may submit new commutation proof within the life of the original entry.

In the latter case, the proof was rejected by the Commissioner after it had been accepted by the local officers. The rejection was based upon the fact that the proof was not made on the day advertised for the making of proof. Under that view, the proof and final cash certificate, in that case, were erroneously accepted and allowed, and repayment should have been allowed under the act of June 16, 1880 (21 Stat., 287). So that even under the law then in force the decision in Polzin's case was error. The later decision in the case of Westfall erred in applying and following the decision in the Polzin

case and also in not applying the later act of March 26, 1908, *supra*, which authorizes repayment where proof has been rejected and where no fraud or attempted fraud appears in connection with the making of such rejected proof. The instructions issued under said act by the Commissioner and approved by the Department April 29, 1908 (36 L. D., 388, 390), advised the local officers, in part, as follows:

In cases where the commutation homestead proof upon which you have issued certificate and receipt has been rejected by this office, the certificate canceled, and the original entry allowed to stand subject to future compliance with the law, you will not, when second commutation proof is accepted, require a second payment of purchase money, *unless the prior payment has been repaid.*

The decisions in the cases of Polzin and Westfall are hereby overruled.

Repayment of the purchase money in this case will be allowed. The decision appealed from is accordingly reversed.

GREGORIE FRAZEE.

Decided February 7, 1914.

INDIAN HOMESTEAD—RESTRICTED TRUST PATENT.

The act of July 4, 1884, extended the period of limitation on alienation under a trust patent issued upon an Indian homestead from five years, as fixed by the act of March 3, 1875, to twenty-five years; and an entryman under the act of 1875 who had not fully complied with all the requirements essential to perfecting his title under that act prior to the passage of the act of 1884, may complete his entry and receive patent under the provisions of the later act.

JONES, First Assistant Secretary:

You [Commissioner of Indian Affairs] have requested an opinion in the case of Gregorie Frazee, involving his homestead entry for the SW. $\frac{1}{4}$ NE. $\frac{1}{4}$, SE. $\frac{1}{4}$ NW. $\frac{1}{4}$, NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ and lot 3, Sec. 18, T. 26 N., R. 44 E., W. M., in Washington.

Your request is based upon a letter of May 5, 1913, from the Superintendent of the Coeur d'Alene Indian School, transmitting abstract of title showing that by warranty deeds, dated December 14, 1911, the land described was conveyed to one J. B. Vallee, who, in turn, by deed of same date conveyed the land to one Henry W. Collins. The Superintendent claims that these deeds are in violation of Sec. 5 of the act of June 25, 1910 (36 Stat., 855).

The application of Frazee for the land described was filed March 6, 1883, under the act of March 3, 1875 (18 Stat., 402, 420), which extends the benefits of the homestead law of May 20, 1862 (12 Stat., 392), to every Indian born in the United States who is the head of a family or who has arrived at the age of twenty-one years and who

has abandoned or may thereafter abandon his tribal relations, with the proviso:

That the title to lands acquired by any Indian by virtue hereof shall not be subject to alienation or incumbrance, either by voluntary conveyance or the judgment, decree, or order of any court, and shall be and remain inalienable for a period of five years from the date of the patent issued therefor.

Final proof was made by Frazee May 31, 1890. The final receipt was indorsed "Act of July 4, 1884. Indian homestead. No fees or commissions," indicating that although entry was originally made under the act of March 3, 1875, proof was submitted under the act of July 4, 1884 (23 Stat., 76, 96), passed in the meantime and which provided that Indians then or thereafter located on public lands might avail themselves of the provisions of the homestead laws as fully and to the same extent as might be done by citizens of the United States and no fees or commissions were to be chargeable on account of entries or proofs thereunder. It was further provided:

All patents therefor shall be of the legal effect, and declare that the United States does and will hold the land thus entered for the period of twenty-five years, in trust for the sole use and benefit of the Indian by whom such entry shall have been made, or, in case of his decease, of his widow and heirs according to the laws of the State or Territory where such land is located, and that at the expiration of said period, the United States will convey the same by patent to said Indian or his widow and heirs aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever.

On December 11, 1891, patent was issued to Frazee, not in accordance with the foregoing provision of the act of 1884, but under the act of January 18, 1881 (21 Stat., 315), relating to the Winnebago Indians in Wisconsin. The patent contained the following provision:

This patent is issued upon the express condition that the title hereby conveyed shall not be subject to alienation or incumbrance, either by voluntary conveyance, or by judgment, decree or order of any court, or subject to taxation of any character, but shall remain inalienable and not subject to taxation for the period of twenty years from the date hereof as provided by act of Congress approved January 18, 1881.

This clause in the patent issued to Frazee, a Cœur d'Alene Indian, embodying as it does a provision of the special act of January 18, 1881, which applied only to the Winnebago Indians in Wisconsin, was void. (*United States v. Saunders*, 96 Fed. Rep., 268.)

It was held in 1888 by the Attorney-General (19 Op. Atty. Gen., 161)—

that the act of 1884 was intended to be supplemental to and somewhat in modification of the act of 1875, and that its provisions apply to all entries made under the act of 1875 for which patents had not issued at the time the act of 1884 went into effect.

The case of *Frazee v. Spokane County* (69 Pac. Rep., 779), involved an action by Gregorie Frazee and wife against the County of

Spokane to remove a cloud against his homestead created by a levy of taxes and issuance of certificates of delinquency thereon. The court held:

The complaint alleges that the respondents entered the land in 1883, which was prior to the passage of the law of 1884. The act of March 3, 1875 (18 Stat., 420), extended the privileges of the homestead laws to Indians who had abandoned their tribal relations, and placed a five-year limitation upon alienation thereunder. It is insisted that respondents' title is subject to the provisions of that law, and that the limitation upon alienation has, in any event, expired since the patent was issued in 1891. The statute of 1884 was a continuation of the homestead privilege with an enlargement of the time of restriction upon alienation from five to twenty-five years. Respondents had no title when the law of 1884 was passed. They were simply occupants of the land. We see no reason why they might not avail themselves of the provisions of the law of 1884, if they chose to do so; and the complaint alleges that that is what they did, which the demurrer must be held to admit. It is alleged that their proof was made in 1890, and their residence upon the land after the act of 1884, therefore, covered the necessary time for their title to ripen under the homestead law.

The court accordingly expressed the opinion that the complaint of Frazee and wife "shows them to hold these lands under the law of 1884 and that they are subject to the twenty-five-year restriction against alienation.

The plaintiffs in the case of *Frazee v. Piper* (98 Pac. Rep., 760), on appeal of Piper, are the same parties who were plaintiffs in *Frazee v. Spokane County* and the same land was involved. The action in the later case was brought to recover possession of the land embraced in Frazee's homestead. The court said:

Upon the merits, the controlling questions presented by the appellant's further assignments of error are: (1) Under what act should the patent have been issued, and what conditions should it have contained? By the pleadings both appellants and respondents contend that the patent actually issued was improperly issued, as it contained conditions provided for in the act of 1881 pertaining to the Winnebago Indians of Wisconsin. This court, in *Frazee v. Spokane County*, *supra*, held that the patent should have been issued under the act of July 4, 1884, and we now adhere to that holding, which sustains respondents' present contention. The appellant, however, now insists that the final proof was made under the act of 1875, that the patent should have only contained a restriction of five years on the right of alienation, and that, said period having expired prior to the execution of the written contract of sale under which he claims, such contract should be specifically enforced in this action. When Gregorie Frazee filed upon the land in 1883, the act of 1875 was in effect; but, before he made or was entitled to make final proof, the act of July 4, 1884, became a law, and the question now before us is whether his patent should have been issued under the terms of the former act of 1875 or the later act of 1884. We think the trial court, following *Frazee v. Spokane County*, correctly held that the latter act applied. Had Gregorie Frazee's right to the homestead been perfected under the act of 1875, and had he been entitled to make final proof under that act before the act of 1884 was passed,

a different condition would be presented, and the five years' restriction on his right of alienation for which the act of 1875 provided would not have been extended by the act of 1884. His right of homestead, however, was not perfected, nor was he entitled to make final proof for several years after the act of 1884 took effect. This being true, we conclude that his patent when issued should have contained the restriction on alienation for 25 years, as provided in the later act of 1884, that he actually took the land subject to such restriction.

The case of *United States v. Hemmer*, 195 Fed. Rep., 790, involved the homestead entry of Henry Taylor, a Sioux Indian, made October 7, 1878, under the act of March 3, 1875. He submitted final proof December 11, 1884, and patent issued to him June 6, 1890, under the provisions of the act of January 18, 1881, which related exclusively to the Winnebago Indians in Wisconsin. Another patent was issued to Taylor June 10, 1909, in lieu of that issued in 1890, under the act of July 4, 1884, fixing the period of nonalienation at twenty-five years as therein provided. Suit was brought in said case for the purpose of removing clouds on Taylor's title to the land arising from an agreement or contract for the sale thereof entered into in 1908 by Taylor and his wife and also from the issuance of a deed by the county treasurer. The defendant contended that Taylor, having perfected his five years' residence upon his homestead, was entitled to his patent in June, 1884; that the act of 1884 was not passed until in July following and, therefore, that his patent, although proof was not made until December, 1884, should have been issued under the provisions of the act of 1875 with a five-year limitation on alienation, because his right to make final proof had accrued before the passage of the act of 1884, and that the act of 1884 should not be construed as amending the act of 1875. The court held, referring to the acts of 1875 and 1884:

These two statutes must be construed together, and the language therein employed must be given its ordinary meaning, in the light of the then existing conditions prompting the legislation. It is my judgment that the law of July 4, 1884, amended section 15 of the law of March 3, 1875, extending the period of limitation of alienation from five years to twenty-five years.

* * * * *

Under the facts as they are disclosed in this record, it is my judgment that Taylor had not fully complied with all the requirements essential to the perfecting of this title. He had not made his final proof in accordance with the laws, rules and regulations made pursuant to statute and had not received his receipt and final certificate. At the time of the passage of the act of July 4, 1884, he was a resident upon this public land of the United States, having filed under the provisions of the act of 1875, was within the class of Indians referred to in the act of 1884, and by the plain provisions of that act was protected in the use and occupancy of the land, without the power of alienating it for twenty-five years, pursuant to the plan that was being developed by the Government of the United States for the protection of these dependent people.

* * * * *

While not necessarily controlling upon this court, it is evident upon the face of this record that the officers of the United States whose duty it was to administer these laws of the United States by the issuance of the patent of June 10, 1909, admitted the error in the provisions of the patent issued to Taylor June 6, 1890, and by the issuance of the last patent construed the act of 1884 as an amendment to the act of 1875 affecting the rights and interest of this Indian, Henry Taylor, and that, under the facts and circumstances presented to them and presented here now, it was and is the duty of the United States to hold the title to the premises in question for this Indian, Taylor, and his heirs under the provisions of the law of 1884 for twenty-five years from the date of the issuance of said patent.

An appeal was taken in Taylor's case and some doubt exists on the part of your office as to the correctness of the court decisions in the Gregorie Frazee case by reason of the fact that the decree of the court in Taylor's case (*United States v. Hemmer*, 195 Fed. Rep., 790), was reversed on appeal in *Hemmer v. United States* (204 Fed. Rep., 898). It was held in the latter case that the act of 1884 did not repeal, amend or modify any of the provisions of the act of 1875. In discussing the matter, the court stated among other things:

Did the act of July 4, 1884, which was not passed until after Taylor had completely earned the title to his homestead, subject to the restriction of only five years upon its alienation imposed by the act of 1875, so amend that act as to extend that restriction to twenty-five years?

The United States offered this land to Taylor by the act of 1875, free from all restrictions upon alienation after five years from the date of his patent, on the sole condition that he would reside upon and cultivate it and endure the toils and privations of frontier life for five years. That offer he accepted in the only way in which it could be accepted, by five years of actual residence, occupation and cultivation of the land. He proved his compliance with the offer to the satisfaction of the Government, paid the prescribed fees for his final entry, and obtained his final receipt therefor under the act of 1875 and the purchasers from him have bought his land and paid for it in reliance upon this act of Congress and these facts. These purchasers, the grantees under Taylor, stand in his shoes. They have every legal right and every equitable right and title which he held.

Referring to the case of *Frazee v. Spokane County* and *Frazee v. Piper*, *supra*, the court said:

He (Frazee) had first entered and occupied it in 1883 and had resided upon and cultivated it from that time until May 31, 1890, when he made his final proof under the act of 1884, and he subsequently took his title under that act. The court held that inasmuch as he had resided upon and cultivated his land for five years after the passage of the act of 1884 before he made his final proof, and as he had taken his title under that act, his land was subject to the restriction for twenty-five years specified therein, but that "had Gregorie Frazee's right to the homestead been perfected under the act of 1875, and had he been entitled to make final proof under that act before the act of 1884 was passed" (as Taylor was), "a different condition would be presented and the five years' restriction on his right of alienation for which the act of 1875 provided, would not have been extended by the act of 1884."

In *United States v. Saunders* (96 Fed., 268, 270), cited by the court below, a nontribal Indian entered in 1878, occupied and cultivated his homestead for the full five years under the act of 1875, and made his final proof before the act of 1884 was passed, and the court held that the act of 1884 imposed no further restriction upon his power of alienation. There is nothing in these cases favorable to an affirmative answer to the question at issue, and the decision in *United States v. Saunders* is a clear adjudication that it should be answered in the negative, for when Taylor had completely earned his land and had secured his final receipt for it under the act of 1875, his equitable title to it was perfected and could not be subsequently modified by any action of the officers of the Land Department.

* * * * *

It may be conceded that . . . if the homesteaders under the act of 1875 had availed themselves of the act of 1884, the restrictions upon their homesteads would have been extended to twenty-five years. But Taylor never availed himself of the provisions of the act of 1884. He made his final proof, paid for his land, and took his final receipt under the act of 1875.

It will be observed that there is no declaration in *Hemmer v. United States* that the conclusion of the court in the two cases of *Gregorie Frazee* were wrong. On the contrary, regardless of the court's ruling that the act of 1884 did not amend or repeal the act of 1875, the statements made by the court in *Hemmer v. United States* leave the reasonable implication that if the facts of Taylor's case, as found by it, had been the same as those in *Frazee's* case, a conclusion similar to that in the latter case would have been reached. It is deduced from such statements that the decisions of the court turn primarily upon the difference in the finding of facts by it and the lower court; that the court below was wrong in finding that Taylor had not fully complied with all the requirements essential to the perfecting of his title under the act of 1875 prior to the passage of the act of 1884. But no such deductions are warranted from the statements of the court with respect to the decisions in *Frazee's* case.

Your office states:

Should the Department hold that the entry in question is to be construed as one under the act of 1884, which calls for a twenty-five year restricted trust patent, appropriate recommendations will be submitted with a view to setting aside the conveyance to Henry W. Collins and the issuance of a proper patent to said Indian under the act of 1884, the trust period not expiring until 1916.

You are advised that the Department finds nothing in the case of *Hemmer v. United States*, 204 Fed. Rep., 898, that should be regarded as necessarily impugning the correctness of the conclusion reached by the courts in *Frazee v. Spokane County*, 69 Pac. Rep., 779, and *Frazee v. Piper*, 98 Pac. Rep., 760.

IM-OW-TAN-IC.

Decided February 7, 1914.

INDIAN ALLOTMENT—TRUST PATENT—SURRENDER AND REISSUANCE.

There is no provision of law authorizing the Secretary of the Interior to accept the surrender for cancellation of an Indian trust patent issued under the act of March 3, 1885, and to issue in lieu thereof two trust patents, one to the allottee for part of the land and the other to his wife for the remainder.

JONES, First Assistant Secretary:

June 26, 1913, Im-ow-tan-ic, Walla Walla allottee No. 152, relinquished his allotment for lots 9, 10, 15 and 16, Sec. 13, T. 3 N., R. 35 E., W. M., Umatilla Reservation, Oregon, with request that a portion thereof be allotted to his former wife, Sheilya or Talleshaspum.

November 3, 1913, your [Commissioner of Indian Affairs] office recommended that allottee's trust patent be canceled and that trust patents of like form and legal effect be issued as follows:

No. 152, Im-ow-tan-ic, lots 9 and 10, Sec. 13, T. 3 N., R. 35 E., Oregon, containing 83.66 acres.

No. 152-a, Sheilya (Talleshaspum), lots 15 and 16, Sec. 13, T. 3 N., R. 35 E., Oregon, containing 83.48 acres.

November 28, 1913, the Department approved the foregoing recommendation and referred the matter to the General Land Office for appropriate action.

December 10, 1913, the Commissioner of the General Land Office returned the case to the Department, stating that no provision for issuing trust patent to the wife is contained in the act under which Im-ow-tan-ic was allotted, and asking for further instructions. The attention of the Department was at the same time called to a similar case where the Department directed issuance of trust patent to the wife. Such action in that case, however, was in addition to approval of a formal deed of conveyance from the husband to the wife. No deed has been executed by Im-ow-tan-ic in favor of his former wife.

The case was referred back to your office for further consideration. It has now been returned to the Department with your letter of January 21, 1914, in which, after citing cases regarded as precedents, some of which are distinguishable from this one, the former recommendation of your office is adhered to.

The allotment of Im-ow-tan-ic was made under the provisions of the act of March 3, 1885 (23 Stat., 340). The persons entitled to allotment under said act are heads of families, single persons over the age of eighteen years, orphan children under eighteen years of

age, and children under eighteen years of age not otherwise provided for. The name of Sheilya, former wife of Im-ow-tan-ic, appears on a schedule of allotments to Indians of the Walla Walla tribe on the Umatilla Reservation, but she was not allotted for the reason that said act of March 3, 1885, only provides for allotments, in case of married persons, to heads of families. There are several acts which authorize the Secretary of the Interior to cancel trust patents issued to Indians, but his power under said acts is limited to certain classes specifically named therein. The case of an Indian who surrenders his trust patent for cancellation for the purpose of having a portion of the land covered thereby allotted to his wife, does not come within any of the classes enumerated in said acts.

Likewise the power to issue trust patents is limited to those Indians who by law are entitled to receive allotments and have been given specific tracts of land. There is no general authority for allotting lands to individual Indians or for the issuance of patents to them. The act under which Im-ow-tan-ic was allotted and received his trust patent provides:

The President shall cause patents to issue to all persons to whom allotments of lands shall be made under the provisions of this act, which shall be of the legal effect, and declare that the United States does and will hold the land thus allotted for the period of twenty-five years, in trust for the sole use and benefit of the Indian to whom such allotment shall have been made, or in case of his decease, of his heirs according to the laws of the State of Oregon, and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever.

Under the terms of the trust patent issued to Im-ow-tan-ic, the land embraced in his allotment was to be held in trust for his sole use and benefit. There is no law which specifically authorizes him to relinquish any portion of his lands in order that it may be allotted to his wife. The only provision authorizing an Indian to relinquish his allotment for the purpose of having all or any part thereof allotted to other persons and trust patents issued to them, is found in Sec. 3 of the act of June 25, 1910 (36 Stat., 855), but the benefits of that section extend only to the allottee's children who have received no lands in allotment.

The practice heretofore of issuing trust patents to the wife in such cases as the present one will no longer be followed and departmental approval on November 28, 1913, of the application of Im-ow-tan-ic herein will be recalled and vacated.

It may be stated in this connection that existing laws authorize an Indian under certain conditions, prior to the expiration of the trust period declared in his patent, to sell or convey all or part of his land.

The usual provision in said laws is that the Secretary of the Interior shall cause to be issued to the purchaser a patent in fee for the land. In some of these laws, however, notably what is known as the "Non-competent Act" of March 1, 1907 (34 Stat., 1018), the Secretary is authorized to approve a deed of conveyance executed by the allottee. As it is provided by these acts that sales thereunder are to be made on such terms and conditions and under such rules and regulations as the Secretary may prescribe, the practice has become in cases where the purchaser is an Indian and it is desired to protect him against improvident acts or the influence of unscrupulous persons to have inserted in the deed of conveyance a clause against alienation or incumbrance of the land during the remainder of the trust period declared in the patent issued to the original allottee.

It is suggested that the object of Im-ow-tan-ic might be accomplished in the foregoing way; that is, for him to execute a deed in favor of his wife which shall set forth a nominal consideration and also contain a nonalienation clause or some provision expressed in appropriate language to show a continuation in said deed of the trust declared in the trust patent issued to him.

NELLIE CAMPBELL.

Decided February 10, 1914.

WITHDRAWAL OF PLAT OF SURVEY FOR CORRECTION—AUTHORITY TO PERMIT ENTRY.

Local officers are without power to permit entry of public lands where no approved plat of survey thereof is on file in their office; and where after filing of a plat of survey it is withdrawn for the correction of error therein, the lands are not subject to disposal under the public land laws until the survey is corrected and the approved plat refiled.

JONES, *First Assistant Secretary:*

Nellie Campbell appealed from decision of the Commissioner of the General Land Office April 3, 1913, rejecting his application for homestead entry for the SW. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 24, N. $\frac{1}{2}$ NE. $\frac{1}{4}$ and SE. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 25, T. 2 N., R. 46 E., W. M., La Grande, Oregon.

December 23, 1912, Campbell filed application which the local office rejected because the land had been withdrawn from entry by the Commissioner on account of alleged overlap in survey. The Commissioner affirmed that action.

The record shows that sections 24 and 25 with other tracts of land were withdrawn by the Commissioner October 4, 1902, because of erroneous plats. The land had not at date of Commissioner's de-

cision been relieved from such suspension and is, therefore, not subject to entry. The Commissioner having found error in the plats, withdrew them for correction. There was, therefore, no record of survey existing in the local office on which an entry could be allowed.

It was held by the Department in *Anderson v. State of Minnesota* (37 L. D., 390), that public lands are not surveyed until an approved plat of survey is officially filed in the local office. It is true there has been a survey and supposed plat filed, but finding error therein, the Commissioner withdrew it for correction of such errors.

It was held in *Barnard's Heirs v. Ashley's Heirs* (18 Howard, 43, 46) that entries can only be made "when the township survey was sanctioned and became a record in the district land-office."

The survey of public lands and plat thereof is the basis of all titles granted by the land department, and where no approved plat of survey remains in the local office, there is no power to dispose of public land.

The decision is affirmed.

DORATHY DITMAR.

Decided February 12, 1914.

REPAYMENT—RELINQUISHMENT—"REJECTED."

Wherever an application, entry or proof fails or is defeated for any cause short of voluntary abandonment or relinquishment by the applicant or entryman, it is "rejected" within the meaning of the repayment act of March 26, 1908; and where an application or entry is relinquished in the face of charges by the government, such relinquishment will not necessarily be regarded as voluntary; but in such case the applicant for repayment will be required to make a positive showing of the facts relied upon by him, including evidence that the relinquishment was not voluntarily made.

JONES, *First Assistant Secretary:*

Dorathy Ditmar has appealed from the decision of the Commissioner of the General Land Office dated April 2, 1913, denying her application for repayment in connection with her homestead entry made on March 7, 1906, for NE. $\frac{1}{4}$, Sec. 33, T. 119 N., R. 78 W., Pierre, South Dakota, land district, upon which she submitted commutation proof and final certificate issued on July 11, 1908.

It appears from the record that on February 14, 1910, the Commissioner of the General Land Office directed proceedings against this entry upon the charge that the claimant had not established and maintained residence upon nor cultivated and improved the land. The claimant, a widow with two children, rather than face the expense and uncertainty of a contest, relinquished the entry on Novem-

ber 1, 1910, and applied for the return of the purchase money paid in connection therewith.

In the decision from which this appeal is prosecuted, the Commissioner of the General Land Office, referring to the act of March 26, 1908 (35 Stat., 48), held, in substance, that neither the entry under consideration nor the proof offered thereon, had been rejected within the meaning of said act.

The Department is unable to concur in the position assumed by the General Land Office with reference to the meaning of the word "rejected" as employed in the act of March 26, 1908. It is common knowledge that a very large proportion of entrymen are practically without means and little able to wage controversies with the United States. Assuming, as it must be assumed, until the contrary is established, that the entryman has acted in good faith, it is not believed that he forfeits his claim to a return of purchase money by relinquishing the entry rather than face an expensive controversy with the Government. The action of the local officers in accepting commutation proof and issuing certificate thereon is not binding upon the Commissioner of the General Land Office, who, when the matter is submitted to him, may either reject the proof outright or direct a hearing to determine its truth. Undoubtedly, if the Commissioner rejected the proof or if he accepted the same and it was in turn rejected by the Department, it would be rejected within the meaning of said act.

For purposes of administration of this repayment law, it is held that wherever an application, entry or proof fails or is defeated for any cause short of the voluntary abandonment or relinquishment of the applicant or entryman, it is rejected within the meaning of the statute; and where the application or entry is relinquished, as under the circumstances disclosed by this record, such relinquishment will not be regarded, necessarily, as voluntary. The Commissioner of the General Land Office should, in all cases involving repayment, require a positive showing of the facts relied upon by the applicant, and where, as in this case, the entry has been relinquished, such showing must include evidence that the relinquishment was not voluntarily made. The claimant's affidavit that she relinquished her entry solely to avoid the expense and uncertainty of a contest with the Government is, *prima facie*, sufficient upon that issue.

In accordance with the foregoing, the decision appealed from is reversed; and the case is remanded to the General Land Office for reconsideration. Investigation to determine the claimant's good faith may be made, if any facts of record warrant such action.

JOHN W. HENDERSON.

Instructions, February 16, 1914.

TIMBER TRESPASS—MEASURE OF DAMAGES.

In cases of innocent trespass, where timber is cut from lands of the United States, the stumpage value, and not the value after severance, is the proper measure of damages.

CONTRARY INSTRUCTIONS RECALLED AND VACATED.

Instructions of April 1, 1912, in John W. Henderson, 40 L. D., 518, recalled and vacated.

JONES, *First Assistant Secretary:*

By decision of April 1, 1912, this Department, in the case of John W. Henderson (40 L. D., 518), laid down the following rule in cases of innocent timber trespass:

In all cases of innocent trespass, where timber has been cut from lands of the United States, whether the timber so cut has been converted by the trespasser or the innocent vendee of such trespasser, or whether it has been allowed to remain on the land where cut, the measure of damages should be the value of the timber after it has been severed from the soil and not its stumpage or standing value.

The above rule reversed the practice obtaining in this Department ever since the promulgation of the instructions of March 1, 1883 (1 L. D., 695), which provided:

Where the trespasser is an unintentional or mistaken one, or an innocent purchaser from such a trespasser, the value of the timber at the time when first taken by the trespasser, or if it has been converted into other material, its then value, less what the labor and expense of the trespasser and his vendor have added to its value, is the proper rule of damages.

* * * * *

In cases where settlement with an innocent purchaser of timber cut unintentionally through inadvertence or mistake is contemplated, you are instructed to report as nearly as possible the damage to the government as measured by the value of the timber before cutting.

I have recently had occasion to consider the case of John W. Henderson, *supra*, in connection with certain proposed suits sought to be instituted.

The question presented is: What is the correct measure of damages to be recovered of an innocent trespasser upon the lands of the United States? In *Wooden-ware Co. v. United States* (106 U. S., 432), the second rule for the settlement of damages against a defendant in an action for timber cut and carried away from its lands is:

Where he (the defendant) is an unintentional or mistaken trespasser, or an innocent vendee from such trespasser, the value *at the time of conversion*, less the amount which he and his vendor have added to its value.

The doubt arises as to the exact period indicated by the phrase "time of conversion."

In *Pine River Logging Co. v. United States* (186 U. S., 279), the court states at page 293 that in *Wooden-ware Co. v. United States*, *supra*:

It was held that where the trespass is the result of inadvertence or mistake, and the wrong was not intentional, the value of the property when first taken must govern; or, if the conversion sued for was after value had been added to it by the work of the defendant, he should be credited with this addition.

In *United States v. St. Anthony R. R. Co.* (192 U. S., 524), after finding that the trespass was an innocent one, the court said at page 541:

The further question is as to the time when the value of the timber is to be ascertained.

The parties agreed that the amount of the timber growing on the lands is correctly stated in the answer, and the value thereof at the place where the timber was cut was \$1.50 per thousand feet and the value upon delivery to the defendant was \$12.35 per thousand feet.

At page 542 the following rule is apparently laid down:

We think that then the measure of damages should be the value of the timber after it was cut at the place where it was cut.

It should be noted, however, that the judgment was "at the rate of \$1.50 per thousand feet," which, as appears in the report of the case below (114 Fed. Rep., 722), was the stumpage value.

The question of the correct measure of the damages in the case of an innocent trespasser was exhaustively considered by Judge Lowell (*Trustees of Dartmouth College v. International Paper Co.*, 132 Fed. Rep., 92) who held that even in an action of trover the measure of recovery is the stumpage value of the trees at the time they were cut. After citing *Wooden-ware Co. v. United States*, *Pine River Logging Co. v. United States*, and *United States v. St. Anthony R. R. Co.*, he said at page 106:

While the language thus used by the Supreme Court, upon the whole, approves as measure of damages the value of the logs immediately after their separation from the freehold, it is plain that the difference between this value and stumpage has never been expressly considered by that court. On technical grounds it is possible to argue with some force that the plaintiff should be given the value immediately after severance, but the stumpage value better accords with the principles upon which the allowance for improvements is made. Neither measure is strictly accurate, as has been pointed out already, but, if the defendant is to be allowed for any improvements, then to deprive him of the value of the improvement first in time and most necessary, viz, that arising from severance from the realty, is to make the technical difference between real property in the shape of a standing tree and personal property in the shape of a felled tree the cause of a great difference in substantial

rights. The weight of authority outside the Supreme Court, on the whole, supports the allowance of stumpage only, and with some doubt I have decided to allow only that in this case.

The same measure was adopted in *United States v. Van Winkle* (113 Fed. Rep., 903) and *Gentry v. United States* (101 Fed. Rep., 51). In *United States v. Homestake Mining Co.* (117 Fed. Rep., 481), the Circuit Court of Appeals of the Eighth Circuit held that the limit of liability for damages of one who takes ore or timber from the land of another through inadvertence or mistake, or in the honest belief that he is acting within his legal rights, is the value of the ore in the mine or the value of the timber in the trees. The same holding was made in *Resurrection Gold Mining Co. v. Fortune Gold Mining Co.* (129 Fed. Rep., 668). It is thus apparent that in the Federal courts the great weight of authority is to the effect that the stumpage value, and not the value after severance, is the proper measure of damages in the case of an innocent trespasser. This is further strengthened by the observations of the Supreme Court in *Wooden-ware Co. v. United States*, at page 433, concerning English decisions in similar trespasses of coal. Justice Miller there said:

In the English courts the decisions have in the main grown out of coal taken from the mine, and in such cases the principle seems to be established in those courts, that when suit is brought for the value of the coal so taken, and it has been the result of an honest mistake as to the true ownership of the mine, and the taking was not a wilful trespass, the rule of damages is the value of the coal as it was in the mine before it was disturbed, and not its value when dug out and delivered at the mouth of the mine—

and upon page 434 he quotes the following language of Lord Hathley:

But "when once we arrive at the fact that an inadvertence has been the cause of the misfortune, then the simple course is to make every just allowance for outlay on the part of the person who has so acquired the property, and to give back to the owner, so far as is possible under the circumstances of the case, the full value of that which cannot be restored to him *in specie*."

Peacock et al. v. Feaster decided by the Supreme Court of Florida, January 30, 1906 (40 Southern Reporter, 74), is cited as authority for demanding the value of the timber after it has been felled. A reference to the report discloses that the decision, so far as the measure of damages is concerned, is based wholly upon an earlier decision of that court in *Wright & Co. v. Skinner* (34 Fla., 453). That was an action in *trover* and the court held that in such an action brought against an innocent trespasser the value of the property *at the time and place of its conversion* must govern; that when the property converted consisted of logs, the *conversion* did not become complete until they were actually removed from the owner's land and that an innocent trespasser was not entitled to any deduction for any additional value placed by him upon the property *anterior* to the time that the

conversion became complete. To the same effect are *Winchester v. Craig* (33 Mich., 205); *White v. Yawkey* (108 Ala., 270); *Ivy Coal and Coke Co. v. Alabama Coal and Coke Co.* (135 Ala., 579); *Beede v. Lamprey* (64 N. H., 510); also *Franklin Coal Co. v. McMillan* (49 Md., 549), and *Blaen Avon Coal Co. v. McCulloch et al.* (59 Md., 403).

In all except the last two, the actions were the common law action of trover, which could be maintained only as to personal property. In other words, the argument is, that the timber does not become personal property until severed from the realty and that, therefore, the correct measure of damages is the value of the timber as personal property at the time of its conversion.

The Supreme Court of Pennsylvania, however, repudiated this doctrine even in a technical action of trover. *Forsyth v. Wells* (41 Pennsylvania State, 291). The nature of the action is sufficiently indicated by the syllabus:

1. Trover lies for coal mined upon, and carried away from another's land by mistake.
2. The measure of damages is the fair value of the coal in *place*, and such injury to the land as the mining may have caused.

The court said:

The plaintiff insists that, because the action is allowed for the coal as personal property, that is, after it had been mined or severed from the realty, therefore, by necessary logical sequence, she is entitled to the value of the coal as it lay in the pit after it had been mined, and so it was decided below. It is apparent that this view would transfer to the plaintiff all the defendant's labor in mining the coal, and thus give her more than compensation for the injury done.

Yet we admit the accuracy of this conclusion, if we may properly base our reasoning on the form, rather than on the principle or purpose of the remedy. But this we may not do, and especially we may not sacrifice the principle to the very form by which we are endeavoring to enforce it.

The American and English Encyclopedia of Law, 2nd Edition, Volume 28, page 724, so summarizes the varying rules:

Where, however, the defendant acted in good faith, the owner of the land has been allowed to recover only the value of the standing trees, or the stumpage value, or the value of the logs deducting the cost of felling the timber, thereby giving to him the benefit of his labor, or the value of the trees immediately after they had been severed from the land so as to become chattels and the subject of conversion.

As to the last proposition, it cites *White v. Yawkey*, *Wright v. Skinner*, and *Beede v. Lamprey*, *supra*.

From the above summary, it is apparent that the great weight of authority supports the rule of allowing but the stumpage value in the case of an innocent trespass. The cases allowing the additional value caused by the labor of the innocent trespasser in severing the timber from the soil are almost wholly actions which were the technical common law actions of trover which compel, in the view of those

courts, a recovery of the value of the timber after it had become personal property and was converted to the defendant's use.

As in most of the states the distinction between the different forms of actions has been abolished and as the great weight of authority supports the prior uniform practice of the Department in demanding merely the *stumpage* value in the case of an innocent trespass; I am of the opinion that the stumpage value alone should be demanded in innocent trespasses.

The case of John W. Henderson (40 L. D., 518) is accordingly recalled and vacated and hereafter you will adjust cases of innocent trespass in accordance with the measure of damages herein adopted.

FRASER SOURCES IRRIGATION AND POWER CO.

Decided February 16, 1914.

RIGHTS OF WAY—CONDUITS—PURPOSES.

Rights of way for which a right of way is sought and for which conduits are to be constructed and utilized will control in the determination as to which of existing laws is applicable to the granting of the right.

ACT OF MARCH 3, 1891—PIPE LINES.

Rights of way for pipe lines may be allowed under the provisions of the act of March 3, 1891, as amended by the act of May 11, 1898, granting rights of way for reservoirs, canals, and laterals, where the rights sought are to be utilized for the main purpose of irrigation.

CONFLICTING DEPARTMENTAL DECISION OVERRULED.

Departmental decision in Malone Land and Water Co., 41 L. D., 138, in so far as it denies rights of way for pipe lines for irrigation purposes under the act of March 3, 1891, is overruled.

JONES, *First Assistant Secretary:*

Upon consideration of the application of the Fraser Sources Irrigation and Power Company for right of way under the act of March 3, 1891 (26 Stat., 1095), as amended by the act of May 11, 1898 (30 Stat., 404), for the Fraser Sources Ditch, Fraser Sources Tunnel, South Boulder Ditch and Pipe Line, Mammoth Gulch Reservoir and Pipe Lines, Pactolus Reservoir, supply ditch and pipe lines, in Ts. 1 and 2 S., Rs. 70 to 76 W., Denver, Colorado, land district, the Commissioner of the General Land Office in decision dated August 23, 1913, held that the application could not be allowed in so far as the same seeks a right of way for pipe lines, but that separate applications for rights of way for the pipe lines must be prepared and presented under the provisions of the act of February 15, 1901 (31 Stat., 790). This action was based upon departmental decision of June 27, 1912, as modified October 25, 1912, in the case of the Malone Land and Water Company (41 L. D., 138), wherein it was held that the grants contained in the acts of 1891 and 1898 are limited to "ditches,

canals, or reservoirs," and should not be extended to include a conduit wherein water flows under pressure, as in a pipe line, unless it is a mere incidental connecting link, such as a culvert or inverted siphon, to carry an irrigating ditch past a stream.

The act of February 15, 1901, *supra*, referred to in the Commissioner's decision, authorizes the issuance of a license or revocable permit to use rights of way through public lands for electrical plants and lines for telephone and telegraph purposes, for canals, ditches, pipes and pipe lines, flumes, tunnels, or other conduits, and for water plants, dams, and reservoirs used to promote irrigation or mining or quarrying, or the manufacturing or cutting of timber or lumber, or the supplying of water for domestic, public, or other beneficial uses.

The act of 1891, *supra*, however, grants a right of way or easement to any canal or ditch company "formed for the purpose of irrigation" to the extent of the ground occupied by the water of the reservoir and of the canals and laterals and 50 feet on each side of the marginal limits thereof.

The act of 1898, *supra*, extended the scope of the act so as to permit the use of right of way secured thereunder for purposes of a public nature, for water transportation, for domestic purposes, for the development of power, as subsidiary to the main purpose of irrigation. The sole purpose of the act of 1891, therefore, was to grant the use of public lands in connection with irrigation plants, and under the later act of 1898 the purpose still remains the primary or dominant one, the other uses named and permitted in the later act being subordinate or subsidiary to that of irrigation.

Worcester's Dictionary defines canal as "an artificial passage for water; a watercourse made by art." Webster's Dictionary defines it as "an artificial channel filled with water and designed for navigation or for irrigating land." The Century Dictionary defines canal as "an artificial waterway for irrigation or navigation," citing the Latin *canalis*, meaning "a channel, trench, pipe, canal."

The publication "Words and Phrases Judicially Defined," citing *Wetmore v. Fiske* (15 Rhode Island, 354), states that the words "ditch" and "trench" have no technical or exact meaning; "they both mean a hollow space in the ground, natural or artificial, where water is collected or passes off."

From the foregoing authorities it appears that the words "canal" or "ditch" are used to designate any artificial waterway for irrigation. In actual practice in the arid or semiarid regions, the methods used for conveying water from the intake or source of supply to the lands to be irrigated vary according to the topography of the country, character of the soil, climate, permanency of the works, etc. Ordinarily, such conduits are adopted and constructed as will attain the

desired results at the least expense consistent with cost of maintenance, economy of water, or other elements of importance to the water company or irrigator. For instance, an open and unlined canal or ditch through a loose or sandy soil may involve so great a loss of water as to require or justify the lining of the canal with cement, or conducting the water through iron or cement pipes upon the surface or beneath the surface of the ground. In excessively hot regions the loss by evaporation where water is conveyed in open conduits may as a measure of economy induce the employment of iron or cement pipes buried in the earth for conveyance of the water to the place of use. In crossing streams or depressions it may be necessary to convey water across such depressions in flumes, or to carry the same beneath the surface of streams through inverted siphons. Consequently, an irrigating system or canal may in its course through the country to the point where water is delivered necessitate and include the use of several different forms of conduits, yet be generally spoken of as the canal or ditch, as the case may be. The *purpose* for which the conduit is constructed and the water conveyed will largely control the descriptive term used and is very material in cases arising before this Department in connection with applications for rights of way under the several laws governing the granting of such easements or licenses.

The act of 1891, *supra*, making the grant only where the water is to be used for the main purpose of irrigation, should be construed as authorizing the utilization of the rights of way granted in such a way as will accomplish the intent and purpose of the grant. That purpose is irrigation and the fact that the words "reservoir, canal, and lateral" are used in the act does not warrant the assumption that it refers to and only authorizes the use of the rights of way granted for open canals or laterals. On the contrary, it is the evident purpose of Congress to grant the necessary rights of way through public lands for any and all structures essential or necessary to the accomplishment of the purpose of irrigation. As already pointed out, there are cases where this purpose can be best and most economically accomplished by the use of pipe lines, and no good reason appears, either in the law itself or in the administration thereof, or in the common practice of irrigators, to restrict the use of such rights of way to open canals or conduits. If the right of way is sought for the generation of hydroelectric power or for other main purposes than irrigation, the acts of 1891 and 1898 do not apply, and the application, if granted at all, must be under some other applicable law of Congress.

In the case at bar, the company's application, the stipulation executed May 22, 1913, and the appeal now before the Department, disclaim any present intention to develop or utilize electrical power

from this right of way for ordinary commercial uses, and state that the rights of way sought are to be used for the main purpose of irrigation.

The Director of the Geological Survey in report dated June 26, 1912, states:

It is my opinion that the principal value at present and for years to come of the collecting canals and tunnels through the divide, as proposed by this company, will be for irrigation.

The Director, however, adheres to a former recommendation that right of way for the so-called South Boulder Pipe Line, the South Boulder Ditch, and the pressure pipe line be not granted under the act of March 3, 1891.

As already set out, the Department is of opinion that the method of transmission is not material or controlling, but the right to grant or to utilize the grant is dependent upon the use to be made thereof. Accordingly, in so far as the right sought is for the purpose of irrigation, whether the water be conveyed through open canals or pipes, the decision of the Commissioner is reversed, and departmental decision in the Malone Land and Water Company case, *supra*, overruled. The record is herewith returned to the General Land Office for further consideration and appropriate action.

The foregoing action is intended to dispose only of the question presented to the Department in the appeal and has no relation to the various questions now pending before the Department involving the general subject of diverting water from the basin of Grand River to the east of the Continental Divide, nor is it intended to authorize the granting of any rights of way to this company under the present application, where such rights of way are not to be used for the main purpose of irrigation.

ISAAC T. WHEELER.

Decided February 16, 1914.

SURVEY—AREA OF LEGAL SUBDIVISION—SURVEYOR GENERAL'S RETURN.

The official return of the surveyor general as to the area of a legal subdivision is, so long as the survey stands, conclusive of the area acquired through entry of that subdivision; but the land department may, upon allegation of defect in the official survey, direct a resurvey to determine the true area of the legal subdivision in question, with a view to ascertaining whether the entryman is disqualified, by reason of the area embraced in his entry, from making an additional entry.

JONES, First Assistant Secretary:

Isaac T. Wheeler has appealed from decision of May 1, 1913, by the Commissioner of the General Land Office, affirming the action

of the local officers rejecting his application to make homestead entry for the NW. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 9, T. 19 N., R. 5 E., M. M., Great Falls, Montana, land district, for the reason that he had already acquired title to 160 acres under the homestead law.

The applicant urges in support of his present application that he is entitled to make additional entry for the land applied for, containing 40 acres, under section 6 of the act of March 2, 1889 (25 Stat., 854). He made a former entry for the N. $\frac{1}{2}$ SW. $\frac{1}{4}$, S. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 3, T. 19 N., R. 5 E., for which he received patent. The official survey of the lands embraced in that entry shows that it contained 160 acres. It appears that the applicant had his former homestead entry surveyed by a private surveyor under date of May 15, 1907, and according to that survey the entry contained only 119.37 acres.

The officers below held that the return of the official Government survey was conclusive as to the area to which the applicant acquired title under his former entry.

Under section 2396, Revised Statutes, each section or subdivision thereof, the contents whereof have been returned by the Surveyor General, "shall be held and considered as containing the exact quantity expressed in such return." The appellant has cited departmental decisions in the cases of *Mason v. Cromwell* (26 L. D., 369), and *Marshall v. Murrison* (28 L. D., 187), in support of his contention that the provisions of section 2396, Revised Statutes, apply to public lands, not to private lands, and that the return of the Government surveyor is considered conclusive only for the purposes of the disposition of the lands so surveyed as public lands, and that the rule no longer applies when the lands have passed into private ownership.

The cases cited involve the question as to the area of lands owned, not as to the area which had been acquired from the Government. It was held that the return of the Surveyor General was not conclusive in passing upon the question of area of lands owned at the time of application to make entry. We have a different question in this case, and that is to determine the area acquired under the former entry. For the purposes of the former entry, the return was conclusive to determine the area embraced therein. The present application is based upon the former entry, and the rights of the applicant are to be determined by the area acquired under that entry. For that purpose the Government survey is conclusive, and a private survey can not be accepted in lieu thereof. *Noyes v. Beebe* (16 L. D., 313); *State of Florida et al. v. Watson* (17 L. D., 88).*

Of course, in saying that the return of the Government survey is conclusive as to the area shown, for the purpose of disposing of a

tract embraced in such return or of another tract, wherein it becomes necessary to know the area acquired by patent under prior entry, it is not meant that such survey is forever conclusive and inviolable, but it is only meant that the Government survey is controlling while it stands as an official survey. Such surveys are often set aside by the Government and resurvey made, which resurvey then becomes the controlling survey. But manifestly the Government cannot undertake in every case to resurvey tracts simply because of discrepancies between its survey and that of a private survey. While surveying may be theoretically an exact science, yet it would probably in actual practice be impossible for any two surveyors to reach exactly the same conclusion as to the area of a particular tract. In view of this, it is very necessary that there be a controlling authority which must govern. If the Government were obliged to open up, for readjudication, the question as to the area of a former entry, whenever objection to the Government survey is raised on application for an additional entry, it would involve untold controversies and result in unsettled and chaotic conditions. Under such conditions, every one who has heretofore made entry would be encouraged to have the land resurveyed in the hope of basing a claim upon the allegation that the Government survey returned too large an area. This would be especially vicious in the case of soldiers' additional entries, where any small fraction is deemed of sufficient value to become the subject of barter and sale in the public markets.

But these considerations do not preclude resurvey by the Government in a proper case. In the present instance, the Government survey shows that the former entry contained 160 acres, while by the private survey of 1907, the area is given as 119.37 acres. And also, by another private survey, dated 1909, the area is given as 119.2 acres. It is thus seen that if the private surveys are approximately correct the Government survey is grossly incorrect, and in view of the gross error thus alleged, and the further fact that the surrounding area may be likewise affected, if the Government survey is so defective as alleged in this instance, the Department deems it appropriate to direct an examination by a United States surveyor and full report respecting the character of the Government survey of the township involved with especial reference to the former entry referred to.

The case is accordingly remanded for that purpose. After such report, the Commissioner will resubmit the case to the Department with his recommendation for further consideration.

MARY LOW BROWN.

Decided February 16, 1914.

HOMESTEAD ENTRY—CITIZENSHIP—DECLARATION OF INTENTION.

One who was a minor at the date of the declaration of intention of his father to become a citizen of the United States acquired by virtue of such declaration the status of one who has declared his intention, and is qualified in that respect to make a homestead entry.

JONES, *First Assistant Secretary*:

Appeal is filed by Mary Low Brown from decision of March 13, 1913, of the Commissioner of the General Land Office, modifying the action of the local officers in rejecting her homestead application filed November 19, 1912, for entry of lot 4 and SE. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 30, and lot 1 and NE. $\frac{1}{4}$ NW. $\frac{1}{4}$, Sec. 31, T. 7 S., R. 40 E., B. M., Blackfoot, Idaho, land district, for the stated lack of proper evidence of her citizenship, she being alien born, and requiring her, within thirty days from receipt of notice, to furnish showing as to citizenship of her deceased husband.

In her application, she alleged she was "naturalized by the naturalization of my father, William W. Low, who was naturalized while I was yet a minor, and I resided in the United States while I was a minor." Her affidavit filed subsequently shows she was born in Scotland February 26, 1854; that she emigrated to this country in 1868; that her father on February 8, 1869, before the District Court of the United States in Utah declared his intention to become a citizen of the United States, and on February 21, 1876, was admitted as such before the United States Court in that territory, as shown by certified copy of such decree; that she had resided in the State of Idaho for 20 years past, and during that period had considered herself a citizen of the United States by reason of her father's preliminary and final papers, and by virtue thereof has in fact exercised citizenship rights by taking the elector's oath and voting for many years past at numerous general elections; and that she has at all times since coming to America regarded same as her home and country.

It is held in the decision appealed from, that as applicant was past 21 years of age when her father became a citizen of the United States, she derived no benefit from his citizenship; and in transmitting the appeal, the Commissioner states, referring to the case of *Boyd v. Thayer* (143 U. S., 135), relied upon by applicant in support of her contention that her father's naturalization and her acts under it effected her own, that the facts alleged do not bring this case within the ruling of the court in that case for the reason "she became a resident of the State of Idaho . . . after the admission of said

State into the Union; . . . and left the Territory of Utah . . . before Utah was admitted as a State.”

This applicant being past twenty-one years of age when her father attained his final citizenship, she did not acquire the status of a citizen also when he acquired that status. Upon the principle stated and followed in the decision of the Supreme Court in the case cited, however, she acquired by his declaration of intention to become a citizen, made while she was yet a minor, the status also of such declarant which she might complete by securing final citizenship based thereon. The court state:

Clearly minors acquire an inchoate status by the declaration of intention on the part of their parents. If they attain their majority before the parent completes his naturalization, then they have an election to repudiate the status which they find impressed upon them, and determine that they will accept allegiance to some foreign potentate or power rather than hold fast to the citizenship which the act of the parent has initiated for them.

The court stated further that ordinarily the election referred to is determined by application for full citizenship on the child's own behalf, but that acceptance of an actual equivalent in lieu of a technical compliance is not necessarily precluded, and that one who, like Boyd in that case, had indisputably evidenced his repudiation of allegiance to any foreign potentate or power by long exercise in good faith of the elective franchise, believing himself in law a citizen of the United States by virtue of his father's stated citizenship while such one was yet a minor, and by long holding office under oath as a citizen of the United States—

was within the intent and meaning, effect and operation of the acts of Congress in relation to the citizens of the Territory (of Nebraska), and was made a citizen of the United States and of the State of Nebraska under the organic and enabling acts and the act of admission—

it appearing that by said acts referred to those residents were citizens of the Territory of Nebraska not only who were already citizens of the United States but who had declared their intention to become citizens of the United States and who, as held, became citizens thereof when that Territory became a State, as well as their children who had, like Boyd, thus in fact repudiated foreign allegiance and in fact asserted allegiance to the United States prior to that State's admission.

This applicant is entitled, under the decision in that case, by virtue of her father's declaration, made while she was a minor, of intention to become a citizen of the United States, to the status also of such declarant, and qualified accordingly for making homestead entry. The circumstances of her case do not bring her within the operation of the admission acts either of the State of Utah where she formerly

lived or of the State of Idaho where she now resides, as she was not a resident of either State at the time of its admission; and whether or not she has in any other manner acquired the status of a fully naturalized citizen of the United States it is unnecessary to determine on this appeal.

The application is entitled, therefore, to go to record as an entry, notwithstanding the withdrawal made January 15, 1913, of all unappropriated public lands within this township from entry, settlement or appropriation except selection by the State of Idaho.

The decision appealed from is reversed.

INSTRUCTIONS.

February 19, 1914.

FOREST LIEU SELECTION—WITHDRAWAL—CANCELLATION IN PART.

The fact that part of the land embraced in a forest lieu selection is within a power site or other withdrawal does not necessitate cancellation of the selection in its entirety, but it may be divided and permitted to stand as to the land subject thereto, upon designation by the selector of proper bases for such portion.

JONES, First Assistant Secretary:

The Department has considered your [Commissioner of the General Land Office] request for instructions with reference to lieu selection 04633, Vancouver, Washington, series, pending before the Department upon appeal from your action holding the selection for cancellation because part of the selected land is included in Power Site Reserve 272.

It appears that the attorneys for the selector request that the land not involved in the power-site withdrawal be allowed to proceed to patent, in the absence of other objection, and you suggest that the selection may be divided, provided the selector "designates the base that is to be used in making such division and gives substantial reasons for the action desired."

No reason of law or administration is known which would require that a lieu selection, valid in other respects, should wholly fail because a part of the land is embraced in a power site or other withdrawal, and the Department is of the opinion that the selector should be allowed to divide the selection and assign proper bases therefor. The reason assigned for the contemplated action in this case, and apparent of record, would appear to fulfill the requirement of a substantial reason for the action desired.

INSTRUCTIONS.

February 19, 1914.

CONTEST AGAINST FOREST LIEU SELECTION—PREFERENCE RIGHT.

The right of contest and resultant preference right of entry accorded by the act of May 14, 1880, do not extend to forest lieu selections under the act of June 4, 1897.

GOVERNMENT PROCEEDINGS—PARTICIPATION BY INDIVIDUALS.

It is within the sound discretion of the Commissioner of the General Land Office to permit individuals to participate in government proceedings against forest lieu selections.

JONES, *First Assistant Secretary*:

The Department has considered the petition filed by Horace Stevens, as attorney for numerous applicants for contest against certain forest lieu selections, asking the exercise of the supervisory power of the Department in the matter of a construction, as to such applicants' rights, of the act of May 14, 1880 (21 Stat., 140), providing that:

In all cases where any person has contested, paid the land office fees, and procured the cancellation of any preemption, homestead, or timber culture entry, he shall be notified by the register of the land office of the district in which such land is situated of such cancellation, and shall be allowed thirty days from date of such notice to enter said lands.

This petition is filed in view of the holding of the Department, in a number of decisions hereinafter referred to, to the effect that no statutory right of contest exists and no preference right accrues as the result of a successful contest against a forest lieu selection, made under the act of June 4, 1897 (30 Stat., 36), and in view particularly of the large number of contests represented by said Stevens in which this holding has been applied or is applicable.

It is urged, earnestly and at great length, that the right of contest and resultant preference right of entry given by said act of May 14, 1880, relate as well to forest lieu selections as to preemption, homestead, and timber culture entries specified in that act.

The Circuit Court of Appeals, Eighth Circuit, held, however, "after a deliberate consideration of all the terms of the act of 1880, in the light of the legislation for disposition of public lands in force when it was enacted," that the preferred right of entry given by said act to a successful contestant accrues to the contestant of "a preemption, homestead, or timber culture entry only," and pertains to no other class of entries. *Hartman v. Warren et al.* (76 Fed., 157).

That decision was rendered September 14, 1896, and was followed December 7, 1908, by the Circuit Court for Oregon in the case of *Howell v. Sappington* (165 Fed., 944). On February 1, 1890, the Supreme Court of California also held to the same effect. *Gray v. Dixon* (83 Cal., 33).

The Department likewise has held there is no statutory right of contest as against a forest lieu selection, and that no preference right of entry can be acquired upon the cancellation of such selection as the result of a contest against same. *Harrington et al. v. Clarke* (40 L. D., 197); *Bergman et al. v. Clarke* (*Ibid.*, 231); *De Long v. Clarke* (41 L. D., 278); *Christy v. Clarke*, unpublished, decided September 5, 1912.

The contention in this petition was particularly urged by Stevens as attorney in the last case cited, which was presented by him, and orally argued, and considered by the Department as a test case among a large number then pending before the Department wherein he appeared as attorney.

Upon reconsideration of the question, the Department adheres to the construction of said act as held in the departmental decision referred to. If not strictly binding upon the Department, the decisions of the federal and state courts in accord with the Department's holding are so strongly persuasive of the correctness of such holding that the Department is disposed to consider this question as no longer, if it ever was in reality, an open or doubtful question.

Under this view of the law, it is unnecessary to consider the other questions raised as to the procedure with reference to a contest filed against a forest lieu selection, which is a matter within the province and discretion, in the first instance, of the Commissioner, under departmental regulations, particularly where adverse proceedings on the part of the Government may be involved; and the Department sees no good reason for changing the rule stated in the decision in the case of *Christy v. Clarke*, *supra*, that such contest-applicants may participate in such proceedings then pending or thereafter brought in such manner and to such extent as the Commissioner may determine is consistent with the public interest.

This petition is denied.

FRANCIS CLARNO.

Decided February 19, 1914.

MINING CLAIMS IN ALASKA.

The provisions in the acts of May 14, 1898, and March 3, 1903, extending the homestead laws to the Territory of Alaska, that no entry shall be allowed extending more than 160 rods along the shore of any navigable water, and that along such shore a space of at least 80 rods shall be reserved from entry between claims, have no application to mining claims asserted under the general mining laws as extended to Alaska.

CONFLICTING REGULATIONS MODIFIED.

Directions given that departmental regulations of July 7, 1913, 42 L. D., 213, be modified to conform to the views herein expressed.

JONES, *First Assistant Secretary*.

Francis Clarno has appealed from the decision of the Commissioner of the General Land Office, dated October 11, 1913, wherein

his mineral entry 01487 made January 21, 1913, for the South Arm placer mining claims Nos. 1 to 8, inclusive, survey No. 946, and his entry 01488 for the South Arm placer claims Nos. 9 to 12 inclusive, survey No. 947, Juneau land district, Alaska, were held for cancellation.

After citing certain of the statutes hereinafter mentioned and the departmental regulations thereunder and having found that the two groups of claims formed one continuous body of locations extending along the shores of navigable waters for a distance of approximately one and one-half miles, the Commissioner's decision concluded as follows:

In view of said acts and regulations thereunder, it will be necessary for claimant to elect which portion of his claim he will retain. Since the claim is divided into two entries, no reason is apparent why claimant cannot receive 160 rods along the shore of each entry, if he so desires, by leaving a space of at least 80 rods between them.

You will allow claimant thirty days from notice within which to comply with the above requirements; in default of which and of appeal, the entries will be canceled without further notice from this office.

In the brief filed on behalf of the claimant in connection with his appeal, it is earnestly contended that the acts relied upon, which are construed to limit the extent of his locations, pertain only to homesteads and kindred nonmineral claims in Alaska and are not applicable to mining claims asserted under the general mining laws as extended to Alaska by the specific acts passed by Congress. Owing to the importance of the question involved and the hardships that will result from a rigorous enforcement of the regulations, the Department has been induced to re-examine the matter with a view to ascertaining whether a correct conclusion has been announced heretofore.

The mining laws were first extended to Alaska by the 8th section of the act of May 17, 1884 (23 Stat., 24). The language used is as follows:

The laws of the United States relating to mining claims, and the rights incident thereto shall, from and after the passage of this act, be in full force and effect in said district, under the administration thereof herein provided for, subject to such regulations as may be made by the Secretary of the Interior, approved by the President.

On May 14, 1898 (30 Stat., 409), was passed an act, entitled: "An Act extending the homestead laws and providing for right of way for railroads in the District of Alaska, and for other purposes."

Section 1 of said act is as follows:

That the homestead land laws of the United States and the rights incident thereto, including the right to enter surveyed or unsurveyed lands under provisions of law relating to the acquisition of title through soldiers' additional homestead rights, are hereby extended to the district of Alaska, subject to such

regulations as may be made by the Secretary of the Interior; and no indemnity, deficiency, or lieu lands pertaining to any land grant whatsoever originating outside of said district of Alaska shall be located within or taken from lands in said district: *Provided*, That no entry shall be allowed extending more than eighty rods along the shore of any navigable water, and along such shore a space of at least eighty rods shall be reserved from entry between all such claims, and that nothing herein contained shall be so construed as to authorize entries to be made, or title to be acquired, to the shore of any navigable waters within said district: *And it is further provided*, That no homestead shall exceed eighty acres in extent.

Section 2 relates to railroad rights of way and provides:

That nothing herein contained shall be so construed as to give to such railroad company, its lessees, grantees, or assigns the ownership or use of minerals, including coal, within the limits of its rights of way, or of the lands hereby granted: *Provided further*, That all mining operations prosecuted or undertaken within the limits of such right of way or of the lands hereby granted shall, under rules and regulations to be prescribed by the Secretary of the Interior, be so conducted as not to injure or interfere with the property or operations of the road over its said lands or right of way.

By section 10 of that act provision was made for the appropriation of tracts not exceeding 80 acres occupied for purposes of trade, manufacture, or other productive industry. Among others the following limitations were made in that section:

such tract of land not to include mineral or coal lands, and ingress and egress shall be reserved to the public on the waters of all streams, whether navigable or otherwise: *Provided*, That no entry shall be allowed under this act on lands abutting on navigable water of more than eighty rods: *Provided further*, That there shall be reserved by the United States a space of eighty rods in width between tracts sold or entered under the provisions of this act on lands abutting on any navigable stream, inlet, gulf, bay, or seashore, and that the Secretary of the Interior may grant the use of such reserved lands abutting on the water front to any citizen or association of citizens, or to any corporation incorporated under the laws of the United States or under the laws of any State or Territory, for landings, and wharves, with the provision that the public shall have access to and proper use of such wharves, and landings, at reasonable rates of toll to be prescribed by said Secretary, and a roadway sixty feet in width, parallel to the shore line as near as may be practicable, shall be reserved for the use of the public as a highway.

Section 13 of said act provided for reciprocal rights with respect to native born citizens of the Dominion of Canada.

By section 26 of the act of June 6, 1900 (31 Stat., 321, 330), the mineral land laws were again extended to Alaska in the following terms:

The laws of the United States relating to mining claims, mineral locations, and rights incident thereto are hereby extended to the district of Alaska.

That same section provides that the reservation of a roadway 60 feet wide under the 10th section of the above act of May 14, 1898, "shall not apply to mineral lands or townsites."

The act of March 3, 1903 (32 Stat., 1028), entitled, "An Act to amend section one of the act of Congress approved May 14, 1898, en-

titled, 'An Act extending the homestead laws and providing for a right of way for railroads in the district of Alaska,' reads in part as follows:

and no indemnity, deficiency, or lieu-land selections pertaining to any land grant outside of the district of Alaska shall be made, and no land scrip or land warrant of any kind whatsoever shall be located within or exercised upon any lands in said district except as now provided by law: *And provided further*, That no more than one hundred and sixty acres shall be entered in any single body by such scrip, lieu selection, or soldier's additional homestead right: *And provided further*, That no location of scrip, selection, or right along any navigable or other waters shall be made within the distance of eighty rods of any lands, along such waters, theretofore located by means of any such scrip or otherwise: *And provided further*, That no commutation privileges shall be allowed in excess of one hundred and sixty acres included in any homestead entry under the provisions hereof: *Provided*, That no entry shall be allowed extending more than one hundred and sixty rods along the shore of any navigable water, and along such shore a space of at least eighty rods shall be reserved from entry between all such claims; and that nothing herein contained shall be so construed as to authorize entries to be made or title to be acquired to the shore of any navigable waters within said district; and no patent shall issue hereunder until all the requirements of sections twenty-two hundred and ninety-one, twenty-two hundred and ninety-two, and twenty-three hundred and five of the Revised Statutes of the United States have been fully complied with as to residence, improvements, cultivation, and proof except as to commuted lands as herein provided.

In departmental regulations of January 13, 1904 (32 L. D., 424, 427), issued pursuant to said acts of 1903 and 1898, is contained the following paragraph:

No entry of any kind in the district of Alaska can however be allowed for land extending more than one hundred and sixty rods along the shore of any navigable water, which is twice the extent originally permitted by the act of 1898, and along such shore a space of at least eighty rods is reserved between all claims, being the same as originally provided in the act of 1898.

In departmental instructions of July 7, 1913 (42 L. D., 213), after a reference to the departmental instructions of 1904 and the two acts involved, gave the following directions:

In administering said acts in accordance with such regulations and the instructions herein contained, no survey will be approved and no application, selection, filing, or location will be allowed under any law for such reserved areas other than for landings or wharves as provided in section ten of the aforesaid act of May 14, 1898.

The reservation between claims along navigable waters is absolute, except as to landings and wharves, and precludes all forms of appropriation under any law, but the inhibition in the reservation between claims along "other waters" applies only to scrip, land warrants, and soldiers' additional claims.

Upon examination of the two homestead acts, it is observed that there is no express direction to the effect that the limitations as to area of claims, the 160-rod shore frontage and 80-rod reserve blocks, shall apply to mineral lands or mining claims. In an endeavor to

construe the several acts applicable to Alaska and give proper operation to the terms, conditions and limitations prescribed in the laws affecting lands of different character and different classes of claims, the Department is persuaded that its regulations of July 7, 1913, go beyond the requirements laid down by Congress. The opinion is now entertained that the two homestead acts mentioned do not in any manner control, modify or limit the general application and operation in the Territory of Alaska of the mining laws as the same have been extended and made applicable thereto. The conclusion is reached that mining locations and applications and entries therefor, and surveys thereof, in that Territory are not properly to be considered within the purview or scope of the conditions and limitations found in said acts of 1898 and 1903.

In this connection, the Department is not unmindful that in the case of Shirley S. Philbrick (39 L. D., 513), the following language was used:

It is urged in argument by claimants counsel that the effect of such a ruling as stated above will be to deny the right to make mineral locations within the reserved areas; that is, if an agricultural claim of this character may not be located within eighty rods of a mineral claim along the shore, neither can a mineral claim be located within eighty rods of such agricultural claim. It is not believed that the result suggested will follow as a necessary consequence, but the question is not now here for determination.

In that case it was held that a soldiers' additional claim could not be located within eighty rods of a prior coal claim.

As the Department is at present advised, its regulations of January 13, 1904, were never construed, prior to July last, as applicable to mining claims, either by this office or the Commissioner's office. On the contrary, the practice in the office of the Commissioner has been to allow mineral entries without reference to said instructions and to approve the same for patent. While the Department has not in any reported case had occasion to comment upon such a practice, yet no decision is found in which it is even intimated that such regulations and the limitations prescribed by the homestead act, were applicable to mining claims. It is noted that at no time since the passage of the homestead acts referred to have the mining regulations contained any reference thereto nor, prior to July 7, 1913, have the conditions and limitations of such acts been construed to apply to mineral land entries.

In view of the foregoing, the Department is of opinion that said regulations of July 7, 1913, should be reformed and amended so as to conform with the views herein set forth, and to that end proper instructions will be issued.

The Commissioner's decision herein is accordingly reversed and in the absence of other objections, the entries involved will be passed to patent.

INSTRUCTIONS.

February 19, 1914.

ALLOTMENTS—INDIAN WOMAN MARRIED TO WHITE MAN.

An Indian woman married to a white man, a citizen of the United States, and the children born of such marriage, if recognized as members of an Indian tribe or entitled to be so recognized, are entitled to allotments on the public domain under section 4 of the act of February 8, 1887, as amended by the act of February 28, 1891, if otherwise within the terms and conditions of that section.

JONES, *First Assistant Secretary*:

The Department has received your [Commissioner of Indian Affairs] request for an opinion as to the right of an Indian woman, married to a white man, a citizen of the United States, and of the children of such a marriage to allotments on the public domain under the fourth section of the act of February 8, 1887 (24 Stat., 388), as amended by the act of February 28, 1891 (26 Stat., 794). Said section provides, in part, as follows:

That where an Indian not residing upon a reservation, or for whose tribe no reservation has been provided by treaty, act of Congress, or Executive order, shall make settlement upon any surveyed or unsurveyed lands of the United States not otherwise appropriated, he or she shall be entitled, upon application to the local land office for the district in which the lands are located, to have the same allotted to him or her, and to his or her children, in quantities and manner as provided in this act for Indians residing upon reservations.

The amended section differs from the original only in the first part thereof, which provides "That where any Indian entitled to allotment under existing laws shall make settlement," etc.

Other legislation bearing on the fourth section is found in section 17 of the act of June 25, 1910 (36 Stat., 855), but it does not materially affect the question involved herein.

In circular of September 17, 1887, rules and regulations were prescribed under the fourth section of the act of February 8, 1887, for making allotments to Indians on the public domain, among which was the following:

Indian women, married to white men, or to other persons not entitled to the benefits of this act, will be regarded as heads of families. The husbands of such Indian women are not entitled to allotments, but their children are.

Here is a recognition, amounting to a construction of the law, that an Indian woman married to a white man, a citizen of the United States, and the children born of such a marriage, are entitled to allotments under the fourth section, regardless of the fact that the woman is so married and although such recognition may not be in harmony with the general rule that among free people the children of married parents follow the status or condition of the father in the matter of citizenship.

In the case of *Black Tomahawk v. Waldron* (13 L. D., 683), which involved an application for allotment on tribal or reservation lands under a special act, and not on the public domain, it was held:

The common law rule that the offspring of free persons follows the condition of the father prevails in determining the status of children born of a white man, a citizen of the United States, and an Indian woman his wife. Children of such parents are, therefore, by birth not Indians, but citizens of the United States, and consequently not entitled to allotments under the act of March 2, 1889.

But in a subsequent decision of the same case (19 L. D., 311), it was held:

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

The rule prescribed in the circular of September 17, 1887, appears to have been followed in making allotments on the public domain under the fourth section, regardless of the above decisions in *Black Tomahawk v. Waldron*, until decision was rendered in the case of *Ulin v. Colby* (24 L. D., 311), wherein it was held:

Children born of a white man, a citizen of the United States, and an Indian woman, his wife, follow the status of the father in the matter of citizenship, and are therefore not entitled to allotments under section 4, act of February 8, 1887, as amended by the act of February 28, 1891.

The case of *Ulin v. Colby* involved an application for allotment under the fourth section of the act of February 8, 1887, and, although referring to the above rule prescribed in the circular of September 17, 1887, and to both of the above decisions in *Black Tomahawk v. Waldron*, and also quoting from the second decision thereof, the ruling as laid down in the first of said decisions was nevertheless followed.

The question now presented by your office is in view of departmental instructions of May 3, 1907 (35 L. D., 549), which overruled *Ulin v. Colby*. These instructions were issued in view of a letter from your office from which it was inferred that since the decision in the case of *Ulin v. Colby*, the rule had been to deny others than full-blood Indians allotments under the fourth section. In said instructions, after pointing out "That there is such a discrepancy between the syllabus of *Ulin v. Colby* and the principle clearly expressed in *Black Tomahawk v. Waldron* (19 L. D., 311), that *Ulin v. Colby* will be disregarded hereafter in deciding questions of allotments," it was further stated:

If the practice has been to refuse allotment to those having white blood, it was a mistake. The quantum of Indian blood or of white blood possessed by the applicant does not control and should not, of itself, influence the decision

as to his right to an allotment. One who is recognized by the laws and usages of an Indian tribe as a member thereof, or who is entitled to be so recognized, must be held qualified to take an allotment out of the public lands under the fourth section of the act of February 8, 1887, as amended by the act of February 28, 1891.

In regard to this ruling, your office states:

It would seem from the foregoing that children of Indian blood born to an Indian woman, married to a white man, a citizen of the United States, are entitled to allotments on the public domain regardless of the common law rule that offspring of free persons follow the status of the father thus making such children citizens of the United States. . . . Further, that the principle laid down therein is broad enough to include and should be extended to include Indian women married to white men, citizens of the United States. . . .

As said in departmental decision of May 3, 1907, the degree of Indian blood or of white blood possessed by an applicant does not and should not control in the decision as to his right to have allotment. Neither should the question of the citizenship of the father be injected into an application in order to deny the right of his minor children born of an Indian mother to allotments on the public domain. The same may be said with regard to the Indian mother. If she is an Indian and entitled to an allotment under existing law, she should be accorded that right regardless of whether her husband is or is not a citizen of the United States.

The effect of the instructions in 35 L. D., 549, overruling *Ulin v. Colby*, was a return or an adherence to the above rule as prescribed in circular of September 17, 1887. Said rule, providing, as it does, that Indian women married to white men will be regarded as heads of families, carries a recognition that a claim of membership in an Indian tribe may be established, contrary to the general rule, by the laws and usages of the tribe. This principle was announced in *Black Tomahawk v. Waldron* (19 L. D., 311), but that case involved an allotment of tribal lands. That the same rule, however, is equally applicable under the fourth section involving allotments on the public domain, is confirmed by the instructions in 35 L. D., 549. That such is the proper rule as regards allotment under the fourth section was also indicated in 8 L. D., 647, when the act of 1887 was before the Department for construction soon after its passage. It was then held:

Viewing the act in all its parts, thus gathering all its purposes and its whole scope, it would seem that it must have been the purpose of Congress to allot to Indians, not living on a reservation, or for whom no reservation has been provided, and to the minor children of such Indians, lands to the same extent, in the same manner, under the same restrictions and limitations, *mutatis mutandis*, as were enacted in the case of Indians living upon reservations; with the additional requirement, however, of actual settlement on the tract applied for by the non-reservation adult Indians.

The fourth section provides that an applicant for allotment thereunder shall make settlement upon the land he desires to have allotted to him. The circular of September 17, 1887, requires, among other

things, that such Indian applicant shall make oath to that effect. The fourth section also authorizes an Indian, upon application, to have allotments made to his minor children. This authority, however, extends only to those cases where the parent has made settlement upon the public domain under said section (40 L. D., 148): The law, as construed, only permits *one entitled himself* under the fourth section to take allotments thereunder on behalf of his minor children or of those to whom he stands in *loco parentis* (41 L. D., 626). The above qualifications must, therefore, appear in addition to the showing that an applicant under the fourth section is a recognized member of an Indian tribe or is entitled to be so recognized.

Your are, accordingly, advised that the right of an Indian woman married to a white man, a citizen of the United States, and of the children born of such a marriage, to allotments under the fourth section is to be determined not with reference to the citizenship of the husband or the *quantum* of Indian blood possessed by the children, but with reference to whether they are recognized members of an Indian tribe, or are entitled to be so recognized, and are otherwise within the terms and conditions of said section as to settlement on the public domain.

TACOMA AND ROCHE HARBOR LIME CO.

Decided February 21, 1914.

MINING CLAIM—EXPENDITURE AS BASIS FOR PATENT—WAGON ROAD OR TRAIL.

A wagon road or trail constructed in good faith and for the manifest purpose of aiding in the conduct of mining operations on the particular claim to which it is sought to be accredited, is available toward meeting the statutory requirement concerning expenditure as a basis for patent.

CONFLICTING DEPARTMENTAL DECISIONS MODIFIED.

Departmental decision in Douglas and Other Lodes, 34 L. D., 556, and Fargo No. 2 Lode Claims, 37 L. D., 404, modified.

JONES, *First Assistant Secretary:*

This is an appeal by the Tacoma and Roche Harbor Lime Company from the decision of the Commissioner of the General Land Office of November 26, 1912, holding for cancellation its mineral entry, No. 02426, made February 13, 1912, at Seattle, Washington, for the Marble Quarry, Marble Gulch, Marble Mount, Marble Dale, Marble Wonder, Marble Cliff, and Marble Beauty placer claims, survey No. 948, as to the first-mentioned claim.

These claims were embraced in mineral entry No. 01665, made November 11, 1909, and March 8, 1910, by the same entryman. Mineral survey 948 was made December 10 to December 24, 1908, the mineral surveyor returning certain cuts and excavations upon all the claims, of a total value of \$3,591, as improvements common to

all, and accredited a one-seventh interest, or \$513, to each. On the Marble Quarry he reported a discovery cut, valued at \$50. May 28, 1910, the Commissioner refused to accept these excavations as common improvements, and held the entry for cancellation as to the Marble Gulch, Marble Quarry, Marble Wonder, and Marble Beauty claims.

The entryman appealed to the Department. During the pendency of that appeal, there was filed a report, dated December 27, 1910, based upon a survey made July 2 to August 19, 1910, by another mineral surveyor. This report sought to accredit portions of a trail, stated to have been constructed for the benefit of a group of twelve placer claims, consisting of the above seven claims, and the Carbonate and Calcite, survey No. 909, and the Marble Gem, Marble King, and Marble Jack claims, survey No. 977, as a common improvement. This report as to the Marble Quarry claim, returned, in respect to this trail a one-half interest in one portion, valued at \$18.33, and the following undivided interests in different portions in connection with others of the group of twelve claims, to wit, a one-fifth interest, valued at \$90.50; a one-sixth, at \$10.33; a one-fourth, at \$5; a one-third, at \$12; a one-half, at \$6, and in another portion a full interest, valued at \$3, or a total value of the various trail items of \$145.16. This report also returned a cut, with a 15 to 27 foot face, and from 5 to 40 feet wide, valued at \$400, and a one-sixth interest in a cabin situated upon the Marble Jack claim, used as a tool house and for living quarters, and asserted to be an improvement common to the Marble Quarry, Marble Beauty, Marble Wonder, Marble King, Marble Jack, and Marble Gem claims. The cabin was valued at \$210, the value of an undivided one-sixth interest being \$35.

By decision of January 28, 1911, the Department affirmed the Commissioner's action of May 28, 1910, holding mineral entry No. 01665 for cancellation, as above stated. As to the trail and cabin embraced in the supplemental mineral surveyor's return, the Department said:

Since the appeal the showing has been supplemented, under a certificate by a mineral surveyor, based upon an examination and survey of improvements by him extending from July to October, 1910, all of which was several months subsequent to the mineral entry. The principal items thereunder are what appear to be other or enlarged cuts upon the claims affected by the Commissioner's order and the trail or trails which are set forth in detail.

Suffice it to say that even if the cabin and trails were held to be acceptable common improvements in such a case under the statute, their value is insufficient to afford the requisite credits except in connection with the open cuts upon which appellant also relies. . . .

On the other hand, it does not appear whether the improvements covered by the supplemental showing were made before the expiration of the period of publication of the notice of the patent application, and in any event the further

showing properly should first be passed upon by the Commissioner, as was the design and purpose of his order. The latter particular is also true as to the other matters included in the order.

The case is therefore remanded with the direction that the appellant be afforded a further opportunity to amplify its supplemental showing in behalf of the entry, as far as the facts will permit to be followed by the appropriate judgment on the merits; and except as thus modified the order of the Commissioner is affirmed.

Thereafter, the entryman relinquished mineral entry No. 01665, and August 25, 1911, filed the application upon which the present entry is based, publication of notice being had from August 31, 1911, to November 2, 1911.

An affidavit by Arthur E. Burr and Julius Hauan, executed December 16, 1911, was filed, which asserted the following improvements upon the Marble Quarry placer:

1. An open cut, N. 82 deg. 16' W. 420 ft. from Cor. No. 3, 27 x 40 x 14 ft. Value \$400.00.
2. Portion of Trails to be credited to this claim \$35.00.
3. A log cabin 755 ft. S. 40 deg. 32' W. from Cor. No. 2, 21 x 14 ft. used in common as tool house with 5 other placers owned by this applicant. Value of 1/6 interest \$35.00.
4. An open cut near S. W. corner, 16 x 28 x 24 ft. all in solid limestone, value \$470.00.
5. Interest in trails to be credited this claim, \$144.33.

August 7, 1912, the Commissioner as to this affidavit pointed out that it was not certified by the surveyor-general and required the claimant to submit a showing of improvements certified by the United States surveyor-general. A third mineral surveyor reported, September 24, 1912, and based upon that report and the preceding surveys, the surveyor-general certified that there were the following improvements upon the Marble Quarry placer:

1. An open cut, \$50.
 2. An open cut, \$400.
 3. One-sixth interest in cabin, \$35.
 4. Trail, \$147.
- Total value, \$632.

By decision of October 15, 1912, the Commissioner held that work done on a cabin or trail is not available toward meeting the requirements of the statute respecting expenditures prerequisite to patent, and required the entryman to show other and sufficient improvements made on or for the benefit of the Marble Quarry claim subsequent to location and prior to the expiration of the period of publication.

In response to this the entryman made a showing to the effect that these claims lie upon the side of Palmer Mountain, which rises very steeply, the sides being for many thousand feet so precipitous that they can not be scaled, making the construction of the trail necessary. It was contended that the construction of the trail was in-

dispensable before any work on the claims could be done, so as to enable the claimant to reach the property with the necessary tools and implements, to place machinery and structures suitable for removing the mineral deposits, and to afford access for workmen and employees, for the carrying in of supplies and carrying out the product of the mines. This showing was held insufficient by the Commissioner in the decision now under review. The trail lies partly within and partly without the boundaries of the group of twelve claims, a branch of it extending into the Marble Quarry.

The appellant contends that work upon a road or trail may properly be accredited as annual assessment or the development work required as a prerequisite to the issuance of patent. In support of this contention he refers to a statute of the State of Washington, section 7371, Remington & Ballinger's Annotated Codes and Statutes of Washington, 1910, which provides in part:

Any mining district shall have the power to make road building to mining claims within such district applicable as assessment work, or improvement upon such claims: *Provided*, That rules pertaining to such road building shall be made only at a public meeting of the miners of such district regularly called by the mining recorder of such district: . . . such meeting to designate where, when, and how such road work shall be done, and shall designate some one of their number who shall superintend such road building or construction, and who shall receipt for such labor to the performer thereof, such receipts to be filed with the county auditor of the county in which such work is performed by the holder or holders of such receipts, and shall be received as *prima facie* evidence of labor performed as annual assessment work upon such claim or claims, as may be designated by an affidavit or oath of labor.

Section 2324, Revised Statutes, provides:

The miners of each mining district may make regulations not in conflict with the laws of the United States, or with the laws of the State or Territory in which the district is situated, governing. . . the amount of work necessary to hold possession of a mining claim, subject to the following requirements: . . . On each claim located after the tenth day of May, eighteen hundred and seventy-two, and until a patent has been issued therefor, not less than one hundred dollars' worth of labor shall be performed or improvements made during each year.

Section 2325, Revised Statutes, requires a certificate by the surveyor-general that "five hundred dollars' worth of labor has been expended or improvements made upon the claim," by the mineral entryman or his grantors.

Assuming, without deciding, that the legislature of the State of Washington has the power under the above sections of the Revised Statutes to establish rules as to what shall constitute labor or improvements upon a mining claim and to delegate that power to a mining district, it should be pointed out that the record in this case fails to disclose that the land lies within any organized mining district, or, if so, that such district has complied with the requirements of the State statute.

The appellant contends, however, that even outside of the State statute work upon a road or trail affording access to a mining claim can properly be accredited as assessment or development work, citing the cases of *Doherty et al. v. Morris* (28 Pac., 85) and *Sexton et al. v. Washington Mining and Milling Company* (104 Pac., 614). The apparent conflict between these decisions and certain holdings of this Department has caused me to consider the question involved anew.

In *Doherty v. Morris* the Supreme Court of Colorado held that a road constructed to afford access to two adjoining lode claims, held in separate ownership, but built in conjunction, could properly, to the extent of the expenditure by each owner, be accredited as annual assessment work to each claim. The court said at page 86:

The parties substantially agree that no ordinary development work was actually done within the surface boundaries of the claim. It is, however, strenuously contended that the law in this particular was complied with by the construction of a wagon road up Cottonwood gulch to the Great Republican and Little Mattis, adjoining claims. We do not hesitate to assert that labor performed by the owner of a mine in constructing a wagon road thereto for the purpose of better developing and operating the same may be treated as a compliance with the law relating to annual assessment work thereon.

In *Sexton et al. v. Washington Mining and Milling Company*, *supra*, the Supreme Court of Washington held that, independent of the State statute above quoted, the payment of \$400 in the construction of a road by the owners of four contiguous claims was available as assessment work. The road there crossed one of the claims in controversy and the expense of the construction within the boundaries of such claim exceeded the sum of \$400. The court stated the question before it at page 615:

Can the construction of a road, without the boundaries of a mining claim, be credited as assessment work upon such claim, such road providing access to such claim and others contiguous thereto, and being built for the benefit of mines and mining claims in the district?

The court answered this question at page 616:

the building and construction of roads which can and are intended to be used in the general development of the mining property is a doing of assessment and improvement work within the meaning of the law.

In *Emily Lode* (6 L. D., 220) the improvements included a trail three-quarters of a mile in length and a wagon road one mile long. The trail and road were built to carry the ores from the Emily Lode to its owner's smelter situate upon a mill site. The report states that only a small portion of the road or trail lay within the surface boundaries of the Emily Lode but that it was used for development of that claim. The Department stated the question raised at page 221:

The sole question presented by the appeal is, can the improvements made outside of the surface boundaries of the claim as shown by said certificate,

be considered as a part of the five hundred dollars required to be expended upon the claim?—

and held that the trail and road having been built to carry the ores from the claim to the company's smelter were properly accreditable as a mining improvement.

In Alice Edith Lode (6 L. D., 711), the entire cost of a road built for the improvement of two groups of claims was sought to be accredited to one claim. This the Department declined to permit, saying at page 713:

Such being the fact, it must be held that, even if it were to be conceded that the making of a road outside the exterior boundaries of a claim but leading to it could be treated as a part of the improvement and development of the claim (which is not done herein), nevertheless the expenditure on the road in question could not be credited to the one claim here under consideration, since to do so would be to credit this claim with work done and expenditure made in part for other claims or lodes.

In White Cloud Copper Mining Company (22 L. D., 252) the Commissioner stated the facts as follows:

Five hundred and twenty-five feet of a road one mile in length, no part of which is upon the claim is also reported as having been built for the benefit of the claim and is valued at \$700.00. A road is not necessarily a mining improvement. The construction of a portion of a road not upon the claim cannot be accepted as a compliance with the law relative to expenditure upon mining claims.

The Department held at page 253:

In the case at bar five hundred and twenty feet of a road a mile long are sought to be credited as an improvement to the claim. Other five hundred and twenty feet of the same road are certified to as the improvements to be applied to another claim.

The work done on different portions of the company's road cannot in this manner be credited to its different claims. Your office correctly held that the claimant is not entitled to a patent on the improvements shown.

In Douglas and Other Lodes (34 L. D., 556) it was held (syllabus):

The cost of construction of such portions of wagon roads, used in the transportation of supplies to and ore from a mining claim or claims, as extend beyond the boundaries of the latter can not be accepted in satisfaction of the statutory requirement with respect to the expenditure in labor or improvements for patent purposes, the connection between the outlying portions of the roads and active mining operations or development being too remote to justify their acceptance.

In Fargo No. 2 Lode Claims (37 L. D., 404) the Department held (syllabus):

No part of a wagon road, lying partly within and partly without the limits of a group of mining claims, constructed and used for the purpose of transporting machinery and supplies to, and ore from, the group, is available toward meeting the requirement of the statute respecting expenditures prerequisite to patent.

At page 407 it was said:

Respecting the availability, as a mining improvement, of a wagon road, lying partly within and partly without the limits of a group of mining claims, constructed and used for the purpose of transporting machinery and supplies to, and ore from, the group, the Department, in the case of Douglas and Other Lode Claims (34 L. D., 556), held that the outlying portion of such a road is too remotely connected with active mining operations on a group of mining claims to justify its acceptance as a credit towards meeting the requirements of the law in the matter of expenditures therefor. If the outlying portion of such a road is, for the reason stated in that decision, unavailable in patent proceedings as a mining improvement, a portion of such a road lying within a claim would seem to be equally unavailable; for it is manifest that the latter portion, if used only for the purpose of transporting supplies to, and ore from, a claim, is no more intimately connected with active mining operations thereon than would be a portion of the same road, similarly used, lying outside the limits of the claim. The transportation of supplies to, and ore from, the claims here in question is the only purpose for which the wagon road, whose value is sought to be accredited to said claims, is alleged to have been constructed or used. The Department is therefore of opinion, that under the circumstances disclosed in this case none of the claims here in question is entitled to be accredited with the value or cost of any portion of said wagon road, whether situated without or within the limits of the group, and so holds.

In *Gird v. California Oil Company* (60 Fed. Rep., 531) a road was attempted to be accredited as annual assessment work to a large number of scattered noncontiguous claims in accordance with the rules of the local mining district. This the court refused to permit, saying at page 542:

But the local rules, in so far as they conflict with the act of Congress are, of course, of no avail, and that, as has been repeatedly stated, requires an annual expenditure of \$100 in work or improvements on each claim, provided that, where the claims are held in common, such expenditure may be made upon any one claim. But, to come within this latter provision, the claims so held in common must, as said by the Supreme Court in *Chambers v. Harrington, supra* (111 U. S., 350), be contiguous, and the labor and improvements relied on must, as held in *Smelting Company v. Kemp*, 104 U. S., at page 655, be made for the development of the claim to which it is sought to apply them; that is, in the language of the Supreme Court, "to facilitate the extraction of the minerals it may contain."

Lindley on Mines, Second Edition, Secs. 629 and 631, lays down the rule as follows:

Roadways are necessities, and where such have been constructed on the claim for the manifest purpose of assisting in the development of the mine, such as transporting machinery and materials to and ore from the mine, it is a legitimate expenditure. But manifestly such a roadway constructed for the purpose of reaching other properties would not satisfy the law.

* * * * *

As we have heretofore observed, roadways are necessary, and where constructed in good faith and for the manifest purpose of aiding in the conduct of mining operations on the particular claims sought to be represented by this character of work, the cost of their construction in connection with active mining operations may be entitled to consideration; but this rule is to be applied cautiously and on the lines of obvious common sense. In a general way, all

roads within a mining district are convenient and necessary; but to say that work done upon the general highways within a mining district may be done by mining locators and applied in lieu of assessment work on their respective claims would be absurd. A road is not *necessarily* a mining improvement. The construction of a road, no portion of which is on the claim, and which is not intended to be used in connection with such claim, cannot be accepted as a compliance with the law relative to annual expenditure.

I am of the opinion that the proper rule is as above laid down by Mr. Lindley, that the decision of this Department in Douglas and Other Lodes and Fargo No. 2 Lode Claims, *supra*, went too far and should be modified to the extent indicated.

In the case now under consideration the Commissioner held that a road or trail could in no event be accredited as an improvement to a mining claim. While this holding is apparently in harmony with the decisions in Douglas and Other Lodes and Fargo No. 2 Lode Claims, *supra*, it is, as applied to the facts of this particular case, which clearly establish that the trail is a proper mining improvement, erroneous. This statement, however, is made with no intention of adjudicating the question of whether the portion of the trail sought to be accredited to the Marble Quarry Claim is properly creditable to it in the manner sought as part of an improvement common to the twelve claims. The questions involved in determining the applicability of the trail as a common improvement have not been passed upon by the Commissioner and should be passed upon by him in the first instance.

The matter is accordingly remanded for further proceedings in harmony herewith. This renders it unnecessary to pass upon the question of whether the cabin upon the Marble Jack Claim can be accepted as a mining improvement or as an improvement common to the six claims.

FORT PECK LANDS—DESERT ENTRIES—EXAMINATION OF LAND.

SUPPLEMENTAL REGULATIONS.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

Washington, February 25, 1914.

The HONORABLE SECRETARY OF THE INTERIOR.

SIR: Your attention is called to paragraph 16 of the regulations opening lands within the Fort Peck Indian reservation, in Montana, which reads as follows (42 L. D., 267, 270):

Applicants will not be required to swear that they have seen or examined the land, before making application to enter, and the usual nonmineral and nonsaline affidavits will not be required with application to enter made prior to June 30, 1914, but evidence of the nonmineral and nonsaline character of the lands entered before that date must be furnished by the entrymen before their final proofs are accepted.

In the opinion of this office, desert land entries for said lands should not be allowed to persons who have not familiarized themselves with the character of the land and the possibility of obtaining water for the irrigation thereof, and, under said regulation, prior to June 30, 1914, neither homestead entrymen nor desert land entrymen need swear, when they present their applications to enter, that they have personally examined the land.

Persons who wish to make desert land entries of these lands, under numbers assigned to them, may present their applications to enter at any time within ten days from the dates of their selections, and may examine the lands either before making their selections or before the expiration of such ten days. In the opinion of this office they should be required to do so and to make the same showing in their applications to enter, as to a previous examination of the lands, its nonmineral and nonsaline character, and otherwise, which is required in other cases where desert land applications are presented.

It is therefore recommended that said paragraph be amended to read as follows:

Persons applying to make homestead entries of these lands prior to June 30, 1914, will not be required to swear that they have seen or examined the land before making applications to enter and will not be required to furnish the usual nonmineral and nonsaline affidavits with their applications, but must furnish evidence of the nonmineral and nonsaline character of the lands before their proofs are accepted. Persons applying to make desert land entries of these lands must personally examine the lands either before or after making their selections and before presenting their applications to enter. Such persons will be required to make the same showing in their applications to enter, as to a previous examination of the lands, its nonmineral and nonsaline character, and otherwise, which is required in other cases where desert land applications are presented.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved, February 28, 1914:

A. A. JONES,

First Assistant Secretary.

CERTIFIED COPIES OF RECORDS.

CIRCULAR.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

Washington, February 26, 1914.

REGISTERS AND RECEIVERS,

United States Land Offices.

SIRS: The Comptroller of the Treasury, in a decision dated January 19, 1914, holds that the act of August 24, 1912 (37 Stat., 497), was not intended to apply to registers and receivers.

Under the interpretation placed upon said act by the Department, circular No. 180 was issued October 17, 1912 (41 L. D., 333), which should henceforth be disregarded by you. The use of the seal furnished you should be discontinued, and the disposition of all moneys received for copies of your records will be governed by the applicable laws without regard to the provisions of said act.

Very respectfully,

CLAY TALLMAN, *Commissioner*.

Approved, February 26, 1914:

A. A. JONES,

First Assistant Secretary.

WILLIAM A. HARE.

Decided February 28, 1914.

ADJOINING FARM ENTRY—AREA OF ORIGINAL FARM.

Section 2289, Revised Statutes, does not limit the area of the original farm that may serve as the basis for an adjoining farm entry under that section, except to provide that the original and adjoining farms shall not together exceed 160 acres; so that any farm holding, no matter how small the area, may be made the basis for an adjoining farm entry.

JONES, *First Assistant Secretary:*

William A. Hare appealed from decision of the Commissioner of the General Land Office of July 1, 1912, canceling his adjoining farm entry for S. $\frac{1}{2}$ SE. $\frac{1}{4}$ and NE. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 28, T. 11 N., R. 15 W., Little Rock, Arkansas, as additional to his original farm for part of NE. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 33, NW. $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 34, and SW. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 27, T. 11 N., R. 15 W.

March 21, 1906, Hare made entry on which he submitted final proof April 29, 1911, but certificate was withheld on protest.

Section 28 was withdrawn by executive proclamations of March 6, 1908, and February 25, 1909, for Ozark National Forest. August 1, 1911, the Commissioner directed proceedings against the entry on the charge preferred by an officer that claimant was not qualified to make adjoining farm entry because he did not then own the land claimed as the original farm; that the land claimed as the original farm embraces only four and a half acres, and is insufficient base for adjoining farm entry. The charge was served and denied, hearing asked and had December 5, 1911, evidence being taken before a designated officer at Clinton, Arkansas. The local office found for claimant, recommending dismissal of the proceeding. The Commissioner found the first charge not proven, and, as to the second charge, that less than a Government subdivision can not be made basis of an adjoining farm homestead entry: wherefore he reversed the action of the local office and held the entry for cancellation. The Commis-

sioner cited as authority for his decision that in case of William F. Roedde (39 L. D., 365). In Roedde's case, cited, it will be seen that the bases for his adjoining farm entry were three town lots, being lots 1 and 5, block 7, and lot 22, block 6, in townsite of Crescent Mills. The Department held—

that to be available as the basis for an adjoining farm entry, a tract relied upon for that purpose should, at the date of the additional entry, occupy such a status that it might, if vacant on the records of the local office, have been included in the entry, the area originally owned being regarded, for administrative purposes, as constituting a part of the entered area. It is on this theory only that a continuance of the entryman's residence on, and cultivation of, the area originally owned can be accepted as fulfilling the requirements of the homestead law with respect to the additional areas.

It is well settled that land that has been appropriated to urban uses is not subject to homestead settlement and entry. (Norman Townsite *v.* Blakeney, 13 L. D., 399; Walker *v.* Lexington Townsite, 13 L. D., 404; Guthrie Townsite *v.* Paine *et al.*, 13 L. D., 562; North Perry Townsite *v.* Linn, 26 L. D., 393; Needham *v.* Northern Pacific R. R. Co., 26 L. D., 444; Turnbull *v.* Roosevelt Townsite, 34 L. D., 94; Aztec Land & Cattle Co. *v.* Tomlinson, 35 L. D., 161.)

It is evident, from the description the present applicant gives of the land sought to be used as the basis of an adjoining farm entry, that it has been appropriated to urban uses, in other words, is a town lot; and the Department is of opinion that ownership of and residence on a town lot bordering on public land subject to entry can not be made the basis for entry of the latter under the provisions of section 2239, Revised Statutes, above quoted. The application, therefore, even if perfected so as to meet the requirements of the decision of the Commissioner, could not be allowed, and, accordingly, will be rejected.

The reason for this decision is stated that the land sought to be used as a basis of the adjoining farm entry had been appropriated to urban uses. It was not an agricultural holding. This was the controlling fact in the case, and is wholly wanting in the present one. The adjoining farm homestead act does not prescribe the form or the area of the original farm. Provided only it is a farm holding, the area is of no consequence, and there is no requirement that the original farm holding shall consist of a Government subdivision, or of any area, or part of one.

The decision is therefore reversed, and if no objection appear final proof will be accepted, and case passed to patent.

SOLDIERS' AND SAILORS' HOMESTEAD RIGHTS.

CIRCULAR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,

Washington, D. C., February 28, 1914.

1. Any officer, soldier, seaman, or marine, who served for not less than ninety days in the Army or Navy of the United States during

the civil war and who was honorably discharged and has remained loyal to the Government, and who makes a homestead entry, is entitled under section 2305 of the Revised Statutes and the act of June 6, 1912 (37 Stat., 123), to have the term of his service in the Army or Navy, not exceeding two years, deducted from the three years' residence required under the homestead laws.

Similar provisions are made in the acts of June 16, 1898 (30 Stat., 473), and March 1, 1901 (31 Stat., 847), for the benefit of like persons who served in the late war with Spain, or during the suppression of the insurrection in the Philippines.

2. A soldier or sailor of the classes above mentioned who makes entry as such must begin his residence and cultivation of the land entered by him within six months from the date of filing his declaratory statement, but if he makes entry without filing a declaratory statement he must begin his residence within six months after the date of the entry. Thereafter he must continue both residence and cultivation for such period as will, when added to the time of his military or naval service (under enlistment or enlistments covering war periods), amount to three years; but if he was discharged on account of wounds or disabilities incurred in the line of duty, credit for the whole term of his enlistment may be allowed; however, no patent will issue to such soldier or sailor until there has been residence and cultivation by him for at least one year, nor until a habitable house has been placed upon the land. If the soldier's military service was sufficient in duration to require only one year's residence and improvement upon the claim, the entryman must perform such an amount of cultivation as to evidence his good faith as a homestead claimant. If his military service was of such limited duration as to require more than one year's residence upon the claim, he will be required to perform cultivation to the extent of one-sixteenth of the area of the entry, beginning with the second year thereof, and if proof is not submitted before the third year he must also cultivate at least one-eighth of the entry beginning with the third year and continuing to date of proof.

3. No credit for military service can be allowed where commutation proof is submitted.

4. A party claiming the benefit of his military service must file with the register and receiver a certified copy of his certificate of discharge, showing when he enlisted, when he was discharged, and the organization in which he served, or the affidavit of two respectable, disinterested witnesses, corroborative of the allegations contained in his affidavit on these points, or if neither can be procured, his own affidavit to that effect.

PERIODS OF SERVICE FOR WHICH CREDIT MAY BE GIVEN IN LIEU OF
RESIDENCE.

5. In determining the rights of parties under sections 2304-2309 of the Revised Statutes the civil war is held to have lasted from April 15, 1861, to August 20, 1866; the Spanish war and Philippine insurrection from April 21, 1898, to July 15, 1903.

No credit for military service can be given unless a soldier or sailor served for at least ninety days between the dates above mentioned.

In computing the period of service of a soldier "who has served in the Army of the United States," within the meaning of that phrase as used in section 2304 of the Revised Statutes, the entrance of the soldier into the army will be considered as dating from his muster into the service and not from his enlistment, if he was a volunteer; credit for military service in the regular army is counted from date of enlistment.

An entryman having enlisted and served ninety days during any one of the wars above mentioned is entitled under section 2305 of the Revised Statutes to credit for the full term of his service under that enlistment, although such term did not expire until after the war ceased.

6. A person who served for less than ninety days in the Army or Navy of the United States during said wars is not entitled to have credit for military service on the required period of residence upon his homestead, although he may have been discharged for disability incurred in line of duty.

7. A person serving in the Army or Navy of the United States may make a homestead entry if some member of his family is residing upon the land applied for, and the application and accompanying affidavits may be executed before the officer commanding the branch of the service in which he is engaged. Such soldier or sailor is not required to reside personally upon the land, but may receive patent if his family maintain the necessary residence and cultivation until the entry is three years old or until it has been commuted. The soldier's family in this connection is restricted to his wife and minor children.

8. A soldier is entitled to the same credit for military service in connection with homestead entries under the enlarged homestead act of February 19, 1909 (35 Stat., 639), as amended by the acts of June 13, 1912 (37 Stat., 132), and February 11, 1913 (37 Stat., 666); and under the act of June 17, 1910 (36 Stat., 531), which was also amended by said act of February 11, 1913, as is allowed in connection with ordinary homestead entries.

9. The special privileges accorded soldiers or sailors, as indicated in this circular, are not subject to sale or transfer, and can only be

exercised by the soldier or sailor himself, his widow, if unmarried, or his minor orphan children. The adult child of a soldier has no special privileges in connection with the homestead laws on account of his father's military service.

HOMESTEAD RIGHTS OF WIDOWS AND MINOR ORPHAN CHILDREN OF
DECEASED SOLDIERS AND SAILORS.

10. (a) If a soldier or sailor makes an entry or files a declaratory statement, and dies before perfecting the same, the right to perfect the claim, including the right to claim credit for the soldier's military service, passes to the persons named in section 2291, Revised Statutes; that is, to his widow, or, if there be no widow, to his heirs or devisees.

(b) In case of the death of any person who would be entitled to a homestead under the provisions of section 2304 of the Revised Statutes, but who died prior to the initiation of a claim thereunder, his widow, or in case of her death or remarriage, his minor orphan children by a guardian, duly appointed and officially accredited at the Department of the Interior, may make the filing and entry in the same manner that the soldier or sailor might have done, subject to all the provisions of the homestead laws in respect to settlement and improvements; and the whole term of service, or in case of death during the term of enlistment, the entire period of enlistment in the military or naval service will be deducted from the time otherwise required to perfect the title to the same extent as might have been allowed the soldier. (Sec. 2307, Rev. Stat.)

Where a homestead entry is made under section 2307, Revised Statutes, by the widow or minor orphan children of a deceased soldier or sailor, compliance with law both as to residence and improvement is required to be shown to the same extent as would have been required of the soldier or sailor in making entry under section 2304, Revised Statutes, except that credit will be given upon the three-year period for the entire term of the enlistment, not exceeding two years, where the soldier or sailor died during the term of his enlistment, provided he served at least ninety days.

(c) In case of widows, the prescribed evidence of military service of the husband must be furnished, with affidavit of widowhood, giving the date of her husband's death.

In case of minor orphan children, in addition to the prescribed evidence of military service of the father, proof of death or remarriage of the mother must be furnished. Evidence of death may be the testimony of two witnesses or a physician's certificate, duly attested. Evidence of marriage may be certified copy of marriage certificate, or of record of same, or testimony of two witnesses to the marriage ceremony.

Minor orphan children must make a joint entry through their duly appointed guardian, who must file certified copies of the powers of guardianship, which must be transmitted to the General Land Office by the registers and receivers.

11. All homestead applicants who are not native born citizens of the United States must have declared their intention to become citizens of this country, and before submitting proof, must be fully naturalized. An honorable discharge from the U. S. Army, or an honorable discharge from the U. S. Navy, or Marine Corps, after five years' consecutive service in the Navy, or one enlistment in the U. S. Marine Corps, is equivalent to a declaration of intention on the part of such soldier, sailor or marine, and he may, therefore, make a homestead entry without formally declaring his intention to become a citizen, but must, of course, perfect final naturalization before submitting proof.

SOLDIERS' DECLARATORY STATEMENTS.

12. (a) Soldiers' and sailors' declaratory statements may be filed in the land office for the district in which the lands desired are located by any person entitled to the benefits of sections 2304 and 2307, Revised Statutes, as explained above. Declaratory statements of this character may be filed either in person or through an agent acting under power of attorney, but the entry must be made in person, and not through an agent, within six months from the filing of the declaratory statement, and residence must also be established within that time.

The party entitled to file a declaratory statement may make entry in person without filing a declaratory statement if he so desires.

The soldiers' declaratory statement, if filed in person, must be accompanied by the prescribed evidence of military service and the oath of the person filing the same, stating his residence and post-office address, and setting forth that the claim is made for his exclusive use and benefit for the purpose of actual settlement and cultivation, and not, either directly or indirectly, for the use or benefit of any other person; that he has not heretofore made a homestead entry, or filed a declaratory statement under the homestead law (or if he has done so, he must show his qualifications to make a second or additional homestead entry); that he is not the proprietor of more than 160 acres of land in any State or Territory; and that since August 30, 1890, he has not entered or acquired title under the agricultural land laws of the United States, nor is he now claiming under said laws a quantity of land, which with the tracts applied for would make more than 320 acres, or, in the case of a claim under the enlarged homestead laws, 480 acres.

(b) In case of filing a soldier's declaratory statement by agent, the oath must further declare the name and authority of the agent and the date of the power of attorney or other instrument creating the agency, adding that the name of the agent was inserted therein before its execution. It should also state in terms that the agent has no right or interest, direct or indirect, in the filing of such declaratory statement.

The agent must file (in addition to his power of attorney) his own oath to the effect that he has no interest, either present or prospective, direct or indirect, in the claim; that the same is filed for the sole benefit of the soldier, and that no arrangement has been made whereby said agent has been empowered at any future time to sell or relinquish such claim, either as agent or by filing an original relinquishment of the claimant.

(c) Where a soldier's declaratory statement is filed in person the affidavit of the soldier or sailor must be sworn to before either the register or the receiver, or before a United States commissioner, or a judge, or clerk of a court of record in the county or land district in which the land sought is situated. Where a declaratory statement is filed by an agent, the agent's affidavit must be executed before one of the officers above mentioned, but the soldier's affidavit may be executed before any officer having a seal and authorized to administer oaths generally, and not necessarily within the land district in which the land is situated.

The fee to be paid to the register and receiver of the land office where the declaratory statement is filed is \$2, except in the Pacific States, where it is \$3.

(d) A homestead entry under a declaratory statement can not be made through an agent, and the entry must be made and settlement on the land commenced within six months after the filing of the declaratory statement. Residence, cultivation, and improvements must be shown to the same extent as though no declaratory statement had been filed.

13. The filing of a declaratory statement will not be held to bar the admission of filings and entries by others, but any person making entry or claim during the period allowed by law for the entry of the soldier will do so subject to his right; and the soldier's application, when offered within such time, will be allowed as a matter of right, and the intervening claimant will be notified and afforded an opportunity to be heard.

14. As implied by the requirements of the oath, a soldier will be held to have exhausted his homestead right by the filing of his declaratory statement, it being manifest that the right to file is a privilege granted to soldiers in addition to the ordinary privilege

only in the matter of giving them power to hold their claims for six months after selection before entry, but is not a license to abandon such selection with the right thereafter to make a regular homestead entry independently of such filing. This is clear from the statutory language. Section 2304 provides: "A settler shall be allowed six months after locating his homestead and filing his declaratory statement in which to make entry and commence his settlement and improvement;" and section 2309 requires him "in person" to "make his actual entry, commence settlement and improvement on the same, and thereafter fulfill all the requirements of the law." These must be done on the same lands selected and located by the filing.

15. Soldiers and sailors are cautioned against dealing with the so-called soldiers' claim agencies, or persons or companies who represent themselves as authorized by the Government to make entries or filings for soldiers. The Government does not employ nor authorize particular individuals to locate soldiers or sailors, or to file declaratory statements for them, except under the conditions above set forth.

CLAY TALLMAN, *Commissioner*.

Approved, February 28, 1914.

ANDRIEUS A. JONES,
First Assistant Secretary.

ALFRED A. KNEPPER.

Decided February 28, 1914.

LEAVE OF ABSENCE—FINAL PROOF.

Where the absence of a homestead entryman from his claim was due to a cause which would have entitled him to a leave of absence under the act of March 2, 1889, had he filed application therefor, his failure to apply for such leave should not prejudice consideration of final proof submitted upon his entry; but, in the absence of adverse claim or interest, the submission of proof may be treated as in effect an application for leave for the period of his absence and leave therefor granted under the provisions of that act.

LEAVE OF ABSENCE—ACT OF JUNE 6, 1912.

The provision in the act of June 6, 1912, that an entryman shall reside upon his entry for practically seven months each year after the establishment of residence, does not prevent the allowance of leave of absence for a greater period, for proper cause, under the act of March 2, 1889.

JONES, *First Assistant Secretary*:

Appeal has been filed by Alfred A. Knepper, from decision of May 22, 1913, of the Commissioner of the General Land Office affirming the action of the local officers in rejecting the final proof submitted by said Knepper, November 27, 1912, under the act of June 6, 1912

(37 Stat., 123), on his original homestead entry made February 14, 1908, for the NE. $\frac{1}{4}$ and his additional entry made July 24, 1909, for the NW. $\frac{1}{4}$, Sec. 19, T. 20 N., R. 34 E., N. M. P. M., Clayton, New Mexico, land district.

These lands were designated May 1, 1909, as subject to the provisions of the enlarged homestead act of February 19, 1909 (35 Stat., 639).

The proof shows that the entryman has on these lands a good class of improvements, including house, coal house, cellar, stable, well, and nearly 900 rods of fence, all valued at \$450. He has had one hundred acres in cultivation since the first year of his entry, cultivating the same to corn, millet, sorghum, oats, maize, potatoes, etc.

Entryman established residence on this land March 6, 1908, with his family, and was on the land thereafter, except for two months and nineteen days, during the first year from the date of establishing residence, two months and fifteen days during the second year, this being, however, part of a continuous period of ten months and ten days, extending to November 1, 1910, the extent of which was due to his wife's invalidism, as shown by physician's certificate. From that date until the submission of proof he was absent for two short periods, from January 1 to May 3, 1911, and from December 1, 1911, to May 4, 1912. It is held in the decision appealed from that the residence required by said act of June 6, 1912, is not shown, but that "bearing in mind the two leaves of absence acts of February 13, 1911 (36 Stat., 903), and August 19, 1911 (37 Stat., 23)," the proof is acceptable as commutation proof as to the original entry, and that the entryman might perfect that entry accordingly.

This entryman's good faith with reference to his entry and the submission of proof thereon, is manifest. His residence from November 1, 1910, was practically continuous, eliminating the periods covered by the leave of absence acts referred to, and he was continuously on the land prior to that date for more than fourteen months preceding his prolonged absence on account of his wife's illness. This absence was clearly such as would have entitled the entryman had he filed application to leave under the provisions of the act of March 2, 1889 (25 Stat., 854). His failure to apply for such leave should not now prejudice consideration of his final proof, the submission of which is in effect an application for such leave, and, in the absence of any adverse claim or interest appearing, leave therefor should be granted. The provision of said act of June 6, 1912, that an entryman shall reside upon his entry for practically seven months each year after the establishment of residence, does not prevent the allowance of leave of absence for a greater period because of prolonged sickness, or other cause, as provided in said act of March 2,

1889. Where a meritorious ground for such leave exists, the continuity of residence is not thereby broken, when the question of such leave comes up for consideration for the first time on final proof, as in this case, and this entryman is entitled on such proof to consideration of his holding residence since the date of its establishment, upon the same principle stated in the case of Sherman Shouse (39 L. D., 360). It is apparent, therefore, that this entryman has resided upon said lands for much more than three years, and has fully complied with the homestead law in the matters of residence, improvements and cultivation.

This proof should be considered as to both entries combined, under the provisions of the act of February 11, 1913 (37 Stat., 666), and approved as to both entries, and certificate issue accordingly.

The decision appealed from is reversed.

FRED A. KRIBS.

Decided January 29, 1914.

FOREST LIEU SELECTION—AMENDMENT—WITHDRAWAL.

Where an application to make forest lieu selection fails because of defective base, amendment thereof by the substitution of new base can not be allowed in the face of an intervening withdrawal for forestry purposes.

JONES, *First Assistant Secretary*:

July 12, 1901, F. A. Kribs filed in the local office at Sacramento, California, an application to make lieu selection under the act of June 4, 1897 (30 Stat., 36), for the S. $\frac{1}{2}$ NE. $\frac{1}{4}$, SE. $\frac{1}{4}$ SE. $\frac{1}{2}$, Sec. 31, SW. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 32, T. 13 N., R. 14 E., M. D. M., in lieu of the NE. $\frac{1}{4}$, Sec. 16, T. 21 S., R. 1 E., W. M., in the Cascade Forest Reserve, and on July 28, 1901, he filed, under the same act, application to select the SW. $\frac{1}{4}$, Sec. 14, T. 13 N., R. 14 E., M. D. M., in lieu of the NW. $\frac{1}{4}$, said section 16. The NE. $\frac{1}{4}$ of section 16, T. 21 S., R. 1 E., assigned as base, was embraced in the homestead entry of James A. Robinson, and the NW. $\frac{1}{4}$, of said section 16, was embraced in the homestead entry of George A. Miller. Patent had issued upon both of these entries.

Suit was brought by the United States in the United States Circuit Court for Oregon, on March 22, 1907, against these entries, which resulted in a decree canceling the patents, which left the selections herein without base. September 23, 1911, claimant herein filed application to withdraw his selection, and tendered therewith an application to re-select the land upon new base.

It appears that on October 3, 1905, a part of the lands selected was included in the Tahoe Forest Reserve, and on March 2, 1909, the entire township was placed within the said Tahoe Forest Re-

serve, the name of which was changed to Eldorado National Forest by Proclamation of July 28, 1910.

From a decision of the Commissioner of the General Land Office, dated June 21, 1912, canceling the selections first offered, for invalid base, and rejecting the subsequent amendment, upon the ground that the land having been placed in the forest reserve was not subject to selection, appeal has been prosecuted to the Department.

The Department has held that a defective base may be cured by amendment but that the rights acquired thereby take effect only from the date when the defect was cured. (6 L. D., 699; 27 L. D., 644.) It has also been held that indemnity selections defective for want of proper base cannot be amended so as to defeat an intervening claim (15 L. D., 549).

In State of California *et al.* (40 L. D., 301), it was held, syllabus:

An application to amend a defective school indemnity selection is defeated by an intervening withdrawal of the land from agricultural entry, with a view to classification by the Geological Survey, under which the lands were subsequently classified as oil and placed in a petroleum reserve.

The same rule applies with reference to withdrawals for forestry purposes, as such withdrawal excepts the land from agricultural entry, and as the lands involved were embraced in a forest withdrawal prior to the filing of the new base herein, such selection was properly rejected. In view of this conclusion it is unnecessary to pass upon the validity of the base assigned. The judgment appealed from is affirmed.

FRED A. KRIBS.

Motion for rehearing of departmental decision of January 29, 1914, 43 L. D., 146, denied by First Assistant Secretary Jones, April 20, 1914.

EDWARD A. MORGAN.

Decided February 12, 1914.

REPAYMENT—VOLUNTARY RELINQUISHMENT.

Where by mistake homestead entry was made for the wrong land, and the entryman, after applying for amendment but without waiting for final action upon his application, voluntarily relinquished the entry and made second entry for the land desired, he is not entitled to repayment of the fees, commissions and excess purchase money paid in connection with the first entry.

JONES, First Assistant Secretary:

Edward A. Morgan has appealed from decision of the Commissioner of the General Land Office, rendered November 26, 1912, deny-

ing repayment of the fee, commissions and excess purchase money paid in connection with homestead entry No. 014000, made by him July 16, 1910, for lots 3, 4, 5, 6, and 7, and SE. $\frac{1}{4}$ NW. $\frac{1}{4}$, and E. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 6, T. 25 N., R. 6 E., Great Falls, Montana, land district, containing 331.43 acres, under the enlarged homestead act of February 19, 1909 (35 Stat., 639).

Said entry was canceled upon relinquishment filed August 19, 1912, and on the same date entryman tendered application for repayment, alleging that the lands covered by said entry did not embrace the tracts examined and actually intended to have been entered.

It appears that appellant upon discovering that error had been made in describing the lands sought to be entered, filed an application to amend his entry so as to embrace the lands he desired, but before said application had been finally disposed of by the Commissioner of the General Land Office, he relinquished the entry upon which he seeks repayment, and made second homestead entry, Great Falls 028742, covering the tracts applied for by amendment, which entry was allowed August 20, 1912.

Repayment can only be allowed upon specific statutory authority. The instances in which repayment is authorized by the act of June 16, 1880 (21 Stat., 287), are where entries have been canceled for conflict or have been erroneously allowed and cannot be confirmed, neither of which conditions is found in this case. The act of March 26, 1908 (35 Stat., 48), provides that purchase moneys and commissions paid under any public-land law shall be repaid in all cases where the entry, application or proof "has been or shall hereafter be rejected, and neither such applicant nor his legal representatives shall have been guilty of any fraud or attempted fraud in connection with such application."

In the present case, while the element of fraud or attempted fraud may be entirely absent, yet the application or entry was not rejected by the Government, but, on the other hand, the application was accepted and the entry allowed thereon was canceled upon voluntary relinquishment. It is clear that a mistake was made in this case, but it is one for which the applicant is solely responsible. The words "erroneously allowed" employed in the repayment act of June 16, 1880, above cited, have been uniformly construed to refer to an error on the part of the Government. *Marie Steinberg* (37 L. D., 234), and *Palagia K. Gallas* (41 L. D., 63).

It is clear that the case is not one wherein repayment is authorized under authority of the acts referred to, and it therefore follows that the Department is without power to afford relief. The decision appealed from is accordingly affirmed.

ELLEN BOURASSA ET AL.

Decided February 19, 1914.

ALLOTMENTS UNDER SECTION 4, ACT OF FEBRUARY 8, 1887.

An Indian settler upon the public domain entitled to take an allotment under section 4 of the act of February 8, 1887, as amended February 28, 1891, is authorized under that section to take allotment on behalf of his minor children, stepchildren, or other children to whom he stands *in loco parentis*.

ALLOTMENTS LIMITED TO MEMBERS OF TRIBE.

Section 4 of the act of February 8, 1887, authorizes allotment of public lands only to persons recognized by the laws and usages of an Indian tribe as members thereof, or entitled to be so recognized.

QUANTUM OF WHITE OR INDIAN BLOOD.

The *quantum* of Indian blood or of white blood possessed by an applicant for allotment under said section 4 does not control and should not be considered in determining the right to allotment.

MARRIAGE OF INDIAN WOMAN TO WHITE MAN.

An Indian woman who by reason of her marriage to a white man is prevented from complying with the terms and conditions of the 4th section of the act of 1887, is not entitled to an allotment thereunder; and for the same reason her minor children living under her care and protection are not so entitled.

JONES, *First Assistant Secretary:*

Appeal has been filed from decision of the Commissioner of the General Land Office, holding for rejection Indian allotment applications filed on behalf of Ellen Bourassa and her minor children under the fourth section of the act of February 8, 1887 (24 Stat., 388), as amended by the act of February 28, 1891 (26 Stat., 794), which provides in part:

That where any Indian not residing upon a reservation, or for whose tribe no reservation has been provided by treaty, act of Congress, or Executive Order, shall make settlement upon any surveyed or unsurveyed lands of the United States not otherwise appropriated, he or she shall be entitled, upon application to the local land office for the district in which the lands are located, to have the same allotted to him or her, and to his or her children, in quantities and manner as provided in this act for Indians residing upon reservations.

This section, as amended by the act of February 28, 1891, differs from the original section only in the first part thereof, which provides that "where any Indian entitled to allotment under existing laws shall make settlement, etc."

The allotment applications were filed by Abdalah Bourassa, a white man, who has since died. He was the second husband of Mrs. Ellen Bourassa, the name of her first husband being La Chapelle. One, at least, of the children for whom allotment applications were filed was by the first husband. Both of the husbands were naturalized citizens, they having emigrated from Canada. Mrs. Bourassa lived with them in the vicinity of St. John, North Dakota, until they died, and it was there that these children were born. It appears that

Abdalah Bourassa had a homestead in that vicinity, and it was there the family always lived. Papers in the record show that they never in any way affiliated with any tribe of Indians.

The action of the Commissioner of the General Land Office, in denying these applications, was for the reason that there is no provision in the fourth section for the allotment of land to "step-children" and that applications made for them by their step-parents are not acceptable; furthermore, as it has been held by the Department—

that the wives and minor children of Indians who have settled upon public land and made homestead entry thereof under the regular homestead laws have become citizens of the United States by virtue of the citizenship acquired by the head of the family and so can not take allotments on the public lands It is thought that the Indian wives and children of white men, who are citizens of the United States, are *also* citizens and are not entitled to allotments.

The fact that the applications of some of these children were filed by a stepfather does not in itself render them invalid. It was held in the case of *Kin-nip-pah et al.* (41 L. D., 626) :

The argument seems to be that because the act makes no provision for selection of allotments by "step-parents" for their "step-children," such applications are not permissible. This is giving the law an altogether too restricted construction. The purpose of that law is to give to Indians who have settled on the public domain and to their immediate families allotments of land and to place them in the same position they would have occupied had they been living upon an Indian reservation. To carry out this purpose, the law should be construed to permit applications by one entitled himself to take allotment in behalf of all those to whom he stands *in loco parentis*.

The benefits conferred by the act of February 8, 1887, as amended, are upon Indians, and those provided for therein are Indians who make settlement upon public lands. This law is, in its essential elements, a settlement law and to make the same effective "to accomplish the purpose in view, it was doubtless intended it should be administered, so far as practicable, like any other law based upon settlement." (8 L. D., 647.)

The section also authorizes an Indian, upon application, to have allotments made to his minor children. This authorization only extends to those cases where the parent has settled upon the public lands. (*Cynthia Martha Sweeney*, 40 L. D., 148.)

The law, as construed, permits *one entitled himself* to take allotment in behalf of his minor children or of those to whom he stands *in loco parentis*. (*Kin-nip-pah*, 41 L. D., 626.)

In the present case, Abdalah Bourassa was not an Indian, was not himself entitled to an allotment under the fourth section and never made settlement under said section. Therefore, he was not qualified to make application for allotment on behalf of the members of this

family. This is equally true of Mrs. Ellen Bourassa, the mother, so far as settlement on public lands under said section is concerned.

In addition to the other qualifications required to entitle one to allotment under the fourth section, it must be shown that he is a recognized member of an Indian tribe or is entitled to be so recognized. Such qualifications may be shown by the laws and usages of the tribe. (35 L. D., 549.)

The record in this case shows that Mrs. Ellen Bourassa at one time made application for the enrollment of herself and minor children as members of the Turtle Mountain Band of Chippewa Indians. The council of the tribe unanimously refused to sanction her enrollment or that of her children. This action was subsequently sustained by the Indian Office and the Department; hence, not being recognized members of an Indian tribe or having been found entitled to be so recognized, the members of this family are for that reason alone not entitled to allotments under the fourth section of the general allotment act, even though they might otherwise be qualified under said section which, as hereinbefore set forth, they are not.

In thus reaching the conclusion that neither Mrs. Ellen Bourassa nor her minor children are entitled to allotments under the fourth section, no consideration has been given to the question as to her status by reason of marriage to a white man, a citizen of the United States, or as to that of her children born of such marriage, because it is not deemed necessary to the proper disposition of the applications in this case; but it may be stated generally in this connection, as was held in 35 L. D., 549, that "the *quantum* of Indian blood or of white blood possessed by the applicant does not control and should not, of itself, influence the decision as to his right to an allotment" under the fourth section.

The abandonment of her tribe by an Indian woman, for the purpose of assuming marriage relations with a citizen of the United States, brings her within the sixth section of the act of February 8, 1887, which declares every Indian who has taken up his residence separate and apart from his tribe and adopted the habits of civilized life a citizen of the United States; but this provision does not conflict with the fourth section of said act, because separation or living apart from his tribe for the purpose of settlement upon public lands, is an essential part of the procedure under said section for the acquirement of such lands by an Indian. The fact of marriage by an Indian woman to a white man, a citizen of the United States, may not of itself necessarily deprive her of the right to allotment under the fourth section, but by assuming such relation she is thereby rendered incapable of complying with the terms and conditions of said section, as shown from the facts of the case now under consideration. For the same reason her minor children, born of such a marriage, are

deprived of the benefits of said section, and not necessarily because of the infusion of white blood or the citizenship of the father, but because the Indian mother, regarded as head of the family, is not able, by reason of her marriage relation and the new conditions surrounding her, to comply with the provisions of the fourth section in respect to her minor children. Even in the case of tribal property, the right to share therein may be lost by change of status of an applicant who might otherwise be entitled. The fourth section, as shown herein, is held to be, in its essential elements, a settlement law. Under that law a white woman, who, as a single person, would be entitled to make homestead entry, forfeits such right by marriage.

The decision of the Commissioner of the General Land Office, denying the applications herein, filed on behalf of Mrs. Ellen Bourassa and her minor children, is hereby affirmed.

The attention of the Commissioner is invited to the numerous protests in the record filed against said applications.

C. A. SHELDON ET AL.

Decided February 21, 1914.

MINING CLAIM—IMPROVEMENTS—CERTIFICATE OF SURVEYOR-GENERAL.

The certificate of the surveyor-general as to improvements upon a mining claim, required by section 2325, Revised Statutes, is not conclusive upon the land department, which may, in the presence of anything tending to impeach the correctness thereof, wholly disregard the certificate and require further showing as to improvements.

PATENT EXPENDITURES—IMPROVEMENTS BY PRIOR LOCATOR.

No part of the value of permanent and immovable improvements on a mining claim, made long prior to the location thereof, by claimant under a previous location embracing the same ground, solely to improve and develop the prior claim, no privity being shown between former and present claimant, can be accredited to the later claim toward meeting the requirement of the statute as to patent expenditures.

JONES, *First Assistant Secretary:*

C. A. Sheldon and F. W. Mettler have appealed from the Commissioner's decision of November 26, 1912, in the matter of their application, 04832, for patent to the Duffy, Criss Cross, and B & B lode mining claims, survey 9093, situate in the McClellam (unorganized) mining district, Helena land district, Montana.

The application for patent, which included, besides the three claims above named, the St. Lawrence, was filed October 10, 1910. Notice of the application was issued October 13, 1910, and publication was commenced October 20, following. By letter of August 17, 1911, the Commissioner directed the local officers to proceed against the application on the charge preferred by a forest officer (the land

being situated in the Helena National Forest), to the effect that \$500 had not been expended upon or for the benefit of the Criss Cross, B & B, and Duffy claims. After due notice, hearing was had on the charge, December 28, 1911. On the evidence adduced, the local officers found and held that there had been performed within the limits of the Criss Cross, and B & B claims work which, if available as patent expenditures with respect to the group, was more than sufficient in value to satisfy the requirements of the law as to these and the Duffy claims; that a portion of this work was performed by Sheldon and some of his associates, prior to the dates of the location of the claims in question and with reference to earlier claims, but that it is not possible to determine from the present record just what work had been so performed; and that—

inasmuch as the government has charged that the necessary expenditure of \$500 has not been made upon the claims, it was incumbent upon it to establish said charge, as a fact, and not as a theory, and in order to do so, it was the duty of the government to show when the work in question was actually done, for in the absence of such a showing we are without facts from which to draw a conclusion, and are left to conjecture as to just what the facts are.

They accordingly recommended that the charge be dismissed.

Upon review of the record, the Commissioner, in the decision here appealed from, reversed the action of the local officers, saying:

The record and testimony have been given careful examination, in connection with your decision. This office, however, can not agree with your construction of the law by which you hold that, in an application for mineral patent, the burden of proof is upon the Government to establish the insufficiency of the expenditure of \$500, upon each location, in satisfaction of the statutory requirement. On the contrary, it is a most essential requisite, under the statute and the regulations, that the applicant shall, himself, furnish full satisfactory proof of improvements. The certificate of the surveyor-general is, by no means, conclusive upon this office, "but further and other evidence may be required in any case." Paragraph 49, U. S. Mining Regulations.

He found that much of the work sought to be credited to the three claims in question was performed upon and for the benefit of different and earlier locations, made by two men named Burns and Burton, and, in effect, that such work was not available as patent expenditures for the benefit of the present locations. The application, however, was not, for this reason, rejected but claimants were afforded opportunity to show the existence upon the claims of other and sufficient improvements, made subsequently to the locations here relied upon and prior to the expiration of the period of publication of the notice of the application, and claimants were notified that, in default of such showing or of appeal, the application would be rejected without further notice.

It appears, from the abstract of title filed in connection with the application for patent that the B and B location was made April

30, 1907, by P. L. Duffy, John Warren, C. Warren and C. A. Sheldon, and that, by deeds dated February 25 and March 1 and 2, 1909, the entire title thereto became vested in Sheldon and Mettler, the present applicants. The Duffy location was made, June 1, 1907, by C. A. Sheldon and P. L. Duffy, the latter of whom, by deed dated March 1, 1909, conveyed his interest in the claim to F. W. Mettler. The Criss Cross claim was located November 7, 1908, by the said C. A. Sheldon and F. W. Mettler. Amended locations of these three claims were made by Sheldon and Mettler, May 2, 1910.

The claims were surveyed, May 22 to May 25, 1910, and in the field notes which were sworn to by the mineral surveyor, June 14, 1910, the following improvements were returned:

ON THE B & B.

Discovery cut, 2 feet wide, 50 feet long, value \$60; shaft (partially caved) $5 \times 3\frac{5}{10} \times 35$ feet, with drift $4 \times 6 \times 30$ feet from bottom, value \$550; shaft $4 \times 5 \times 10$ feet, value \$100; shaft $6 \times 6 \times 10$ feet, value \$110; shaft $4 \times 5 \times 15$ feet, value \$150; shaft $4 \times 5 \times 8$ feet, value \$60; total value of improvements \$1,030.

ON THE CRISS CROSS.

Discovery cut, 2 feet wide, 50 feet long, value \$60; shaft (Partially caved) $6 \times 6 \times 65$ feet from which were run two cuts, respectively, $3 \times 3 \times 75$ feet and $3 \times 3 \times 15$ feet, value \$790; total value of improvements, \$850.

ON THE DUFFY.

Discovery shaft $8 \times 6 \times 22$ feet, value \$350; shaft $4 \times 4 \times 12$ feet, value \$120; shaft $4 \times 5 \times 8$ feet, value \$70; total value of improvements \$540.

Reference is also made to a log cabin 12×16 feet, situated on the B & B claim, but the same is not valued.

The surveyor general certified that—

five hundred dollars worth of labor has been expended or improvements made upon or for the benefit of each of the locations of said mining claim by claimants or their grantors, and that said improvements consist of two disc. shafts, two disc. cuts, five cuts, nine shafts, and drift valued at \$2,855, and that no portion of said labor or improvements has been included in the estimate of expenditures upon any other claim.

The improvements returned by the mineral surveyor and certified to by the Surveyor General would seem, from the face of the return and the certificate, to show full compliance by the applicants and their grantors with the statutory requirements as to patent expenditures upon the B & B, Duffy, and Criss Cross claims. It is urged in the appeal that, so long as the certificate of the Surveyor General is outstanding, it must be accepted by the land department as at least

prima facie evidence of the matters stated therein and held to be conclusive upon the land department, unless overcome by positive proof to the contrary. It is further contended that the evidence presented at the hearing had herein fails to show that the statutory expenditures have not been made upon or for the benefit of each of the claims in question and hence that, on the showing made, the Commissioner should have accepted the improvements returned by the mineral surveyor and certified to by the Surveyor General as sufficient to fulfill the requirements. As supporting these contentions, the applicants cite *United States v. Iron Silver Mining Company* (128 U. S., 673).

In the case cited, the court, at page 685, said:

The sufficiency of the work performed and improvements made upon each of the claims patented was shown by the certificate of the surveyor general of the United States for the State in which the claims are situated. The statute makes his certificate evidence of that fact. Rev. Stat. S. 2325. It declares, where publication is made of the application for a patent, that "the claimants at the time of filing this application, or at any time thereafter, within the sixty days of publication, shall file with the register a certificate of the United States Surveyor General that five hundred dollars' worth of labor has been expended or improvements made upon the claim by himself or grantors." He was fully informed of the character and value of the labor performed and improvements made through his deputy, who had personally examined them and estimated their cost, and also secured affidavits of others on that subject. Their sufficiency, both as to amount and character, were matters to be determined by him from his own observation, or from the testimony of parties having knowledge of the subject; and in such cases, where there are no fraudulent representations to him respecting them by the patentee, his determination, unless corrected by the Land Department before patent, must be taken as conclusive. His estimate here in both particulars was subject to be examined by the Department before the patents were issued; and any alleged error in it cannot afterwards be made ground for impeaching their validity.

While this decision holds that the statements contained in the certificate of the Surveyor General as to improvements upon a mining claim, required by section 2325, Revised Statutes, are, in the absence of fraudulent representations to such official and unless corrected by the land department before patent, conclusive upon the courts and can not, after patent, be impeached, it nevertheless holds, in effect, that such certificates are, before patent, subject to examination and correction by the land department, and hence not conclusive upon it. It does not, therefore, sustain the contentions of the applicants. In the present mining regulations, which were approved March 28, 1908, it is, in paragraph 49, said:

The surveyor-general may derive his information upon which to base his certificate as to the value of labor expended or improvements made from the mineral surveyor who makes the actual survey and examination upon the premises, and such mineral surveyor should specify with particularity and full detail the character and extent of such improvements, *but further or other evidence may be required in any case.*

It must be held, therefore, that, in the presence of anything tending to impeach the correctness of the Surveyor General's certificate as to improvements, the Department is entitled to wholly disregard such certificate and require further showing as to improvements by a mineral applicant.

The evidence adduced at the hearing had in this case shows that the principal improvements returned by the mineral surveyor and certified to by the Surveyor General were made in connection with and for the benefit of locations which long antedated the locations relied upon as a basis for the present application. It appears from the testimony of Sheldon, one of the applicants, that the returned B. & B. improvements, described as a 35-foot shaft and 30-foot drift therefrom, valued at \$550, were made in 1899 and 1900, with respect to an earlier location of the same ground made in 1898 or 1899, by two men named Burns and Burton, with whom Sheldon was associated. The so-called 65-foot shaft on the Criss Cross, which is almost exclusively relied upon as patent expenditures for the benefit of that claim, is shown by the evidence to have been sunk prior to 1901, and in that year to have been badly caved. This work, like the shafts and drifts on the B. & B., appears to have been performed for the benefit of a location of the same ground made by Burns and Burton, in 1898 or 1899. As to the cut, 3 x 3 x 75 feet, returned by the mineral surveyor for the benefit of that claim, it is testified by Sheldon that he does not know when or by whom this work was done. He also testifies that he does not know who dug the cut described as being 3 x 3 x 15 feet on that claim. As to the Duffy, it was testified on behalf of the Government, and not denied, that in 1900 and 1901 there were two holes thereon which at that time were so badly caved that one "could hardly see what the work amounted to;" that shortly before the hearing one of these holes had been cleaned out and that at that time there was also on the claim another hole about 6 feet deep. The work on the two larger openings on the Duffy would seem to have been performed prior to 1901, in connection with a prior location made by Burns and Burton. Sheldon testifies that a great deal of the work upon these three claims was performed from eight to ten years prior to the hearing and hence long before the claims here relied upon were located. The mineral surveyor who was a witness on behalf of the claimant, testified that he first saw the ground in 1909, and hence could have had no personal knowledge as to anything save the existence of said improvements and their then condition.

No part of the value of permanent and immovable improvements on a mining claim, made long prior to the location thereof, by claimants under a previous location embracing the same ground, solely to improve and develop the prior claim, can be accredited to the later

claim toward meeting the requirement of the statutes as to patent expenditures. Yankee Lode Claim (30 L. D., 289); Russell *et al. v.* Wilson Creek Consolidated Mining and Milling Company (30 L. D., 322). Under these rulings it is obvious that on the present record the claimants were not entitled to have accredited to the three claims in question the value of any of the improvements made for the benefit of the earlier locations covering the same ground and exclusive of such credits the improvements returned by the mineral surveyor and certified to by the Surveyor General are insufficient in value to satisfy the statutory requirements as to expenditures upon or for the benefit of any of said claims. While the claimants contend and the local officers found that the Government failed to sustain its charge that the available improvements made upon and for the exclusive benefit of these particular locations did not fulfill, as to value, the requirements of the statute, the evidence, nevertheless, so thoroughly impeached and discredited the Surveyor General's certificate as to deprive it of any *prima facie* probative force or value. This being true, the Commissioner properly required further showing under the above quoted provisions of paragraph 49 of the mining regulations.

Accompanying the appeal is an affidavit by C. A. Sheldon, one of the applicants, wherein he avers that:

ever since the year 1899 he has been in possession of the premises embraced in M. A. 04832, and known as the B & B, Criss Cross and Duffy Lodes, either as part owner or as sole owner of the same, and that the improvements returned by the Deputy Mineral Surveyor as being on said premises were placed on said premises either by this affiant or his co-owners since said year 1899, or during said year 1899; that affiant acquired the interests of Burns and Burton who were originally interested with him in said mining ground in 1899, by a settlement made with them at some time after said year 1899, and prior to the relocation or amended locations of said claims in 1907 and 1908, as shown by the abstract of title; that the locations of said claims made in 1907 and 1908 as shown by the abstract of title were in reality amended locations of said claims, and made partly for the purpose of "locating in" other partners, and not for the purpose of initiating a new right to said premises, or any part thereof; that at the time said locations were made affiant was the owner, locator and claimant of said premises, and that he had been so since said year 1899; that no other person than affiant claimed the said premises or any part thereof, at the time they were so re-located, or at the time said amended locations were filed in 1907 and 1908, and that no other person than affiant and his co-owner, F. W. Mettler, now claim any interests in said claims or any part thereof; that by the filing of said notice of location in 1907 and 1908, as shown by said abstract of title, affiant did not intend to abandon or waive his right to said mining claims, or to the improvements theretofore placed upon the same by affiant and his co-owners, but merely to amend the original location of said claims and also to locate in new partners in said claims; that affiant has no way of determining what part of the improvements now upon said claims was placed thereon subsequent to 1907 or 1908 as the case may be, and what part was placed thereon prior thereto, since there was no change in the possession of said claims, and the work was

simply continued the same after said amended locations were made, as before, by this affiant and his co-owners.

Wherefore, affiant asks that he and his co-owner F. W. Mettler, be adjudged to be the owners of said claims and of the improvements thereon, by adverse possession, since in equity they are entitled to said ground and to the improvements thereon, regardless of whether they were so placed thereon before or after the amendments of the locations thereof; and also asks that applicants be permitted to supplement their proof of title by furnishing the customary proof of the statute of limitations and of the fact that there are no actions pending involving the said premises.

The Department would not be disposed to question the sufficiency of the improvements here relied upon should notices of the original locations be filed and a privity of title between the original and present claimants to the ground be satisfactorily established. The applicants, therefore, will be afforded a reasonable time, to be fixed by the Commissioner, within which to make such showing and, if it be satisfactory, the application may, in the absence of other objection, be passed to entry and patent; otherwise, and in the absence of a showing as to sufficient expenditures made between the dates of the present location and the date of the expiration of the publication of notice, the application will be rejected.

As thus modified, the decision appealed from is affirmed.

GEORGE C. MILLER.

Decided February 27, 1914.

HOMESTEAD ENTRY—INDIAN LANDS—RIGHT EXHAUSTED.

The making and perfecting of title to a homestead entry under the act of June 5, 1906, providing for the disposal of ceded Indian lands under the provisions of the homestead laws to the highest bidder under sealed bids, exhausts the homestead right, notwithstanding the entryman was required to pay for the land the amount bid.

JONES, *First Assistant Secretary:*

George C. Miller has appealed from decision of March 31, 1913, by the Commissioner of the General Land Office, holding for cancellation his homestead entry, made January 25, 1913, under the enlarged homestead act of February 19, 1909 (35 Stat., 639), for the E. $\frac{1}{2}$, Sec. 34, T. 4 S., R. 22 E., Fort Sumner, New Mexico, land district, for the reason that the entryman had exhausted his homestead right by perfecting title under a former homestead entry.

It appears that on April 5, 1907, Miller made homestead entry under the act of June 5, 1906 (34 Stat., 213), at Lawton, Oklahoma, for the NE. $\frac{1}{4}$, Sec. 14, T. 1 S., R. 13 W., which was patented April 21, 1910, upon commutation proof. Said tract was awarded to Miller under his bid of \$1,626.11.

Said land was a portion of a ceded Indian Reservation, and was disposed of to the highest bidder under sealed bids. Notwithstanding the price which entrymen were required to pay, the act referred to provided that the lands were to be disposed of under the provisions of the homestead laws. Therefore, an entry under that act exhausted the homestead right.

On appeal it is urged that inasmuch as Miller has not had a free homestead entry he is entitled to make entry. This contention cannot be concurred in.

Section 2 of the act of May 22, 1902. (32 Stat., 203), provided that any person who prior to the act of May 17, 1900 (31 Stat., 179), made a homestead entry for lands in a ceded Indian Reservation affected by said act of 1900, and perfected the same and acquired title to the land by final entry under section 2291, Revised Statutes, or by commutation under section 2301, Revised Statutes, or any amendment thereto, by having paid the price provided under the law opening the land to settlement, may make another homestead entry, but is not allowed the right of commutation of the second entry, if the first entry was commuted.

It is clear that the act referred to has no application in this case, inasmuch as the land embraced in the first entry was not affected by the said act of May 17, 1900, and the entry was not made prior to that act. The enlarged homestead act does not authorize the allowance of entry thereunder unless the applicant be qualified to make a homestead entry. It is clear that the action below was correct and accordingly the decision appealed from is affirmed.

SAWYER v. SOUTHERN PACIFIC R. R. CO.

Decided February 28, 1914.

RAILROAD GRANT—INDEMNITY SELECTION—CONFLICTING LIMITS.

Lands within the conflicting primary limits of the Southern Pacific Railroad Company's branch line grant made by the act of March 3, 1871, the primary limits of the forfeited portion of the grant to the Atlantic and Pacific Railroad Company made by the act of July 27, 1866, and also within the indemnity limits of the main line grant to the Southern Pacific Railroad Company made by the act of July 27, 1866, is subject to indemnity selection by the Southern Pacific company for losses within its main line grant; and a pending indemnity selection of such lands by said company is a bar to the allowance of entry therefor.

JONES, *First Assistant Secretary:*

Harvey E. Sawyer appealed from decision of the Commissioner of the General Land Office of November 17, 1911, rejecting his application for desert-land entry for N. $\frac{1}{2}$, Sec. 7, T. 5 N., R. 10 W., S. B. M., Los Angeles, California.

June 22, 1911, Sawyer filed application, which the local office rejected because the land was included in Southern Pacific Railroad Company's indemnity list 83, yet pending. The Commissioner affirmed that action.

The land is within primary limits of grant to the Southern Pacific Railroad Company, branch line, by act of March 3, 1871 (16 Stat., 573), and within primary limits of the forfeited portion of grant to Atlantic and Pacific Railroad Company by act of July 27, 1866 (14 Stat., 292). It is also within indemnity limits of grant to Southern Pacific Railroad Company, main line, by act of July 27, 1866 (14 Stat., 292), as adjusted to the map of constructed line from Mojave to the Needles.

The tract was listed January 16, 1885, by the Southern Pacific Railroad Company in its branch line list No. 21 as within primary limits of its grant by act of 1871, *supra*, but was canceled April 13, 1898 (26 L. D., 697), in accordance with decision in Southern Pacific Railroad Company *v.* United States (168 U. S., 1), and the lands, with certain exceptions, were restored to entry. September 6, 1898, the day of opening the restored land, this tract was included in Southern Pacific Railroad, main line, indemnity list under its grant of July 27, 1866, *supra*. The local office rejected this list, which the Commissioner affirmed October 16, 1901, because the tract was within primary limits of the Atlantic and Pacific grant. The company appealed, and May 6, 1909, the papers were returned by the Department, with direction to suspend action pending final decision of the courts upon the company's right to make indemnity selection within the limits wherein the tract lies. The indemnity list is yet pending, and the Commissioner rejected Sawyer's application.

The appeal alleges error, insisting the application should have been allowed under decision in Southern Pacific Railroad Company *v.* United States (168 U. S., 1), and final judgment of the United States Circuit Court, California, Southern District, September 8, 1902, on mandate from the Supreme Court in said action.

Right of the Southern Pacific Railroad Company to make indemnity selection of these lands under its main line grant was not in controversy in said action, and later in Southern Pacific Railroad Company *v.* United States (183 U. S., 519, 533), the court held that the decision in 168 U. S., 1, *supra*, was to be taken—

as applicable only to the facts presented, and can not be construed as announcing any determination as to matters and questions not appearing in the records.

The decision therefore did not determine the question here involved. In United States *v.* Southern Pacific Railroad Company (223 U. S., 565), the question was settled and the court held that the railroad company was entitled to select indemnity for its main line within

the primary limits of Atlantic and Pacific railroad grant. The indemnity list being pending, the land is not subject to entry.

The decision is affirmed.

RECLAMATION—TIETON UNIT, YAKIMA PROJECT—PAYMENT.

PUBLIC NOTICE.

DEPARTMENT OF THE INTERIOR,

Washington, March 4, 1914.

Whereas, under the provisions of the public notices and orders heretofore issued in pursuance of the Reclamation Act of June 17, 1902 (32 Stat., 388), and acts amendatory thereof and supplementary thereto, known as the Reclamation Law, for the Tieton unit, Yakima project, Washington, the charges for building, operation and maintenance have accrued and accumulated against the lands in said unit to such an extent that a considerable proportion of the lands thereunder are not being reclaimed and cultivated; and

Whereas, it is desirable that the said lands shall be settled at the earliest practicable date by persons who will cultivate, reclaim and improve the same;

Now, therefore, in pursuance of the provisions of the Reclamation Law, and in particular of the act of Congress approved February 13, 1911 (36 Stat., 902), public notice is hereby issued as follows:

1. All entries and water-right applications filed in the year 1914 for lands under the Tieton unit shall be accompanied by the portions of instalments for operation and maintenance which have accrued against the said lands and the first instalment of the building charge, \$9.30 per irrigable acre, shall be due on April 1, 1914. The subsequent instalments of the charges for building, and the appropriate charge for operation and maintenance shall be due on April 1 of each succeeding year until fully paid. The building charges shall be graduated as provided for in public notice heretofore issued for the said unit under date of March 21, 1913 [42 L. D., 13], provided, however, that no person shall be entitled to make payments in accordance with such schedule of graduated payments until he shall have reclaimed and cultivated at least 50 per centum of the total irrigable area covered by his application.

2. For entrymen and landowners who have heretofore made entries or filed water-right applications which are still intact no instalment of the building charge shall become due in 1914, but the instalment which under the provisions of the public notices and orders hereto-

fore issued would have become due on April 1, 1914, shall be divided into two parts and added to the 9th and 10th instalments, respectively.

3. Nothing herein contained shall prevent the acceptance by any water user under the Tieton unit of the benefits of any legislation now pending before Congress and which may be hereafter enacted into law, affecting payments to be made on account of the water-right charges.

FRANKLIN K. LANE,
Secretary of the Interior.

RECLAMATION—LOWER YELLOWSTONE PROJECT—PAYMENT.

ORDER.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., March 4, 1914.

Whereas, the public notice, issued December 21, 1908, opening to irrigation lands under the Lower Yellowstone project, Montana-North Dakota, required payment to be made in ten equal annual instalments, and it was later found necessary to grant a stay of proceedings looking to cancellation for failure to make the payments when due; and

Whereas, on March 1, 1912, public notice was issued, granting an extension of time for payment of the first instalment, and permitting repayment of the building charge to be made to the United States in graduated annual instalments, the total building charge being increased from \$42.50 to \$45 per acre; and

Whereas, notwithstanding the allowance of such stay of proceedings, extension of time and better terms of payment, a large number of the water users are delinquent in payments, and their water-right applications subject to cancellation,

Now, therefore, in pursuance of the provisions of the Reclamation Act of June 17, 1902 (32 Stat., 388), and acts amendatory thereof and supplementary thereto, it is hereby ordered:

1. All entrymen and water-right applicants who find themselves unable to meet the conditions of public notices heretofore issued, and also others having irrigable lands for which public notice has not yet been issued, may, by acceptance of the provisions of this order, obtain a supply of water for the irrigation of their lands in the season of 1914, and thereafter, until further notice, on a rental basis of 50 cents per irrigable acre, for the irrigation season, payment thereof to become due December 1, after the close of the irrigation season. Such acceptance will entitle a water user to not to exceed 1.5 acre-feet per acre of irrigable land; and additional

water may, if required for the proper irrigation of the land, be obtained at the rate of 50 cents per acre foot; and payment therefor shall likewise become due December 1 of the year in which the water was furnished. All amounts not paid when due shall bear interest at the rate of ten per cent per annum until paid. No water shall be furnished in any year until full payment of rental charges and interest for the preceding year or years have been paid.

2. All entrymen or water-right applicants who shall on or before May 1, 1914, file with the project manager, Savage, Montana, a written acceptance of the terms and conditions of this order upon the form hereto attached, and comply with the cultivation requirements thereof, shall thereby secure a stay of proceedings looking to the cancellation of their entries or water-right applications for failure to make payments when due, such stay of proceedings to remain in effect until further announcement by public notice or otherwise.

3. The acceptance of the terms of this order shall be subject to the provisions of such public notices and orders as may be hereafter issued affecting such lands; but nothing herein contained shall prevent any water user from securing the benefits of any laws which may be hereafter enacted affecting the operations under the Reclamation Law.

4. All entrymen and water-right applicants who are now in good standing in the matter of payments of water-right charges and all those who on or before May 1, 1914, shall make the necessary payments thereunder may, if they so desire, continue under present contracts and public notices and orders theretofore issued.

FRANKLIN K. LANE,
Secretary of the Interior.

RECLAMATION—MILK RIVER PROJECT—WITHDRAWN LANDS.

ORDER.

DEPARTMENT OF THE INTERIOR,
Washington, March 4, 1914.

In order to provide for the relief of those settlers who have made homestead entries for lands withdrawn under the provisions of Sec. 3 of the Reclamation Act of June 17, 1902 (32 Stat., 388), situated in what is known as the Chinook Division, Milk River project, Montana, west of Dodson dam, it is hereby ordered:

(1) For all such lands covered by existing uncompleted homestead entries the withdrawal under the Reclamation Act will be revoked as to lands held to be susceptible of irrigation to the end that patent

may issue upon proper compliance with the general homestead laws; provided, that the reclamation withdrawal will not be revoked as to any such land until the entryman has become a member of the water users association, and has executed stock subscription and contract with the association covering the land, which has been recorded; and provided further, that when water is made available for the irrigation of the land the area for which any one entryman or his successor in interest may hold a water right under the project prior to full payment will be limited to 80 acres of irrigable land.

FRANKLIN K. LANE,
Secretary of the Interior.

RECLAMATION—MILK RIVER PROJECT—WITHDRAWN LANDS.

ORDER.

DEPARTMENT OF THE INTERIOR,
Washington, March 11, 1914.

In order to provide for the relief of those settlers who have made homestead entries for lands withdrawn under the provisions of section 3 of the Reclamation Act of June 17, 1902 (32 Stat. 388), situated in what are known as the Malta and Glasgow divisions of the Milk River project, east of Dodson dam, it is hereby ordered:

(1) For all lands situated east of Dodson dam, for which water for irrigation is now or will probably be available within a period of five years, the withdrawal under the Reclamation Act shall remain intact and at the proper time such settlers will be required to conform their entries to established farm units.

(2) For all lands situated east of Dodson dam, covered by existing uncompleted homestead entries and for which water for irrigation will probably not be available within a period of five years, the withdrawal under the Reclamation Act will be revoked to the end that patent may issue upon proper compliance with the general homestead laws; provided, that the reclamation withdrawal will not be revoked as to such lands until the entrymen have become members of the water users association and executed stock subscriptions and contracts with the association covering the lands; and provided further that when water is made available for the irrigation of the land no such settler or landowner will be permitted to acquire a water-right under the project for an area in excess of 80 acres of irrigable land.

(3) Nothing herein contained shall be construed as in any way modifying the terms of departmental order of March 12, 1910, regarding a farm unit of 160 acres for lands in the Dodson South Canal

unit, entered prior to that date and which are held by the original homestead entrymen.

ANDRIEUS A. JONES,
First Assistant Secretary of the Interior.

PRACTICE—CANCELED ENTRY WITHIN FOREST RESERVE.

ORDER.

DEPARTMENT OF THE INTERIOR,
Washington, March 4, 1914.

Whenever, after due procedure under the law and the rulings of this Department, any entry within an existing forest reserve has been canceled by order of this Department, it will hereafter be held that such matter is closed, and is not subject to subsequent motion or order before or by the Department.

Effective March 4, 1914.

FRANKLIN K. LANE,
Secretary.

**KIOWA, COMANCHE, APACHE, AND WICHITA LANDS—SETTLERS—
PAYMENT.**

SUPPLEMENTAL REGULATIONS.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, March 6, 1914.

The HONORABLE,

The SECRETARY OF THE INTERIOR.

SIR: The rules and regulations adopted November 3, 1913 (42 L. D., 604), for the sale of lands in the Kiowa, Comanche, Apache, and Wichita reservation, Oklahoma, under the act of June 30, 1913 (38 Stat., 92, Pamphlet Edition), provided in part as follows:

2. *Lands Occupied by Settlers.*—All of such lands as were occupied in good faith on January 1, 1913, by settlers still in possession thereof, shall be sold at the sale hereby ordered subject to the preferred right conferred upon such settlers by said act, to purchase the lands so occupied by them at their appraised value for ninety days from and after notice, and in cases where lands are known at the time of the public sale to be so occupied, and are sold at the sale hereby ordered, no payments shall be required of the purchasers thereof at such sale before the 1st day of April, 1914, and not thereafter if the occupants purchase and pay for said tracts. All such occupants are hereby required to present their applications to purchase under said act, prior to the 1st day of March, 1914, accompanied by the proper payments and proof of their occu-

pancy corroborated by the oaths of two persons, and if they fail to do so, they will not thereafter be permitted to purchase the lands occupied by them under said act.

All persons claiming a preference right to purchase the land settled upon by them under the act, and all persons claiming adversely any of the lands described in the schedule, are required to file their claims, supported by affidavits, with J. W. Witten, Superintendent of Openings, Lawton, Oklahoma, on or before December 8, 1913, otherwise their rights may be forfeited.

There were applications for preference right filed by fifty-six persons, and these applications were all considered in one letter, which was approved by the Department on February 14, 1914. Twelve of these applications were allowed, and the lands are to be appraised. It will take the appraisers from ten days to two weeks to appraise the lands, inasmuch as they are quite scattered.

In view of the impossibility of completing the appraisal in time to permit the purchasers to pay for the lands, after notice, within the time provided in the above quoted regulations, I have the honor to recommend that the regulations be changed so as to permit the preference right claimants to make payment prior to the 1st day of May, 1914, and that upon their failure to do so, the successful bidders at the sale of the lands in question be allowed to make payment within thirty days after notice.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved, March 6, 1914:

A. A. JONES,

First Assistant Secretary.

RECLAMATION—NORTH DAKOTA PUMPING PROJECT—PAYMENT.

ORDER.

DEPARTMENT OF THE INTERIOR,

Washington, March 7, 1914.

Whereas, the public notices issued in April, 1908, opening to irrigation lands under the Buford-Trenton and Williston projects, North Dakota, required payment to be made in ten equal annual instalments and it was later found necessary to grant a stay of proceedings looking to cancellation for failure to make the payments when due; and

Whereas, in March and April, 1911, orders were issued announcing the terms under which water would be rented in 1911, 1912 and 1913, but it was found that a number of settlers were financially unable to pay the charges announced, and orders were later issued extending the time of payment, and

Whereas, notwithstanding the allowance of such stay of proceedings and the furnishing of water on easier terms of payment, a large number of the water users are delinquent in payments and their water-right applications subject to cancellation.

Now, therefore, in pursuance of the provisions of the Reclamation Act of June 17, 1902 (32 Stat., 388), and acts amendatory thereof and supplementary thereto, it is hereby ordered—

1. Water will be furnished in 1914 to all irrigable lands, under the Williston Unit, the entrymen or owners of which shall have executed acceptances and made payments as hereinafter prescribed. The pumping barge for the Buford-Trenton Unit will be launched in 1914, providing acceptances as hereinafter prescribed are presented and payments made before April 15, 1914, covering at least 1,000 acres of irrigable land.

2. The operation of the pumps will be planned with a view to an approximately uniform rate of pumping the water and for adequate irrigation in the shortest practicable operating period with an appropriate regulation of deliveries for each tract irrigated. The operating period shall be for an irrigating season of 80 days, beginning not earlier than June 1 and not later than June 15, and closing not earlier than August 19 and not later than September 2 of each year.

3. All entrymen and water-right applicants who find themselves unable to meet the conditions of public notices heretofore issued, may, by acceptance of the provisions of this order and subject to its provisions, obtain a supply of water for the irrigation of their lands in the season of 1914 and thereafter until further notice on a rental basis of \$1 per irrigable acre for the irrigation season, payment of 50 cents per acre on account thereof to be made at the time such acceptance is filed, and the balance will be due December 1, 1914; such acceptance and payment will entitle a water user to not to exceed one acre-foot per acre of irrigable land, and additional water may, if required for the proper irrigation of the land, be obtained at the rate of \$1 per acre-foot, due December 1, 1914. The portion of the charge due December 1 shall bear interest at 1% per month from the due date until paid.

4. All entrymen or land holders who shall, during the irrigation season of 1914, file with the Project Manager, Williston, North Dakota, a written acceptance of the terms and conditions of this order upon the form hereto attached and comply with the payment, cultivation, and other requirements hereof, shall thereby secure a stay of proceedings looking to the cancellation of their entries or water-right applications for failure to make payments when due, such stay of proceedings to remain in effect until further announcement by public notice or otherwise.

5. The acceptance of the terms of this order shall be subject to the provisions of such public notices and orders as may be hereafter issued affecting such lands; but nothing herein contained shall prevent any water user from securing the benefits of any laws which may be hereafter enacted affecting the operations under the Reclamation Law.

6. All entrymen and water-right applicants who are now in good standing in the matter of payments of water-right charges and all those who on or before May 1, 1914, shall make the necessary payments thereunder, may, if they so desire, continue under present contracts and the public notices and orders heretofore issued.

ANDRIEUS A. JONES,

First Assistant Secretary of the Interior.

THORPE ET AL. v. STATE OF IDAHO.

Decided March 10, 1914.

EXTENT OF STATE'S RIGHT TO HAVE LANDS WITHDRAWN.

The Commissioner of the General Land Office has authority to reject the application of a State for the survey of additional townships under the act of August 18, 1894, where sufficient withdrawals have already been made under that act to satisfy the claims of the State under its grants.

WITHDRAWAL—AFFIRMATIVE ACTION BY COMMISSIONER AFTER NOTICE.

Affirmative action by the Commissioner of the General Land Office, after publication of notice of an application for survey under the act of August 18, 1894, is a prerequisite to a withdrawal of the lands.

UNAUTHORIZED SELECTIONS—RATIFICATION—RETROACTIVE EFFECT.

No rights accrued to the State of Idaho by virtue of the unauthorized selections of the State Land Board until such selections were ratified and confirmed by act of the State legislature of February 8, 1911; but such ratification had no retroactive effect to impair the rights of bona fide settlers whose claims had attached long prior thereto.

CONFLICTING DEPARTMENTAL DECISIONS VACATED.

Former departmental decisions recalled and vacated in so far as in conflict.

JONES, *First Assistant Secretary:*

The Department has had frequent occasion to consider the conflicting claims of the State and many settlers to lands in Ts. 44 N., Rs. 2 and 3 E., the State asserting a preference right to select under the provisions of the act of August 18, 1894 (28 Stat., 394), predicated upon a supposed withdrawal for its benefit. As to the lands in T. 44 N., R. 2 E., the State filed school indemnity selections in lieu of parts of sections 16 and 36 then within the Coeur d'Alene Indian Reservation, and as to the lands in T. 44 N., R. 3 E., like selections in lieu of parts of unsurveyed sections 16 and 36 within a national forest.

For the purposes of this decision, it is unnecessary to refer specifically to former departmental adjudications upon the respective rights of the State and the settlers, many of which are reported in the land decisions. However, in a decision, dated March 22, 1913 [42 L. D., 15], the Department practically resolved all material issues in favor of the State and directed the Commissioner of the General Land Office to take the steps necessary to carry said decision into effect.

In a decision dated May 19, 1913, the Commissioner rejected certain of the State's selections in T. 44 N., R. 2 E., upon the following ground:

At the time the State's application was filed, the selection by the State of lands in lieu of school sections in the Indian Reservation was unquestionably permitted by the act of February 28, 1891 (26 Stat., 796). The status of such base lands was changed, however, by the act of Congress approved June 21, 1906 (34 Stat., 335), providing for the opening to entry and disposition of said reservation lands, as sections 16 and 36 thereof were granted by that act to the State of Idaho for the support of public schools.

The State's appeal from the Commissioner's decision again brings the matter before the Department.

Former adjudications between the State of Idaho and settlers upon lands within these two townships have proceeded upon the assumption that the State's application for survey and withdrawal, the publication of notice thereof, and the withdrawal of the lands, were in all respects formal and regular and that the Commissioner of the General Land Office had inadvertently failed or neglected to have noted upon the records of his bureau and the local office the fact that he had actually withdrawn said townships under the provisions of the act of August 18, 1894, *supra*. It is clear that the failure of the Commissioner to perform this ministerial duty would not have operated to destroy the preference right conferred by law upon the State.

As a matter of fact, the record discloses that the action of the Commissioner in failing to note the withdrawal upon his record was not due to inadvertence but to his deliberate judgment that the application for withdrawal should be denied. That application, filed by the Governor of Idaho on July 5, 1901, included not only the two townships referred to but sixteen others. Notice of the application was duly published by the State and, on July 19, 1901, the Commissioner refused to withdraw these townships, upon the ground that the areas embraced in previous withdrawals were sufficient to enable the State to satisfy its several grants. No appeal having been filed from the action of the Commissioner, his decision became final, under the Rules of Practice. Ts. 44 N., Rs. 2 and 3 E., were subsequently surveyed under other laws.

To determine, whether the land department has any discretion, judicial or administrative, to reject an application of the character here under consideration, for the reason assigned by the Commissioner, recourse must be had to the act of August 18, 1894, itself, which, among other things, provides:

That it shall be lawful for the governors of the States of Washington, Idaho, Montana, North Dakota, South Dakota and Wyoming to apply to the Commissioner of the General Land Office for the survey of any township or townships of public land then remaining unsurveyed in any of the several surveying districts, with a view to satisfying the public land grants made by the several acts admitting the said States into the Union *to the extent of the full quantity of land called for thereby.*

This does not, either in terms or spirit, warrant a construction that the governors of the States named in the act might, as a matter of right, demand the withdrawal of all the unsurveyed public lands in their States until the several grants made to those States had been satisfied. On the contrary, the States had the right to apply for and have withdrawn lands "to the extent of the full quantity of land called for" by the grants made by the several acts admitting them into the Union. The Commissioner of the General Land Office was, therefore, acting within the scope of his authority when he rejected the application for the withdrawal of the townships under consideration for the reason that sufficient withdrawal had already been made for the satisfaction of the claims of the State under its grant. If the decision of the Commissioner was erroneous in fact, if there had not been sufficient withdrawals for the purpose contemplated by the act, the remedy of the State was an appeal to the Department. No such appeal having been taken, it is unnecessary now to inquire if the facts warranted the action of the Commissioner.

In this connection, it should be observed that, following the language hereinbefore quoted, the act of August 18, 1894, *supra*, provides that though a withdrawal thereunder, when made, shall become effective from the date of the application for survey, such withdrawal is expressly conditioned upon timely publication of notice by the State, with the proviso that the Commissioner of the General Land Office shall *immediately* notify the local officers of the reservation. Obviously, it was the purpose of Congress that the General Land Office should act promptly upon an application for survey *after* the State had complied with the essential requirement of publication; and, construing the act as a whole, it must be held that affirmative action by the Commissioner, after publication by the State, was a prerequisite to a withdrawal and that a notice to the surveyor general of the filing of the application for survey looked merely to the expeditious surveying of the land in a proper case. Applying these principles to this case, it follows that the application made by the Governor of Idaho dated March 15, 1899, for the

survey and withdrawal of T. 44 N., R. 2 E., and the action of the Commissioner, on March 29, 1899, withdrawing said township, no notice of said application having been published, conferred no right upon the State, as was clearly recognized by the State in the inclusion of this township in the application for survey and withdrawal filed on July 5, 1901, hereinbefore referred to.

If the State has any claim to the selected land, that claim must rest upon its selections and date not earlier than the filing thereof. This, of itself, would render the selections junior to the claims of the settlers. But the Supreme Court of the State of Idaho, in the case of *Balderston v. Brady* (107 Pac., 493), held that the State Board of Land Commissioners had no power conferred upon it, either by the constitution or the statutes of the State, to relinquish the State's right or title to sections 16 and 36, and that any action taken by the board or under its authority attempting to relinquish or waive the State's right to such lands was void. In the case of *Rogers v. Hawley et al.* (115 Pac., 687), the same court held that the legislature of Idaho had, by an act approved on February 8, 1911, ratified and confirmed the unauthorized acts of the State land board, referred to in the case of *Balderston v. Brady, supra*. These two opinions of the court of last resort of the State are precisely pertinent to the case here under consideration and determine, beyond question, that the State's selections had no validity until their ratification and confirmation by the act of February 8, 1911. Prior to that time, they were void and of no effect having been made in the face of the constitution and laws of Idaho. The act of the legislature of Idaho, ratifying and confirming the selections, had no retroactive effect and in no wise impaired the rights of *bona fide* settlers upon the lands whose claims had attached long before.

The decision appealed from is modified in accordance with the foregoing and all departmental decisions in conflict herewith are revoked and vacated. The record is remanded to the General Land Office for action in conformity herewith.

**RECLAMATION—SUNNYSIDE UNIT, YAKIMA PROJECT—STOCK
SUBSCRIPTION.**

ORDER.

DEPARTMENT OF THE INTERIOR,
Washington, March 10, 1914.

It is hereby ordered that no water shall be delivered to any water user under the Sunnyside Unit of the Yakima Project pursuant to any contract with the United States wherein the water user has

agreed to subscribe to the stock of the Sunnyside Water Users Association, unless at the time request for such water is made the water user proves himself by certificate of the secretary of said association to be a subscriber to the stock of the said association as contemplated in said contract. This order shall not be construed as prohibiting the delivery of water to which any such water user is recognized as having a vested right prior to the making of contract with the United States, and applies solely to delivery of water supplementing such vested right under contract with the United States.

ANDRIEUS A. JONES,
First Assistant Secretary.

WILLIAM C. McGEHEE.

Decided March 11, 1914.

SOLDIERS' ADDITIONAL—APPROXIMATION.

Approximation will be permitted in the location of an entire and undivided soldiers' additional right, whether located singly or in combination with other additional rights; but where an additional right has been divided, only one application of the rule of approximation will be permitted under that right; and no distinction will be made in applying this rule as to rights located singly or in combination with other rights.

SELECTIONS PRIOR TO SPAETH DECISION.

Soldiers' additional locations made prior to the decision in the Spaeth case may be adjudicated under the rule regarding approximation in force at the time of such locations, or under the rule herein established, at the applicant's election.

CONFLICTING DECISIONS OVERRULED.

All decisions and rules in conflict herewith overruled.

JONES, *First Assistant Secretary:*

William C. McGehee has appealed from decision of March 21, 1913, by the Commissioner of the General Land Office, holding for rejection his application to enter under section 2306, Revised Statutes as assignee of Reese P. Kendall, the SW. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 34, T. 6 N., R. 4 E., Washington Meridian, Jackson, Mississippi, land district, containing 38.79 acres.

The claim of additional right is based upon the military service of Reese P. Kendall in the army of the United States during the Civil War for more than ninety days, with honorable discharge from such service, and by virtue of homestead entry made by the soldier November 17, 1865, at St. Cloud, Minnesota, for 140.48 acres, which was canceled May 12, 1870, for abandonment. The Commissioner raised no question as to the additional right of Kendall for 19.52 acres. He rejected the application for the reason that the area of the right does not equal the area of the land applied for, citing as authority the case of Ernest P. Spaeth (41 L. D., 487-9).

Oral argument has been heard in support of the appeal, and the question of allowing application of the rule of approximation in soldiers' additional cases has been fully considered. The rule of approximation is a rule of necessity designed by the Department to meet the conditions caused by irregular surveys.

It is believed that soldiers' additional rights are as much entitled to the application of the rule of approximation as other claims under the public land laws. It appears that the rule was somewhat abused, and the Department has not been uniform in the application of the rule to such claims. After careful consideration of all phases of the matter, the following rule has been decided upon, viz:

Approximation will be permitted in the location of an entire and undivided additional right of a soldier, whether such right be located singly or in combination with other soldiers' additional rights. Where the additional right of a soldier has been divided, only one application of the rule of approximation will be permitted under the right of such soldier. (Guy A. Eaton, 32 L. D., 644.) No distinction will be made in applying this rule as to rights located singly or in combination with other such rights.

It is further directed, however, that locations made prior to the date of the Spaeth decision, *supra*, may be adjudicated under the rule regarding approximation in force at the time of such locations, or under this rule, at applicant's election. All decisions and rules in conflict herewith are hereby vacated.

The case under present consideration meets the conditions above stated, for application of the rule of approximation. Therefore, the decision appealed from is reversed.

MOORE v. NORTHERN PACIFIC RY. CO. ET AL.

Decided March 11, 1914.

SETTLEMENT—ASSERTION OF CLAIM WITHIN THREE MONTHS.

A settler upon public land who fails to make entry within three months from the date of settlement, or within three months from the date of the filing of the township plat of survey where the settlement is upon unsurveyed land, forfeits his right in favor of a subsequent settler who asserts his claim in time; but in the absence of an adverse settlement, the settler loses no rights by failure to assert his claim within three months.

EQUITABLE CONSIDERATION OF SETTLEMENT CLAIMS.

Any question concerning the formality of the assertion and completion of title under settlement claims is a matter between the United States and the settler; and the land department is not deprived of its jurisdiction and duty to give equitable consideration to asserted settlement claims by the tender of a scrip application for the land by one having no claim to equitable consideration.

JONES, *First Assistant Secretary*:

Counsel for Florence A. Coffin, assignee of Abell, has addressed a communication to the Department, under date of February 5, 1914,

which has been treated as a second petition for the exercise of supervisory authority with reference to Coffin's claim to the S. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 5, T. 53 N., R. 11 W., Duluth, Minnesota, land district.

Said tract was awarded to William Millen, a settler thereon, by departmental decision of September 30, 1913. On December 17, 1913, a motion for rehearing of said decision was denied and, on January 28, 1914, a petition on behalf of Coffin for the exercise of supervisory authority was also denied.

It is now requested that final action in this case be not taken until one of the counsel for Coffin, now unavoidably absent from the United States, be afforded an opportunity to be heard in her interest. The record has again been considered by the Department in connection with the decisions heretofore rendered, and it is not believed that any useful purpose would be subserved by further delay in carrying into effect the award of the land in controversy to Millen.

It is urged, in support of Coffin's claim to the land under the soldiers' additional homestead application, first, that Millen had forfeited his settlement right in that he had not asserted it by a homestead application within three months from the date upon which the land first became subject to homestead entry, and, second, that Millen had forfeited his settlement claim through failure to continuously reside upon the land from the date of his settlement to that upon which he filed his homestead application.

A sufficient answer to both these contentions is found in the fact that the claim of the Northern Pacific Railway Company to the tract here under consideration, and others similarly situated, was continuously asserted, either in this Department or in the courts, to within less than ninety days prior to the date of the presentation of Millen's homestead application. It may be granted that there was a period between the first rejection of the railroad selection and its reinstatement, wherein Millen might have applied for the land. The Department is clearly of the opinion that his failure to do so did not work a forfeiture of the settlement claim and that he should not be held to have waived such claim through failure to maintain continuous residence upon the land during the many years in which the asserted right of the railroad thereto was undetermined.

In this connection, the Department deems it proper to advert to the impression, apparently widespread in the minds of public-land claimants and their counsel, that a homestead settler upon public lands forfeits the right thereto acquired by settlement, unless he files homestead application for the land within three months from the date of settlement, or, where the tract is unsurveyed, within three months from the date of the filing of a plat of survey in the local office. This is not the law. The preference right conferred upon a settler by section 3 of the act of May 14, 1880 (21 Stat., 140), is an

extension to homestead settlements of the provisions of section 5 of the act of March 3, 1843 (5 Stat., 620). This right was long ago defined by the Supreme Court of the United States, in the case of *Johnson v. Towsley* (13 Wall., 72), as a preference right over subsequent settlers, which, as to a subsequent settler who asserts his right, is waived by the first settler who has neglected to do so within the time specified in the law. The Court said:

If no other party has made a settlement or has given notice of such intention, then no one has been injured by the delay beyond three months, and if at any time after the three months, while the party is still in possession, he makes his declaration, and this is done before any one else has initiated a right of pre-emption by settlement or declaration, we can see no purpose in forbidding him to make his declaration or in making it void when made. And we think that Congress intended to provide for the protection of the first settler by giving him three months to make his declaration, and for all other settlers by saying if this is not done within three months any one else who has settled on it within that time, or at any time before the first settler makes his declaration, shall have the better right.

While a settler may lose his preference, over other settlers, by failure to comply with the requirements of the act of May 14, 1880, *supra*, his right to the land, acquired by settlement thereon, was not created by that act but has been recognized by this Department and the courts from the beginning of the Government. Our whole public-land system is based upon the fundamental consideration that the settler is to be preferred over claimants who seek to assert scrip or other rights to the public domain. Lands settled upon and claimed under the homestead law do not fall within the designation of public lands open to sale or other disposition under general laws other than those relating to settlement. This Department is not robbed of its jurisdiction and duty to give equitable consideration to asserted settlement claims by the tender of a scrip application for the land by one having no claim to equitable consideration.

With reference to the objection raised by counsel for Coffin that Millen has not maintained residence upon the land settled upon by him, it is sufficient to say, in the language of my predecessor, in *South Dakota v. Thomas* (35 L. D., 171):

Any question governing the formality of the assertion and completion of title under such settlement is clearly a matter between the United States and the settler. As repeatedly held by the courts, the law deals tenderly with the one who, in good faith, goes upon the public lands with a view to making a home thereon (*Ard v. Brandon*, 156 U. S., 537, 543).

The petition is denied.

F. A. HYDE ET AL.

Decided March 12, 1914.

TIMBER CUTTING—UNAPPROVED FOREST LIEU SELECTION.

The Secretary of the Interior is without power to authorize the cutting of timber from the lands embraced in an unapproved forest lieu selection, even though the selector should execute bond to indemnify the United States in event the selection should fail.

JONES, First Assistant Secretary:

This is an appeal by D. J. Arpin and William Scott, claiming as transferees, from the decision of the Commissioner of the General Land Office of December 15, 1913, rejecting their application to be permitted to cut the timber from the lands embraced in lieu selection No. 3180 (0-8171), to-wit: The E. $\frac{1}{2}$ SW. $\frac{1}{4}$, S. $\frac{1}{2}$ SE. $\frac{1}{4}$, the NE. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 33, T. 57 N., R. 10 W., SE. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 6, NW. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 21, T. 58 N., R. 6 W., and NW. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 32, T. 59 N., R. 6 W., 4 P. M., Duluth, Minnesota, district, filed September 5, 1900, by F. A. Hyde, through H. W. Coffin, attorney-in-fact, in lieu of the E. $\frac{1}{2}$, Sec. 36, T. 25 S., R. 35 E., M. D. M., Sierra Forest Reserve, California.

The selection has not been approved. On February 15, 1913, the Commissioner of the General Land Office directed proceedings upon the report of the field officer to the effect that the base land had been fraudulently acquired from the State of California. Hearing upon this charge was held before the register and receiver December 23, 1913, but no decision has as yet been rendered.

The transferees represent that they own other land in the vicinity of these tracts, from which they propose to cut the timber in the near future; that it would be desirable to cut the timber from these selected tracts at the same time, as otherwise it will become of little value and deteriorate. They offer to give bond to indemnify the United States in case of their failure to secure title. The Commissioner of the General Land Office rejected the application in view of the fact that a hearing had been held upon the charges.

The case raises at the threshold the question whether the Secretary of the Interior would have the power to permit cutting of timber upon these lands and to accept the bond to indemnify the United States in case the selection should fail. It is apparent from the above statement of facts that equitable title has not yet vested in the lieu selector.

In 18 Op. of the Atty. Gen., page 434, Acting Attorney General Jenks held that the Interior Department had authority to make seizure through its officers, or agents, of timber cut on the public lands, and that such timber could be disposed of by that Department

either by public or private sale, with or without previous advertisement, at its discretion. At page 436 he said:

As to the authority of the Commissioner to dispose of such timber by public or private sale, where the same has been seized by duly-authorized agents of the Land Department and remains in their custody, I apprehend that this power exists, subject to the general supervision or direction of the Secretary of the Interior. There being no statutory provision covering a case of that kind, or regulating the disposition of the property, it must be regarded as a subject left to the Land Department to be dealt with in such manner as in the judgment of that department will best protect the interests of the Government. As the property is perishable in its nature, and its custody may involve expense, it is not only within the power, but it is the duty of the department, for the avoidance of loss to the Government, to convert the same into money, and whether this be done by public or private sale, is a matter entirely discretionary with it.

The above opinion, however, relates to a case in which the timber had actually been cut in trespass and seized by the United States, the question being as to the disposition of timber so seized.

Section 2461 provides, in part:

if any person shall cut, or cause or procure to be cut, or aid or assist, or be employed in cutting any live-oak or red-cedar trees, or other timber on, or shall remove, or cause or procure to be removed, or aid, or assist, or be employed in removing any live-oak or red-cedar trees or other timber, from any other lands of the United States, acquired, or hereafter to be acquired, with intent to export, dispose of, use, or employ the same in any manner whatsoever, other than for the use of the Navy of the United States; every such person shall pay a fine not less than triple the value of the trees or timber so cut, destroyed, or removed, and shall be imprisoned not exceeding twelve months.

Section 4, of the act of June 3, 1878 (20 Stat., 89), provides:

That after the passage of this act it shall be unlawful to cut, or cause or procure to be cut, or wantonly destroy, any timber growing on any lands of the United States, in said States and Territory, or remove, or cause to be removed, any timber from said public lands, with intent to export or dispose of the same, . . . and any person violating the provisions of this section shall be guilty of a misdemeanor, and, on conviction, shall be fined for every such offense a sum not less than one hundred nor more than one thousand dollars: *Provided*, That nothing herein contained shall prevent any miner or agriculturist from clearing his land in the ordinary working of his mining claim, or preparing his farm for tillage, or from taking the timber necessary to support his improvements, or the taking of timber for the use of the United States; and the penalties herein provided shall not take effect until ninety days after the passage of this act.

The present Criminal Code, Section 49, provides:

Whoever shall cut, or cause or procure to be cut, or shall wantonly destroy, or cause to be wantonly destroyed, any timber growing on the public lands of the United States; or whoever shall remove, or cause to be removed, any timber from said public lands, with intent to export or to dispose of the same; or whoever, being the owner, master, or consignee of any vessel, or the owner, director, or agent of any railroad, shall knowingly transport any timber so cut or re-

moved from said lands, or lumber manufactured therefrom, shall be fined not more than one thousand dollars, or imprisoned not more than one year, or both. Nothing in this section shall prevent any miner or agriculturist from clearing his land in the ordinary working of his mining claim, or in the preparation of his farm for tillage, or from taking the timber necessary to support his improvements, or the taking of timber for the use of the United States. And nothing in this section shall interfere with or take away any right or privilege under any existing law of the United States to cut or remove timber from any public lands.

Under section 2461 of Revised Statutes the District Court of Oregon (*United States v. Nelson*, 5 Sawyer, 68) held that the cutting and removing of timber from lands embraced in an application for patent for a mining claim, but in which the payment of the purchase price to the United States had not been made, the cutting being for the purpose of sale, was an offense as defined in that section. This holding was adhered to in *Teller v. United States* by the Circuit Court of Appeals for the 8th Circuit (113 Fed. Rep., 273). The Court there held that while for the purpose of subsequent entry the lands covered by such an inchoate claim were segregated, still the legal and equitable title to them remained in the United States, and that they were still "lands" of the United States within the meaning of section 2461 R. S. The lands in the present case therefore are still lands of the United States and the cutting of timber thereon for the purpose of sale as proposed by the appellants would constitute not only a trespass but a crime against the United States, since no equitable title has as yet vested in them. It is, therefore, apparent that the Secretary of the Interior is without power to enter into the proposed arrangement.

This selection, however, has been pending for a long period and should be promptly adjudicated. The Commissioner will accordingly instruct the register and receiver to render their decision upon the record made as early as is consistent with the other public business, and upon the coming in of the record the Commissioner of the General Land Office will at once take up the matter for his adjudication.

With the above modification, the Commissioner's decision is affirmed.

LAYTON'S HEIRS v. LEWMAN.

Decided March 12, 1914.

RAILROAD LANDS—PURCHASERS—ACT OF MARCH 3, 1887.

Section 5 of the act of March 3, 1887, according to persons who in good faith purchased from a railroad company lands subsequently found to be excepted from its grant the right to purchase such lands from the United States, does not require that persons claiming the benefits thereof shall be settlers upon the land; and it is not necessary that purchasers from the Oregon and California Railroad Company applying to purchase under that section shall be settlers, the provisions in the act of April 10, 1869, that lands granted to said company shall be sold to actual settlers only, being waived as to them by the later act.

JONES, *First Assistant Secretary*:

Richard F. Lewman appealed from decision of the Commissioner of the General Land Office of August 26, 1912, canceling his commuted homestead entry for NW. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 17, T. 38 S., R. 4 W., W. M., Roseburg, Oregon.

The land is within primary limits of grant to Oregon and California Railroad Company by act of July 25, 1866 (14 Stat., 239), opposite that part of its line definitely located July 3, 1883, and was listed by the company May 15, 1890, list 21. The list was canceled October 31, 1891, as to S. $\frac{1}{2}$ of S. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ for conflict with Farrish placer claim.

June 6, 1872, the NW. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 17, was included in homestead entry then made by David Blagle, canceled on Blagle's relinquishment July 27, 1891. The Commissioner held that such homestead entry existing at time of definite location excepted the forty-acre tract from operation of the grant. The company did not appeal. October 13, 1893, plat was made by the surveyor-general to show areas and lottings of mineral claim 37, partly within section 17, and the N. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ and N. $\frac{1}{2}$ of S. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$, area thirty acres, was lotted as lot 1. May 24, 1909, Richard F. Lewman was allowed to make homestead for said lot 1.

February 28, 1911, Lola Bailey, for herself and other heirs of T. J. Layton, deceased, presented an application under section 5, act of March 3, 1887 (24 Stat., 556), to purchase lot 1. This the local office rejected on the ground that the land was settled upon after December 1, 1882, by Lewman. Applicant appealed.

The application alleged that about February 1, 1899, supported by quitclaim deed of the railroad company dated February 6, 1899, T. J. Layton for value purchased N. $\frac{1}{2}$ NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ and N. $\frac{1}{2}$ of S. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ from the railroad company believing the grantor company was owner thereof, and he in his lifetime and since his death his administrator and heirs had been since such purchase and

were then in possession of the land, without notice of cancellation of the company's list, until Lewman's entry.

August 2, 1911, the Commissioner instructed the local office that protection given settlers by section 5, act of March 3, 1887, *supra*, is limited to those who settled on the land in good faith, in ignorance of rights and equities of others purchasing from the railroad company, after December 1, 1882, and before March 3, 1887. The Commissioner directed the local office to allow Layton's heirs, on due notice, to submit proof on their application.

November 29, 1911, Layton's heirs and Lewman, each in person aided by counsel, appeared at the local office and submitted evidence. October 25, 1911, the local office found that neither Layton nor any of his heirs settled upon or were in possession of the land, and that the railway company under act of April 10, 1869 (16 Stat., 47), was limited to sale of its lands to actual settlers only. Whereupon the local office recommended rejection of application of Layton's heirs and that Lewman's entry remain intact. The Commissioner, on appeal of Layton's heirs, reviewing the evidence, reversed the action of the local office, held Lewman's entry for cancellation, and allowed application of Layton's heirs, conditioned on their filing a proper nonmineral affidavit.

The evidence clearly shows that John T. Layton, February 6, 1899, purchased the land from the railroad company for the purpose of a dump for tailings from his placer claim. The conveyance was by quitclaim deed for \$2.50 per acre upon payment of \$75.

Section 5, act of March 3, 1887, *supra*, provides:

That where any said company shall have sold to citizens of the United States, or to persons who have declared their intention to become such citizens, as a part of its grant, lands not conveyed to or for the use of such company, said lands being the numbered sections prescribed in the grant, and being co-terminous with the constructed parts of said road, and where the lands so sold are for any reason excepted from the operation of the grant to said company, it shall be lawful for the *bona fide* purchaser thereof from said company to make payment to the United States for said lands at the ordinary Government price for like lands, and thereupon patents shall issue therefor to the said *bona fide* purchaser, his heirs or assigns.

This act does not require that the persons claiming its benefit shall be settlers, but any citizen of the United States, *bona fide* purchaser from the company, is entitled to its benefits as against any person not a *bona fide* settler under the settlement laws prior to December 1, 1882. Whatever may have been the restriction as to persons to whom the lands should be sold by the company, imposed by act of April 10, 1869, *supra*, it was within power of Congress to waive that restriction, at least as to persons not claiming the land by settlement prior to December 1, 1882, and by section 5, act of March 3, 1887,

supra, it did so by giving the right to purchase to all citizens of the United States, actual purchasers.

Not till November, 1909, did Lewman make settlement, and that was done with full notice of Layton's purchase. He therefore is not within benefit of the provisions of the act of March 3, 1887, *supra*.

The decision is affirmed.

FLOYD W. WARREN.

Decided March 12, 1914.

ISOLATED TRACTS—LAND NOT SUBJECT TO SALE.

Congress having by the act of April 27, 1904, provided a complete system for the disposition of the ceded portion of the Crow Indian reservation, and specifically declared that the lands opened to entry under that act shall be disposed of under the homestead, townsite, and mining laws, such lands are not subject to sale as isolated tracts under section 2455, Revised Statutes, as amended.

CONFLICTING DECISIONS OVERRULED.

Edwin J. Miller, 35 L. D., 411, Frank Maple, 37 L. D., 107, and Peter F. Kolberg, 37 L. D., 453, overruled.

JONES, *First Assistant Secretary*:

Floyd W. Warren has appealed from decision of May 17, 1913, by the Commissioner of the General Land Office, rejecting his application to have the SE. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 4, T. 1, N., R. 31 E., M. M., Billings, Montana, land district, ordered into market and sold as an isolated tract, under the provisions of section 2455, Revised Statutes, as amended by the act of March 28, 1912 (37 Stat., 77). The said tract is within the ceded portion of the Crow Indian Reservation, opened to entry under the act of April 27, 1904 (33 Stat., 352). That act provided for certain allotments to Indians, the withdrawal for irrigation of tracts susceptible of irrigation under the reclamation act, and provided that the remaining lands, excepting sections 16 and 36, "shall be disposed of under the homestead, townsite, and mineral-land laws of the United States." The opening was to be declared by proclamation of the President describing the manner in which the lands could be settled upon and entered. The price of the lands was fixed at \$4 per acre, when entered under the homestead laws, and lands entered under the townsite and mineral-land laws were to be paid for as provided by said laws, but in no event at less price than that fixed for lands entered under the homestead laws. The act further provided:

That when, in the judgment of the President, no more of the land herein ceded can be disposed of at said price he may by proclamation, to be repeated at his discretion, sell from time to time the remaining land subject to the provisions of the homestead law or otherwise as he may deem most advanta-

geous, at such price or prices, in such manner, upon such conditions, with such restrictions, and upon such terms as he may deem best for all the interests concerned.

Under authority of the latter provision the President, under date of September 9, 1910 (36 Stat., 2742), issued a proclamation for the disposal of the unsold lands, which proclamation provided:

That all of the unentered nonmineral, unreserved lands affected by said act which have not been withdrawn under the Reclamation Act, and which are not embraced in any valid existing right initiated under the public land laws, be offered for sale at public auction. . . .

All lands offered but not sold at the sale herein directed shall thereafter be subject to purchase at private sale in the areas under the terms, conditions and limitations mentioned in this proclamation at two dollars per acre.

The Commissioner held in the decision appealed from that the disposal of the tract here involved is governed by the terms of said proclamation, and therefore that the tract is subject to private sale at \$2 per acre, but not subject to sale under the isolated-tract law. It appears that this tract was formerly embraced in a homestead entry, made September 13, 1909, which was canceled on relinquishment under date of November 4, 1910. It was therefore at the date of said proclamation embraced in said entry, and according to the terms of the proclamation was wholly unaffected by it. *Clara F. Moran* (39 L. D., 434). It will, therefore, be seen that the reason assigned by the Commissioner for rejection of this application was insufficient. The application was properly rejected, however, inasmuch as the area including this tract was opened under a special or local law specifically providing the manner for the disposal of such lands. A complete system was provided for the offering of the lands to entry in the first instance, and then for the disposal of the unsold lands through proclamation of the President, to be repeated at his discretion. It is therefore believed that the general isolated-tract law may not properly be applied in contravention of the said special or local law governing the disposal of this area. See *Frost v. Wenie* (157 U. S., 46, 58); and *United States v. Healey* (160 U. S., 136, 147).

The Department has not been uniform in its decisions with reference to the applicability of the isolated-tract law in cases where the lands were opened under local or special law, which did not in terms provide for the sale of isolated tracts within the area affected by such special law. In the following three cases it was held that the isolated-tract law could not be applied, viz: *H. R. Saunders* (27 L. D., 45); *W. D. Harrigan* (29 L. D., 153), *James M. McComas* (33 L. D., 447). It was also held in the case of *William C. Quinlan* (30 L. D., 268) that where a certain area in Oklahoma was opened to actual settlers under the homestead laws only, the act of June 4, 1897 (30 Stat., 11, 36), providing for the exchange of lands, could not be

applied in said area, although the latter act provided for the selection of any tract of vacant land opened to settlement.

In the following three cases it was held that the isolated-tract law could properly be applied, viz: Edwin J. Miller (35 L. D., 411); Frank Maple (37 L. D., 107), Peter F. Kolberg (37 L. D., 453). These three cases next above referred to might, with some semblance of reason, be distinguished from the case under present consideration, especially in view of the complete provision made by the special law under consideration for the disposal of these lands, but as the interpretations of the statutes involved in the several cases are deemed unsound, the three said cases are hereby overruled, so that they may not longer be followed in cases involving lands within the areas affected thereby.

It will be observed that while the law under consideration authorizes the President to provide a way for the disposal of the unsold lands, yet no way, except as prescribed by the original law, has been provided for the sale of lands in said area, which have become vacant since the date of the former proclamation, and the isolated-tract law has not been made applicable thereto. It may be advisable to request issuance of a new proclamation for disposal of the tracts, which have since become vacant, and also for extending the isolated-tract law to said area. The President undoubtedly has sufficient authority under the law to do this, if it be deemed advisable to do so. This matter is called to the attention of the Commissioner of the General Land Office for appropriate initial action.

The rejection of the present application is affirmed.

CUMBERLAND MINING AND SMELTING CO.

Decided March 12, 1914.

REPAYMENT—ACT OF MARCH 26, 1908.

The fact that an applicant for repayment under the act of March 26, 1908, has previously applied for and been denied repayment under the act of June 16, 1880, in no wise affects his right to repayment under the act of 1908.

CONFLICTING DECISION OVERRULED.

James H. Febes, 37 L. D., 210, overruled.

JONES, First Assistant Secretary:

This is an appeal by the Cumberland Mining and Smelting Company, a corporation, from the Commissioner's decision of March 13, 1913, denying its application for the return of the purchase price paid by Robert D. McCloud, its remote assignor, in connection with Leadville, Colorado, coal entry No. 41.

The entry was made March 16, 1883, and originally embraced the S. $\frac{1}{2}$ NE. $\frac{1}{4}$ and W. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 15, T. 14 S., R. 86 W., but by the Commissioner's letter of October 3, 1884, was canceled to the extent of the tract last above described for reasons that have no bearing on the present case. By decision of July 29, 1890, the Commissioner found that the affidavit required of claimants at the time of purchase was verified not by the entryman himself, as prescribed by paragraph 32 of the coal land regulations of July 31, 1882 (1 L. D., 687), but by his agent, Scace L. Maultby, and that the evidence of the entryman's citizenship was lacking. He accordingly directed that the claimant be notified that he would be required to complete the record in these particulars. No such affidavits having been furnished, the Commissioner, by decision of December 8, 1890, for that reason held the entry for cancellation. It was finally canceled by the Commissioner's letter of October 29, 1891.

On or about February 25, 1892, the Cumberland Mining and Smelting Company, claiming as transferee of McLoud, applied for a return of the purchase price paid for the said S. $\frac{1}{2}$ NE. $\frac{1}{4}$, but the application was denied by the Commissioner's decision of March 28, 1892, and from this action no appeal was taken.

The present application was filed December 20, 1912, but by the decision here complained of was rejected for the following stated reasons:

The second application submitted by you contains no new statement of fact or argument not before this office in the first instance, or that will permit of a judgment that would be in violation of the principle laid down by the Department in the case of the Anthracite Mesa Coal Mining Company (28 L. D., 551), syllabus:

"An entry is not 'erroneously allowed' within contemplation of the repayment statute where the alleged defect is not of such character as to necessarily defeat confirmation of the entry, and might have been cured on compliance with the requirements of the General Land Office."

This office has found that the requirements of this office were essential under paragraphs 32 and 35, circular of July 31, 1882, relative to coal land laws; that compliance therewith was a reasonable requirement, and that it can not be held that failure to comply therewith evidenced error in the allowance of the entry.

While no reference is made in said decision to the repayment act of June 16, 1880 (21 Stat., 287), it is evident from the context that the application was rejected by the Commissioner because it was not deemed by him to be within the purview of that act.

It is unnecessary to determine whether this application for repayment is or is not allowable under the provisions of the act of 1880, for, in the absence of fraud or attempted fraud in connection with the entry, it is within the purview of section 1 of the act of March 26, 1908 (35 Stat., 48), which reads as follows:

That where purchase moneys and commissions paid under any public land law have been or shall hereafter be covered into the Treasury of the United

States under any application to make any filing, location, selection, entry, or proof, such purchase moneys and commissions shall be repaid to the person who made such application, entry, or proof, or to his legal representatives, in all cases where such application, entry, or proof has been or shall hereafter be rejected, and neither such applicant nor his legal representatives shall have been guilty of any fraud or attempted fraud in connection with such application.

It is true that a prior application for repayment filed by the present applicant under the act of 1880, was rejected by the Commissioner in 1892, and that, in the case of James H. Febes (37 L. D., 210), it was held that the act of 1908 does not contemplate the reopening of repayment cases properly adjudicated under prior laws, nor authorize repayment in cases where the entry failed of confirmation solely because of the fault or laches of the entryman. This decision, however, was disregarded by the Department in Ernest Weisenborn (42 L. D., 533), wherein, after stating that several applications for repayment (under the act of 1880, it appears) had been made by Weisenborn prior to the one then under consideration, made under the act of 1908, it was said:

The evident purpose of this act was to return to disappointed purchasers of public lands their purchase money in all cases where they failed to acquire title and had been guilty of no fraud or attempted fraud in connection with their applications to purchase. The obligation to repay is placed on the failure of consideration and is granted in all cases not tainted by fraud. The present case comes within the benefit of the act.

The decision in James H. Febes, *supra*, is out of harmony with the later decision cited, and, the Department is now convinced, is contrary to the purpose and intent of the act of 1908. It is accordingly overruled.

For the reasons stated, the decision in the case at bar is reversed and the matter remanded for adjudication under the act of March 26, 1908.

In this connection, the attention of the Commissioner is invited to the fact that the entry was allowed March 16, 1883, and that, prior thereto and on August 22, 1882, McLoud had executed a power of attorney to Scace L. Maultby, who, acting thereunder, on March 19, 1883, executed a deed conveying the land to Gerard B. Allen, the grantee of the Cumberland Mining and Smelting Company. It appears from the decision in Gerard B. Allen (8 L. D., 140), that, on January 15, 1883, just two months prior to the allowance of McLoud's entry, four coal entries were made by an equal number of men, among them the said Scace L. Maultby, in the interest and for the benefit of Allen, for 320 acres of land immediately adjoining the tract embraced in McLoud's entry.

These facts, while insufficient in themselves to warrant a finding that the entry of McLoud was fraudulently made for the benefit of

Allen, nevertheless give rise to the strong suspicion that such was the case and demand that a definite, specific, and satisfactory showing, as to the good faith of McLoud and Allen in the matter of the entry, be required of the applicant for repayment, or that the facts and circumstances surrounding the entry be ascertained and determined in some other appropriate manner, before final action is taken on the application.

ROBERT G. McDougall.

Decided March 14, 1914.

NATIONAL FOREST HOMESTEAD—RESIDENCE—SETTLEMENT UNDER SPECIAL USE PERMIT.

One who applies to have land within a national forest listed for opening under the act of June 11, 1906, and is thereafter granted a special use permit to occupy the land, is entitled, in submitting proof upon his entry made in pursuance of such listing, to credit for residence since the date of the special use permit.

JONES, *First Assistant Secretary*:

Robert G. McDougall has appealed from decision of December 16, 1913, of the Commissioner of the General Land Office for rejection of final proof submitted by him November 22, 1913, on his homestead entry made January 17, 1911, for certain tracts in Sec. 22, T. 19 N., R. 6 E., Santa Fe, New Mexico, land district, under the act of June 11, 1906 (34 Stat., 233).

It appears that said lands were first withdrawn for National Forest purposes November 6, 1906; that the claimant filed application for listing under said act and was given a special use permit to occupy the tracts under date of December 16, 1908; that since the date of said permit he has continuously occupied the land, has placed valuable improvements thereon and cultivated the greater part thereof. The Commissioner held that the cultivation was amply sufficient to satisfy the requirements of the three-year homestead act of June 6, 1912 (37 Stat., 123), but held that no credit for residence could be allowed prior to January 17, 1911, when the lands were opened, as above stated. According to this view, the proof was slightly premature, inasmuch as the three-year period would not be completed until January 17, 1914. Supplemental affidavits have been filed showing residence has been continued since the former proof was submitted, thus completing the three-year period.

It is further believed, however, that credit for residence may be accorded from the date of the special use permit, which was given after the claimant had applied for listing.

Section 3 of the act of May 14, 1880 (21 Stat., 140), provides, that where any qualified claimant shall settle on any public lands of the United States with the intention of claiming the same under the homestead laws, and thereafter makes entry, his right shall relate back to the date of settlement, the same as if he settled under the preemption laws.

The act of June 11, 1906, *supra*, providing for homestead entries in National Forests, provides that the person applying for listing shall, if qualified to make a homestead entry, be accorded preference right of entry when the land is opened, unless there be a prior legal settler on the land. Technically, this land was not public land and was not subject to general settlement claim at the time this entryman made settlement thereon, but he was not a trespasser, as he had filed his application for listing with the Forest Service for opening under the said act of June 11, 1906, and had been given a special use permit by that service. He was, therefore, in legal occupation of the land after the date of the permit, with the understanding that if the tract be found appropriate for opening under said act, he would have a preference right of entry, as provided by that act. He thus had a restricted or qualified settlement claim. If it had resulted that his application for listing could not be allowed, then, of course, his settlement could not have ripened into a claim for title. But the land was opened upon his application, he was accorded preference right of entry, and he made entry, all in pursuance of the claim initiated by his application. No good reason is seen why credit for residence for the full period after the date of the permit may not be accorded under such circumstances. The decision appealed from is, therefore, vacated and the proof will be accepted, unless other objection be found. All decisions and instructions in conflict herewith are overruled.

INSTRUCTIONS.

March 14, 1914.

RESIDENCE BY CONTESTANT.

A contestant who settles upon the land embraced in the entry under contest and maintains residence thereon, may be credited with the full period of such residence where the contested entry is afterwards canceled and the contestant is permitted to make homestead entry.

JONES, First Assistant Secretary:

It was stated in departmental instructions of September 24, 1910 (39 L. D., 230), that credit for residence will not be allowed in final proof in support of a homestead entry during the time the land is not subject to entry by the person maintaining the residence. Said

instructions were modified August 19, 1911 (40 L. D., 236), so as to allow credit for such residence in cases where a contestant established residence prior to September 24, 1910, and has since maintained such residence and succeeded in procuring cancellation of the entry under contest and made entry in his own behalf following such cancellation.

The question of allowing credit for residence maintained prior to the time when the land has become subject to entry, has arisen in a somewhat different form in a case pending before the Department, and after very careful consideration it is believed that the instructions of August 19, 1911, *supra*, should not have limited credit for such residence to persons who had established residence prior to September 24, 1910. The rule is, therefore, redrafted in the form given below, viz:

A contestant who settles upon the land embraced in the entry under contest and maintains residence thereon, may be credited with the full period of such residence where the contested entry is afterwards canceled and the contestant is permitted to make homestead entry.

SMILEY v. JORDAN.

Decided March 14, 1914.

CONTEST—ABANDONMENT—JUDICIAL RESTRAINT.

Absence of a homestead entryman from his claim due to judicial restraint does not break the continuity of his residence and does not render the entry liable to contest on the ground of abandonment.

JUDICIAL RESTRAINT—ONE AT LIBERTY ON BAIL.

One at liberty on bail which obligates him not to leave the jurisdiction of the court is under judicial restraint.

JONES, *First Assistant Secretary*:

William R. Smiley appealed from decision of the Commissioner of the General Land Office, of May 28, 1913, dismissing his contest against Fleet Jordan's homestead entry for W. $\frac{1}{2}$, Sec. 9, T. 32 N., R. 11 E., Havre, Montana.

May 4, 1909, Jordan made entry against which Smiley, March 11, 1912, filed contest affidavit that Jordan had abandoned the land for more than six months last past and has failed to reside upon and cultivate it according to law. Notice issued, was served, and defendant filed denial. The case was regularly tried at the local office, August 12, 1912, both parties aided by counsel. January 3, 1913, the local office found for contestant, recommending cancellation of the entry. The Commissioner affirmed that action.

The evidence in this case is without controversy and shows that entryman has a frame house 14 x 20 feet, with an addition 12 x 14 feet, valued at \$275; 53 acres of breaking, cropped to flax and oats

in 1912; 600 fence posts set around the land, with a well and pump, all improvements being valued at \$845. Defendant established residence on his homestead, with his wife and two children under the age of five years, May 4, 1911, the date of his entry, residing there continuously from that time to August 1, 1911, during which time he made improvements, valued by the claimant at \$1,500. On account of his wife's ill health, August 1, 1911, he took her to her home in West Virginia for medical attendance and, while he was there expecting within a few days to return, he was arrested, December 6, following, and confined in jail until December 21, 1911, when he was released, on bail, having been sentenced to confinement in the county jail for fourteen months beginning January 24, 1912. Cancellation of the entry is claimed on the ground that he was at liberty, on bail, and might have gone to his entry. This contention is unsound. His bail obligated him not to leave the jurisdiction of the court and had he left his bond would have been forfeited. He was therefore under judicial restraint when bound not to leave the jurisdiction of the court.

Judicial restraint does not break the continuity of residence. *Reed-head v. Hauenstine* (15 L. D., 554); *Kunz v. Jochim* (37 L. D., 169, 170).

The decision is affirmed.

FRED STEININGER.

Decided March 18, 1914.

DESERT ENTRY—EXTENSION OF TIME—ACT OF JUNE 27, 1906.

The act of June 27, 1906, authorizing an extension of time for compliance with law on desert entries where the entryman has been hindered in the reclamation of the land by reason of a withdrawal under the reclamation act, has no application where the waters from which it is proposed to supply the government project were withdrawn from all appropriation prior to the date of the entry, notwithstanding the withdrawal embracing the land was not made until after the entry.

DESERT ENTRY—DELAY IN RECLAMATION—EXTENSION OF TIME.

The construction of an artesian well, with a view to procure water for the reclamation of a desert entry, is a construction of irrigating works within contemplation of section 3 of the act of March 28, 1908, and the acts of February 28, 1911, and April 30, 1912; and failure, after diligent effort, to obtain water by means of such attempted artesian well, without fault on the part of the entryman, is sufficient ground for extension of time as provided by said acts.

JONES, *First Assistant Secretary:*

Fred Steininger has appealed from decision of May 8, 1913, of the Commissioner of the General Land Office, denying his application for extension of time within which to make final proof on his

desert-land entry for the SE. ¼, Sec. 24, T. 13 N., R. 19 E., W. M., North Yakima, Washington, land district.

The entry was made July 27, 1907, and three annual proofs have been submitted. At the time the entry was made the applicant stated that he expected to obtain water supply to irrigate said land from artesian wells or wells and pump on said land. It is shown by affidavit, duly corroborated, that the entryman has made an earnest endeavor to procure water for the reclamation of the land by drilling a well for that purpose to a depth of more than 400 feet, at an expense of more than \$1,400; and that some water was obtained in the well but not sufficient in quantity to irrigate the land. It is urged by the claimant that he has been hindered in the reclamation of the land by reason of a withdrawal by the Government of an area embracing his claim. He therefore asks that the time during which such hindrance obtains be not computed or considered as a part of the statutory period. It would appear that the claimant contemplated extension of time under the act of June 27, 1906 (34 Stat., 520), which provides extension of time where a desert-land entryman has been hindered in the development of his claim by withdrawal of surrounding lands in connection with reclamation projects. Said act provides that during such hindrance an entryman so hindered is not required to make improvements upon his claim or to make final proof.

The supervising engineer in his report of June 20, 1911, stated that all waters of the Yakima River were withdrawn from all appropriation on May 4, 1905, by the State of Washington, at the request of the U. S. Reclamation Service, in pursuance of the act of the legislature of March 4, 1905. It will, therefore, be observed that the waters from which the high line extension of the Yakima Project would be supplied, should such extension be completed as contemplated, were withdrawn from appropriation prior to the date of this entry and it can not properly be said that the withdrawal of the lands in this township by the Government under date of January 28, 1910, interfered with the plans of this claimant. It must be held, therefore, that the claimant is not entitled to extension of time under the said act of June 27, 1906. Such was the holding under somewhat similar facts in the case of Frank C. Jones (41 L. D., 377). That decision, however, did not consider the application with reference to other acts of Congress providing for extension of time under certain circumstances.

Section 3 of the act of March 28, 1908 (35 Stat., 52), provides—

That any entryman under the above acts who shall show to the satisfaction of the Commissioner of the General Land Office that he has in good faith complied with the terms, requirements, and provisions of said acts, but that because of some unavoidable delay in the construction of the irrigating works, intended to convey water to the said lands, he is, without fault on his part, unable to

make proof of the reclamation and cultivation of said land, as required by said acts, shall, upon filing his corroborated affidavit with the land office in which said land is located, setting forth said facts, be allowed an additional period of not to exceed three years, within the discretion of the Commissioner of the General Land Office, within which to furnish proof, as required by said acts, of the completion of said work.

A similar law of local application for the relief of entrymen in the counties of Benton, Yakima, and Klickitat in the State of Washington, was enacted February 28, 1911 (36 Stat., 960). The tract involved in the present case is in Yakima County. Also another law of general application and of like import was enacted April 30, 1912 (37 Stat., 106), which provides for a further extension not exceeding three years, or a total extension not exceeding six years.

In the case of Arthur E. Day (39 L. D., 475), it was held (sylabus):

The construction of an artesian well, with a view to procure water for the reclamation of a desert land entry, is a construction of irrigating works within contemplation of section 3 of the act of March 28, 1908, and failure, after diligent effort, to obtain water by means of such attempted artesian well, without fault on the part of the entryman, is sufficient ground for extension of time as provided by that section.

The facts in this case seem to fall within the purview of the decision in the Day case and extension of time will accordingly be granted for the making of final proof in this case. Should more than three years be necessary, the applicant should file new application for further extension which, if filed, will receive appropriate consideration.

The decision appealed from is accordingly reversed.

ADA I. HINDMAN ET AL.

Instructions, March 18, 1914.

LAND REPORTED AS VALUABLE FOR COAL—EX PARTE AFFIDAVITS.

Where at the time of the submission of final proof upon a nonmineral entry *ex parte* affidavits are submitted on behalf of the government to the effect that the land is coal in character, and the entryman refuses to accept a restricted patent under the act of March 3, 1909, the character of the land should not be adjudicated upon such *ex parte* affidavits, but the case should be remanded for further hearing in accordance with paragraphs 3 to 5 of the regulations of September 7, 1909, and patent should not issue until the character of the land is finally adjudicated upon the testimony submitted at the hearing.

FORMER DEPARTMENTAL DECISION RECALLED AND VACATED SO FAR AS IN CONFLICT.

Departmental decision in Ada I. Hindman, 42 L. D., 327, recalled and vacated in so far as it directs that patent without reservation be issued without hearing first being had.

JONES, *First Assistant Secretary:*

I am in receipt of your [Commissioner of the General Land Office] letter of February 4, 1914, which relates to the Department's deci-

sion of Ada I. Hindman (42 L. D., 327), in which you request instructions in view of the apparently contradictory non-reported decision of October 18, 1913, in the case of Zoro McCroskey.

The material facts are as follows: The Hindman entry was made November 9, 1903, final proof being made November 11, 1910. At this final proof a field officer of your Bureau appeared and filed his *ex parte* affidavit to the effect that the land was coal in character. Upon this *ex parte* showing your office, by decision of May 17, 1912, adjudicated the land to be coal in character, and required the entryman to take a patent with a reservation of the coal deposits to the United States in accordance with the act of March 3, 1909 (35 Stat., 844). This the Department held to be in violation of paragraphs 3, 4 and 5, of the circular of September 7, 1909 (38 L. D., 183), and directed that the patent issue without such reservation. The patent was issued December 2, 1913.

The McCroskey entry was made July 7, 1905, final proof being made December 6, 1909. At this proof a similar affidavit was filed by a field officer, but the entryman thereafter appealed from the action of the register and receiver in issuing a final certificate with the endorsement, "Patent to contain reservations, conditions, and limitations of act of March 3, 1909," and requested that a hearing be ordered with respect to the character of the land. Such hearing was ordered by you and full hearing held thereunder. In its decision of October 18, 1913, the Department affirmed the action of your office in requiring that the entryman take a patent with a reservation of the coal deposits of the United States under the act of March 3, 1909.

In the Hindman case the attempted adjudication was upon entirely *ex parte* testimony and in violation of the Department's instructions. It was thought that under the act of March 3, 1909, it was incumbent upon the United States to make the showing that the land was chiefly valuable for coal at the time of final proof, and having not shown it as required by its own regulations, the entryman was entitled to an absolute patent. Possibly it would have been more correct to have remanded the matter for further hearing in accordance with the regulations. The United States had submitted certain evidence at the time of final proof, but such evidence was improper in form and not in compliance with the regulations. The case might have been properly remanded, however, for further hearing in accordance with the Department's regulations. That part of the decision in Ada I. Hindman, *supra*, which directs that a patent without reservation be issued, is accordingly vacated and recalled. It will not be followed as to other entries in which the same facts may arise, and as to them, you will follow the holding in unreported decision of October 18, 1913, *ex parte* Zoro McCroskey.

GEORGE F. GOODWIN.

Decided March 19, 1914.

SPECIAL AGENTS' REPORTS—EVIDENCE—PRACTICE.

A special agent's report upon an entry is not evidence and can not be given evidential value as against any rights or claims asserted by the entryman; and where an entryman, after denying the charges based upon a special agent's report and applying for a hearing, withdraws such denial and application for hearing, such action constitutes at most an admission of the truth of the charges contained in the notice served upon him, but does not constitute a confession that the statements and assertions made in the special agent's report are true.

JONES, First Assistant Secretary:

George F. Goodwin has appealed from the decision of the Commissioner of the General Land Office dated November 15, 1911, denying his application for repayment of the purchase money in the sum of \$95 paid by him December 31, 1908, in connection with mineral entry 0808 for the Cold Spring lode mining claim, survey No. 5751, Salt Lake City land district, Utah.

Upon consideration of the record in the matter of said entry, the Commissioner on July 7, 1909, made the following statement:

From the field notes in this case it appears that \$515 worth of excavation, consisting of a 35-ft. tunnel and 3 shafts ranging from 8 to 9 ft. deep, has been made on the claim but all of said excavations are in loose boulders and the discovery is a mere point.

The claimant was accordingly called upon to furnish additional showing, describing the kind and character of mineral discovered, the characteristics of the vein, the value of ore extracted, and such other facts as would tend to show the existence of a vein in said claim, as required by paragraph 41 of the Mining Regulations. In September, 1909, the claimant responded, filing objections to the requirements made, and in connection therewith submitted an affidavit in part as follows:

That by reason of the lack of sufficient means he has not developed said mining claim to the extent he has desired; that the vein or lode on said claim is iron and copper, and so far as affiant has been able to determine the strike of the vein, it enters through the West End line and passes out through the South side line near the East End line. Affiant further states, that copper ore in small quantities has been encountered and extracted from said claim both in the shafts and in the tunnel, and that no ore has been shipped therefrom.

Affiant further states, that this lode claim adjoins patented mining claims on the South and West; that within 800 feet to the South the Old Evergreen Mining and Tunnel Company has run a tunnel on the ledge a distance of about 1000 feet, and is still actively engaged in developing its property. That about 3000 feet to the Southwest the Woodlawn Mining Company and the Alta

Coalition Company have run long tunnels and extracted ore running as high as 30 per cent copper and are still continuing work on their properties. That across the Big Cottonwood stream to the Northeast, the Giles Mining and Milling Company has run a tunnel over 1000 feet and is still working the same and has extracted a good grade of copper ore. And affiant further states, that in his opinion, based upon the work done, the surface indications and his general knowledge of the mineral character of the surrounding territory, said Cold Spring lode contains valuable mineral deposits; that in all things appertaining to the location, annual labor and application for patent for said claim he has acted in good faith with the purpose of securing the title to said claim for mineral purposes and not otherwise.

A field investigation of this claim was made and adverse reports were filed, as a result of which proceedings against the entry were directed. The Commissioner on January 27, 1910, instructed the local office to serve notice on the following charges:

1. There has been no discovery of mineral in rock in place on this lode.
2. That the sum of \$500 has not been spent in the improvement and development, as required by law, upon and for the benefit of this lode.

The charges were duly served and on March 4, 1910, the entryman filed his verified denial of the same and applied for a hearing. September 14, 1910, notice issued, setting the case for hearing upon November 28, 1910. On October 7, 1910, the claimant filed in the local office a petition to withdraw his answer to the charges and his consent to the cancellation of the entry. In said petition, which is verified, appear the following averments:

1. That at the time of filing his answer to the complaint herein, he was of the opinion, in good faith, that he had fully complied with the laws of the United States and the rules and practice of the Interior Department thereunder, both as to discovery of ore or rock in place, and as to amount of improvements on said claim.

2. That as he is now advised by an expert mining engineer employed by him to examine said mining claim, there is sufficient doubt as to the discovery of ore or rock in place, to warrant your petitioner in not further contesting the claim of the Government herein, and therefore, upon that ground, prays leave to withdraw his answer herein, and does hereby consent to the cancellation of mineral application therefor.

In their decision of November 23, 1910, the local officers held that the claimant, by the withdrawal of his application for a hearing, in which he admitted that there was doubt as to discovery of mineral upon the land, admitted the charges, and therefore that the entry should be held for cancellation. April 4, 1911, the Commissioner found that the conclusion reached by the local officers was correct and the application for patent was declared "finally rejected" and the case was closed. On August 7, 1911, the claimant filed his application for repayment herein. In the Commissioner's decision denying said application appears the following:

The mineral inspectors made report, among other things, that—

“The claim is located in and on the gently sloping bottom and hillside along the Big Cottonwood Canyon, within a half mile of Silver Lake, or Brighton, Salt Lake City’s most fashionable mountain summer resort. Upon this claim there has been built a one-room log cabin. Here since 1895, when the claim was located, and with the possible exception of 3 or 4 years, the claimant has spent from 2 to 3 weeks each summer. His time has been divided between fishing and mining, and principally fishing if one is to judge by the character of the mining improvements which exist upon the land.”

The report also states that the improvements placed upon the land were done so merely as a pretext at complying with the mining laws, and that the land was being held for its value as a summer resort.

An expert miner of the Forest Service reported, among other things, that—

“This claim is entirely lacking in evidence of good faith. There is no showing whatever of mineral upon it, and no discovery of any lode or vein has been made. The workings upon the claim are entirely in surface material, and do not even expose rock in place. Notwithstanding the certificate of the U. S. Deputy Mineral Surveyor, there has been an entirely insufficient amount of work performed to entitle the claim to patent, and the character of the work itself is such that it can only be classed as fraudulent and not intended for bona fide mining purposes . . .

“This claim is located about one-half mile below the resort known as Brighton, or Silver Lake P. O., where there is a large hotel and a number of small cottages. Along the Big Cottonwood Canyon Creek in the vicinity of this claim there are numerous places which are used as camping points by parties of people from Salt Lake City. On account of the topography it is my opinion that this claim is desired as a summer residence or for the purposes of a resort, and from the present showing, it is more valuable for such purposes than for mining. Although not heavily timbered there is more or less timber upon the claim as already stated.”

The act of June 16, 1880 (21 Stat., 287), controlling repayment in cases of this character, authorizes the return of purchase money only in case an entry is canceled for conflict or was erroneously allowed and can not be confirmed, conditions that do not exist in this case. The entry under consideration was properly allowed by the local officers upon the proofs presented, and confirmation of the same was only precluded by the ascertainment, through investigation, that said proofs were false, it being found that the applicant was endeavoring to acquire title to a valuable tract of land having no value for mineral, under the mining laws.

It thus appears that the Commissioner of the General Land Office has based his decision upon the statements contained in the special agent’s reports. The contents of these reports are confidential in character, and by specific orders, when adverse, are not open for inspection either by the general public or by the claimant. The withdrawal by the entryman of his denial of charges and application for hearing at most can only be held to constitute an admission of the truth of the charges contained in the notice served upon him. Such admission does not, by any means, carry with it a confession that the statements and assertions made in the agent’s reports are true. These reports are not evidence and can not be given evidential weight as against any rights or claims asserted by the entryman. In this

connection, see the case of Richard P. Ireland (40 L. D., 484) and the cases there cited. As to the several specific statements made in the reports, which are not required to be under oath, the claimant has not been notified and has no direct knowledge and he has not had his day in court in that regard.

The charges preferred and served, and in legal effect admitted as true, do not necessarily include bad faith or fraud on the part of the claimant. The questions of the discovery of mineral in rock in place and of \$500 expenditures are in many cases matters of judgment upon which various minds may honestly reach diverse conclusions. The particular charges admitted do not convict the applicant of bad faith or fraud in connection with his entry. This case is not controlled by the act of June 16, 1880 (21 Stat., 287), but will be adjudicated pursuant to the act of March 26, 1908 (35 Stat., 48). See the case of Alfred D. Hawk (41 L. D., 350). With respect to the good faith of the claimant, if the Commissioner from matters called to his attention deems any further investigation or a hearing necessary, the same may be had. See case of Dorathy Ditmar (43 L. D., 104).

The case is accordingly remanded to the Commissioner for further consideration and appropriate action. The decision appealed from is reversed.

ALICE O. REDER.

Decided March 21, 1914.

HOMESTEAD CONTEST—DEFAULT CURED PRIOR TO CONTEST.

In order to sustain a contest against a homestead entry it must be shown that the entryman, his widow or heirs, was in default at the time of the initiation of the contest, and not merely that such default had at some time theretofore occurred; and the contest must fail if the alleged default is in good faith cured prior to service of notice and such action is not induced by the contest.

DEATH OF ENTRYMAN—RIGHT OF WIDOW OR HEIRS.

In case of the death of a homestead entryman then in default, his widow or heirs may complete title by cultivation and improvement of the land for the required time where the entry was made prior to the act of June 6, 1912; or where the entryman was not in default at the time of his death, his widow or heirs may in like manner complete title under the provisions of the act of June 6, 1912.

HOMESTEAD PROOF—ACT OF JUNE 6, 1912.

In view of the provisions of the acts of June 6, 1912, and August 24, 1912, proof submitted upon a homestead entry made prior to the act of June 6, 1912, may be considered under either the act of June 6, 1912, or the law as it existed prior thereto, whichever may be found applicable to the facts shown.

EXTENSION OF TIME FOR RESIDENCE—ACT OF JUNE 6, 1912.

Under the provisions of the act of June 6, 1912, in case an entryman is prevented by sickness from establishing residence within six months from the

date of entry, he is entitled, upon making proper application therefor, to further time, not exceeding six months, within which to begin residence; but in event of his death in such case within the year, his failure to apply for such extension will not result in forfeiture of his claim, and his widow or heirs may show, in case of contest, the existence of conditions which might have been made the basis for an application for extension of time under said act.

CONFLICTING DEPARTMENTAL DECISION MODIFIED.

Hon. v. Martinas, 41 L. D., 119, modified.

JONES, *First Assistant Secretary*:

April 6, 1908, Charles Reder made homestead entry for a tract containing 33.21 acres, described by metes and bounds, in the SE. $\frac{1}{4}$ of Sec. 25, T. 4 S., R. 5 E., B. H. M., Rapid City, South Dakota, land district.

The entry was made under the act of June 11, 1906 (34 Stat., 233), being within a national forest.

Under date of June 19, 1912, Alice O. Reder, widow of the entryman, made final proof on said entry and final certificate issued by the local officers July 13, 1912. It appears from the final proof that the entryman did not reside upon the land at any time, but that he resided upon adjacent lands and cultivated the land embraced in said entry, since the year 1883. It further appears that the widow never took up her residence on the land embraced in the entry, but that she caused the same to be cultivated every year and that she built a house thereon in 1909. It is stated that 20 acres of the land are under cultivation, raising alfalfa and timothy.

By decision of February 25, 1913, the Commissioner of the General Land Office rejected the said final proof and also held for cancellation the said final certificate and the original entry. Appeal from that action has brought the case before the Department for consideration.

The Commissioner in the course of his decision adverted to the statement that Reder made a former homestead entry for 80 acres in Iowa, about the year 1868, and that inasmuch as it was not stated whether the entry was completed, relinquished or abandoned, it was not clearly shown that the entryman was qualified to make the entry under consideration. It is alleged, in support of the appeal, that it can be shown that the said former entry for 80 acres was completed. If this be true, there would seem to be no question regarding the qualifications of the entryman, and it is directed that further showing upon this point should be permitted or that the Land Office records be searched for verification.

It appears that the entryman died on December 16, 1908, which was about 8 months after making entry. Under the law as it existed prior to the act of June 6, 1912 (37 Stat., 123), the entryman was in

default for failure to establish residence upon the land embraced in the entry within six months from the date of such entry. (See *Bertram C. Noble*, decided by the Department January 29, 1914.) In the case of *Hon v. Martinas* (41 L. D., 119) it was held that such default could not be cured. The conclusion reached in that case was probably correct, under the circumstances involved therein, but some principles were stated in that decision which are not in accord with present views of the Department. For instance, it was held therein that inasmuch as section 2291, Revised Statutes, required residence and cultivation for five years immediately succeeding the date of the entry, and as at least one entire calendar year out of that period had passed, without residence or cultivation by the entryman, widow or his heirs, it was impossible to thereafter meet the requirements of law. The result of such holding would be to forever bar an entryman from curing his laches so as to complete title, if he was once in default. The uniform holding of the Department had theretofore been that, in order to sustain a contest, entryman, his widow or heirs, must have been in default at the time of the initiation of the contest, and not merely that such default had at some time theretofore occurred; that a contest must fail, if the alleged default is in good faith cured prior to service of notice and such action is not induced by the contest. See *Stayton v. Carroll*, (7 L. D., 198); *Hall v. Fox* (9 L. D., 153); *Scott v. King* (9 L. D., 299); *Davis v. Fairbanks* (9 L. D., 531); *Heptner v. McCartney* (11 L. D., 400); *Brown v. Naylor* (14 L. D., 141); *Davis v. Eisbert* (26 L. D., 384). It will thus be seen that this rule has the prestige of long standing usage and repeated affirmation. It is grounded upon sound principles of law and equity and it meets present departmental approval. The case of *Hon v. Martinas*, *supra*, is accordingly modified to meet the views herein expressed.

Therefore, under the law in force at the time the entryman died, while in default, for failure to establish residence, his widow, by performing the requirements of the law as his successor in interest, could cure such laches, and thereafter complete title by showing cultivation for the required length of time. She was not required to live upon the land. However, inasmuch as the entryman had not complied with the law, prior to his death, the widow would be required to cultivate the land for the full five-year period under the law as it existed prior to the act of June 6, 1912, *supra*. By the later act, however, only three years' compliance with law is required. The proof may be considered under either the later law, or the law as it existed prior thereto. It was contemplated by the later law that entries theretofore made should be adjudicated thereunder unless the entryman elected to complete his entry according to the law under which it was made, but the act of August 24, 1912 (37 Stat., 455),

abrogated the necessity for election provided for in the said act of June 6, 1912, so that an entry may be considered under either law which may be found applicable to the facts shown, where the entry was made prior to the date of the three-year law. There are two provisions of the latter act which are pertinent for consideration in determination of the question whether this entry may be completed under said act. These provisions are as follows:

That when the person making entry dies before the offer of final proof those succeeding to the entry must show that the entryman had complied with the law in all respects, as would have been required of the entryman had he lived, excepting that they are relieved from any requirement of residence upon the land. * * *

That where there may be climatic reasons, sickness, or other unavoidable cause, the Commissioner of the General Land Office may, in his discretion, allow the settler twelve months from the date of filing in which to commence his residence on said land under such rules and regulations as he may prescribe.

It is shown in an affidavit by the widow that at the time of making this entry Reder intended to build a house on the land and reside there, but that he was taken sick immediately after making the said entry and sent to a hospital for treatment, where he died December 16, 1908. Therefore he failed to establish residence within the six months period, but inasmuch as he failed to do so because of sickness, he was entitled to further time, not exceeding six months, under the provision of law last above quoted, and therefore he was not in default at the time of his death. The latest instructions issued under the three-year law (42 L. D., 511), require, as a general rule, that application for extension of time for establishment of residence must be made, but it is stated that failure to apply for such extension will not forfeit the right of an entryman to show, in case of contest, the existence of conditions which might have been made the basis for such an application. There must be equal opportunity to obtain all the benefits of this privilege in support of final proof. It being shown, as above stated, that the entryman was not in default at the time of his death, when the provisions of the new law are applied to the case, therefore the other provision above quoted, which requires the successors in interest to show that a deceased entryman complied with the law up to his death, affords no bar to the consideration of the proof under the three-year law.

Provided it be found that the entryman was qualified to make the entry, the proof will be accepted, and the decision appealed from is accordingly reversed, and the case remanded for further appropriate action.

SIESTREEM v. KORN.

Decided March 21, 1914.

HOMESTEAD ENTRY—QUALIFICATION—OWNERSHIP OF LAND.

One having a mere life estate in land is not the proprietor thereof within the meaning of the statute declaring disqualified to make homestead entry one who is the proprietor of more than 160 acres of land; a proprietor within the meaning of that statute being an owner in fee simple or one who may acquire the fee simple title by carrying out his own obligations or enforcing a vested right.

JONES, *First Assistant Secretary*:

Charles E. A. Siestreem has appealed from the decision of the Commissioner of the General Land Office, dated May 16, 1913, affirming the action of the local officers and dismissing his contest, based upon claim of prior settlement, against the homestead entry made by Bruno Korn on June 29, 1912, for lots 3, 4, 5 and 6, Sec. 5, T. 23 S., R. 11 W., W. M., Roseburg, Oregon, land district. The controversy, however, relates only to lot 6.

The material facts of the case are that Siestreem became the owner of 249.06 acres of land prior to and during the year 1895; in 1904 he settled upon 160 acres of land, including the lot in controversy; in 1906 Korn settled upon the land embraced in his entry; and, on July 2, 1912, which it will be observed was subsequent to the date of Korn's entry, Siestreem conveyed to his daughter 104.48 acres of the 249.06 acres previously acquired by him, reserving to himself a life interest in the land conveyed.

In the decision from which this appeal is prosecuted, the Commissioner held that Siestreem was the proprietor of the land conveyed to his daughter, as above stated, within the meaning of section 2289, Revised Statutes, as amended by the act of March 3, 1891 (26 Stat., 1095).

The Department is unable to concur with the Commissioner's view that Siestreem's life estate in the land constituted him the proprietor thereof within the meaning of the law forbidding homestead entry by one who is the *proprietor* of more than 160 acres of land in any State or Territory. The word proprietor, as employed in this statute, means neither more nor less than owner, one who has a fee simple title to the land or may acquire such title by carrying out his own obligations or enforcing a vested right. See *Gourley v. Countryman* (27 L. D., 702); *Smith v. Longpre* (32 L. D., 226).

From what has been stated, however, it is obvious that Siestreem never acquired any right to the lot in controversy through settlement, inasmuch as he was neither qualified to make homestead entry at the time of his settlement nor at the date of Korn's entry. Korn's settlement and entry having been both valid when made were not in-

validated by the fact that Siestream subsequently became qualified to make homestead settlement. When the latter became so qualified, the lot in controversy was segregated from the public domain by lawful entry.

Even had Siestream been qualified to make settlement when he went upon the lot in controversy, that right would have been forfeited as against Korn's entry by the acquisition of a fee simple title to more than 160 acres of land. See *Gourley v. Countryman*, *supra*. This principle, which has been uniformly followed by the Department in preemption and homestead cases, applies with double force to a case like this, where the settler was neither qualified to make homestead entry at the date of his settlement nor at the time when the intervening entry was made.

As herein modified, the decision appealed from is affirmed.

RECLAMATION—KLAMATH PROJECT—CHARGES.

PUBLIC NOTICE.

DEPARTMENT OF THE INTERIOR,

Washington, March 23, 1914.

Whereas, under the provisions of the public notices and orders heretofore issued in pursuance of the Reclamation Act of June 17, 1902 (32 Stat., 388), and acts amendatory thereof and supplementary thereto, the charges for building, operation and maintenance against private lands under the Klamath project, Oregon-California, have accrued and accumulated to such an extent that a considerable proportion of such lands thereunder are not being reclaimed and cultivated; and

Whereas, it is desirable that the said lands shall be cultivated and reclaimed at the earliest practicable date;

Now, therefore, in pursuance of the provisions of the Reclamation Law, and in particular of the act of Congress approved February 13, 1911 (36 Stat., 902), public notice is hereby issued, as follows:

1. All water right applications filed in the year 1914 for private lands under the Klamath project shall be accompanied by the portions of instalments for operation and maintenance which have accrued against the said lands, and the first full instalment on account of the charges for building and maintenance \$3.75 per irrigable acre shall be due on May 1, 1914. The subsequent instalments of the charges for building and the appropriate charge for operation and maintenance shall be due on May 1 of each succeeding year until fully paid.

2. Nothing herein contained shall prevent the acceptance by any water user under the Klamath project of the benefits of any legislation now pending before Congress and which may be hereafter enacted into law affecting payments to be made on account of the water-right charges.

ANDRIEUS A. JONES,
First Assistant Secretary of the Interior.

RECLAMATION—MINIDOKA PROJECT—CHARGES.

ORDER.

DEPARTMENT OF THE INTERIOR,
Washington, March 23, 1914.

1. Whereas, under the provisions of orders heretofore issued, water was furnished on a rental basis in 1911, 1912 and 1913 to lands in the South Side Pumping Unit, Minidoka project, Idaho, constructed under the Reclamation Act of June 17, 1902 (32 Stat., 388), and acts amendatory thereof or supplemental thereto; and

2. Whereas, a large number of the settlers or land owners are unable to comply with said orders and pay in full the rental charges heretofore announced and it is desired to continue the development of the lands by irrigation in 1914;

3. Now, therefore, it is hereby ordered that water may be furnished for the season of 1914 to all lands shown on approved farm unit plats as applied for on the form hereto attached, which shall be filed in the office of the Reclamation Service at Burley, Idaho, accompanied by payment in full of that portion of the rental charge which accrued, if any, on account of the use during June, July and August, in 1912 and 1913, of water in excess of 1.75 acre-feet per acre in cultivation, as set forth in order dated March 25, 1913.

4. The minimum rental charge for the irrigation season of 1914 shall be \$1.25 per acre of irrigable land, whether or not water is used thereon.

5. For that portion of the season beginning June 1 and ending August 31, 1914, the maximum amount of water which will be furnished for the minimum charge named in paragraph 4 is 1.75 acre-feet per acre of irrigable land actually under cultivation, approximately equal portions of such amount to be delivered during each month of the said period at approximately a uniform rate, so far as practicable, and not in excess of the applicant's proportionate share of the available water supply and capacity of the works: *Provided*, however, that a rotation system of delivery may be installed to en-

courage the economical use of water, but in no case shall more water be delivered than is reasonably required for beneficial use.

6. All the water used on any farm unit during June, July and August, 1914, in excess of 1.75 acre-feet per acre of land actually in cultivation thereon shall be charged for at the rate of 20c per acre-foot as measured by the engineers of the Reclamation Service.

7. All charges for 1914, including both the minimum rate and the acre-foot charge for excess supply, shall be due December 1, 1914, and payable to the proper agent of the U. S. Reclamation Service at Burley, Idaho. No water will be furnished to any farm unit in 1915, or subsequent seasons, until all charges due against such unit shall have been paid.

8. This is a preliminary order made prior to the completion of the project to provide for the rental of water during the season of 1914 only, and is not to be considered as a public notice for South Side Pumping Unit or any part thereof.

9. The entire rental charges which have heretofore accrued against lands under the South Side Pumping Unit, whether or not any portion of such charges have been paid, except such amounts as may be due for excess water furnished in 1912 and 1913, shall be added to and incorporated in the building charge to be hereafter announced, and credit for the amount paid for water supplied therefor, will be allowed on the building charge on account of each tract: *Provided*, that excess water shall be separately charged against the land on which it is used, and shall be separately collected from the owner or holder thereof.

ANDRIEUS A. JONES,
First Assistant Secretary of the Interior.

PARAGRAPHS 12 AND 13 OF DESERT LAND CIRCULAR AMENDED.

CIRCULAR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, March 23, 1914.

REGISTERS AND RECEIVERS,
United States Land Offices.

SIRS: Paragraphs 12 and 13 of the desert land circular [39 L. D., 253] are hereby amended to read as follows:

12. Whoever makes a desert land entry must acquire a clear right to the use of sufficient water to irrigate and reclaim the whole of the land entered, or as much of it as is susceptible of irrigation. Therefore, whoever tenders a desert land declaration, without definite arrangements for obtaining water,

in anticipation of the construction of extensive irrigation works not determined upon, and where it is not demonstrated that water can be conserved in sufficient quantity and conveyed to the land, does not meet the requirements of the law, and the declaration shall be rejected by the register and receiver, subject to the usual right of appeal. If applicant proposes to appropriate water for the irrigation of the land claimed by him, he must file with his declaration record evidence of his notice of appropriation under applicable State laws. In case he proposes to procure water through an irrigation district, a corporation, or an association, record evidence of a contract for water must accompany his declaration, or if no contract can be obtained prior to entry, some written assurance from responsible officials of such district, corporation, or association, having either a proposed irrigation scheme, one under construction, or one completed, that, if entry be allowed, applicant will be able to procure from that source, the necessary water to irrigate and reclaim the land described in the declaration.

13. At the time of filing his declaration with the register and receiver, the applicant must also file plans, describing, in detail, the following: source of water supply; character of the irrigation works constructed, in course of construction, or proposed to be constructed, *i. e.*, reservoirs for storage, canals, flumes, or other methods by which water is to be conveyed to the land; or, if by diversion, the nature of the flow of streams or springs, *i. e.*, whether perennially flowing or intermittent; character of the works constructed, in course of construction, or to be constructed to convey water to the land; whether the irrigation works, if not constructed, are to be built by an irrigation district, a corporation, an association, or by applicant personally; if the works have not been constructed, then to make a general statement as to the proposed plan; whether surveys therefor and other investigations have been made, and by whom, to demonstrate the existence of a sufficient water supply and the feasibility of the proposed works to convey water to the land. If applicant or others in association propose to construct irrigation works for the reclamation of their own lands, a sworn statement must accompany the declaration, containing a general description of the proposed works, an estimate of the cost, and such other data as will enable the register and receiver and the Department to determine the feasibility of the proposed works to convey water to the lands to be irrigated. If the irrigation is proposed by means of artesian wells, or by pumping from nonartesian underground sources of water supply, evidence must be submitted as to the existence of such water supply, upon or near the land involved, including a statement as to other wells theretofore sunk and affording a water supply to adjoining or nearby lands. In this connection, with respect to the land itself, a specific showing must be submitted as to its approximate elevation, character of the soil, and to what point upon the tract the ditch or lateral is to be extended; also, that the land is of such contour that it can be irrigated from the proposed canal or lateral. The map required to be filed by section 4 of the act of March 3, 1891 (26 Stat., 1095), must be sufficiently definite and accurate (preferably, but not necessarily, prepared by a licensed engineer), to show a practicable and feasible plan for conducting water to the land to be irrigated. The register and receiver will carefully examine the evidence submitted in such declarations, and either reject defective declarations, or require additional evidence to be filed. They will also report any facts in their knowledge with respect to the land, the water supply, or the proposed plan of irrigation, including the financial responsibility and general ability of irrigation districts, corporations, or associations, which propose to construct works for the reclamation of such land, if known to them. At the time of filing his declara-

tion, plans, and the statements submitted therewith, the applicant must pay the receiver the sum of 25 cents per acre for the lands therein described, the declaration to be given its proper serial number, at that time, in accord with Par. 4, Circular No. 105. The receiver will issue a receipt for the money, and the register will, in due course, sign the certificate at the end of the declaration, under date of its allowance. All such desert land declarations, plans, and statements submitted in support thereof, will be transmitted at the end of each month with the register's returns, to the General Land Office, where they will receive careful examination, immediately after receipt and notation on the records, to the end that a supplemental showing may be required, if necessary, or the entryman advised of the nonfeasibility of the irrigation plan, if such be the case.

You will, at once, notify all officers in your land district before whom declarations may be made, of the above, and that it is the purpose and intent of this office to see that all requirements are fully met; also that failure on the part of applicants, or of officers preparing the declarations, to cause full and explicit showing to be made, will result in the applicants being put to the trouble and expense of filing supplemental showings, and it may be, in the loss of their claims.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved, March 23, 1914:

ANDRIEUS A. JONES,
First Assistant Secretary.

EARL C. POUND.

Decided March 27, 1914.

SOLDIERS ADDITIONAL—ENTRY UNDER ACT OF JUNE 8, 1872.

The making of a soldiers' additional entry under the act of June 8, 1872, prior to the adoption of the Revised Statutes, for an amount of land which added to the original entry aggregates 160 acres, which additional entry was subsequently canceled, does not exhaust the soldier's additional right, which may be exercised under section 2306, R. S., notwithstanding the provision in that section limiting the right of additional entry thereunder to persons who have "heretofore entered under the homestead laws a quantity of land less than 160 acres."

JONES, *First Assistant Secretary:*

July 26, 1913, the Commissioner of the General Land Office rejected soldiers' additional homestead application, above described, for the N. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 28, T. 13 S., R. 13 E., S. B. M., on the ground that the soldier had exhausted whatever additional right he possessed by virtue of the law through the making of an additional entry, and that consequently no additional right passed to his estate on his death. The case of Frank Weller (41 L. D., 506) and section 2306 of the Revised Statutes were cited as authority for the

action taken. It is contended by counsel for appellant that the case is identical with that of Edward H. Alcott, departmental decision of November 5, 1913.

It is set out in the record that Johnathan Scott served in Company M, 5th Iowa Cavalry, from October 6, 1861, to August 11, 1865, and on July 13, 1871, made homestead entry 8712 at Boonville, Missouri, for the S. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 23, T. 38 N., R. 10 W., which entry was canceled for abandonment October 27, 1879; that on October 26, 1872, Scott made homestead entry 9361 at Boonville for the S. $\frac{1}{2}$ SE. $\frac{1}{4}$, same section, township, and range, stating in his homestead affidavit that he had a homestead entry on the S. $\frac{1}{2}$ SW. $\frac{1}{4}$, and that the later entry was an extension of the same under the act of June 8, 1872. The latter entry was canceled for abandonment July 10, 1880.

In the Weller case, *supra*, it appears that the soldier made entry for 120 acres of land in 1868, which was canceled for abandonment, and that in 1872 he made another homestead entry for 160 acres, stating under oath that he had not theretofore perfected or abandoned an entry under the homestead act. Thereafter, an attempt was made to exercise his alleged additional right by the entry of 40 acres of land in South Dakota. It is true, the Department in its decision stated that the soldier's claim does not come within the provisions of section 2306 of the Revised Statutes, because he did not occupy the status of a person who, prior to June 22, 1874, date of approval of the Revised Statutes, made a homestead entry for less than 160 acres, his entries aggregating 280 acres in area, but the decision further set out that the 160-acre entry made by the soldier was, upon its face, a legal entry made as an original filing and not as an additional or second entry, and it was pointed out that if the true facts had been known or divulged by the soldier, the second entry could not have been legally allowed.

In the case at bar the regularity of the proceedings, including the accuracy of statements made by the soldier, in connection with his entry, are not questioned, and it appears that the second entry made was, on its face, an extension of or addition to the original entry presented under the provisions of the act of June 8, 1872 (17 Stat., 333). The aggregate area of both entries was 160 acres, therefore the element of fraud presented in the Weller case is absent here. With respect to the provisions of section 2306 of the Revised Statutes cited by the Commissioner, "heretofore entered under the homestead laws a quantity of land less than 160 acres," there must be borne in mind the various acts of Congress conferring right of additional homestead entry upon soldiers, which acts formed the basis for section 2306 of the Revised Statutes, and it must also be remembered that the

latter section did not operate to destroy any rights which had theretofore vested under the law.

The act of May 20, 1862 (12 Stat., 392), authorized making of homestead entries for public lands for 160 acres, or a quarter section, of minimum land and of half that quantity of double minimum land. It granted no special right in consideration of military service. The act of April 4, 1872 (17 Stat., 49), granted to honorably-discharged soldiers and sailors who had served not less than ninety days in the civil war the right to take homesteads under the act of 1862 without restriction to the half quantity of double minimum land, and conferred on those who had theretofore entered less than 160 acres of such land the right to enter an additional quantity, which, when added to the area originally entered, should not exceed 160 acres. The latter act was amended June 8, 1872 (17 Stat., 333), by limiting the additional entry to land contiguous to that originally entered. By a further amendment, March 3, 1873 (17 Stat., 605), the requirement of contiguity was removed. Subsequently, as heretofore stated, the law was carried into section 2306 of the Revised Statutes.

This case is similar to that of Price Fruit (36 L. D., 486), in that at time of Scott's second entry there was no law authorizing same, except in the exercise of an additional homestead right. Treated as an additional homestead entry, that right was not exhausted by the cancellation of the entry, but remained subject to exercise by the soldier or by those upon whom the statute conferred the right after his decease. It was a right lawfully initiated under the existing and applicable law of June 8, 1872, a right which the Department and the courts now hold to have been a vendible and transferrable one, free of any restriction, except as to the character and nature of the land upon which it may be located and a gift to the soldier in the nature of compensation for past services, vesting in him a property right. Such a right was acquired by Scott through his military service and through his entry No. 8712, Boonville, for 80 acres. It was not destroyed or defeated by the additional entry he made in 1872, and which was thereafter canceled for abandonment and it was not defeated by that provision of section 2306 of the Revised Statutes which confined the right to those who had "heretofore entered," for, as is obvious, Scott's right was earned and acquired and had vested in him under the provisions of the act of 1872, as amended by the act of 1873, before the adoption of section 2306 of the Revised Statutes.

The Commissioner's decision is reversed and the additional homestead entry will be allowed and passed to patent in the absence of other objection.

ROGERS v. SOUTHERN PACIFIC R. R. CO.

Decided February 19, 1914.

RAILROAD GRANT—INDEMNITY SELECTION—PATENT ERRONEOUSLY ISSUED.

Patent erroneously issued to the Southern Pacific Railroad Company upon an indemnity selection of land within the conflicting limits of the grant made by the act of July 27, 1866, to the Atlantic and Pacific Railroad Company, and the branch line grant made by the act of March 3, 1871, to the Southern Pacific Railroad Company, and within the portion of the Atlantic and Pacific grant forfeited to the United States by the act of July 6, 1886, which land was not subject to such selection, is not void but voidable, and so long as the patent remains outstanding the land department is without jurisdiction to permit entry of the land.

PATENT—EFFECT OF ISSUANCE.

A patent issued by the land department for public land of the United States over which it has jurisdiction, and which is not reserved or withdrawn for any purpose but is subject to disposition, passes the legal title to the land and divests the land department of jurisdiction, notwithstanding the patent may have been erroneously issued.

JONES, *First Assistant Secretary*:

James A. Rogers has appealed from the decision of the Commissioner of the General Land Office dated January 29, 1913, affirming the action of the local office and denying his desert-land application for the N. $\frac{1}{2}$, Sec. 21, T. 4 N., R. 1 W., S. B. M., Los Angeles, California, land district.

This land is within the conflicting indemnity limits of the grant by the act of July 27, 1866 (14 Stat., 292), to the Atlantic and Pacific Railroad Company, and the branch line grant made by the act of March 3, 1871 (16 Stat., 573), to the Southern Pacific Railroad Company, and within the portion of the Atlantic and Pacific Railroad Company's grant which was forfeited to the United States by the act of July 6, 1886 (24 Stat., 123).

Notwithstanding that lands occupying this status were not subject to indemnity selection by the Southern Pacific Company (*Southern Pacific Railroad Co. v. United States*, 223 U. S., 560), said tract was so selected on October 31, 1877, and the land was patented thereunder on November 28, 1894.

The question presented by this appeal is one of jurisdiction. Did the issuance of patent divest the land department of jurisdiction? If so, since the patent is outstanding, the land is not subject to Rogers's desert-land application.

It is urged by the appellant that the patent was and is a void instrument; that the legal title did not pass and that the land may be disposed of as though patent had never issued.

The rule may be stated generally to be that, if a patent is void, the legal title does not pass; but, if it is voidable only, the legal title

does pass and jurisdiction of the land department is lost, although the patent may be vacated and set aside in a court of law.

A thing is "void" which is done against the law, at the time of doing it, and where no person is bound by the act. A thing is "voidable" which is done by a person who ought not to have done it, but who nevertheless can not avoid it himself after it is done. Whenever the act takes effect as to some purposes and is void as to persons who have an interest in impeaching it, it is not a nullity, and, therefore, is not utterly void, but merely voidable. Another test of the void act or deed is, every stranger may take advantage of it; not so as to a voidable one. Anderson's Dictionary of Law, page 1092, Title Void.

If it was within the province of the officers of the land department to dispose of the land, or decide to whom disposition should be made of it, then when, in accordance with such decision, it was disposed of by a duly executed patent, "that instrument carried with it the title of the United States to the land." *United States v. Schurz*, 102 U. S., 378, 400-1-2.

Of course, when we speak of the conclusive presumptions attending a patent for lands, we assume that it was issued in a case where the department had jurisdiction to act and execute it; that is to say, in a case where the lands belonged to the United States, and provision had been made by law for their sale. If they never were public property, or had previously been disposed of, or if Congress had made no provision for their sale, or had reserved them, the department would have no jurisdiction to transfer them, and its attempted conveyance of them would be inoperative and void, no matter with what seeming regularity the forms of law may have been observed. *St. Louis Smelting Co. v. Kemp*, 104 U. S., 636, 641.

In the light of these precise and forceful authorities, the case stands thus: The land department had jurisdiction of the land involved in this proceeding at the date of issuance of patent. It was the property of the United States and had not been reserved or withdrawn for any purpose. It was subject to disposition, and this Department, with all the facts before it, held it subject to selection by the Southern Pacific Company. Though it be conceded that the Department erred, the error is not one for it to correct. The legal title passed and could only have been recovered by direct proceedings in the court to set aside the patent within the time prescribed by law for the bringing of such suit. No such proceedings were instituted. The United States has lost nothing by the transaction—a proper base was assigned by the company in support of its selection and, in any event, the company is bound by it.

In view of the importance of the question presented by this appeal the Department, on October 13, 1913, requested of the Attorney-General for the United States an expression of his opinion on the premises. In his reply, dated October 24, 1913, the Attorney-General

has indicated his concurrence in the conclusion hereinbefore reached by this Department.

The decision appealed from is, accordingly, affirmed.

ROGERS v. SOUTHERN PACIFIC R. R. CO.

Motion for rehearing of departmental decision of February 19, 1914, 43 L. D., 208, denied by First Assistant Secretary Jones, April 20, 1914.

MANGUS MICKELSON.

Decided March 18, 1914.

RECLAMATION ENTRY—CONFORMATION.

Where an entryman of lands within a reclamation project fails, after notice, to conform his entry to an established farm unit, the Secretary of the Interior has the power to so conform the entry.

RECLAMATION CHARGES—ESTIMATED COST.

In case the actual cost of a reclamation project exceeds the estimated cost of construction, it is the duty of the Secretary of the Interior to revise the estimate and make the charges sufficient to reimburse the reclamation fund for the cost of construction.

WATER SERVICE COMPULSORY.

It is not optional with an entryman of lands within a reclamation project to take or refuse water service from the project; but he is compelled to take the water service and to pay the charges fixed therefor.

JONES, *First Assistant Secretary:*

Mangus Mickelson appealed from decision of the Commissioner of the General Land Office of March 22, 1913, rejecting his application to reinstate his homestead entry as to S. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 8, T. 19 N., R. 58 E., M. M., Miles City, Montana.

March 29, 1906, Mickelson made homestead entry for the entire SW. $\frac{1}{4}$, Sec. 8. August 24, 1903, the land was withdrawn for reclamation purposes under the act of June 17, 1902 (32 Stat., 388). The certificate of entry was stamped as subject to the provisions of the reclamation act. June 16, 1909, after due notice to Mickelson and his refusal to conform the entry, it was conformed by the Commissioner to embrace farm unit "C" of the Lower Yellowstone project, being the N. $\frac{1}{2}$ SW. $\frac{1}{4}$. The entryman applied to the Commissioner to reopen the question of conforming his entry to a farm unit, contending that he was entitled to hold the entire SW. $\frac{1}{4}$. The Commissioner rejected his application.

The appeal urges that the entry "subject to the provisions of the act of June 17, 1902," on his certificate, was made by the local office

without his consent; that he established residence on his entry in the spring of 1907 and has resided there continuously since, making improvements upon both 80-acre tracts, valuing his improvements at the cost of \$180.

There was no error in the Commissioner's action. Section 4 of the reclamation act vests the Secretary of the Interior with power to limit the area per entry which shall represent the acreage that, in the opinion of the Secretary, may be reasonably required for support of a family. It also authorizes the Secretary to fix the amount and times of payment of irrigation charges, with the provision that—

the said charges shall be determined with a view of returning to the reclamation fund the estimated cost of construction of the project, and shall be apportioned equitably.

Complaint is made in the appeal that the estimated cost at the commencement of the project has been increased. As stated, it has been doubled. Be this as it may, it is the Secretary's duty to make the charges such as will reimburse the Treasury of the United States for its expenditures, be they more or less, and if the first estimate proves inadequate, it is obviously the Secretary's duty, when the works are complete, to revise the estimate and make the charges such as when paid the Treasury will be reimbursed for cost of construction.

Complaint is also made that the entry fees paid by Mickelson have in no part been reimbursed to him, though he now gets only half the quantity of the land. It is sufficient to say that Mickelson does not claim he has applied for repayment. Repayment can only be made on a proper application and it is not necessary that the United States should send a disbursing officer into the field to search for claims and settle them there.

Complaint is also made that Mickelson is threatened with cancellation of his entry unless he joins the Water Users Association, which he is unwilling to do, since charges are nearly double, as he claims, what they were expected at the outset to be. When a reclamation project is determined upon, all public lands within the project are compelled to take water service. It is not a matter of choice with the entrymen. If it were a matter of choice, the Treasury would not be reimbursed for cost of the project should some of the entrymen refuse to take service. One is not compelled to make an entry in an irrigation project, but if he does make it under the reclamation act he is obligated to take water service and to pay the charges in full.

The decision is affirmed.

JOHN T. SLATON.

Decided March 21, 1914.

FIRST FORM RECLAMATION WITHDRAWAL—CONTEST—PREFERENCE RIGHT.

A successful contestant can not be permitted to make entry in exercise of his preference right while the lands he seeks to enter are embraced in a first form withdrawal under the reclamation act; but under the regulations of August 24, and September 4, 1912, he may exercise that right at any time within thirty days from notice that the lands involved have been released from withdrawal and made subject to entry.

JONES, *First Assistant Secretary*:

Appeal has been filed by John T. Slaton from decision of May 6, 1913, of the Commissioner of the General Land Office affirming the action of the local officers and holding for rejection the application filed by said Slaton September 11, 1912, to make desert land entry for lots 8, 10, 16 and 17, and the E. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 10, and lots 2 and 3 and the E. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 15, T. 15 S., R. 16 E., S. B. M., Los Angeles, California, land district, for the stated reason that said lands were then embraced in first form withdrawal made April 9, 1909, under the act of June 17, 1902 (32 Stat., 388).

The record shows that this application was filed by Slaton as in exercise of a preference right of entry for said lands as successful contestant against the prior entry therefor made March 4, 1908, by J. W. Ferguson, said lands being then designated as the E. $\frac{1}{2}$, Sec. 17, in said township and range, and description thereof as given in Slaton's application being according to their resurvey. Slaton's contest against Ferguson's entry was filed December 12, 1908, and said entry was canceled thereon November 10, 1909.

Slaton alleges that he took possession of said lands December 24, 1909, and he appears to have submitted so-called first annual proof September 9, 1913, showing expenditure of \$1,306, \$56 being for leveling of said lands and \$1,250 payment of water stock.

This application was properly held for rejection, said withdrawal being then subsisting; and while it has since been determined to open this tract, with adjoining lands, to disposition, the plan to govern such restoration has not been determined upon, and no rights can accrue to Slaton from the filing of this application.

While the prosecution of Slaton's contest after January 19, 1909, and cancellation of Ferguson's entry thereon, were contrary to the regulations issued on that date (37 L. D., 365), said regulations were superseded by those of August 24 and September 4, 1912 (41 L. D., 171, 241), under which Slaton must be held to have acquired a preferred right of entry by virtue of the successful prosecution of his contest, which he may exercise at any time within 30 days from

notice that the lands involved have been released from withdrawal and made subject to entry. The act of May 14, 1880 (21 Stat., 140), under which he gained such preference right, contemplates that notice of said right shall issue at a time when the land is subject to entry since time begins to run against the contestant from the date of such notice. *Bassett v. Sunderlin* (41 L. D., 437); *Edwards v. Bodkin* (42 L. D., 172).

Preference right gained by Slaton will, therefore, be exercisable by him upon notice which will be given him when these lands become subject to entry, and it is hereby directed that such notice be given him at that time.

As modified by above direction, the decision appealed from is affirmed.

PARPALA ET AL. v. LIND ET AL.

Decided March 25, 1914.

ADDITIONAL HOMESTEAD—ACT OF APRIL 28, 1904.

The right of additional homestead entry accorded by section 2 of the act of April 28, 1904, is limited to entrymen who own and occupy the land covered by their original entries; and the wife of an entryman, even though she be in fact the head of the family, is not entitled to make an entry under that act as additional to an entry made, owned and occupied by her husband, nor would she, after her husband's death, be entitled to make such entry, where the land embraced in the original entry passed to her, as widow, and to the minor children of the entryman.

JONES, *First Assistant Secretary:*

This case involves lands within the Duluth, Minnesota, land district, and are a part of the Chippewa ceded lands formerly embraced in the Fond du Lac Indian Reservation. These lands became subject to settlement and entry August 22, 1911, at 9 o'clock in the morning.

The following entries were made: Homestead entry 09565, made at 8 minutes after the hour of opening, by Matt W. Lind, for the SW. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 2, SE. $\frac{1}{4}$, SE. $\frac{1}{4}$, Sec. 3, and E. $\frac{1}{2}$, NE. $\frac{1}{4}$, Sec. 10, T. 49 N., R. 18 W. A half a minute later Richard Laurila made homestead entry 09566 for the NW. $\frac{1}{4}$, Sec. 11, of same township. At 9 minutes after the hour of opening Fabian Leino made homestead entry 09567 for the SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ and SW. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 3, NE. $\frac{1}{4}$ NW: $\frac{1}{4}$ and NW. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 10, same township.

September 9, 1911, Benjamin J. Pfeifer filed homestead application 09752 for the SE. $\frac{1}{4}$ SW. $\frac{1}{4}$, S. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 3, and the NW. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 10, alleging settlement on August 22, 1911, at 9 o'clock in the morning.

September 1, 1911, Andrew Parpala filed homestead application 09694 for the SW. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 2, and N. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 11, of the same township, alleging settlement at 9 o'clock on the opening day.

September 22, 1911, Hilda Hjelt filed homestead application 09801 for the SE. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 10, and SW. $\frac{1}{4}$ NW. $\frac{1}{4}$, Sec. 11. She also alleged settlement at 9 o'clock in the morning of the opening day.

Hearing was had to determine these conflicting interests, when all the parties appeared in person and by attorney except Parpala, who had theretofore relinquished the NW. $\frac{1}{4}$ NW. $\frac{1}{4}$, Sec. 11, which was a part of the land claimed by him in conflict. He was therefore no longer a party in interest to the lands involved.

The register and receiver decided in favor of Pfeifer and Hjelt, from which the several defendants appealed. The Commissioner of the General Land Office, May 21, 1913, modified the action of the local office as to the claim of Hjelt, holding that she had no right to the land she applied for. The Commissioner found that Pfeifer entered upon the land claimed by him at 9 o'clock in the morning of the opening day, posted notices of his claim on each of the quarter sections upon which the lands he applied for is situated, within six minutes after the hour of opening and thereafter continued to improve, cultivate and reside upon the land. The Commissioner therefore awarded to Pfeifer the lands claimed by him and thereby eliminated from the entries of the others the lands in conflict.

All parties have appealed to this Department. The Commissioner properly sets forth the testimony in this case; indeed, there is little conflict. Mrs. Hjelt is widow of Emil Hjelt, who had entered and had patented to him an adjoining 80-acre tract. For about two years prior to the date of opening Hjelt had been ill and on the day of opening was unable to work or earn a living for his family. His wife, however, went to the land immediately after the moment of opening and claimed the same as the head of the family. She commenced improvements on the two 40-acre tracts desired by her, working there with other friends, cutting brush to the extent of one-half to three-quarters of an acre. She never resided on the land but continued her residence on lands adjacent thereto patented to her husband. Her husband died soon after, August 22, 1911.

It is contended that Mrs. Hjelt is the head of the family and had been its manager for some time; that she therefore has the right of making an additional entry to the lands in question. Section 2 of the act of April 28, 1904 (33 Stat., 527), under which right of additional entry may be allowed, provides, in general, that any homestead settler who has entered less than one quarter section of land may enter other and additional land contiguous to the original entry, which shall not, with the land first entered, exceed in the aggregate 160 acres; that he may do this without proof of residence upon and

cultivation of the additional entry, and if final proof of settlement and cultivation has been made for the original entry when the additional entry is made patent shall issue without further proof. But there is a proviso to this section, viz, that the same shall not apply to or for the benefit of any person who, at the date of making application for entry under this section, "does not own and occupy the lands covered by his original entry." Mrs. Hjelt did not, in her own right, own the land patented to her husband. She may have been, and probably was, the head of the family even for some time before her husband died. On his death, she became a qualified entryman, and had she remained on the land after making the early settlement there, might possibly have secured title thereto in her own right. But she could not have had this under the circumstances stated, for it is clear that she did not own the land patented to her husband, title thereto being in her as widow and in the eight minor children.

The only other question involved in this case is, whether or not Pfeifer went upon the land on the day of opening or prior thereto in disregard of the order opening the lands. The register and receiver and the Commissioner both hold that he did not; that he remained off the land after the hour of 9 o'clock in the morning, when he immediately stepped thereon, began to cut brush, and posted notices on the various subdivisions. These acts of settlement were made prior in point of time to the entries of either one of the parties above named and gave to him a prior right of entry.

The action appealed from is affirmed.

RECLAMATION—MINIDOKA PROJECT—WATER SERVICE.

ORDER.

DEPARTMENT OF THE INTERIOR,

Washington, March 31, 1914.

1. Water will be furnished on a rental basis in the irrigation season of 1914 to the lands in the West End Extension of the Gravity unit of the Minidoka project, Idaho.

2. A list of the lands which may be irrigated, together with the approximate area of each holding that may be watered from the completed works, may be examined at the office of the U. S. Reclamation Service at Rupert, Idaho. It is expressly understood that such areas are subject to revision for 1915 and subsequent years, after final survey has been made of the irrigable area. The rental charge for the irrigation season of 1914 shall be 75c per acre of irrigable land, whether or not water is used thereon.

3. Payment of the rental charge will be due on December 1, 1914, and payable at the office of the Reclamation Service, Rupert, Idaho;

and water will not be furnished for such lands in 1915 until full payment of all such amounts due hereunder, as well as for water used in 1913, have been made.

4. No water will be furnished in 1914 to any lands which were served with water in 1913 unless the charges for 1913, due December 1, 1914, shall have been paid in full.

5. Public notice will be hereafter issued announcing the charges, terms and conditions, under which entries and water-right applications may be made for such lands.

ANDRIEUS A. JONES,
First Assistant Secretary.

FINAL PROOF NOTICES—PUBLICATION—NEWSPAPER.

INSTRUCTIONS.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, April 4, 1914.

REGISTERS AND RECEIVERS

AND CHIEFS OF FIELD DIVISION.

SIRS: The instructions of August 11, 1909 (38 L. D., 131), relative to publication of final-proof notices and concerning the discretionary authority of registers in the selection of newspapers for that purpose, are hereby amended by the insertion of the following after paragraph twelfth thereof:

Thirteenth. Any person having knowledge of the failure of a register to designate the proper newspaper for the publication of notice of final proof, may file with the Chief of the Field Division in which the land district is situated a corroborated affidavit fully setting forth all the facts and circumstances.

Fourteenth. On receipt of such affidavit, the Chief of Field Division shall cause a prompt investigation to be made and submit full report to the Commissioner of the General Land Office, who shall then take such action as the facts may warrant.

Fifteenth. The law imposes upon registers the duty of procuring the publication of proper final-proof notices, and charges the claimant with no obligation in that behalf, except that he shall bear and pay the cost of such publication. Registers should accordingly exercise the utmost care in the examination of such notices and in the comparison thereof with the records of their offices, to the end that they may not go to the printer containing any erroneous description of the entered land, or designating an officer not authorized to receive the proof, or that they shall not be for any other reason insufficient. It is equally important that a notice correct in all of

these particulars shall not be published in a newspaper manifestly disqualified as a means of publication and clearly incapable of bringing the notice to the attention of the people dwelling in the vicinity of the lands to which it relates.

Neglect of the duty above defined, resulting in a requirement of republication, should not visit its penalty upon the claimant. In all such cases, therefore, the register by whom the publication was procured will be required to effect the necessary republication at his own proper expense. If an error is committed by the printer of the paper in which the notice appears, the register may require such printer to correct his error by publishing the notice anew for the necessary length of time, and for his refusal to do so may decline to designate his said paper as an agency of notice in cases thereafter arising.

Yours respectfully,

CLAY TALLMAN, *Commissioner.*

Approved April 4, 1914:

ANDRIEUS A. JONES,

First Assistant Secretary.

FISHER v. HEIRS OF RULE.

Decided April 4, 1914.

PREVIOUS DECISIONS VACATED—ENTRY REINSTATED.

Departmental decisions herein of February 28, 1913, and July 19, 1913, 42 L. D., 62, 64, recalled and vacated, the contest of Fisher dismissed, all conflicting applications rejected, and the entry of Rule reinstated.

JONES, *First Assistant Secretary:*

February 28, 1913, the Department on appeal found in favor of the contestant in the case of Allen G. Fisher v. Highlan N. Rule, involving the homestead entry of Rule for the NE. $\frac{1}{4}$ of Sec. 22 and N. $\frac{1}{2}$ and SW. $\frac{1}{4}$, Sec. 23, T. 30 N., R. 55 W., Alliance, Nebraska, land district. July 19, 1913, the motion for rehearing was denied. (See 42 L. D., pages 62 and 64.) November 3, 1913, a petition for the exercise of the supervisory authority of the Secretary was likewise denied.

May 17, 1913, the local officers were notified by the Commissioner of the General Land Office to suspend all action with reference to the contest or disposal of the land embraced in the said entry, because of a proceeding begun in the Supreme Court of the District of Columbia for the purpose of requiring the Department to reinstate the entry of Rule and issue patent thereon. On the same date, May 17, the local officers reported that the entry was canceled on May 6, 1913, and that notice of preference right issued to the contestant; that on May 6, the same date as the cancellation of Rule's entry, William A. Fisher,

not the contestant, filed application to make homestead entry, which application was suspended by the local officers because the applicant was not 21 years of age and did not satisfactorily show that he was the head of a family. The record does not show whether the contestant subsequently filed application to make entry in the exercise of his preference right, but it is alleged that he has made settlement.

The said decisions of the Department were based upon the view that where an entryman dies without having established residence upon his entry, the entry thereupon terminates and his heirs succeed to no rights whatever in the land. In this case the entryman had died within six months from the date of the entry and he had not established residence. It had been a long and well-established rule in the Department that an entryman was allowed six months within which to establish residence after the date of his entry, and in the case of Bertram C. Noble, decided January 29, 1914 [43 L. D., 75], it was held that it was error to revoke this rule which had so long obtained, especially as applied retroactively to the disadvantage of persons who had acted under that rule. Accordingly the departmental decisions in the present case were overruled and the practice of allowing six months in which to establish residence was reaffirmed.

Under date of February 7, 1914, the Department called upon Fisher to show cause why his contest should not be dismissed and the entry of Rule reinstated and passed to patent. He has responded to that order and urges that the former action should be adhered to and that the court proceedings which resulted in favor of Rule should be reinstated, if possible, and carried up on appeal, if necessary, to sustain the action of the Department. These contentions have received consideration, but the Department is fully convinced that its former action in the present case cancelling the entry of Rule was error. For the reasons stated in the case of Noble, *supra*, the aforesaid decisions in the present case are hereby recalled and vacated, the contest of Fisher dismissed, all conflicting applications rejected, and the entry of Rule reinstated. The Commissioner will take appropriate action in the light of this decision.

RECLAMATION—SUNNYSIDE UNIT, YAKIMA PROJECT—CHARGES.

PUBLIC NOTICE.

DEPARTMENT OF THE INTERIOR,

Washington, April 11, 1914.

Whereas, under the provisions of the public notices and orders heretofore issued in pursuance of the Reclamation Act of June 17, 1902 (32 Stat., 388), and acts amendatory thereof and supplementary thereto, known as the Reclamation Law, for the Sunnyside unit, Yakima project, Washington, the charges for building, operation

and maintenance have accrued and accumulated against the lands in said unit to such an extent that a considerable portion of the lands thereunder are not being reclaimed and cultivated; and

Whereas, it is desirable that the said lands shall be settled at the earliest practicable date by persons who will cultivate, reclaim and improve the same;

Now, therefore, in pursuance of the provisions of the Reclamation Law, and in particular of the act of Congress approved February 13, 1911 (36 Stat., 902), public notice is hereby issued as follows:

1. All entries and water-right applications filed in the year 1914, for lands under the Sunnyside unit, shall be accompanied by the portions of instalments for operation and maintenance which have accrued against the said lands, and the first instalment of the building charge, \$5.20 per irrigable acre, shall be regarded as due on March 1, 1914. The subsequent instalments of the charges for building, and the appropriate charge for operation and maintenance, shall be due on March 1 of each succeeding year until fully paid.

2. Nothing herein contained shall prevent the acceptance by any water-user under the Sunnyside unit of the benefits of any legislation now pending before Congress, and which may be hereafter enacted into law, affecting payments to be made on account of the water-right charges.

FRANKLIN K. LANE,
Secretary of the Interior.

SOLDIERS' ADDITIONAL—APPROXIMATION.

INSTRUCTIONS.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., April 11, 1914.

REGISTERS AND RECEIVERS,
United States Land Offices.

GENTLEMEN: Circulars of March 8, 1913 (41 L. D., 490), and July 2, 1913 (42 L. D., 208), were revoked by the Department's decision of March 11, 1914, in the case of William C. McGehee, assignee of Reese P. Kendall (Jackson 05998) [43 L. D., 172], and a new rule of approximation in the location of applications under sections 2306 and 2307, R. S., was adopted, which is as follows:

Approximation will be permitted in the location of an entire and undivided additional right of a soldier, whether such right be located singly or in combination with other soldiers' additional rights. Where the additional right of a soldier has been divided, only one application of the rule of approximation will be permitted under the right of such soldier. (Guy A. Eaton, 32 L. D., 644.) No distinction will be made in applying this rule as to rights located singly or in combination with other such rights.

It was further stated in said decision that locations made prior to the Spaeth decision (41 L. D., 487-9), "may be adjudicated under the rule regarding approximation in force at the time of such locations, or under this rule, at applicant's election."

All applications under sections 2306 and 2307, R. S., filed in your office, will continue to be transmitted to this office for consideration and appropriate action as heretofore.

CLAY TALLMAN,
Commissioner.

Approved April 11, 1914:

LEWIS C. LAYLIN,
Assistant Secretary.

PUBLIC SALE—QUALIFICATIONS OF PURCHASERS—CITIZENSHIP.

INSTRUCTIONS.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, April 18, 1914.

REGISTERS AND RECEIVERS,

UNITED STATES LAND OFFICES.

SIRS: In accordance with departmental instructions of January 31, 1914 [43 L. D., 90], you are advised that the Department is of the opinion that the rule announced in the case of Andrew Rafshol (38 L. D., 84), was a proper one and that it should be applied to all purchases at public sale where the right to purchase was not limited by the statutes to native born or naturalized citizens.

Therefore, in the case of all sales of public lands where the right to purchase is not thus limited, it will be sufficient if the purchaser shows that he has declared his intention to become a citizen of the United States in order to entitle him to purchase at such sale. You will be governed accordingly and will adjudicate all pending cases of purchases at public sale in accordance with this regulation.

The regulation of December 18, 1912 (41 L. D., 443), requiring purchasers of isolated tracts to be citizens of the United States, is modified to conform to the foregoing.

Very respectfully,

JOHN MCPHAUL,
Acting Assistant Commissioner.

Approved April 18, 1914:

A. A. JONES,
First Assistant Secretary.

HOWARD A. ROBINSON.*Decided April 22, 1914.***REPAYMENT—REJECTED APPLICATIONS—CANCELED ENTRIES—ACT MARCH 26, 1908.**

The act of March 26, 1908, provides for repayment in cases where applications have been carried to entry and the entry canceled, as well as in cases of mere rejected applications.

REPAYMENT—CANCELLATION FOR FRAUD—RES ADJUDICATA.

The fact that an application or entry was rejected or canceled on a finding of fraud will not prevent the land department from reconsidering that question, in connection with an application for repayment, where it is made to appear that the facts and circumstances under which such adjudication was made were not sufficient to sustain the charge.

COAL ENTRY—AGREEMENT PRIOR TO ENTRY.

A mere moral obligation on the part of a coal land applicant to share with another, who furnished the money with which to make the entry, whatever profits might accrue from the venture, is not, in the absence of any agreement or lien enforceable against the land, in violation of the coal land regulations requiring an applicant to make oath that the entry is made in good faith for his own benefit, and not, directly or indirectly, in whole or in part, in behalf of any other person or persons.

COAL ENTRY—DISQUALIFICATION ON ACCOUNT OF PRIOR ENTRY.

The fact that a person once initiated a coal claim upon public land and failed to perfect the same does not necessarily disqualify him under the coal land law; but if it appear that good and sufficient reason existed for the abandonment of such claim his rights are not thereby exhausted.

CONFLICTING DEPARTMENTAL DECISIONS OVERRULED.

Mary O. Lyman, 24 L. D., 493, and John Birkholz, 27 L. D., 59, overruled in so far as in conflict.

JONES, First Assistant Secretary:

This is an appeal by Howard A. Robinson from a decision of the Commissioner of the General Land Office dated May 1, 1913, denying his application for the repayment of \$1,601.70, paid July 31, 1907, as purchase money in connection with his coal entry 0369, for lot 1, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ and E. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 6, T. 5 N., R. 91 W., 6th P. M., Glenwood Springs land district, Colorado.

Repayment was denied by the Commissioner upon the ground that the facts in the case did not bring the application within the purview of the act of June 16, 1880 (21 Stat., 287); that the act of March 26, 1908 (35 Stat., 48), makes no provision for repayment in cases where applications have been carried to entry; and for the further reason that the entry in connection with which application for repayment is made had been canceled for fraud.

The position assumed by the Commissioner as to the question of fraud involved in this case is stated as follows:

Whether a coal declaratory statement filing is in fact an "entry" within the meaning of said section, or whether Howard A. Robinson was guilty of fraud in permitting his father to advance the purchase money for the land and

in holding himself morally bound to share in the products of the supposed coal mine, are not questions for present consideration, being *res adjudicata*. Findings by competent authority unappealed from must govern where applicable in considering claims for repayment. "On application for repayment under an entry cancelled for fraud, the applicant will not be permitted to go back of the judgment of cancellation and show that in fact there was no fraud." (24 L. D., 493, and 27 L. D., 59.)

The position assumed by the Commissioner that the act of March 26, 1908, *supra*, makes no provision for repayment in cases where applications have been carried to entry is clearly unwarranted and erroneous. The act provides that certain moneys "shall be repaid to the person who made such application, *entry*, or proof," and in a number of cases the Department has allowed repayment where entries were involved. Mary Ward (39 L. D., 495); Alfred D. Hawk (41 L. D., 350); Oscar A. Olson (43 L. D., 93).

Nor does the Department believe that where an application for repayment is presented involving an application or entry which has been rejected or cancelled for fraud and it is made to appear that the facts and circumstances under which such adjudication was made were not sufficient to sustain the charge, that the applicant for repayment should not be entitled to have such question reconsidered.

It is well known that in many cases where proceedings are had against an application or entry upon a charge of fraud that the claimant, through financial inability, or through ignorance of his rights and liabilities in the premises, fails to make a proper defense, as a result of which his application or entry is cancelled. In such cases it is manifestly unjust to deny an applicant for repayment the privilege of showing that as a matter of fact no fraud was committed or attempted. The doctrine of *res judicata* usually has no application in matters solely between an applicant under the public land laws and the Government. In the case of Ernest B. Gates, on review (41 L. D., 384), it was held (syllabus):

While the rules of *res judicata* and *stare decisis* should be considered and respected by the Secretary of the Interior he is not precluded thereby from taking proper action in any matter remaining subject to his jurisdiction.

In the case of James H. Febes (37 L. D., 210) it was held that the act of 1908, does not contemplate the reopening of repayment cases properly adjudicated under prior law, nor authorize repayment in cases where the entry failed of confirmation solely because of the fault or laches of the entryman. This decision, however, was disregarded by the Department in the case of Ernest Weisenborn (42 L. D., 533), wherein it was said:

The evident purpose of this act was to return to disappointed purchasers of public lands their purchase money in all cases where they fail to acquire title and had been guilty of no fraud or attempted fraud in connection with their

applications to purchase. The obligation to repay is placed on the failure of consideration and is granted in all cases not tainted by fraud.

The decisions in the cases of Mary O. Lyman (24 L. D., 493) and John Birkholz (27 L. D., 59), in so far as they are out of harmony with the views thus expressed are hereby overruled.

In the case under consideration proceedings against the entry involved in the application for repayment were ordered by the Commissioner February 18, 1910, upon the following charge formulated from a report of a special agent:

That said coal declaratory statement and entry were not made for the exclusive use and benefit of the entryman, but at the request of E. G. Robinson and for the use and benefit of some other person or persons believed to be Sarah J. Pettit and E. G. Robinson.

Notice of charges were served and denial filed. Thereafter the deposition of Howard A. Robinson, the claimant herein, was taken at Memphis, Tennessee, and the deposition of his father, E. G. Robinson, was taken at Los Angeles, California. Upon the testimony thus adduced the local officers on October 21, 1911, found and held that the entry was not made for the claimant's sole use and benefit but for the benefit in part at least of E. G. Robinson, who was disqualified, and accordingly recommended that the entry be cancelled for fraud. No appeal was taken from this decision and upon review of the record the Commissioner on August 17, 1912, affirmed the decision below and the entry was accordingly cancelled.

The Department has carefully reviewed the testimony under which these decisions were rendered and finds the same to be meager, unsatisfactory, and wholly insufficient to sustain the charge of fraud. Howard A. Robinson, the coal entryman, testified that in 1907, while residing in Los Angeles, California, he was advised by his father, who had received information as to certain valuable coal lands subject to entry in the State of Colorado, to initiate a coal claim upon a tract of such lands; that, acting upon this advice he empowered an attorney in fact for such purpose and made arrangements with his father to furnish the money; that he then removed to Memphis, Tennessee, and thereafter from time to time executed such papers as were sent to him by his attorney in fact, without giving much concern as to their purport; that when the time arrived to pay for the land his father furnished the money; that he gave no notes or other evidence of indebtedness for the amount thus furnished, but that he had an account with his father who was in business, under which there was a balance of \$400 in his favor. In response to a question as to what interest his father had in the entry this witness testified that there was no definite agreement of any sort between them, but that he felt morally bound to share equally with him whatever profits might accrue from the venture. This testimony was sub-

stantially corroborated by the deposition of E. G. Robinson, who declared that there had never been any agreement, verbal or written, between himself and his son, under which a conveyance of any interest in the land was contemplated.

As to the manner in which a division of the profits which might have accrued under the coal entry were to be affected, whether by a sale of the land or otherwise does not appear from the record. It is manifest, however, that a mere moral obligation constitutes no agreement or lien enforceable against the land, and in this connection reference may be had to a recent decision of the Department in the case of the Heirs of Martin Jemison (42 L. D., 420), in which it was held:

An agreement by a coal land applicant to pay to another, out of the proceeds of the sale of the land after patent, the money advanced by such party to pay the purchase price, fees, etc., in connection with the entry, and in addition one-third of the balance remaining after making such repayment, being merely a promise to pay in case of sale, not enforceable against the land, is not in violation of the coal land regulations requiring an applicant to make oath that the entry is made in good faith for his own benefit, and not, directly or indirectly, in whole or in part, in behalf of any other person or persons.

Nor does the Department find the testimony sufficient to warrant the conclusion that E. G. Robinson had exhausted his right under the coal-land law and was therefore disqualified to receive the benefits of a coal entry made by another. (*United States v. Colorado Anthracite Company*, 225 U. S., 219). The following is all of the testimony given upon this feature of the case:

Q. Did you ever take a coal entry yourself?—A. I have taken one, yes.

Q. When?—A. Well, when Mr. Baker was down here there were several friends—he mentioned about this property and several of us took up claims. Some dropped them some didn't.

Q. You never consummated your entry by paying the Government for it then?—A. No sir, I did not.

The manner in which E. G. Robinson's coal claim was initiated, whether by declaratory statement or application, and why it was not perfected, whether because the land was found to be valueless, or whether adverse claims were encountered, does not appear from the record. The fact that a person has once initiated a coal claim upon public land and failed to perfect the same does not necessarily disqualify him under the coal-land law. If good and sufficient reason existed for the abandonment of such claim his rights would not be exhausted. *Henry Burrell* (29 L. D., 328); *Anderson Coal Company* (41 L. D., 337).

After careful consideration of the whole record in this case the Department finds that no fraud was committed or attempted in making the entry in connection with which repayment is requested. The decision appealed from is accordingly reversed and the application for repayment will be allowed.

JOHN MORTON.

Decided April 22, 1914.

FORT FETTERMAN LANDS—SOLDIERS' ADDITIONAL LOCATIONS.

Lands formerly embraced within the Fort Fetterman military reservation, opened under the act of July 10, 1890, to disposal under the homestead laws only, are subject to appropriation under section 2306, R. S., by location of soldiers' additional rights.

JONES, *First Assistant Secretary*:

John Morton, assignee of Daniel B. Dunmire, has appealed from the decision of the Commissioner of the General Land Office, dated July 1, 1913, which holds for cancellation his entry made under section 2306, R. S., May 31, 1911, embracing lot 4, Sec. 15, T. 33 N., R. 72 W., containing 33.72 acres, and lot 8, Sec. 7, T. 33 N., R. 71 W., containing 10.68 acres, making a total of 44.40 acres.

It appears that the application had been previously rejected, January 16, 1911, for the reason that the land was withdrawn under the act of June 25, 1910 (36 Stat., 847). It appears that the applicant elected to accept restricted patent and further action on the case was suspended, pending resurvey of T. 33 N., R. 71 W.

From recitals made by the Commissioner, it appears that the land has been classified as noncoal and was restored to entry by executive order May 27, 1913. The land is in the former Fort Fetterman military reservation, which was opened to homestead entry only under the act of July 10, 1890 (26 Stat., 227). The Commissioner held the entry for cancellation because an application under section 2306, R. S., is not a homestead, citing the case of Thomas A. Cummings (39 L. D., 93).

The act of July 10, 1890 (26 Stat., 227), providing for the disposition of lands in certain military reservations, including Fort Fetterman, was made "subject to disposal under the homestead laws only." The first proviso of the act gives special privilege to "actual occupants" on the land January 1, 1890, by giving them a preference right of entry to not exceeding 160 acres. The act does not limit entries to actual settlers only. If it had such limitation, the lands would not be subject to entry under section 2306, R. S. In the case of Jacob Jenne (40 L. D., 408), it was held that section 1 of the act of June 22, 1910 (36 Stat., 583), providing for disposal of lands withdrawn or classified for coal under the homestead laws "by actual settlers only," does not include soldiers' additional entries, for the reason that no cultivation or settlement is required under such entries.

But in this case the land in question is subject to entry under the homestead laws only, actual settlement not being specifically provided for as a condition precedent to entry.

In the case of Herbert W. Coffin, decided by the Department January 29, 1914 (43 L. D., 72), it was held:

The history of what is now section 2306 clearly establishes its right to be incorporated among the homestead laws as compiled in the Revised Statutes.

It is stated in appeal that the entryman, relying upon the validity of his entry and upon previous rulings in such cases, has purchased water right for the tract, cut sage brush therefrom, and has plowed and cultivated the same to alfalfa—all at an expense of \$2,000.

The Department is of opinion that the entry was properly allowed and that patent should issue, unless there be valid objections to such action, not stated by the Commissioner. It is so ordered and the action appealed from is reversed.

FEES FOR RECORD INFORMATION AND TRANSCRIPTS OF RECORDS.

CIRCULAR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, April 24, 1914.

REGISTERS AND RECEIVERS,
United States Land Offices.

SIRS: Section 2239, United States Revised Statutes, provides that:

The register for any consolidated land district, in addition to the fees now allowed by law, shall be entitled to charge and receive for making transcripts for individuals, or furnishing any other record information respecting public lands or land titles in his consolidated land district, such fees as are properly authorized by the tariff existing in the local courts of his district; and the receiver shall receive his equal share of such fees, and it shall be his duty to aid the register in the preparation of the transcripts, or giving the desired record information.

The act of March 22, 1904 (33 Stat., 144), provides:

That registers and receivers of United States land offices, shall, in addition to the fees now allowed by law, be entitled to charge and receive for making transcripts of the records in their offices for individuals, the sum of ten cents per hundred words for each transcript so furnished.

The above act modified section 2239, United States Revised Statutes, which section limited such authority to consolidated offices, and gives to every register and receiver the authority to furnish transcripts of their records, and provides that the fees for such service shall be ten cents per hundred words for each transcript so furnished, instead of the fees authorized by the tariff existing in the local courts of the district in which the land office is situated (See Circular "M." April 7, 1904, 32 L. D., 554).

A transcript is a literal copy of the words, letters and figures, which make the record. The correctness of the transcript may, or may not, be certified to, but it is nevertheless a transcript.

Registers and receivers of consolidated land districts, only, are entitled to charge for furnishing any other record information, such fees as are properly authorized by the tariff existing in the local courts of their district. Record information is held to be any official statement of the facts appearing of record—a certificate—and for which they are entitled to charge the fee as above authorized. In the absence of the State fee bill providing for such fee, you will be entitled to charge the fee allowed clerks of courts for furnishing certificates of their records, and in your receipt for the amounts so collected, you will cite the section and page of the State statute, or other authority for such charge.

While it may often be desirable for any register and receiver to furnish record information, there is no authority for others than officers of consolidated land districts to collect a fee therefor. The fees allowed to public officers are matters of strict law, depending upon the very provisions of the statute, and are not subject to discretionary action on the part of the officials.

Very respectfully,

JOHN MCPHAUL,
Acting Assistant Commissioner.

Approved, April 24, 1914:

A. A. JONES,
First Assistant Secretary.

DESERT ENTRIES—EXTENSION OF TIME.

INSTRUCTIONS.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, April 24, 1914.

REGISTERS AND RECEIVERS,

North Yakima, Walla Walla, and Waterville, Washington.

SIRS: Annexed is a copy of the act of Congress approved October 30, 1913 (Public—No. 35), entitled, "An act authorizing the Secretary of the Interior to grant further extensions of time within which to comply with the law and make proof on desert-land entries in the counties of Grant and Franklin, State of Washington."

1. This act authorizes the Secretary of the Interior, in his discretion, to grant to any entryman under the desert-land laws in the counties of Grant and Franklin, in the State of Washington, a fur-

ther extension of the time within which he is required to comply with the law and make final proof; provided that such entryman shall, by his corroborated affidavit, filed in the land office of the district where such land is located, show to the satisfaction of the Secretary that because of unavoidable delay in the construction and operation of irrigation works intended to convey water to the land embraced in his entry he is, without fault on his part, unable to make proof of the reclamation and cultivation of said lands, as required by law, within the time limited therefor; but such extension may not be granted for a period of more than three years, and the act does not affect contests initiated for a valid existing reason.

2. All applications for the benefit of this act must be supported by the affidavits of the applicants and at least two corroborating witnesses, made before an officer legally authorized to administer oaths in connection with the entry in question, and setting forth the facts on account of which the further extension of time is desired.

3. Such applications and affidavits must be filed in the local land office of the district wherein the lands are situated, for transmission, with the recommendation of the register and receiver, to the Commissioner of the General Land Office.

4. You are directed to suspend any application that may be considered defective in form or substance and allow the applicant an opportunity to remedy the defects or to file exceptions to the requirements made, advising him that, upon his failure to take any action within a specified time, appropriate recommendations will be made. Should exceptions be filed, they will be duly considered with the entire record. In transmitting applications for the benefit of this act you will report specifically whether or not there is any contest pending against the entry involved, and if a contest is pending you will transmit the application to the Commissioner of the General Land Office by special letter, without action thereon, making due reference to this paragraph.

Very respectfully,

C. M. BRUCE,
Acting Commissioner.

Approved, April 24, 1914:

ANDRIEUS A. JONES,
First Assistant Secretary.

[PUBLIC—No. 35.]

An Act Authorizing the Secretary of the Interior to grant further extensions of time within which to comply with the law and make proof on desert-land entries in the counties of Grant and Franklin, State of Washington.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior may, in his discretion, grant to any entryman under the desert-land laws in the counties

of Grant and Franklin, in the State of Washington, a further extension of time within which he is required to comply with the law and make final proof: *Provided*, That such entryman shall, by his corroborated affidavit, filed in the land office of the district where such land is located, show to the satisfaction of the Secretary that because of unavoidable delay in the construction and operation of irrigation works intended to convey water to the land embraced in his entry he is, without fault on his part, unable to make proof of the reclamation and cultivation of said lands, as required by law, within the time limited therefor; but such extension shall not be granted for a period of more than three years, and this act shall not affect contests initiated for a valid existing reason.

Approved, October 30, 1913.

LOTTON v. HOBBIE.

Decided April 27, 1914.

HOMESTEAD APPLICATION—DEATH OF APPLICANT PRIOR TO ENTRY.

By the filing of an application to make homestead entry of land properly subject thereto the applicant acquires a right which upon his death prior to allowance of entry descends to his widow or heirs, who may make entry and perfect title by proper cultivation for the required period without actual residence on the land.

CONFLICTING DEPARTMENTAL DECISION MODIFIED.

Garvey v. Tuiska, 41 L. D., 510, modified.

JONES, *First Assistant Secretary*:

Gertrude Hobbie has appealed from decision of May 7, 1913, by the Commissioner of the General Land Office, holding for cancellation her homestead entry for the W. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 16, T. 26 N., R. 10 W., made at the Woodward, Oklahoma, land office June 5, 1905.

Final proof was made August 16, 1912, showing that the entrywoman had not resided upon the land but that she had cultivated it each and every year since the entry.

August 20, 1912, Docia B. Lotton filed affidavit of contest against the entry, alleging that the entrywoman had never established or maintained residence on the land, and the case was submitted for decision upon the following statement of facts:

1. That the defendant was the wife and is now the widow of Charles W. Hobbie, who, at the time of his death, August 20, 1902, had an application pending and suspended for the W. $\frac{1}{2}$ NW. $\frac{1}{4}$ and W. $\frac{1}{2}$ SW. $\frac{1}{4}$ of Sec. 16, T. 26 N., R. 10 W., I. M., said application having been protested by Charles L. Heise, and Hobbie's application was finally allowed for the W. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 16, T. 26 N., R. 10 W., I. M., being the land involved in this contest.

2. It is now further agreed that the defendant, Gertrude Hobbie, was notified by the Register and Receiver of the Alva, Oklahoma, land office, of her right to file on the W. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 16-26-10, the land involved in this contest, and that she could do so as the widow of said Charles W. Hobbie, deceased, and, further, that she would not have to reside upon the land; that on June 5,

1905, in accordance and in obedience to the notice given her by the land-office officials, she appeared at the land office in Alva, Oklahoma, and duly made her entry of said land as the widow of Charles W. Hobbie, deceased.

3. The records of the Alva, Oklahoma, land office, now a part of the Woodward, Oklahoma, land office, show that she filed as Gertrude Hobbie.

4. It is further admitted and agreed upon behalf of the defendant, that she has never built upon or resided upon said land since making said entry.

5. It is further agreed that the testimony offered by the said defendant in her final proof upon said land shall be considered as a part of her testimony in the consideration of this case.

6. It is further agreed that the affidavit of the said defendant dated October 24, 1912, shall be filed and received as a part of the agreement and testimony in this case and marked exhibit "A."

In the decision appealed from, the Commissioner held that inasmuch as the application of Charles W. Hobbie was not allowed during his lifetime, his widow gained no right thereunder, because the right of Hobbie under his application terminated with his death before allowance of entry; that the advice given by the local officers to the applicant's widow, to the effect that she was not required to reside upon the land, was erroneous and did not protect her from contest for failure to reside thereon.

In the case of *Turner v. Wilcox Heirs* (38 L. D., 521) the Department stated:

A legal application to enter is equivalent to an actual entry so far as applicant's rights are concerned. *Pfeff v. Williams* (4 L. D., 455). Upon this principle, it has been held that the heirs of an applicant who dies before his application has been perfected may perfect such application and complete the entry by fulfilling the requirements of the statute. *Townsend's Heirs v. Spellman*, *supra*; *Prestina B. Howard* (8 L. D., 286); *Rosenberg v. Hale's Heirs* (9 L. D., 161); *Thompson v. Ogden* (14 L. D., 65); *Northern Pacific R. R. Co. v. Coffman et al.* (24 L. D., 280); *Heirs of Phillip Mulnix* (33 L. D., 331). The decisive question is whether it was such application as initiated a right to the land.

This is the rule which was well established and long obtained in the Department and which was not departed from until departmental decision in the case of *Garvey v. Tuiska* (41 L. D., 510), wherein it was stated:

Congress has made no provision for succession and descent with reference to a mere application to enter; and this Department has no authority in disposing of the public domain to give validity to claims of succession or descent of inchoate rights where Congress has failed to provide therefor.

That expression was not in harmony with prior rulings of the Department as above shown, and it was not necessary to the conclusion reached in that case, which involved an illegal application and not one wherein the land was properly subject to such application at the time it was filed. That decision is hereby modified to the extent of recalling and vacating the expression above quoted therefrom.

It appears that the application under present consideration was properly received, at least to the extent of the land involved in the entry, and, in accordance with rulings in force at that time, the widow was entitled to complete the entry. And it was not necessary for her to perform actual residence in order to earn title. The uniform ruling of the Department has been and is that persons who make entry as the widow or heirs of homestead claimants are not required to both reside upon and cultivate the land entered by them, but that it is sufficient for the land to be cultivated for the length of time required under section 2291, Revised Statutes.

For the reasons above cited the decision appealed from is reversed.

JOHN W. ILEY.

Decided April 27, 1914.

THREE-YEAR HOMESTEAD—ACTUAL RESIDENCE—CONSTRUCTIVE RESIDENCE.

The requirement of the act of June 6, 1912, that the entryman maintain *actual* residence upon the land entered for at least seven months each year for three years, precludes the land department from giving the entryman credit, as part of such seven months' period, for constructive residence during the period elapsing between the date of entry and the establishment of residence.

JONES, *First Assistant Secretary:*

October 29, 1906, John W. Iley made homestead entry, Roswell, No. 9986—Fort Sumner, 03725—for the NW. $\frac{1}{4}$, Sec. 22, T. 5 S., R. 35 E., New Mexico P. M., now Fort Sumner, New Mexico, land district. Final five-year proof was submitted December 2, 1912, and rejected by the local officers on the ground that entryman failed to reside upon the land for the period required by law.

April 8, 1913, the Commissioner of the General Land Office, considering the case upon appeal, sustained the action of the local officers and rejected the claimant's proof, finding that the residence shown was not sufficient to satisfy the requirements of the five-year law, and, moreover, giving consideration to the act of June 6, 1912 (37 Stat., 123), known as the three-year homestead act, held that the proof offered did not show sufficient residence for allowance under the latter act, from which decision Iley has appealed to the Department.

It appears from the record that claimant established residence upon the land April 7, 1907, and resided thereon for five and one-half months during said year; for seven months and one week during the year 1908; for eleven and one-half months during the year 1909; five months and three weeks during the year 1910; claimant was allowed leave of absence from November 25, 1910, to July 25, 1911,

and thereafter during the latter year resided on the land for three weeks; and in the year 1912, remained about one month.

It is clear that the proof offered does not warrant allowance under the act of June 6, 1912, *supra*, which provides for the issuance of patent upon proof by the entryman that he has a habitable house upon the claim and has "actually resided upon and cultivated the same for a term of three years succeeding the time of filing the affidavit." A proviso authorizes such entryman to be absent from the land for a period not exceeding five months in each year after establishing residence, such absence to be considered as constructive residence. It will be noted that this statute contemplates and requires the maintenance by entryman of actual residence upon the land entered for at least seven months a year for three years. This statutory requirement precludes the Department from extending in such cases the privilege of constructive residence during period lapsing between the date of entry and establishment of residence, the act requiring seven months actual residence each year.

Considering the case with reference to the act under which proof was offered, the Department is convinced that the showing made is insufficient to warrant acceptance of the proof under the five-year law.

The decision appealed from is accordingly hereby affirmed.

UNITED STATES PHOSPHATE CO.

Decided April 27, 1914.

MINING CLAIM—AMENDED LOCATION—INTERVENING WITHDRAWAL—SURVEY.

Where between the dates of the original location of a mining claim and an amended location thereof the claim was included within an area withdrawn by competent authority from appropriation under the mining laws, no rights attach by virtue of the amended location, to such portions of the vein or lode claimed thereunder as were not included in the original location, so long as the withdrawal stands; and as no lawful purpose would therefore be subserved by a survey of the amended location, the land department will not direct such survey to be made.

JONES, First Assistant Secretary:

This is an appeal by the United States Phosphate Company from the Commissioner's decision of December 16, 1913, declining to direct the surveyor-general of Idaho to order a survey of the amended Maury lode mining claim, situated in Sec. 6, T. 13 S., R. 45 E., B. M., Blackfoot land district, Idaho.

This claim appears to have been originally located November 16, 1907, on account of a deposit of rock phosphate. It is alleged that on or about April 29, 1910, the locators caused an official survey No. 2537 to be made thereof, which survey was approved by the surveyor-general February 9, 1911. December 9, 1908, the section in which the

claim was situated was embraced in a phosphate withdrawal and by executive order of July 2, 1910, it was included in phosphate reserve No. 2, created under the act of June 25, 1910 (36 Stat., 847).

The amended location was made August 12, 1913, and on October 24, 1913, a certified copy of the notice of the amended location was filed in the General Land Office accompanied by a letter from counsel for claimant wherein it is said:

Subsequent to the execution and approval of the survey in question, the owners of said Maury lode discovered, upon further development of the claim, that the end lines thereof were not established so as to allow the claimant to avail himself of all the right incident to the said location, and it was deemed proper to amend the location so as to make the end lines properly show the rights under the original location. Accordingly, on Aug. 12, 1913, the amended location was made by and on behalf of the United States Phosphate Company, such amendment establishing new end lines, wholly within the original location of said Maury lode.

As the regulations of your office do not allow the Surveyor General to make a survey based upon an amended location made subsequent to the approval of a survey for the same claim, without instructions from your office, we hand you herewith a certified copy of the amended location in question and ask that order be given to the Surveyor General to amend the survey in question as per amended location certificate.

In the decision appealed from it is said:

While rights initiated prior to withdrawal are protected by the act of June 25, 1910, no change in these acquired rights which would be a gain to the claimants, with a resultant loss or injury to the Government, can be made by a change in boundaries. As the expressed purpose of your request is to permit the claimant to change the end lines of his claim, so as to avail himself of all the right incident to the location, I must decline to grant the same.

This land was not subject to location of *phosphate* mining claims on August 12, 1913, nor to amended location in such manner as in any way to enlarge rights previously secured by locations of *such claims*. For this reason, and because the office feels impelled to refuse recognition, express or implied, of any extension of claims prejudicial to the public interest to be secured by said withdrawal, I must decline to order an amended survey.

The plat of survey of the original location is not before the Department and the request for the order for the survey of the amended location contains nothing from which the precise purpose of the amendment of the location can be determined. It appears, however, from a diagram of said survey No. 2537 furnished the Commissioner by the surveyor-general, that the end lines of the original location were laid in a north and south direction. The lines so laid would give rise to extralateral rights if any, only in a northerly or southerly direction. In the certificate of the amended location the end lines are described as lying due east and west. This in connection with the showing now made would seem to evidence an intent to appropriate a segment of the vein or lode underlying on its dip an area outside of that bounded by an extension of the end lines of the claim as originally located.

Assuming the claim as first located to have been valid at the respective dates of the departmental and executive orders of withdrawal, neither the area within the limits of the claim nor the deposits included in the extralateral rights incident thereto was affected by either of the orders. The withdrawals, however, both of which antedated the amendment of the location, attached as of their respective dates to all then unappropriated phosphate deposits lying outside of said claim and included extralateral rights.

In the case of Bunker Hill & Sullivan Mining and Concentrating Company *v.* Empire State-Idaho Mining and Developing Company (134 Fed., 268) it is said at page 270:

It has long been held that a mining location may be amended without the forfeiture of any rights acquired by the original location, except such as are inconsistent with the amendment, but new rights cannot be added which are inconsistent with those acquired by other locations made between the dates of the original and the amended location. The amended Stenwinder notice fully states the reasons therefor, and specifically reserves all prior acquired rights. While the new lines are placed almost within the old, they are so laid that in their prolongation westward they leave out on one side and take in on the other small portions of the ledge not included between the original lines. The amended location is valid against any of defendant's locations made after the date of the amended notice, May 23, 1887; but, as to those made between the dates of the original and the amended location, it is void as to any portion of the ledge claimed by the amended location which was not included in the original, in so far as it conflicts with any of defendant's locations involved in this action.

The same principle would seem to apply with equal force to a case like this, where, between the dates of the original and the amended location the outlying portion of the vein or lode was, by competent authority, withdrawn from appropriation under the mining laws. It does not appear, therefore, that any lawful purpose will be subserved by the desired survey of the amended location, and for that reason the Department is of the opinion that the application therefor should be rejected. The decision appealed from is accordingly affirmed.

MAUDE L. DEERING.

Decided April 27, 1914.

REPAYMENT—RELINQUISHMENT.

A homestead entryman who upon discovery that the land embraced in the entry is coal in character relinquishes the entry upon advice of the local officers and is permitted to make a second entry for other land, is entitled to repayment of the fees and commissions paid in connection with the relinquished entry.

JONES, First Assistant Secretary:

This is an appeal from decision of the Commissioner of the General Land Office of April 11, 1913, denying an application by Maude L.

Deering, formerly Maude L. Bacon, for repayment of the fee and commissions paid by her on homestead entry 4030 for the SE. $\frac{1}{4}$ of Sec. 14, T. 25 N., R. 58 E., Glasgow, Montana.

The entry was made May 27, 1907, and relinquished June 3, 1908. Application for repayment was denied by the Commissioner on the ground that the entry was voluntarily relinquished and that, under such conditions, a return of the money is not authorized under the act of June 16, 1880 (21 Stat., 287), which provides for repayment of fees, commissions and purchase money only where an entry is canceled for conflict or has been erroneously allowed and cannot be confirmed. In support of her appeal the applicant states:

The reason I relinquished my former entry is that a ledge of coal was found on same, and I was advised by the local office that I would have trouble in making final proof, and it was best for me to relinquish under those circumstances, which I did, and filed on and made proof on another tract.

The records of the General Land Office show that applicant was allowed to make a second homestead entry at Miles City, Montana, and from papers filed in connection with that entry it appears that on May 8, 1908, she communicated with the local land officers at Glasgow, Montana, relative to the discovery of coal on the land embraced in her former entry. The receiver at Glasgow, on May 12, 1908, wrote her as follows:

Replying to your favor of the 8th inst. It is my opinion that under the circumstances that you relate in reference to your homestead claim that if you will file a corroborated affidavit setting out the facts that you filed on your present claim without knowledge of the same containing coal and accompany the same with a relinquishment for the same and an application to enter another tract, setting forth the facts fully, we will transmit the same to the general land office for action and it is likely that you will be allowed to make another entry.

The presumption is that applicant's relinquishment of June 3, 1908, was filed pursuant to the above correspondence. She subsequently applied for a second homestead entry at Miles City and in connection with her application filed several affidavits setting forth, among other things, that at the time she made her former entry there were no indications of coal on the land embraced therein; that she established residence and built a house believing that the land was farming land; that about May 6, 1908, she discovered a coal-bearing ledge on the land from which she concluded that the same was more valuable for its coal than farming purposes.

The records of the General Land Office show that the land embraced in applicant's former entry was withdrawn for coal April 20, 1910, and classified as coal land May 25, 1911.

From the foregoing it is clear that the relinquishment by applicant of her former entry can not be regarded as voluntary; in fact, the relinquishment was filed at the suggestion of the local officers.

Any other course on applicant's part would but have invited controversy with the Government, which, as the facts show, would eventually have resulted in cancellation of the entry.

While, under the circumstances, the entry may not, strictly speaking, be one that was "erroneously allowed," yet it is clear, owing to the subsequent discovery of coal, that it could not have been confirmed.

In construing the act of June 16, 1880, it is held that, notwithstanding an entry may have been erroneously allowed, if despite such error the entry can be confirmed there is no reason for repayment and the act does not authorize it. The converse of this proposition is equally sound, namely, that if subsequent developments render the confirmation of an entry impossible, the entryman is entitled to repayment.

In addition to the repayment legislation contained in the act of June 16, 1880, it is provided in the act of March 26, 1908 (35 Stat., 48), that purchase moneys and commissions paid under any public land law shall be repaid in all cases where the application, entry or proof "has been or shall hereafter be rejected, and neither such applicant nor his legal representatives shall have been guilty of any fraud or attempted fraud in connection with such application."

Aside from any showing or even intimation that applicant was not in good faith with respect to her former entry, the fact that she was subsequently allowed to make second homestead entry was an adjudication that she was not guilty of any fraud, because the act under which the second entry was made (35 Stat., 6), specifically provides that it does not apply to any person whose former entry was canceled for fraud.

In the case of Dorathy Ditmar, decided by the Department February 12, 1914 (43 L. D., 104), the entrywoman, rather than face the expense and uncertainty of a contest, relinquished her homestead entry and applied for repayment. It was held:

Assuming, as it must be assumed, until the contrary is established, that the entryman has acted in good faith, it is not believed that he forfeits his claim to a return of purchase money by relinquishing the entry rather than face an expensive controversy with the Government. . . .

For the purposes of administration of this repayment law (act of March 26, 1908), it is held that wherever an application, entry or proof fails or is defeated for any cause short of the voluntary abandonment or relinquishment of the applicant or entryman, it is rejected within the meaning of the statutes; and where the application or entry is relinquished, as under the circumstances disclosed by this record, such relinquishment will not be regarded, necessarily, as voluntary.

It is impossible to distinguish the principle involved in that case and in this. The facts in the present case, however, are more favorable to the applicant for repayment, as in the Dorathy Ditmar case

it appears that the relinquishment was in the face of a charge that she had not complied with the homestead law, whereas, in the present case, the applicant, upon discovering the coal character of the land embraced in her entry, on her own volition called the attention of the local officers to the fact.

Under all the circumstances the applicant herein is entitled to repayment of the *fee and commissions* paid on her relinquished entry, and the decision of the Commissioner of the General Land Office is accordingly reversed.

HANS HANSEN HEDEMARK.

Decided April 29, 1914.

NATIONAL FOREST—SETTLEMENT—ACT OF JUNE 11, 1906.

A settler upon unsurveyed lands subsequently included in a national forest may elect to stand upon his rights as a settler and await survey of the township, when he may make entry of 160 acres or less under the general homestead laws, or he may, without waiting for the regular survey, apply for listing of the lands under the act of June 11, 1906; and where he applies for listing under that act, and makes entry of such part of the lands embraced in his settlement as is found to be of the character subject to listing and opened to entry under the act, he thereby waives all claim to the remainder and can not, after survey of the township, make entry under the general homestead law for the entire area covered by his settlement claim.

JONES, *First Assistant Secretary:*

Hans Hansen Hedemark has appealed from the decision of the Commissioner of the General Land Office, rendered March 1, 1913, reversing the action of the local land officers and holding for cancellation his additional homestead entry, made July 8, 1912, for the E. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 29, and the W. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 28, T. 12 N., R. 2 E., S. L. M., in the Salt Lake City, Utah, land district, upon the ground that most of the land included in such entry had not been listed by the Forest Service as of the character subject to homestead entry.

The land involved is within the limits of the present Cache National Forest, being so included by proclamations of the President dated May 28, 1906, and July 1, 1908.

Hedemark alleges that he settled upon the land, then unsurveyed, in 1896, and has since resided upon, cultivated and improved the same.

January 2, 1913, the Chief of Field Division transmitted the report of a forest officer, dated November 1, 1912, from which it appears that the lands embraced in Hedemark's settlement claim were, upon his application, examined, and 17.74 acres, containing his improvements, recommended for listing; that the area was restricted to said 17.74 acres for the reason that no more of the land was suitable for agri-

cultural purposes; that the adjacent lands consisted of steep rocky mountain sides which are not cultivable; that claimant has on the lands listed a two-room log house, a log barn, 24x36 feet, and a smoke-house; that he has cultivated 10 acres of the tract, and that he has resided upon and cultivated the land since November, 1896.

The plat of survey of this land was filed in the local office May 18, 1912, and on July 8, 1912, following, Hedemark filed additional homestead application for the E. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 29, and W. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 28, T. 12 N., R. 2 E., S. L. M., stating in his application that the area of 17.74 acres, for which he had made entry following listing by the Department of Agriculture was a part of the land applied for under the additional homestead application. Entry was permitted by the local land officers, although it does not appear that the lands had previously been listed. March 1, 1913, the Commissioner of the General Land Office overruled their decision and held the additional entry for cancellation. December 11, 1912, the Forest Service had asked that final action be not taken until such service had been afforded opportunity to be heard, and on June 3, 1913, the Solicitor for the Department of Agriculture filed a brief in opposition to the allowance of the additional entry. From the adverse decision of the Commissioner of the General Land Office, Hedemark has appealed to the Department.

It is contended, in substance, in the appeal, that since Hedemark is shown to have established residence on the land in 1896, and has since complied with the provisions of the homestead law, he was entitled, following the filing of the township plat of survey, May 18, 1912, to make such additional entry of lands as would bring his holdings up to the full 160 acres permitted *bona fide* homestead settlers on public lands.

It is urged by the Solicitor for the Department of Agriculture, in substance, that Hedemark, by making entry under the provisions of the act of June 11, 1906 (34 Stat., 233), of a portion of the area embraced in his settlement claim, abandoned his right under the general homestead law as to the remainder, and that the forest withdrawal immediately attached to such remainder.

In the first paragraph of the act of June 11, 1906, *supra* (omitting portions not here material), it is provided:

That the Secretary of Agriculture may in his discretion, and he is hereby authorized, upon application or otherwise, to examine and ascertain as to the location and extent of lands within permanent or temporary forest reserves, . . . which are chiefly valuable for agriculture, and which, in his opinion, may be occupied for agricultural purposes without injury to the forest reserves, and which are not needed for public purposes, and may list and describe the same by metes and bounds, or otherwise, and file the lists and descriptions with the Secretary of the Interior, with the request that the said lands be opened to entry in accordance with the provisions of the homestead laws and this act.

The second paragraph of the section, after setting forth the manner in which the Secretary of the Interior shall open the listed lands to settlement and entry, contains the following proviso:

That any settler actually occupying and in good faith claiming such lands for agricultural purposes prior to January first, nineteen hundred and six, and who shall not have abandoned the same, and the person, if qualified to make a homestead entry upon whose application the land proposed to be entered was examined and listed, shall, each in the order named, have a preference right of settlement and entry.

In section 5 of the act it is provided:

That nothing herein contained shall be held to . . . in any way impair the legal rights of any *bona fide* homestead settler who has or shall establish residence upon public lands prior to their inclusion within a forest reserve.

It appears therefore that Hedemark, under the terms of this act, had an election whether to stand upon his rights as a homestead settler, and when the plat of survey was filed make entry of 160 acres or less, under the provisions of the general homestead law, which right was expressly confirmed to *bona fide* settlers by the language of section 5 of the act, or to make application under the first section of the act.

Hedemark adopted the latter course, and thereby elected to take title to a portion of the public domain under the provisions of an act which limited selection to lands determined by the Secretary of Agriculture to be "chiefly valuable for agriculture, and which, in his opinion, may be occupied for agricultural purposes without injury to the forest reserves, and which are not needed for public purposes." Where the land of this character equals or exceeds 160 acres, the settler who requested the listing may receive a full quarter section, and it appears from the regulations of the Forest Service that "the examination for listing should be made with the view of listing 160 acres of land where possible (see Forest Service Program, July, 1909-June, 1910, pp. 329, 330, heading "Bona Fide Squatters"). It is further provided in such regulations, that "in cases where less than 160 acres of land has been listed to a person who settled upon the land prior to the creation of the Forest, an additional area sufficient to complete the homestead entry may be allowed upon proper application."

From the report of the Forest Service, above mentioned, it appears that in the case at bar only an area of 17.74 acres was found of the character subject to listing, upon the application of Hedemark, and that he made entry of this area. Having elected to take under the act of June 11, 1906, *supra*, thereby obtaining title to the land in advance of the Government's general survey, he is now precluded from obtaining title to the full 160 acres of the land settled upon by him except upon due ascertainment that such land is not needed for

Government purposes, is chiefly valuable for agriculture, etc., and listed as such, and otherwise meets the requirements of said act.

The view seems clearly unreasonable that the act of June 11, 1906, *supra*, contemplated the invocation of its provisions by an application for listing, the resulting examination and survey of the said lands with a view to the exclusion of those needed for public purposes or those not agricultural in character, and later, upon the filing of the Government plat of survey, the inclusion in the settler's entry of, it may be, the very tracts previously excluded.

In the brief filed by counsel on behalf of Hedemark, in connection with the appeal to the Department, it is alleged:

It can be further shown, if necessary, that taking this claim as a whole, each smallest legal subdivision is more valuable for agricultural purposes than for any other purpose whatsoever, and that the improvements of this claimant form a part of each of the 40 acre tracts here in question.

The determination of what lands in National Forests are "chiefly valuable for agriculture, and . . . may be occupied for agricultural purposes without injury to the Forest Service," is a matter which Congress has left to the sound discretion of the Secretary of Agriculture. The Department of the Interior is without right or duty in the premises. Its authority is limited to opening such lands to entry under the public land laws upon request of the Secretary of Agriculture, following the latter's decision as to the character of the lands and his listing of the same. If Hedemark is of opinion that the present boundaries of his entry do not include all the land intended by the act of June 11, 1906, *supra*, he should address his objection to the Department of Agriculture.

Under the provisions of the act of April 28, 1904 (33 Stat., 527), additional entry may be made of *listed* lands within National Forests.

In the opinion of the Department, the additional homestead entry of Hedemark was properly held for cancellation, and the decision appealed from is therefore affirmed.

KIOWA, COMANCHE, APACHE, AND WICHITA LANDS—EXTENSION OF TIME.

INSTRUCTIONS.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, April 30, 1914.

REGISTER AND RECEIVER,
Guthrie, Oklahoma.

SIRS: By letter "K" of March 12, 1914, you were furnished a copy of a letter approved by the Department on March 6, 1914 [43

L. D., 165], changing the regulations issued November 3, 1913 [42 L. D., 604], with reference to the time within which preference-right claimants to lands in the Kiowa, Comanche, Apache, and Wichita reservations, Oklahoma, sold pursuant to the rules and regulations adopted November 3, 1913, under the act of June 30, 1913 (38 Stat., 92), and such preference-right claimants were allowed until May 1, 1914, to make their payments, and upon their failure to do so, the successful bidders at the sale of the lands in question were allowed to make payment within thirty days after notice.

On account of a change made in the Board of Appraisers, the work of appraisement was not commenced until the month of April, and the report of the appraisement has not yet been received. In consequence thereof, it will be impossible for the preference-right settlers to make their payments within the time provided in said letter of March 6, 1914, and the time is therefore hereby extended until June 15, 1914.

In case such purchasers fail to make their payments within the time indicated, the successful bidders at the sale of the lands will be allowed to make payment within thirty days after notice of such default.

Very respectfully,

JOHN MCPHAUL,
Acting Assistant Commissioner.

Approved April 30, 1914:

A. A. JONES,
First Assistant Secretary.

BERTHA EARLY ROBISON.

Decided April 30, 1914.

DESERT ENTRY—EXTENSION OF TIME—ACT OF MARCH 28, 1908.

Where at the time of making desert land entry the entryman in good faith expected to obtain water by means of ordinary surface wells, but subsequently ascertained that such wells would not furnish an adequate supply to irrigate the land, such unforeseen failure of his proposed water supply is proper ground for extension of time under the act of March 28, 1908.

JONES, *First Assistant Secretary:*

Bertha Early Robison appealed from the decision of the Commissioner of the General Land Office, of May 29, 1913, denying extension of time of three years within which to submit final proof on her desert-land entry for the W. $\frac{1}{2}$, Sec. 1, T. 33 S., R. 19 E., W. M., Lakeview, Oregon.

April 16, 1909, Robison made entry and, February 18, 1913, applied for extension of time of three years to submit final proof. April 2, 1913, the Commissioner held her application for rejection, ruling her

to show ownership of a water right. May 7, 1913, she made return to the ruling showing that it is practicable to irrigate her land by artesian well and that such is her intent, but she has not, since making entry, been financially able to sink an artesian well. At the time of her entry, she announced an intent to irrigate her land by wells and windmills, but she now shows that ordinary surface wells do not yield sufficient water. The Commissioner held that claimant's inability to put down artesian wells was not due to any unforeseen or unavoidable cause entitling her to the benefits of the act of March 28, 1908 (35 Stat., 52).

Claimant has made satisfactory annual proof, and the most relief that the Commissioner would give her was to refrain for six months from proceedings for cancellation of her entry.

With her appeal, she shows that her entry is located in a basin not far from the Chewaucan river and marsh and that she presumed water from ordinary well could be obtained in such locality, but, after making the entry, it was demonstrated that such water in sufficient quantity could not be obtained for irrigation of the land. Experiments have shown that the sinking of artesian wells reaches a supply of flowing water from which she may reasonably expect success in effecting irrigation. Between date of her entry and January 13, 1912, she has expended, in clearing her land, \$985 and has submitted first, second, and third annual proofs. Her good faith is evident and, in view of the Department, the unforeseen insufficiency of water in the surface or shallow well entitled her to the benefits of the act of March 28, 1908, *supra*. The intended source of water failed, which is no less a disappointment or unforeseen circumstance than is the failure to complete project irrigation works and the obtaining of water by her own or cooperative efforts by the damming of a stream and construction of the irrigation system.

The decision is therefore reversed and the extension of time granted.

TRUEMAN v. BRADSHAW.

Decided April 30, 1914.

HOMESTEAD ENTRY—HEIRS OF DEVISEE.

Section 2291, Revised Statutes, contemplates that, as between the devisee and the heirs of a homestead entryman, the devisee shall succeed to the entryman's right to perfect the entry.

CONTRARY DECISIONS OVERRULED.

Knight v. Heirs of Knight, 39 L. D., 362, 491, 40 L. D., 461, and *Syvert Larson*, 40 L. D., 69, overruled.

JONES, *First Assistant Secretary:*

Appeal has been filed by Duane F. Bradshaw from decision of May 29, 1913, of the Commissioner of the General Land Office

reversing the action of the local officers and holding for rejection the application filed by said Bradshaw August 24, 1912, to make homestead entry for the N. $\frac{1}{2}$ and SW. $\frac{1}{4}$, Sec. 8, T. 23 N., R. 52 W., Alliance, Nebraska, land district, which was filed by him with the relinquishment by Ezra T. Trueman of said lands embraced in the latter's homestead entry therefor made September 15, 1905; said application being held for rejection for the stated reason that said Trueman had died prior to the filing of said relinquishment.

Said relinquishment was signed January 2, 1909, and was acknowledged April 16, 1910. Said Trueman died June 26, 1910.

Protests were filed August 20 and 28, 1912, by Andrew Ronfeldt and George W. Trueman, respectively, the latter claiming to be the sole heir of the entryman and alleging that a relinquishment had been executed by said Ezra T. Trueman while not in his right mind, and protesting that same was procured and would be or had been filed for the purpose of depriving said entryman's heirs of their interest in said lands.

Hearing was duly had on said protests, and upon testimony presented the local officers recommended that said protests be dismissed, Trueman's entry canceled, and Bradshaw's application allowed. The Commissioner held upon appeal by said George W. Trueman, Ronfeldt defaulting, that the filing of said entryman's relinquishment after his death was of no effect and that Bradshaw's application should be rejected.

It appears said Ezra T. Trueman executed, October 27, 1909, a will devising to one Fred A. Austin all his real and personal property and naming said Austin as his executor. Said will was duly probated January 25, 1911.

Said Ezra T. Trueman's death prior to the filing of his relinquishment deprived the same of any legal effect. *Robertson v. Messent's Heirs et al.* (18 L. D., 301). Said entry by Trueman remained therefore intact notwithstanding the filing of said relinquishment, and Bradshaw's application was properly held for rejection.

Bradshaw contends, however, that he has acquired a right to said lands by purchase thereof from said Austin, who it appears filed September 22, 1913, since the filing of this appeal, his relinquishment as devisee under the will of said entryman of the above-described lands, and also on the same date Bradshaw appears to have filed a new application for said lands, and on November 6, 1913, an argument addressed to the Commissioner of the General Land Office, in support of his claim to said lands, both by virtue of his alleged purchase from Austin and by virtue of the latter's relinquishment and his own concurrent second application to make entry for said lands.

It further appears from argument in support of this appeal that said George W. Trueman on November 22, 1912, submitted as heir of said Ezra T. Trueman final proof on the latter's entry.

Said Bradshaw acquired no rights by purchase from said Austin. If the latter had any status or right as devisee or otherwise to perfect the entry made by Ezra T. Trueman he was prohibited by section 2291, Revised Statutes, from alienating said lands prior to perfecting such entry.

Under the Department's decision in the case of *Knight v. Heirs of Knight* (39 L. D., 362, 491; 40 L. D., 461), followed in the case of *Syvart Larson* (40 L. D., 69), the entryman's heirs and not his devisee would succeed under said section 2291, Revised Statutes, to the right to perfect and complete his entry. The Department has given careful consideration, however, to the construction of said section made in said decision and is convinced that same is erroneous and unwarranted.

Said section provides that a homestead entry may be perfected by the submission of proof thereon by "the person making such entry; or if he be dead, his widow; or in case of her death, his heirs or devisee; or in case of a widow making such entry, her heirs or devisee in case of her death."

Subject to the grant, contained in section 2292, Revised Statutes, to children under 21 years of age, both of whose parents are deceased, said section 2291 plainly confers the right to perfect a homestead entry in succession first upon the widow and, secondly, in case there be no widow, upon entryman's heirs or devisee. The collocation of the words "heirs" and "devisee" coordinates and places heirs and devisees in one class, entitling them in the alternative, dependent upon the existence or the absence of a will by the entryman, and not subordinately one to the other. *Dorame v. Towers* (1 C. L. L., 438); *John J. Jones* (1 L. D., 64); *Patton v. George* (20 L. D., 533); *Turner v. Wilcox's Heirs* (38 L. D., 521). Had the law contemplated giving heirs precedence in order of succession over a devisee, more apt terms would doubtless have been employed to that end, as by saying, following the form of expression used in said section, the devisee shall succeed if there be no widow and no heir. The language used, however, taken in its natural and ordinary sense can only mean that a devisee, like an assignee under a provision in a statute or deed granting or conveying to one's "heirs and assigns," succeeds to the entryman's right to perfect his entry, and not the latter's heirs except in the absence of a devisee.

In the early case of *Jones, supra*, it was stated that the heirs succeed "unless the land in question has been devised"; and in numerous decisions it has been held that "the devisee of a homestead claimant is entitled to all the privileges that would descend to his

heirs." H. C. Dodge (1 L. D., 47); Winters *v.* Jordan (2 L. D., 85); Tobias Beckner (6 L. D., 134). Also, in the repeated circular of suggestions to homesteaders, approved by the Department (35 L. D., 187, 194; 36 *Ibid.*, 373, 380; 37 *Ibid.*, 638, 645; 39 *Ibid.*, 232, 239), it was stated specifically that an entryman's rights pass, in the absence of a widow and if children are not all minors, "to the person to whom such rights were devised by the entryman's will, or if an entryman dies without leaving . . . a will, . . . to the persons who are his heirs."

The decision in the case of *Knight v. Heirs of Knight*, *supra*, was a distinct departure from the construction of the law by this Department in force for many years; and although expressions used by the State courts in the decisions cited in that case tend to support the holding in such case, the cases in which said decisions were rendered (*Chapman v. Price*, 32 Kan., 446, 4 Pac., 807, and *Lewis v. Lichty*, 3 Wash., 43, 28 Pac., 356) do not present facts requiring such holdings and such decisions are not properly authority therefor. In both cases there was a device by which it was sought to throw into the testator's estate the lands embraced in his unperfected homestead entry, thereby subjecting such lands to administration and to payment of the testator's debts, which was clearly not within the power of the testator, as held in the case of *Jones*, *supra*, for one reason because said section 2291, Revised Statutes, is not a statute of descent or inheritance of real estate (*Bernier v. Bernier*, 147 U. S., 242; *McCune v. Essig*, 199 U. S., 382, 390), and also because section 2296, Revised Statutes, specifically provides no lands "shall in any event become liable to the satisfaction of any debt contracted prior to the issuing of the patent therefor."

The decisions in the cases of *Knight v. Heirs of Knight*, *supra*, *Syvert Larson*, *supra*, and all others so far as in conflict herewith, are accordingly overruled.

In accordance with the foregoing views, it is held the devisee Austin succeeded, under said section 2291, on the entryman's death to the right to perfect the latter's entry. While he appears to have attempted, by a sale of the entryman's relinquishment, to dispose to Bradshaw of his own interest as devisee in said entry, neither he nor the entryman had any transferable interest therein, as above stated. However, it appears that since this appeal he has filed in the local office his relinquishment of all his right, title and interest in and to the lands embraced in said entry and said relinquishment has been transmitted by the local officers for consideration and instruction.

The decision appealed from is, therefore, hereby affirmed, and the case is remanded for consideration and appropriate action in the premises, and as to Austin's relinquishment in particular, in accordance with the foregoing views.

GEORGE JUDICAK.

Decided April 30, 1914.

PROCEEDING BY GOVERNMENT—COAL LAND—UNRESTRICTED PATENT.

In case no contest, protest, or proceeding by the government was commenced against an entry within two years from the date of the issuance of final receipt, the land department is thereafter without jurisdiction to inquire into the known coal character of the land at the date of final receipt, but must issue unrestricted patent upon the entry.

CONFLICTING DEPARTMENTAL DECISION OVERRULED.

Herman v. Chase et al., 37 L. D., 590, overruled.

JONES, *First Assistant Secretary*:

This is an appeal by George Judicak from the Commissioner's decision of November 23, 1912, finding and holding the NE. $\frac{1}{4}$, Sec. 21, T. 27 S., R. 67 W., 6th P. M., Pueblo, Colorado, land district, embraced in his homestead entry 08338, to be coal in character and requiring him, under penalty on default of suffering the cancellation of the entry, to elect to receive a limited patent therefor under the provisions of the act of March 3, 1909 (35 Stat., 844).

This entry was made September 27, 1905, and following the submission of final proof thereon, February 8, 1907, receiver's receipt upon final entry issued February 21, 1907.

No contest or protest was commenced until April 2, 1910. On that date the Commissioner of the General Land Office directed proceedings against the entry both as to compliance by the entryman with the requirements of the homestead law and the coal character of the land. The bar of the statute of March 3, 1891, had then fallen and the Commissioner was without jurisdiction to order such action, so that the questions involved and subsequent proceedings thereunder need not be further discussed.

In its decision of December 13, 1913, in the case of Jacob A. Harris (42 L. D., 611), the Department held that, under the proviso to section 7 of the act of March 3, 1891 (26 Stat., 1095), an entry was protected against any proceeding in this Department by the Government, as well as against private contests and protests, unless such proceeding was pending at the expiration of two years from the date of the issuance of the receiver's receipt upon final entry, and amounted to an action, order, or judgment had or made by the Commissioner of the General Land Office cancelling the entry, holding it for cancellation, or requiring something more to be done by the entryman to duly complete and perfect the same, and without which the entry would necessarily be canceled.

As in the case at bar no action was taken by the land department which required anything to be done by the entryman until more than two years after the issuance of final receipt on this entry, and as the two-year period had expired prior to the act of March 3, 1909, *supra*,

and no contest or protest was then pending, it must be held that thereafter the Department was without jurisdiction to entertain any proceeding adverse to this entry and that an unrestricted patent must be issued to claimant.

The conclusion reached above is in conflict with the decision in the case of *Herman v. Chase et al.* (37 L. D., 590), and that decision is hereby overruled.

The decision appealed from is, accordingly, reversed and the entry will be passed to unrestricted patent.

BRANDT v. BERGLIN.

Decided May 4, 1914.

CONTEST—ABANDONMENT—RESIDENCE—ACT OF AUGUST 19, 1911.

The act of August 19, 1911, relieving certain homestead entrymen from residence and cultivation from the date of that act until April 15, 1912, operated to relieve entrymen from the necessity of establishing residence during that period; and an entry within the act is not subject to contest for failure to establish residence until the expiration of six months from the time of making the entry exclusive of the period specified in said act.

JONES, *First Assistant Secretary*:

Appeal has been filed by Arnold Brandt from decision of the Commissioner of the General Land Office of July 1, 1913, affirming the action of the local officers and dismissing said Brandt's contest against the homestead entry made by Andrew Berglin March 23, 1911, for lot 3, Sec 4, T. 12 N., R. 20 E., and W. $\frac{1}{2}$ SE. $\frac{1}{4}$ and NE. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 22, T. 13 N., R. 20 E., Timber Lake, South Dakota, land district.

Brandt's contest affidavit filed April 17, 1912, alleged that Berglin had failed to make settlement upon, improve and cultivate, and had abandoned said lands. Hearing was duly had, at which both parties appeared and testimony was presented by the contestant and hearing continued for testimony by the contestee, and without passing upon the contestee's motion to dismiss the contest, the local officers recommended dismissal of said contest on the merits. The Commissioner held in the decision appealed from that the questions in dispute are not of much moment and dismissed the contest for the stated reason that same was premature in view of the act of August 19, 1911 (37 Stat., 23), six months not having elapsed from the date of making said entry to the date of initiation of said contest, excluding the period from the date of said act to April 15, 1912, during which the entryman was, by the express terms of said act, relieved from the necessity of residence and cultivation on said entry.

Without considering other questions, the Department concurs in the conclusion stated in the decision appealed from. While said

act of August 19, 1911, does not, as do the similar acts of January 28, 1910 (36 Stat., 189), and February 13, 1911 (36 Stat., 903), specifically extend the time for the establishment of residence upon the entries within the operation of said act, it merely "relieved from the necessity of residence and cultivation" during the period stated in the act, as above recited. Said provision of that act operated to relieve an entryman from the establishment of residence within said period. It would be useless to require a formal establishment of residence at a time when residence or other compliance with the law was not necessary.

Under the law and the regulations of the Department existing at the time of making this entry and of the initiation of this contest, the entryman was not in default on his entry until after six months from the time of making entry, and the period for which leave of absence may be granted by an act of Congress is eliminated from consideration in estimating the absence of six months constituting statutory abandonment of an entry. *Dahl v. Bailey* (41 L. D., 289). Eliminating the period from August 19, 1911, to April 15, 1912, of authorized absence under said act of the former date, this contest was initiated after five months and fourteen days, only, of chargeable absence in this case, and was therefore premature.

The decision appealed from is accordingly affirmed.

CATARACT GOLD MINING CO. ET AL.

Instructions, May 26, 1914.

PLACER MINING CLAIMS—BEDS OF NONNAVIGABLE STREAMS.

The banks and beds of nonnavigable, unmeandered streams, upon lands belonging to the United States, containing valuable mineral deposits, may be included in locations and entries under the mining laws.

MINERAL DEPOSITS IN NATIONAL FORESTS OR POWER-SITE WITHDRAWALS.

The general mining laws are operative with respect to deposits of gold within the limits of national forests or power-site withdrawals the same as with respect to like deposits elsewhere on the public domain.

MINERAL LANDS—WITHDRAWALS UNDER ACT OF JUNE 25, 1910.

Lands containing mineral of such quantity and value as to warrant a prudent man in the expenditure of his time and money with a reasonable expectation of developing a paying mine, are disposable *only* under the mining laws, notwithstanding they may possess a possible or probable greater value for other purposes; but by the act of August 24, 1912, lands withdrawn under the act of June 25, 1910, are open to location and acquisition under the mining laws only so far as the same apply to metalliferous minerals.

JONES, *First Assistant Secretary*:

Under date of June 11, 1913, you [Commissioner of General Land Office], forwarded for instructions the records pertaining to min-

eral application 0469 for the Willow and Muggins Bar placer claims; 0470 for the Feather River Indian Bar and Kansas placer mining claims; mineral entry 0891 for the Marietta and Waverly placer claims; and mineral entry 0494 for the Canton and Columbus placer mining claims, all located in the Sacramento land district, California. You directed attention to the fact that the claims covered portions of the banks and bed of the north fork of Feather River, including lands reported by the Geological Survey to be valuable for the development of electrical power, and asked to be advised (1) whether the bed of the stream, if valuable for its deposits of gold, is subject to location and entry under the placer mining laws, making reference in this connection to department decision in the case of Northern Pacific Railway Company (40 L. D., 441); and (2) whether, in the consideration of said applications and entries in connection with the alleged value of the lands for power purposes, you should take into consideration alleged relative commercial value of the lands involved for mining and for power purposes. In conclusion, you state that a review of the records by the Department is not desired but simply a response to the inquiries hereinbefore outlined in the form of instructions under which you may proceed with the adjudication of the cases. On page three of your letter you state that the Bidwell Bar folio of the Geological Survey shows that part of Feather River situate in the area involved will average, possibly, three chains in width, and it is, presumably, because you believe the stream to be of the character which would, under the surveying rules of the Department, be meandered, that you submit said question one.

Under the rules governing the survey of public lands the beds of streams more than three chains in width, or so deep, swift and dangerous as to be impassable, are meandered for the purpose of defining the sinuosities of the banks and to ascertain the quantity of public lands in the adjacent surveyed areas subject to sale. Aside from the statement of this rule and its application to glacial areas or streams there is nothing in the departmental decision in the case of Northern Pacific Railway Company, *supra*, applicable to the case now presented by you.

The mining claims involved are located in what will probably be described, when surveyed, as townships 25 N., R's. 6 and 7 E., T. 23 N., R. 5 E., and in T. 24 N., R. 6 E., surveyed in part. The official mineral survey of the Muggins Bar claim, which crosses the river twice, describes it as about 150 feet wide, and the same is true of the Indian Bar survey. The survey of the Waverly placer describes the river as 125 feet in width at one point to 132 feet in width at another. The survey of the Marietta gives the width of the river as 113 feet at one point and 289 feet at another. The survey of the Columbus gives the width of the stream at 135 feet and of the Canton 135 feet

at one point and 255 at another. The official survey of township 24 north, range 6 east, approved April 25, 1885, did not meander those areas of public land lying along the banks of the north fork of Feather River. The width of the stream, as returned by that survey, is as follows: between sections 15 and 22, 2 chains wide; between sections 10 and 15, $3\frac{1}{4}$ chains wide; between sections 3 and 10, 2.85 chains wide; between sections 20 and 21 2.15 chains wide; between sections 29 and 30, 2.3 chains.

From the foregoing it will be perceived that the official government survey and the mineral surveys executed by deputy mineral surveyors and approved by the United States surveyor-general, did not return the river as of such width or character as to render it meanderable under the rules governing the survey of public lands, and it was not so regarded or treated in the official survey of said township 24 north, range 6 east. The evidence indicates that during ordinary seasons it is a narrow and shallow stream, easily crossed and containing many bars, or deposits, of sand and gravel. With respect to such un-navigable and unmeandered streams the Department held, in the case of William Rablin (2 L. D., 764):

It is well settled that if the beds of unnavigable streams contain mineral deposits they may be appropriated for mining purposes.

And Mr. Lindley, in his work on mines, section 428, states:

As to the beds of nonnavigable streams there is no reason why the gravel deposits lying on them may not be appropriated as the banks may (for it is there that placers are usually found), if the title to the bed resides in the general government and is clear of prior appropriations.

In view of the foregoing your first question is answered in the affirmative.

The lands involved are situate within the limits of the Plumas National Forest and a part of them are also included within the limits of power-site withdrawal No. 239, made September 5, 1912, under the act of June 25, 1910 (36 Stat., 847). In report, dated January 8, 1912, the Director of the Geological Survey states that the principal value of these lands for power purposes appears at the present time to rest upon their relation to Yellow Creek, which flows into the north fork of Feather River. Under an application made to the Forest Service for permission to use certain areas along said creek, under the act of February 15, 1901 (31 Stat., 790), it is proposed to construct a reservoir to impound the water of Yellow Creek and its tributaries and deliver the water therefrom into the Cataract ditch, to be carried to a point whence the fall to the north fork of Feather River will be approximately 1,825 feet. The Director, assuming that this system will impound and furnish an average flow of 175 second feet, states that it would yield about 21,900 horsepower, which, figured at \$100 per annum for continuous

horsepower, would produce a gross revenue of \$2,190,000 for delivered power. Some of the lands involved in the placer mining application hereinbefore described would, it is suggested, be utilized for the location of a power house and pressure pipe leading from the Cataract ditch, and, presumably, from the conclusions contained in the Director's report, he regards the land as more valuable as an adjunct to or a portion of the proposed power development system than for mining. Entertaining this view, he suggests that the burden of proof rests upon the mineral applicants to show that the lands have a greater value for minerals than for other purposes.

The placer locations, applications and entries were made under the provisions of sections 2318 to 2335, United States Revised Statutes, commonly known as the general mining laws. Section 2318 expressly reserves from sale, except as otherwise directed by law, public lands "valuable for minerals." Section 2319, R. S., declares that "all valuable mineral deposits in lands belonging to the United States" are to be free and open to exploration and purchase. Section 2325 provides that "patent for any land claimed or located for valuable deposits may be obtained in the following manner." The act of June 4, 1897 (30 Stat., 34), provides that—

any mineral lands in any forest reservation which have been or which may be shown to be such, and subject to entry under the existing mining laws of the United States and the rules and regulations applied thereto, shall continue to be subject to such location and entry.

The act of June 25, 1910 (36 Stat., 847), under which the power-site withdrawal hereinbefore mentioned was made, provides:

That all lands withdrawn under the provisions of this act shall at all times be open to exploration, discovery, occupation and purchase under the mining laws of the United States so far as the same apply to minerals other than coal, oil, gas, and phosphates.

The latter act was amended August 24, 1912 (37 Stat., 497), so as to provide—

That all lands withdrawn under the provisions of this act shall at all times be open to exploration, discovery, occupation, and purchase under the mining laws of the United States so far as the same apply to the metalliferous minerals.

The mineral deposit alleged to exist in each and all of the placer claims here involved is gold, consequently the general mining laws are operative with respect thereto exactly as if they were not located within the limits of a national forest or a power site withdrawal. Your second question calls for an expression of opinion as to whether lands located and sought to be purchased under the mining laws must be shown to be chiefly valuable for the mineral deposits rather than for other purposes.

As appears from the quotations hereinbefore made from the general mining laws, the word "chiefly" is not found therein, nor are terms

of comparison used. "Lands valuable for minerals" are reserved. "Valuable mineral deposits" are declared to be subject to location and purchase. In this connection attention should be directed to the fact that from a very early date in the history of the United States it has been the policy to promote and encourage the discovery and development of minerals. The act of May 18, 1796 (1 Stat., 464), required land-surveyors to note the true situation of all mines, and the acts of July 4, 1866, and May 10, 1872, carried into the Revised Statutes already cited, were enacted for the express purpose of reserving lands containing valuable minerals from agricultural disposition and by their very liberal terms encouraging the development, under the mining laws, of valuable mineral deposits. There are a number of decisions of this Department which dispose of controversies between mineral and agricultural claimants upon the stated ground that the lands are more valuable for agriculture than for mining or *vice versa*, but a careful consideration of those opinions seems to support the view that the expression used was based upon the fact that the land involved possessed a positive or greater value for the purpose for which the award was made and no practical or commercial value for the purpose for which patent was denied.

Some of these rulings were cited by the Supreme Court in the case of *Davis's Administrator v. Weibbold* (139 U. S., 519), but in another portion of the same decision the court said:

The exceptions of mineral lands from preemption and settlement and from grants to States for universities and schools, for the construction of public buildings and in aid of railroads and other works of internal improvements, are not held to exclude all lands in which minerals may be found, but only those where the mineral is in sufficient quantity to add to their richness and to justify expenditure for its extraction.

and on page 524, that—

The exception of mineral lands from grant in the acts of Congress should be considered to apply only to such lands as were at the time of the grant known to be so valuable for their minerals as to justify expenditure for their extraction.

In the case of *Castle v. Womble* (19 L. D., 455), a contest between an agricultural and a mineral claimant, the Department held:

It is my opinion that where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine, the requirements of the statute have been met. To hold otherwise would tend to make of little avail, if not entirely nugatory, that provision of the law whereby "all valuable mineral deposits in lands belonging to the United States . . . are . . . declared to be free and open to exploration and purchase." For if, as soon as minerals are shown to exist, and at any time during exploration before the returns become remunerative, the lands are to be subject to other disposition, few would be found willing to risk time and capital in the attempt to bring to light and make available the

mineral wealth which lies concealed in the bowels of the earth, as Congress obviously must have intended the explorers should have proper opportunity to do.

The foregoing departmental decision was quoted by the Supreme Court of the United States in the case of *Chrisman v. Miller* (197 U. S., 313), wherein the court drew a distinction between a controversy between two mineral claimants and between a mineral claimant and an agricultural one, stating that in the latter class of controversies "the evidence of its mineral character should be reasonably clear."

In the case of *Deffeback v. Hawke* (115 U. S., 392, 406), the court held that—

title to known valuable mineral lands can not be acquired under the townsite laws.

In the case of *Iron Silver Mining Company* (128 U. S., 673, 684), in commenting upon the allegation that the parties were moved in the purchase of the land by the desire to obtain valuable timber thereon, the court said that such fact—

would not affect the mineral applicant's claim to a patent. . . . A prudent miner acting wisely in taking up a claim, whether for a placer mine or for a lode or vein, would not overlook such circumstances, and they may in fact control his action in making the location. If the mine contains gold or other valuable deposits in loose earth, sand or gravel which can be secured with profit, that fact will satisfy the demand of the government as to the character of the land as placer ground, whatever the incidental advantages it may offer to the applicant for a patent.

In the case of *Brophy et al. v. O'Hare* (34 L. D., 596), a contest between a mineral applicant and certain town lot claimants, this Department said:

To sustain the application for mineral patent, as against persons alleging the land to be non-mineral, it must appear that mineral exists in the land in quantity and of value sufficient to subject it to disposal under the mining laws. In other words, the land applied for must be shown to contain valuable deposits of mineral, which means more than a mere discovery that might be sufficient to support a location in the first instance.

In one of the papers submitted with your letter, reference is made to departmental decision of September 4, 1912, in the case of the *Stanislaus Electric Power Company* (41 L. D., 655). There is nothing in that decision inconsistent with that hereinbefore quoted. The application in that case was presented under the act of August 4, 1892 (27 Stat., 348), which differs in two respects from the general mining laws: (1) the act of 1892, *supra*, requires the land to be "chiefly" valuable for building stone; (2) that under the act of 1892 lands, though chiefly valuable for building stone, are not withheld or excluded from reservations or donations for school purposes or to States. Moreover, in that case the Department found with

reference to the alleged deposit of building stone for which patent was sought under the act of 1892—

It has no commercial value. It could not be transported and marketed at a profit.

As already set out, the intent of the general mining laws was to encourage and promote the development of the mining resources of the United States, and with this fact in mind, a careful review of the laws and of the various decisions of this Department and of the courts appears to support the conclusion that if a mineral claimant is able to show that the land contains mineral of such quantity and value as to warrant a prudent man in the expenditure of his time and money thereupon, in the reasonable expectation of success in developing a paying mine, such lands are disposable only under the mineral laws, notwithstanding the fact that they may possess a possible or probable greater value for agriculture or other purposes. In other words, the mineral deposit must be a "valuable" one; such a mineral deposit as can probably be worked profitably; for, otherwise, there would be no inducement or incentive for the mineral claimant to remove the minerals from the ground and place the same in the market, the evident intent and purpose of the mining laws.

In the case at bar you are, therefore, advised that if the evidence now before you, or such additional evidence as you may find desirable to secure, convinces you that the placer mining claims in question contain deposits of gold of such quantity, quality, and value as would warrant a prudent man in the expenditure of labor and means with a reasonable prospect of success in developing valuable mines, you are warranted in disposing of the lands under the mining laws, notwithstanding their possible or probable value for or in connection with the development of electrical power.

DISPOSITION OF APPLICATIONS, FILINGS, AND SELECTIONS.

CIRCULAR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, May 22, 1914.

REGISTERS AND RECEIVERS,
United States Land Offices.

SIRS: Hereafter when lands unsurveyed or withdrawn or reserved are to become subject to disposition under the laws applicable thereto by the filing of a township plat of survey or by restoration to entry from such withdrawals or reservations all applications, filings, or selections therefor may be executed in the manner required by law and, with the required fee and commissions, be presented to the

proper local land office in person, by mail, or otherwise within the period of 20 days prior to the date of filing the township plat or of restoration to entry, unless the law or the regulations governing the disposition of a particular application or the land affected otherwise provide. No priority will be secured nor right forfeited by the presentation of such application, filing, or selection in the manner and within the time prescribed prior to the filing of the township plat or the restoration of the land to entry, and all such applications, filings, and selections shall, with those presented by persons present at the local office at the hour the lands become subject to entry, be held and treated as simultaneously filed.

Applications presented after the lands become subject to entry will be received and noted in the order of their filing.

Any application, filing, or selection not based on a prior settlement right will be subject to valid settlement claims asserted in the manner required by law.

The register and receiver will carefully compare all applications simultaneously filed as aforesaid and will dispose of them as follows:

1. Where there is no conflict the application shall be allowed, irrespective of whether settlement is alleged.

2. In case of conflicting applications and only one of the applicants alleges prior settlement, his application shall be allowed and the others rejected.

3. If two or more conflicting applications are received, each containing allegations of prior settlement, a hearing shall be ordered to determine the priority of right, and it shall be restricted to those alleging such right.

4. Where there are applications conflicting in whole or in part in which no one of the several applicants claims prior settlement the register and receiver will write on cards the names of the several applicants, and each of these cards shall be placed in an envelope upon which there is no distinctive or identifying mark, and at 2 o'clock p. m. on the date of opening to entry, if practicable (if not, at the same hour one week later), after all the envelopes containing the names of the several applicants shall have been thoroughly mixed in the presence of such persons as may desire to be present, they shall be drawn and numbered in order. The cards as numbered and drawn will be securely fastened to the applications of the respective persons, and the applications shall be allowed in such order. Where any applicant fails to obtain all the land applied for by him he will be permitted to elect whether he will retain the land secured and amend his application to embrace other lands not affected by pending applications and otherwise subject thereto when such amended application is presented, or withdraw his original application without prejudice, and in the event of such withdrawal the fee and commissions will be returned by the receiver. Applications conflicting in

whole with those previously allowed will be rejected in the usual manner.

Very respectfully.

CLAY TALLMAN,
Commissioner.

Approved:

ANDRIEUS A. JONES,
First Assistant Secretary.

COMMUTATION PROOF—REVISED REGULATIONS.

CIRCULAR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, May 27, 1914.

REGISTERS AND RECEIVERS,
United States Land Offices.

SIRS: Paragraph 3 of the circular of October 18, 1907 (36 L. D., 124), wherein the rule is laid down that in no case can commutation proof be accepted when it fails to show that the required residence and cultivation continued to the date on which notice of intention to make such proof was filed, is hereby revoked and the following substituted therefor:

3. (a) The entryman, or his statutory successor, must, as a general thing, show substantially continuous residence upon the land, maintained until the submission of the proof or filing of notice of intention to submit same, the existence of a habitable house upon the claim, and cultivation of not less than one-sixteenth of its acreage. However, the proof may be accepted where actual residence for the required period is shown, even though slightly broken, provided it be in reasonably compact periods; and the failure to continue the residence until filing of notice to submit proof, will not prevent its acceptance if the land department be fully satisfied of entryman's good faith, and provided no contest or adverse proceeding shall have been initiated for default in residence, or other good cause, prior to filing such notice.

(b) Where a contest is initiated against an entry, prior to filing of notice to submit commutation proof, the entry will be considered under sections 2291 and 2297, Revised Statutes, as amended, and the homesteader's absence will not be excused upon the ground that he has complied with the law for fourteen months, and is under no obligation to further reside upon the land. However, a contest for abandonment can not be maintained, if the absence after the fourteen months' residence is pursuant to a leave of absence regularly and properly granted under the act of March 2, 1889, or under conditions which would have entitled the entryman to such leave, upon formal

application therefor; and such absence will not prevent the submission of acceptable commutation proof.

(c) An entryman submitting commutation proof may add together, to make up the fourteen months, periods of residence before and after an absence under a leave of absence regularly granted, or an absence of not exceeding five months, of which he had given notices, as provided by the act of June 6, 1912.

(d) In cases where the entry was made before June 6, 1912, commutation proof may be submitted under the law theretofore in force. In that event, there need be no showing of cultivation of a specific proportion of the acreage, and full citizenship need not be shown; on the other hand, the five months' absence privilege does not apply.

Subparagraph 2 of paragraph 36 of circular No. 290, containing "Suggestions to Homesteaders," dated January 2, 1914 (43 L. D., 1), is modified in accordance with the foregoing.

Very respectfully,

CLAY TALLEMAN,
Commissioner.

Approved, May 27, 1914:

ANDRIEUS A. JONES,
First Assistant Secretary.

ALASKA COPPER COMPANY ET AL.

Decided May 28, 1914.

MILL SITE IN NATIONAL FOREST—REINSTATEMENT OF CANCELED ENTRY.

A decision by the Department of the Interior canceling a mill site entry, without passing upon the validity of the mill site claim or location or the claimant's possessory rights or ownership in the premises, in no wise affects the legal rights, if any, the claimant may have in the mill site claim; and where the land is included within the limits of a national forest, but excepted from the operation of the proclamation creating the same, by reason of the mill site claim, the subsequent cancellation of the mill site entry does not have the effect to make the land a part of the national forest or deprive the Secretary of the Interior of jurisdiction to reinstate the canceled entry with a view to the issuance of patent thereon.

JONES, *First Assistant Secretary:*

The Solicitor for the Department of Agriculture has filed a motion for rehearing and reconsideration in the above entitled case, in which the Department by decision of January 2, 1914 [not reported], ordered the reinstatement of canceled mineral entry No. 84, Sitka (now Juneau) series, as to the Maine, Monterey and San Francisco Mill Site claims, included with other locations in mineral survey No. 419, A and B, Alaska. At the time the mineral entry mentioned was canceled in August, 1904, as to the eighteen mill site

claims embraced therein, the land involved was and still is within the out-boundaries of the Tongass National Forest.

The pending motion presents the single question as to whether, under the circumstances, the Secretary of the Interior had the legal power and authority to order the reinstatement of the canceled entry as to the above named mill sites. It appears that in 1908 suit was brought by the United States at the instance of the Department of Agriculture, against the Alaska Copper Company *et al.*, to eject the defendants from the alleged forest lands, to recover damages, and to restrain them from cutting timber. A temporary injunction was granted. In 1909 the suit apparently was compromised, as the result of which the company paid for and accepted a special use permit for a smelter site upon the lands. This permit recites that it is issued subject to all valid existing claims and should not be construed as a waiver of any rights asserted by the Alaska Copper Company.

It is claimed that the occupancy of the company and its successor in interest has ever since been under permit. The contention of the Solicitor is that the Department's adjudication calling for the cancellation of the entry, in effect finally established the invalidity and nullity of the mill site locations, and that upon the execution of that judgment by the formal notation of the cancellation upon the records of the land department, the area covered thereby fell into and became an integral part of the national forest which was created in 1902, and that no power remained with or now exists in the Interior Department to reinstate the mill site entry.

At the outset it is deemed proper to state that in this case, under the usual rules of procedure and in consonance with the comity that governs the relations existing between the Department of Agriculture and this Department, notice of the filing of the petition for reinstatement should have been given and due opportunity afforded the officials of the Agricultural Department to have presented their objections to such petition and the action therein prayed for. This was not done. While the procedure was in so far irregular, yet patent has not issued. The Agricultural Department through its Solicitor has presented his objections based on points of law. The most careful consideration has been given to all the arguments presented, so that no rights have been prejudiced by the original oversight in the matter of notice.

In discussing this case a sharp distinction will be observed between the terms "entry" and "claim" or "location." A valid mill site claim arises by reason of the claimant's taking possession of and staking a five-acre tract or less of nonmineral land, and using or occupying the same for mining or milling purposes in connection with his lode claim or claims. The making of application for patent

and the procuring of an entry upon such a claim are steps only in the statutory procedure required to obtain the fee simple title from the Government, the same as in case of lode or placer claims. A failure of patent proceedings for any reason whatsoever, and the resulting cancellation by the land department of a mineral or a mill site entry, does not necessarily affect the claimant's ownership or possessory rights under his claim or location.

In the case of *Clipper Mining Company v. Eli Mining and Land Company* (194 U. S., 220, 222 and 223), the Supreme Court of the United States had occasion to consider and discuss a contention similar to the one here urged. The opinion of the Court in part is as follows:

It is contended that the Land Department held that the ground within the Searl location was not placer mining ground, nor subject to entry as a placer claim, that such holding by the department must be accepted as conclusive in the courts, and therefore that the tract should be adjudged public land and open to exploration for lode claims and to location by any discoverer of such claims.

The Court observed that the Commissioner of the General Land Office in rejecting the placer application for patent had said that he was not satisfied that the land was placer ground or that the requisite expenditure had been made, and further that the locators had not acted in good faith but were attempting to acquire title to the land for its town site and supposed lode values, and such decision was affirmed by the Secretary of the Interior. The Court then proceeds:

But notwithstanding this expression of opinion by these officials, all that was done was to reject the application for a patent. As said thereafter by the Secretary of the Interior upon an application of the Clipper Mining Company for a patent for the lode claims here in dispute:

"The judgment of the department in the Searl placer case went only to the extent of rejecting the application for patent. The department did not assume to declare the location of the placer void, as contended by counsel, nor did the judgment affect the possessory rights of the contestant to it." (22 L. D., 527.)

The situation disclosed in the case at bar is essentially parallel to that under discussion by the Supreme Court. In the Department's decision directing the cancellation of the mill site entry (32 L. D., 128), a number of objections were pointed out but the judgment in fact rendered is contained in the concluding paragraph of the opinion, which is as follows:

In view of the foregoing considerations the entry, as to all the mill site claims, must be canceled, and it is so ordered. The decision of your (Commissioner's) office is modified accordingly.

This judgment does not declare that the mill site claims or locations were invalid nor does it purport to affect the claimant company's possessory rights or ownership in the premises. It thus appears that whatever legal rights, if any, the Alaska Copper Company actually had in the mill site claims, were not destroyed or

abolished by that judgment and no attempt was made to that end in the decision rendered. The "entry" only as to the eighteen mill site locations was found bad and ordered canceled.

In the decision now complained of, it is expressly stated (page 11) that as to the three claims in question—

The Department is convinced that, at the date of the application, each was occupied by improvements of such a character as could be accepted as fulfilling the requirements of the statute and that the improvements subsequently placed thereon by the Alaska Copper Company evidenced its good faith respecting those claims; also that the area embraced therein is, under all the circumstances disclosed, reasonably required for the development of lode claims with which the mill site claims are associated.

It thus becomes clearly apparent that the contention to the effect that upon the cancellation of the entry the land covered by these mill site claims fell into and became an integral part of the forest, is without controlling force or essential merit. If, prior to the establishment of the National Forest, these three claims were valid under the law and were thereafter not abandoned but, on the contrary, were maintained by the continuance of the requisite statutory user or occupation, as is here made to appear, they were never, as a matter of law, a part of the forest, for the Presidential proclamation of August 20, 1902, withdrew the lands for forestry purposes subject to valid rights then existing. The patenting of the claims under these circumstances, whether pursuant to renewed application proceedings and another entry or pursuant to the reinstatement of the former canceled entry, is a matter confided exclusively to the land department and one wholly within the authority and jurisdiction of the Secretary, the power to grant the patent to be exercised with due regard to the usual forms of procedure relating to claims within National Forests.

The question is, therefore, narrowed to one of form of procedure, namely, whether the present claimant should have been remitted to the prosecution of application proceedings for these three mill site claims *de novo*, or whether the company was justified in presenting and relying upon a petition for reinstatement. Attention is called to the act of June 4, 1897 (30 Stat., 11, 35, 36), which contains the following provisions:

Nor shall anything herein prohibit any person from entering upon such forest reservations for all proper and lawful purposes, including that of prospecting, locating, and developing the mineral resources thereof: *Provided*, That such persons comply with the rules and regulations covering such forest reservations.

The act of February 1, 1905 (33 Stat., 628), which transferred the administration of the forests from the Interior Department to the Department of Agriculture, provides that the Secretary of the latter Department shall execute or cause to be executed all laws affecting public lands embraced in forest reservations—

excepting such laws as affect the surveying, prospecting, locating, appropriating, entering, relinquishing, reconveying, certifying, or patenting of any of such lands.

It can not well be doubted that if the claimant company had presented a new application for the three mill site claims, such application would necessarily have been received and acted upon by the land department for the reason that the owner of a patented lode claim may, by subsequent application, secure entry of a mill site location. *Eclipse Mill Site* (22 L. D., 496).

In the mining statute there is no limitation of time within which the claimant for either a placer or lode claim or mill site location is required to present his application and purchase the land. With the facts presented and established in connection with such new application, the same as they have been under the petition for reinstatement, it must have followed, all else being then regular, that entry would have been allowed as to such claims and that patent in due course would have issued. The fact that the prior application proceeding had failed by reason of the cancellation of the former entry in 1904, could not have been successfully urged to defeat such present application and entry thereon. That cancellation, the institution of the suit on behalf of the Forestry Service, the issuance of the temporary injunction, the compromise of the suit pursuant to which the company accepted and paid for a permit which was made subject to all valid claims, one and all would be clearly insufficient to prevent or defeat the consummation of new application proceedings. In this situation it is not a matter of substance that reinstatement was granted and patent order issued on the old entry, instead of requiring new patent proceedings and another entry as the basis for patent.

This Department, upon the showing made, became convinced that as to at least three of these mill site claims proper location, user and occupancy were shown at and prior to the 1901 application and entry. Such being the finding, it was concluded that the petition for reinstatement should be granted. The Department had before it a showing as to the actual use and occupancy for mining purposes at the date of the former application and also evidence as to the claimant's continued assertion of claim and user, and was satisfied with respect to the good faith of the company as evidenced by its large expenditures and valuable improvements for mining purposes constructed upon and in connection with the claims. But the company's showing alone was not relied upon as a basis for action. A special investigation was ordered and made by the Field Service of the General Land Office. By the facts thus developed and disclosed the Department was persuaded that in equity and good conscience the petitioner company was entitled to relief and that relief was extended by granting the reinstatement of the canceled entry. It is

not now urged that the showing made is in any essential respect defective or untrue. The facts involved are not disputed. The only question raised is as to jurisdiction. The Department is not convinced that it has committed any substantial error in the action taken, and does not find that grounds are presented requiring the recall or vacation of the decision heretofore rendered.

This case is not one on all fours with the so-called "Benham Case," D-21335, also pending before the Department involving a reinstated homestead entry within the forest, and would not be controlled by the reasoning and conclusions reached therein. The oral argument submitted by the Solicitor at the hearing had in the Benham case, at which reference was also had to this case, has been borne in mind in connection with the present discussion.

The decision of January 2, 1914, now complained of is adhered to and the motion for reconsideration and rehearing submitted on behalf of the Department of Agriculture is denied.

JOSEPH CROWTHER.

Decided May 28, 1914.

PRACTICE—REOPENING OF CLOSED CASE.

Cases will not be reopened under the doctrine announced in Jacob Harris, 42 L. D., 611, where the proceeding has been closed and the entry canceled, without regard to the time that has elapsed since the final action of the land department; but cases in which the claimants have asserted in the courts their rights under entries which have been canceled as the result of proceedings begun more than two years after the issuance of receiver's receipt upon final entry, and have diligently and continuously prosecuted their claims, but relying upon the decision in the Harris case have dismissed their suits in court for the purpose of invoking the supervisory authority of the Department, are not regarded as coming within the terms or spirit of this rule.

JONES, *First Assistant Secretary:*

After mature consideration it has been determined by the Department, that in the future no case will be reopened under the doctrine announced in Jacob Harris (42 L. D., 611, 614), where the proceeding has been closed and the entry canceled, without regard to the time that has elapsed since the final action of the land department.

There are, however, certain cases in which claimants have asserted in the courts their rights under entries which had been canceled as the result of proceedings begun more than two years after the issuance of receiver's receipt upon final entry. Inasmuch as these parties have diligently and continuously prosecuted their claims, and have dismissed the suits referred to for the purpose of again invoking the supervisory authority of the Department, their cases are not regarded as coming within the terms or spirit of the rule prescribed in the foregoing paragraph.

Among the cases wherein suit has been dismissed for the purpose of invoking the supervisory authority of the Department is that of Joseph Crowther who, on December 22, 1902, submitted homestead commutation proof for the NW. $\frac{1}{4}$, Sec. 15, T. 8 S., R. 9 W., W. M., Portland, Oregon, land district, and received final receipt for the purchase money. It appears from the record that the entryman has transferred the land to Helen A. McClure *et al.* No proceedings against this entry were instituted until September 18, 1907, and Crowther was, therefore, entitled to a patent under the proviso to section 7 of the act of March 3, 1891 (26 Stat., 1095).

You are accordingly directed to issue a patent to him conveying the land embraced in his entry.

— — —

FREDREK STEEBNER.

Decided May 28, 1914.

RECLAMATION—HOMESTEAD—ACT OF FEBRUARY 18, 1911.

This homestead entry of lands within a reclamation withdrawal, allowed after the entryman had in good faith purchased the relinquishment of a prior entry for the same land under the proviso to section 5 of the act of June 25, 1910, as amended by the act of February 18, 1911, is permitted to remain intact notwithstanding the prior entry had been canceled, though not noted as canceled upon the records of the local office, at the time the relinquishment was filed and the entry in question allowed, it appearing that the transaction was in entire good faith and neither the prior entryman, the present entryman, nor the local officers had actual knowledge of the cancellation at that time.

APPLICATION PRESENTED PRIOR TO NOTATION OF CANCELLATION.

The rule that no application to enter shall be received until proper notation of the cancellation of a prior entry is made upon the records of the local office was adopted for administrative purposes and designed primarily for the protection of the rights of contestants, and will not be applied with the same strictness in cases solely between the government and an entryman or an applicant for entry.

RECLAMATION—HOMESTEAD—ACT OF FEBRUARY 18, 1911.

The act of February 18, 1911, applies to all entries embracing lands reserved for irrigation purposes made prior to June 25, 1910, which have been or may be relinquished, where the entrymen have been or may be, by reason of the provisions of the act of June 25, 1910, prohibiting entries for such lands until public notice of water charges, etc., has been issued, prevented from realizing the value of the improvements placed by them on their entries by selling such improvements to others desiring to make entry for the lands upon relinquishment of the existing entries therefor.

DEPARTMENTAL DECISION CITED AND CONSTRUED.

Ethel M. Catron, 42 L. D., 7, cited and construed.

JONES, *First Assistant Secretary:*

Appeal has been filed by Fredrek Steebner from decision of October 1, 1913, of the Commissioner of the General Land Office holding for cancellation the homestead entry made by said Steebner April

29, 1913, for the S. $\frac{1}{2}$ NW. $\frac{1}{4}$, N. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 21, T. 24 N., R. 3 W., M. P. M., Great Falls, Montana, land district, for the stated reason said lands are embraced in second form withdrawal made November 7, 1903, under the act of June 17, 1902 (32 Stat., 388), and under the provisions of the act of June 25, 1910 (36 Stat., 835), are not subject to entry, farm unit plats covering said lands not having been approved nor public notice fixing the water right charges and the date when water will be available issued.

Said lands were formerly embraced in the homestead entry made by Reginald C. Ferguson November 8, 1902, which was canceled by letter "C" of April 25, 1913, for failure to submit proof thereon within the statutory period, based upon notice sent to said Ferguson's address of record July 26, 1912, and returned unclaimed.

Steebner's entry was allowed upon the filing by him of Ferguson's relinquishment executed April 12, 1913, which Steebner states he purchased for \$400 in good faith April 29, 1913, upon the records of the local office then showing Ferguson's entry intact. He states further, in his affidavit filed with this appeal, that he was formerly a skilled mechanic earning good wages in Chicago, Illinois, but was forced by ill health, and upon the advice of his physician, to leave there, and he accordingly went to Montana, purchased Ferguson's relinquishment as stated, and with the remainder of his earnings built a house on said lands, and some fencing, and established his residence thereon with his family, consisting of a wife and two children, and plowed two acres for a potato crop. He has been unable he says to make further improvements because he had no more money, and the cancellation of this entry will result he adds in putting himself and his family out penniless.

Section 5 of said act of June 25, 1910, forbids settlement upon or entry of lands reserved for irrigation purposes prior to the approval of farm unit plats and the issuance of public notice fixing water charges and the date when water can be applied. The act of February 18, 1911 (36 Stat., 917), however, amends said section 5 of the former act and provides that where entries made prior to June 25, 1910, have been or may be relinquished in whole or in part the lands so relinquished shall be subject to settlement and entry under the homestead law as amended by said act of June 17, 1902.

The regulations issued under said act of February 18, 1911 (42 L. D., 365), provide that—

The register and receiver in their action on applications to make homestead entry under the provisions of this act will be governed by the records of their office.

In this case Steebner and the local officers appear to have acted in accordance with said regulations, the former in purchasing Ferguson's relinquishment and the latter in accepting same and allowing

Steebner to make entry Ferguson's entry, however, was at that time canceled under said letter "C" of April 25, 1913. Such cancellation ended Ferguson's rights or interest in said lands. Under the decision in the case of *Stewart v. Peterson* (28 L. D., 515) and circular issued thereunder (29 L. D., 29) no other party could acquire any rights by tendering application prior to the date such cancellation was noted upon the records of the local office. This rule, however, was made for administrative purposes and designed primarily for the protection of contestants, and a distinction was made in *O'Shee v. La Croix* (34 L. D., 437), wherein it was stated that said rule was not intended to apply in cases where no action by the Commissioner was necessary to clear the record of an existing entry and restore the land covered thereby to the public domain, and that where proceedings are instituted on behalf of the Government solely for the purpose of clearing the record of an existing entry, no question of a preference right being involved, and a relinquishment was subsequently filed and no valid adverse rights are outstanding, the rule that no application to enter shall be received until notation of the cancellation of the entry is made upon the records of the local office does not apply.

The Department has also held in the case of *Hiram M. Hamilton* (38 L. D., 597)—

Upon the filing by an entryman of a relinquishment of his entry, the register and receiver are empowered to cancel the relinquished entry and thereupon to receive applications for the land, if the rights of third parties are not affected.

Considerations governing a case wherein a contestant's or other third party's rights are or may be involved do not strictly pertain to a case where no such rights supervene and which is one solely between the Government and an entryman or an applicant for entry.

As to the purpose and intent of said act of February 18, 1911, the Department stated in the case of *Ethel M. Catron* (42 L. D., 7) that said act—

was intended for relief of those who had made entry under the Reclamation Act, and by act of June 25, 1910, were prevented from realizing the value of their improvements by assigning their entries or by relinquishing them, so that the vendee of their improvements might make an entry. . . . The act of 1911 must be construed according to its purpose and intent, rather than its letter.

The Department was in error in here stating by implication that said act of February 18, 1911, was limited to the relief of those who had made entry "under the Reclamation Act." Said act of February 18, 1911, does not in terms so provide, but relates to "entries made prior to June 25, 1910; (which) have been or may be relinquished" in cases where the lands involved are reserved for irrigation purposes, and was manifestly intended to apply to all such

entrymen who have been or should be, by reason of the provisions of said act of June 25, 1910, prohibiting entries for such lands until public notice of water charges, etc., should be issued, prevented from realizing the value of the improvements placed by them on their entries by selling such improvements to others desiring to make entry for the lands upon relinquishment of their vendor's entry therefor, as might have been done prior to June 25, 1910, but which the act of that date prevented, as above stated. This mischief existed both as to entries for lands so reserved for irrigation purposes and as to those for lands not so reserved until after such entry, as in the case of Ferguson, and no reason appears in the nature of the case or in the law for distinguishing the kinds of entries the relinquishment of which may bring the lands embraced therein within the operation and benefit of said act of February 18, 1911.

The decision appealed from in the Catron case, *supra*, should have been affirmed upon the sole ground that the lands involved were not relinquished as contemplated by that act prior to Catron's application. One Hearson, in 1899, relinquished and one Ryan made entry, and the latter received patent in 1907 for lands which were in 1903 reserved for irrigation purposes under said act of 1902. Said patent was set aside in 1910, on the Government's suit, for fraud. Catron's application was filed in 1911 prior to public notice of water charges, etc., as to said lands, and it was therefore properly subject to rejection under the provisions of said act of 1910, and said act of 1911 has no application to the case for the reason above stated.

In the present case Ferguson's relinquishment was executed prior to cancellation of his entry, and there is nothing to show he had any actual knowledge of the fact said entry had been held for cancellation, the notice that it had been so held sent to his address of record having been returned unclaimed, or that he or Steebner or the local officers had any actual knowledge of the cancellation of said entry when said relinquishment was filed and Steebner's entry allowed. The sale of Ferguson's improvements and the execution and filing of his relinquishment and the allowance of Steebner's entry appear to have been in good faith in reliance upon the records of the local office. Such relinquishment of Ferguson's and allowance of Steebner's entry are within the spirit and purview of said remedial legislation enacted February 18, 1911, and in accordance with existing regulations under that act, and Steebner's entry should be held intact. A further reason exists for so holding said entry in the fact that Steebner appears to have maintained same in good faith, by due compliance with law, for more than six months before notified that it was held for cancellation and is yet so maintaining same. He is equitably entitled to perfect his entry.

The decision appealed from is accordingly reversed.

J. H. SEUPELT.

Decided May 29, 1914.

COLVILLE INDIAN RESERVATION—BOUNDARY—ISLANDS IN COLUMBIA RIVER.

The executive order of July 2, 1872, establishing the Colville Indian reservation and designating the Columbia river as the east and south boundaries thereof, contemplates that the reservation shall extend to the middle of the channel of the river; and all islands lying between the middle of the channel of the river and the main land of the diminished reservation are part of the reservation and not subject to disposal under the public land laws.

JONES, *First Assistant Secretary*:

January 29, 1914, the Commissioner of the General Land Office transmitted to the Department with favorable recommendation the application of J. H. Seupelt for the survey of an island in the Columbia River, described as being in Secs. 26 and 35, T. 30 N., R. 36 E., Washington.

With the record are certain letters, affidavits, and exhibits, transmitted by the Commissioner of Indian Affairs, and it is shown that the Indian Office takes the view that this island and certain other islands lying west of the main channel of the Columbia River lie within the diminished Colville Indian Reservation. Some of the islands so situated have been allotted to Indians.

It is shown by the application of Seupelt that the island in question contains about 152 acres; that the width of the channel between it and the nearest main shore is about 360 feet and the depth thereof at ordinary stages of the water is about 12 feet; that the island is about 25 feet above high-water mark, not subject to overflow, and the land is fit for agricultural purposes; that the improvements thereon consist of a nursery, three acres clearing and breaking, 40 acres fenced, one log house, one barn, one cellar, one half mile flume, 12 acres orchard, pumping plant, making a total value of improvements about \$5,000.

The view of the Commissioner of the General Land Office as expressed in his communication is that this island is not within the reservation mentioned but that the west bank of the river forms the boundary.

The executive order dated July 2, 1872, establishing the Colville Indian Reservation reads as follows:

It is hereby ordered that the tract of country referred to in the within letter of the Commissioner of Indian Affairs as having been set apart for the Indians therein named by Executive Order of April 9, 1872, be restored to the public domain, and that in lieu thereof the country bounded on the east and south by the Columbia River, on the west by the Okanogan River, and on the north by the British possessions, be, and the same is hereby, set apart as a reservation for said Indians, and for such other Indians as the Department of the Interior may see fit to locate thereon.

If said order were to be interpreted solely from the language used therein there might be some doubt as to its meaning, as to whether the west bank of the Columbia River is the boundary of the reservation or whether the reservation extends to midstream. The well-known rule with reference to the boundaries of States is that the boundary extends to the thread of the stream where a stream forms the boundary. It is, however, deemed important to consider certain later acts of Congress wherein recognition has been given to the reservation as extending to the main channel of the river. These acts may be regarded as legislative interpretations of the executive order, if in fact they do not of themselves establish the extent of the reservation. The act of July 1, 1892 (27 Stat., 62), which provided for the opening of a part of the Colville Reservation, described the portion to be opened as follows:

Beginning at a point on the eastern boundary line of the Colville Indian Reservation where the township line between townships thirty-four and thirty-five north, of range thirty-seven east, of the Willamette meridian, if extended west, would intersect the same, said point being in the middle of the channel of the Columbia River, and running thence west parallel with the forty-ninth parallel of latitude to the western boundary line of the said Colville Indian Reservation in the Okanogan River, thence north following the said western boundary line to the said forty-ninth parallel of latitude, thence east along the said forty-ninth parallel of latitude to the northeast corner of the said Colville Indian Reservation, thence south following the eastern boundary of said reservation to the place of beginning.

The act of February 20, 1896, extending the mining laws to the north half of said reservation described the boundaries thereof exactly the same as above given.

It will be observed from these acts that the reservation was recognized as extending from the west to the middle of the channel of the Columbia River. They also recognized the western boundary line of said reservation as being "in the Okanogan River." As one of the officials of the Indian Office pertinently observes, it would seem reasonable that the intention in the establishment of the reservation was to include the land to the center of the river to protect the fishing interests of the Indians, as it is well known that the Indians secure a great deal of their subsistence from the fish obtained from the Columbia River. After very careful consideration of this question the Department concludes that the island in question is a portion of the said Indian Reservation and, therefore, not subject to disposal as public land of the United States. The application for survey is accordingly denied.

EUDORA V. ANDERSON..

Decided May 29, 1914.

DESERT LAND ENTRY—CULTIVATION AND IRRIGATION.

While a desert land entryman is required to show upon final proof that he has cultivated and irrigated at least one-eighth of the land embraced in his entry, it is not necessary to show that one-eighth of each separate legal subdivision has been cultivated and irrigated, but all the required cultivation and irrigation may be upon any one or more subdivisions.

DESERT LAND ENTRY—CHARACTER OF LAND.

There is no objection to including within a desert land entry a legal subdivision less than one-eighth of which is susceptible of irrigation, if such subdivision is necessary to carry out the irrigation scheme adopted by the entryman to irrigate adjoining tracts embraced in the entry.

JONES, First Assistant Secretary:

Eudora V. Anderson has appealed from the decision of the Commissioner of the General Land Office rendered May 9, 1912, requiring that she relinquish part of her desert land entry No. 0470 (old number 717) for the SE. $\frac{1}{4}$ SW. $\frac{1}{4}$, SW. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 11, and NW. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 14, T. 19 S., R. 33 $\frac{1}{2}$ E., W. M., containing 120 acres, Burns, Oregon, land district.

The entry was made December 1, 1905. November 20, 1911, claimant filed final proof and on same date final certificate issued. Filed with the final proof is a duly corroborated affidavit stating that she was delayed in making proof beyond the statutory period, and that this delay was unavoidable and caused by no fault on her part, and that in order to make the entry contiguous it was necessary to include a subdivision having less than 5 acres irrigable. The evidence discloses that 39 acres of the SW. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 11, was not susceptible of irrigation, and that the relinquishment of this subdivision would render the entry non-contiguous.

In view of these conditions it was held by the Commissioner that claimant must be required to relinquish said above described subdivision, in accordance with departmental regulations found in paragraph 24, circular of September 30, 1910 (39 L. D., 253), and as such relinquishment would leave the two remaining subdivisions non-contiguous, it necessarily followed that claimant must also relinquish one of these.

It appears from the record and proof that about 50 acres of the entry has been reclaimed by irrigation and substantial crops cultivated thereon. That adequate ditches and laterals have been constructed. That claimant has provided a permanent water supply and system, sufficient to irrigate all the irrigable portion of the land entered. That considerably more than \$3.00 per acre has been expended in the work necessary to irrigate, reclaim, and cultivate said

land, and in permanent improvements thereon, while the good faith of claimant seems to be unquestioned.

Claimant insists, and there seems to be no doubt as to her contention, that the high points of the SW. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 11, rendered it impossible to irrigate from any known source of water supply, more than one acre of this subdivision, and that in order to reclaim and cultivate the 26 acres of irrigable land contained in the NW. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 14, the use of said subdivision (SW. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 11) is absolutely necessary. That she has demonstrated the irrigability of 49 acres of the other two subdivisions, more than one-third of the land entered, by raising substantial crops of rye, wheat, oats and potatoes. That all the land in the entry susceptible of reclamation and irrigation by any water supply obtainable, has been reclaimed, fenced and improved, as by law required, at an expense to her of \$1,250, a large part of which has been expended on said SW. $\frac{1}{4}$ SE. $\frac{1}{4}$, of Sec. 11, and that to now require her to relinquish two of the three subdivisions entered would work a great hardship.

It is the well-established rule that where there is not as much as one-eighth of any legal subdivision irrigable, such subdivision is not subject to desert land entry. While this is true, and departmental instructions provide that final proof must show cultivation and irrigation of one-eighth of the land, it is held that it is not necessary that such cultivation and irrigation be upon each legal subdivision, and it may all be upon one subdivision. Departmental instructions contained in said circular (39 L. D., 253) *supra*, can only mean that if no portion of any subdivision can be used as a necessary part of the reclamation project, such subdivision is not subject to entry, but where a legal subdivision is used as a necessary part of the reclamation scheme and it is shown to be a necessary part of the plan to irrigate adjoining tracts, such use is sufficient to bring the entry within the meaning and intention of the desert land law, if all other provisions of the law and instructions of the Department, are complied with (42 L. D., 411).

It is shown that the subdivision in question is quite necessary for the conveyance of water to the irrigable portion of one of the tracts upon which 26 acres have been successfully reclaimed and irrigated. That much more than the required one-eighth of the entry is shown to be in successful cultivation, and, that the tracts taken together, form one complete irrigation system, which would be rendered practically valueless by the elimination of said two legal subdivisions.

Therefore, in view of these facts, the Department can not agree that any portion of this entry be canceled. The decision appealed from is accordingly reversed.

COAL RESERVATION—SUPPLEMENTAL PATENTS—ACT OF APRIL
14, 1914.

CIRCULAR.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

Washington, June 3, 1914.

REGISTERS AND RECEIVERS,

United States Land Offices.

SIRS: The act of Congress approved April 14, 1914 (Public, No. 83), reads as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he is hereby, authorized and directed, in cases where patents for public lands have been issued to entrymen under the provisions of the acts of Congress approved March third, nineteen hundred and nine, and June twenty-second, nineteen hundred and ten, reserving to the United States all coal deposits therein, and lands so patented are subsequently classified as noncoal in character, to issue new or supplemental patents without such reservation.

The act is construed to affect all filings, locations, selections, or entries upon which patent or its equivalent has issued, or may hereafter issue, containing a reservation of the coal in the land to the United States under the act of March 3, 1909 (35 Stat., 844), or the act of June 22, 1910 (36 Stat., 583), such land having subsequently been finally classified as noncoal in character.

This office will list the cases and issue the patents with such expedition as may be possible with the clerical force available for the purpose. Therefore application for such supplemental patent will not be necessary, *and will receive no special action if filed.*

The patents will be transmitted to you, and follow the course applicable to original patents, including notice of receipt to the patentee and notation on the serial register and against the record of coal reservation on the tract books and plats. The patents may be delivered to the patentees or the present owners of the land upon their filing with you an affidavit of ownership.

You will give this circular such publicity as may be possible without incurring expense.

Very respectfully,

CLAY TALLMAN,
Commissioner.

Approved:

A. A. JONES,

First Assistant Secretary.

ALLOTMENTS TO INDIANS AND ESKIMOS IN ALASKA.

CIRCULAR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, June 6, 1914.

REGISTERS, RECEIVERS, AND UNITED STATES SURVEYOR GENERAL.

SIRS: Paragraph 14 of circular No. 298, "Allotments to Indians and Eskimos in Alaska," act of May 17, 1906 (34 Stat., 197), approved January 31, 1914 [43 L. D., 88], is hereby amended to read as follows:

Hereafter the register and receiver will require each person applying to enter or in any manner acquire title to any of the lands in your district under any law of the United States to file a corroborated affidavit to the fact that none of the lands covered by his application are embraced in any pending application for an allotment under this act or in any pending allotment, and that no part of such lands is in the *bona fide* legal possession of or is occupied by any Indian or native, except the applicant; provided, however, that this requirement may be waived in cases where persons apply for the right to cut timber under the provisions of section 11 of the act of May 14, 1898 (30 Stat., 414), upon the substitution of a statement signed by the applicant and duly witnessed by two witnesses, setting forth the above facts.

Very respectfully,

CLAY TALLMAN,
Commissioner.

Approved, June 6, 1914:

A. A. JONES,
First Assistant Secretary.

INTERMARRIAGE OF HOMESTEADERS—ACT OF APRIL 6, 1914.

CIRCULAR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, June 6, 1914.

REGISTERS AND RECEIVERS,
United States Land Offices.

SIRS: 1. Your attention is directed to the act of Congress of April 6, 1914 (Public, No. 81), relating to the rights of homesteaders who intermarry:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the marriage of a homestead entryman to a homestead entrywoman after each shall have fulfilled the requirements of the homestead law for one year next preceding such marriage shall not impair

the right of either to a patent, but the husband shall elect, under rules and regulations prescribed by the Secretary of the Interior, on which of the two entries the home shall thereafter be made, and residence thereon by the husband and wife shall constitute a compliance with the residence requirements upon each entry: *Provided*, That the provisions hereof shall apply to existing entries.

2. The act applies to claims initiated before or after its date, and to become entitled to its benefits it is required that each of the parties shall have complied with the requirements of the homestead laws for not less than one year next preceding their marriage. Where the parties, or either of them, are entitled to credit for such compliance prior to entry, that time may be counted in making up the period of one year, and it follows that neither of the entries need be one year old at the time of marriage.

3. The law confers upon the husband the privilege of electing on which of the two entries the family shall reside. His election must be supported by the affidavits of both the parties, describing their entries and showing the facts as to the residence, cultivation, and improvements already had in connection therewith. Only in cases where the tracts involved are situated in different districts will it be necessary that the election and affidavits be executed in duplicate, then copies of all papers must be filed in each office.

4. The local officers will make due notation of the filing of the election on their records as to the entry, or entries, within their district, and will at once forward the papers, with their recommendations, to the General Land Office, which will promptly pass upon the question of accepting the election.

5. Though the election be accepted, proofs on the entries will be submitted separately, as in other cases; it will be necessary to show residence on the selected homestead from approximately the date of the selection, and on the entries of the respective parties before said date. The act makes no change whatever in the requirements as to cultivation, and compliance with the homestead law in this regard must be shown as to each entry, precisely as though the marriage had not taken place.

6. If proof is made on the entry selected as the home before title to the other is earned, residence may nevertheless be continued on the perfected entry and credited to the other. However, the act has no application to cases where the requirements of law have been fulfilled as to one entry prior to the marriage or to the filing of the election.

Very respectfully,

CLAY TALLMAN,
Commissioner.

Approved:

ANDRIEUS A. JONES,
First Assistant Secretary.

RECLAMATION—RESTORATION OF WITHDRAWN LANDS.

INSTRUCTIONS.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, June 12, 1914.

The HONORABLE, The SECRETARY OF THE INTERIOR.

SIR: On February 4, 1914, the Department directed this office to recommend a method of opening lands released from withdrawal under the reclamation act of June 17, 1902 (32 Stat., 388), reference being particularly had to the proposed release of a considerable area of land from withdrawal for the Milk River project in Montana, and this office thereupon recommended that the lands involved be opened to settlement in advance of entry under the act of September 30, 1913 (38 Stat., 113), and that all recommendations for the release of lands from reclamation withdrawal be submitted through this office, in order that appropriate recommendation might be made to the Department as to the method of opening the lands.

On February 16, 1914, this office was advised that the Department approved the recommendation and directed that this office submit appropriate instructions to establish such procedure.

In accordance with the above instructions, there are transmitted herewith letters prepared for your signature addressed to the Directors of the Reclamation Service and the Geological Survey directing that all future recommendations for the withdrawal and the release of lands from withdrawal be transmitted to the Department through this office.

The practice of this office for the last two years in opening lands released from withdrawal under the reclamation act has been to open the lands to settlement on the sixtieth legal day after the date of the order of restoration and to entry on the thirtieth legal day after the date fixed for settlement, except where the lands are covered by a valid appropriation, or otherwise reserved from settlement and entry, in which cases no dates are fixed for settlement and entry.

In the order opening the lands to settlement and entry this office has stated that:

Warning is expressly given that no person will be permitted to gain or exercise any right whatever under any settlement or occupation begun after the withdrawal of the land from settlement and entry and prior to the date fixed for settlement, all such settlement and occupation being forbidden.

It has been found that this warning is insufficient to prevent settlers from taking up positions on a portion of the lands to be restored, with the intention of immediately stepping over on the land upon which they intend to claim settlement rights at the hour fixed for settlement; and since this warning was not based upon

statutory authority, this office has been unable to penalize this action. See case of *Hanson v. Gammanche* (34 L. D., 524).

Certain lands eliminated from national forests have been opened to settlement and entry under the act of September 30, 1913, and in the order of opening notice is given as follows:

Warning is hereby expressly given that all persons who go upon any of the lands to be restored hereunder and perform any act of settlement thereon prior to 9 o'clock a. m., standard time (date), or who are on or are occupying any part of said lands at such hour, except those having valid, subsisting settlement rights initiated prior to withdrawal from settlement and since maintained, will be considered and dealt with as trespassers and will gain no rights whatever under such unlawful settlement or occupancy; provided, however, that nothing herein contained shall prevent persons from going upon and over the lands to examine them with a view to thereafter going upon and making settlement thereon when the land shall become subject thereto, in accordance with this notice. Persons having prior settlement rights, as above defined, will be allowed to make entry in conformity with existing law and regulations. Intending settlers are also warned to ascertain the status of surveyed land and get all information available as to the unsurveyed lands by inquiry at the local land office before making settlement thereon.

It is therefore respectfully recommended that in all cases where the Department approves the recommendation of this office that lands be opened to settlement in advance of entry, this office be authorized to fix the date of settlement on the sixtieth legal day after the date of the order of restoration and to entry on the thirtieth legal day after the date fixed for settlement and to insert the above quoted warning in the notice of restoration, which, being based upon the statutory authority of Sec. 2 of the act of September 30, 1913, will make the ruling in the case of *Hanson v. Gammanche* inapplicable. The approval of this letter will obviate the necessity of long and formal recommendations in particular cases.

Very respectfully,

CLAY TALLMAN,
Commissioner.

Approved June 18, 1914, and it is so ordered:

A. A. JONES,
First Assistant Secretary.

STATUS OF ST. FRANCIS RIVER SUNK LANDS, ARKANSAS.

CIRCULAR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, June 16, 1914.

TO SETTLERS, ENTRYMEN, AND OTHERS:

On December 12, 1908, and February 27, 1909, the Department of the Interior adjudged those lands situated in Tps. 11 to 16 N.,

R. 6 E., and Tps. 12 to 17 N., R. 7 E., in Poinsett, Craighead, and Greene Counties, Ark., which were left unsurveyed at the dates of the original surveys of those townships and which were meandered and shown on the township plats as the so-called St. Francis River sunk lands, to be public lands of the United States (vol. 37, Land Decisions, pp. 345 and 462).

The above referred-to decisions were made subject to a provision contained in the act of April 29, 1898 (30 Stat., 367), to the effect that the titles of persons who had purchased certain unconfirmed swamp lands within the aforesaid area, namely, the unsurveyed portions of the S. $\frac{1}{2}$, S. $\frac{1}{2}$ NE. $\frac{1}{4}$, and the S. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 28, and the N. $\frac{1}{2}$ of Sec. 33, T. 12 N., R. 6 E., and unsurveyed portions of sections 2, 3, 4, 5, 8, 9, and 10, to the extent of 1,560.70 acres in the aggregate, constituting a part of so-called Bagwells Lake, T. 17 N., R. 7 E., should not be disturbed. Sec. 36, T. 14 N., R. 6 E., although left unsurveyed at the date of the original survey of said township, was approved and patented to the State of Arkansas as swamp land under the provisions of the act of September 28, 1850 (9 Stat., 519), and of the confirmatory act of March 3, 1857 (11 Stat., 251). The information contained herein does not apply, therefore, to said described lands.

Subsequent to the above-mentioned dates the Department of the Interior has likewise adjudged those lands situated in Ts. 11 to 16 N., Rs. 9 to 13 E., in Mississippi County, Ark., which were left unsurveyed at the dates of the original surveys of those townships and which were meandered and shown on the township plats as Moon, Buford, Clear, Flat, Grassy, Walker, Carson, Hickory, Tyronza, and Campbells Old Field Lakes, to be public lands of the United States. The original surveys were held to have been erroneous in that the unsurveyed areas were returned as "sunk lands" or "lakes," when in fact they were in whole or in part lands in place when the surveys were made. Accordingly surveys thereof were directed and the plats were ordered to be corrected.

So-called Moon, Buford, Clear, Flat, Grassy, Walker, and Campbells Old Field Lakes have been surveyed and the plats of the townships within which those lands are situated have been corrected. The areas within the first-mentioned so-called lake were opened to homestead entry June 16, 1910, and the areas within the other six so-called lakes were opened to homestead entry November 16, 1912. Of the Government lands within the so-called sunk-land area proper, those in T. 12 N., R. 7 E., have been surveyed and were opened to homestead entry July 2, 1913; those in Tps. 11, 12, 13, and 14 N., R. 6 E., and 13 and 14 N., R. 7 E., have been surveyed, and information relative to the entering of Government lands therein may be obtained

from the register and receiver of the United States land office at Little Rock, Ark.

The field work with reference to the surveys of the Government lands within the areas of so-called Carson, Hickory, and Tyronza Lakes, and also of the so-called sunk lands proper within Tps. 15 and 16 N., R. 6 E., and Tps. 15, 16, and 17 N., R. 7 E., has been practically completed and the work of correcting the plats is progressing as rapidly as possible. Due notice of the correction of said plats will be given when the work shall have been completed.

The status of the unsurveyed areas shown upon the original plats as so-called Big, Brown, Round, Golden, Mill, Hudgens, Dismal, and Youngs Lakes, all of which are situated in northeastern Arkansas, is now under consideration, in order to determine whether or not said areas come within the same category as the above referred to areas. Due notice will be given of the rendering of decisions at the proper time. Investigations may be made from time to time in order to ascertain the rightful ownership of lands within other so-called lakes in the State of Arkansas. This office can not, however, undertake to say at this time whether or not any of the above referred to lands, with respect to which decisions have not been rendered, will be claimed by the Government, nor can it say when decisions in the cases now pending will be rendered.

The above information does not apply to any lands which may be similarly circumstanced situated in the State of Missouri. This office has not ordered any investigations in that State and it can not say at this time whether or not any investigations will be made in the future. Investigations will be directed, however, if sufficient evidence shall be presented in a proper case tending to establish the fact that lands have been erroneously or fraudulently omitted from the Government surveys which should have been surveyed. If lands in the State of Missouri are being advertised for sale or disposal, such is a private enterprise in which the Government has no interest.

It is not to be implied from the foregoing description that the whole of each of the above-enumerated townships was declared to be Government land. On the contrary, only those portions of the several townships which were left unsurveyed at the dates of the original surveys thereof were involved in the above-mentioned decisions. The lands which were originally surveyed were patented years ago to the State of Arkansas under the provisions of the swamp-land grant of September 28, 1850 (9 Stat., 519), and the State has in turn conveyed her interests therein, so that the title is now within private ownership. The areas which were originally left unsurveyed and which the Government now claims have, however, also been claimed

or are now being claimed by private interests, which allege title through purchase from the State or from the St. Francis levee board or from riparian owners.

The lands described herein which the Government has asserted title to are to be considered in the same category as are other lands of the public domain, to the extent that they are open to settlement and at the proper time to entry under the homestead laws. The law permits settlers to enter upon the unsurveyed lands of the United States, requiring them to plainly mark the boundaries of their claims. When opened to entry bona fide settlers residing upon and cultivating the lands in good faith will be given three months' prior right over all other persons to make applications for their claims. No entries or filings can be allowed for any of the aforesaid lands until after the surveys thereof have been completed and approved by the Commissioner of the General Land Office and the plats thereof filed in the United States land office at Little Rock, Ark. Full notice of the time when applications to enter may be presented will be given the public through advertisement and otherwise by the register and receiver of the latter office, to which officers all communications relative to the formalities of entering such lands should be addressed.

Persons desiring diagrams showing entire portions of all or any part of the surveyed lands which adjoin unsurveyed areas may obtain township diagrams by sending postal money order for \$1 for each diagram desired to the receiver, United States land office, Little Rock, Ark. Persons desiring photolithographic plats of townships showing the extent to which surveys have been made thereon, and also meanders which form the boundaries between lands originally surveyed and those portions of townships which were left unsurveyed at date of original survey, can obtain the same from the Commissioner of the General Land Office, Washington, D. C., by mailing 25 cents for each township plat desired. There are two plats for each township, the original survey of which has been extended or corrected. With reference to these, persons desiring plats should state whether they desire a copy of the original plat or of the amended plat, or both. When the status of any lands is requested a description thereof by township, range, and section number and sectional subdivision should be given.

The question of title to some of the above-mentioned lands which were omitted from the original surveys has been involved in suits in which decisions have been recently rendered. Two of said suits went to the United States Supreme Court, one of which, that of *Little v. Williams* (231 U. S., 335), was decided December 1, 1913, the other, that of *Chapman and Dewey Lumber Company, etc. v. St. Francis Levee District* (232 U. S., 186), was decided January 26, 1914. In the former suit the question of title to so-called Walker

Lake, referred to above, was involved and the United States Supreme Court held in that case that the State of Arkansas relinquished under the terms of the compromise act of April 29, 1898 (30 Stat., 367), whatever title it may have had therein under the swamp land grant, if the lands were in fact swamp lands at the date of the Government survey, and that, therefore, neither the St. Francis levee district nor their transferees have any title thereto. The question of whether the title has vested in the riparian owners or in the United States was left for future determination. In the latter suit the question of title to the so-called sunk lands area proper in T. 12 N., R. 7 E., was involved, and the United States Supreme Court held in that case that the title to said area in that township is in the United States.

On February 20, 1914, the United States District Court for the Eastern Division of the Eastern District of Arkansas rendered a decision in the suit of United States *v.* Lee Wilson & Co. *et al.*, in which it was held that the title of the area locally known as Moon Lake, referred to above, is in the United States.

While the decision of the issues, favorable to the Government, in the above referred to suits may be determinative of the issues involving the question of title to the remaining areas which the Government is claiming in the above enumerated townships, yet it will be necessary for the Government to continue with its suit previously instituted in the United States District Court for the Eastern Division of the Eastern District of Arkansas to quiet title in the Government to the area locally known as so-called Walker Lake involved in the suit of Little *v.* Williams, *supra*, and it will probably be necessary to also institute other suits similar to the suit of United States *v.* Lee Wilson & Co. *et al.*, *supra*, for the purpose of quieting title in the Government to all of the areas claimed by the Government and described in this circular the title to which has not been determined by the courts; in fact a number of such suits have already been instituted. Should the courts finally determine that the title to any portion or portions of said areas is not in the Government, settlers or entrymen thereupon will undoubtedly be ousted and the Government will have no authority to prevent such ouster. The risk, therefore, must be assumed by those making settlement or entry upon said lands. In order that the Government's suits may not be prejudiced by permitting the title of the lands which it is claiming to pass into the hands of private parties, it has been determined that the issuance of final certificates and patents to any of the aforesaid lands the question of title to which has not been finally adjudicated by the courts where suits have already been instituted or where the institution of suits is contemplated, will be withheld.

The above referred to court decisions do not in any wise disturb the title to any lands which were surveyed at the dates of the original

surveys of the townships within which they are situated and which were patented to the State of Arkansas, and the Government is not laying any claim to the same.

This office can not undertake to say how soon the question of title will be finally adjudicated by the courts, nor when the plats of those townships, the surveys of which have not yet been corrected, will be ready for filing, nor does it have for distribution copies of the above referred to court decisions.

This circular supersedes the circular of January 2, 1914 (43 L. D., 21), pertaining to the same subject.

Very respectfully,

CLAY TALLMAN,
Commissioner.

Approved:

ANDRIEUS A. JONES,
First Assistant Secretary.

**FORT BERTHOLD, ROSEBUD, AND PINE RIDGE LANDS—TIME OF
PAYMENTS EXTENDED.**

CIRCULAR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, June 17, 1914.

REGISTERS AND RECEIVERS,

*United States Land Offices,
Minot, North Dakota, and Gregory, South Dakota.*

SIRS: 1. Your attention is directed to section 1 of the act of Congress, approved May 28, 1914 (Public, No. 110), which reads as follows:

That the Secretary of the Interior is hereby authorized to extend for a period of one year the time for the payment of any annual installment due, or hereafter to become due, on the purchase price for lands sold under the act of Congress approved June 1, 1910, entitled "An act to authorize the survey and allotment of lands embraced within the limits of the Fort Berthold Reservation in the State of North Dakota, and the sale and disposition of a portion of the surplus lands after allotment, and making appropriation and provision to carry the same into effect," the act of Congress approved May 27, 1910, entitled, "An act to authorize the sale and disposition of the surplus and unallotted lands in Bennett County in the Pine Ridge Indian Reservation, in the State of South Dakota, and making appropriation to carry the same into effect," and the act approved May 30, 1910, entitled "An act to authorize the sale and disposition of a portion of the surplus and unallotted lands in Mellette and Washabaugh Counties in the Rosebud Indian Reservation in the State of South Dakota, and making appropriation and provision to carry the same into effect," and any payment so extended may annually thereafter be extended for a period of one year in the same manner: *Provided*, That the last payment and all other pay-

ments must be made within a period not exceeding one year after the last payment becomes due, by the terms of the act under which the entry was made: *Provided further*, That any and all payments must be made when due, unless the entryman applies for an extension and pays interest for one year in advance at 5 per centum per annum upon the amount due as herein provided, and patent shall be withheld until full and final payment of the purchase price is made in accordance with the provisions hereof: *And provided further*, That failure to make any payment that may be due, unless the same be extended, or to make any extended payment at or before the time to which such payment has been extended, as herein provided, shall forfeit the entry and the same shall be canceled, and any and all payments theretofore made shall be forfeited.

2. Said section applies to entries made after the passage of the act as well as to those theretofore made; the time for the payment of any installment which is due, or is about to become due, will be extended for one year, provided the applicant pays 5 per cent on the amount as interest for the year after its original maturity. Further extensions may be obtained on the same conditions, from year to year, but no installment can be postponed beyond seven years from the date of the entry in question. Payment of interest on installments, now due and unpaid, must be made at once, in order to secure the extension, and such payments must hereafter be made at or before the maturity of the installments to be extended.

3. There need be no formal application for extension, but making the required payment will be sufficient. The receiver will note upon the receipts and on the abstracts of collections the nature and purpose of the payments.

4. Three-year proofs may be submitted when the necessary showing can be made, and the payments be postponed until their maturity under the act opening the land to entry or under this act; final certificate and patent will not issue on any entry until full payment has been made.

Very respectfully,

CLAY TALLMAN,
Commissioner.

Approved:

A. A. JONES,
First Assistant Secretary.

TEMPORARY WITHDRAWALS UNDER CAREY ACT.

REGULATIONS.

DEPARTMENT OF THE INTERIOR,
Washington, June 17, 1914.

THE COMMISSIONER, GENERAL LAND OFFICE.

SIR: Your letter of June 13, 1914, recommends a modification of section 9 of the regulations (38 L. D., 580, 582; modified 41 L. D.,

256) issued under the act of March 15, 1910 (36 Stat., 237), by the addition of a direction that where restoration is made under the act of September 30, 1913 (38 Stat., 113), the order of restoration shall be approved by the Secretary before it becomes effective.

Your recommendation is approved, and paragraph 9 of the regulations as amended September 7, 1912 (41 L. D., 256), is amended to read as follows:

Upon departmental approval of an application for temporary withdrawal, the local office will be advised thereof by the General Land Office, and the register will make proper notations upon the records of his office.

The one year mentioned in the act as the period of withdrawal will commence on the date of approval of the application by the Department.

At the expiration of one year from the date of approval (or at such prior date as the Secretary may determine to restore a part or all of the withdrawn land), the Commissioner will advise the local office of such restoration.

Upon receipt by the local office of such advice, immediate notation thereof will be made on the records, and the lands withdrawn will be thereby restored to entry, as though such withdrawal had not been made except in case where, by the order of restoration, provision is made under the act of September 30, 1913 (38 Stat., 113), as to the particular conditions governing the restoration.

In all cases, restoration shall be made as provided by the order of restoration, but where it is found proper to restore land with conditions and restrictions as provided by the act of September 30, 1913, the order of restoration shall be approved by the Secretary of the Interior before becoming effective.

Very respectfully,

A. A. JONES,
First Assistant Secretary.

SARAH E. SLIGH.

Decided June 18, 1914.

DESERT LAND ENTRY—EXTENSION OF TIME—WATER RIGHT.

An applicant for extension of time under the act of March 28, 1908, for the submission of final proof upon a desert land entry, is not required to show that he owns a water right sufficient for the irrigation of his entire entry.

JONES, *First Assistant Secretary:*

Appeal has been filed by Sarah E. Sligh from decision of July 26, 1913, of the Commissioner of the General Land Office denying her application filed January 24, 1913, under the act of March 28, 1908 (37 Stat., 52), for extension of time for the submission of final proof on her desert land entry made February 25, 1909, for the E. $\frac{1}{2}$, Sec. 35, T. 5 S., R. 8 E., G. & S. R. M., Phoenix, Arizona, land district, for the stated reason that said applicant has water right sufficient for the irrigation of but 80 acres of said entry, 30 days being allowed her, however, within which to make showing that she has acquired the right to use of water sufficient for the entire irrigable area embraced in her entry or to reduce the area of said entry

by relinquishment to conform to the present water right owned by her.

Annual expenditures are shown, as required by law, for clearing and fencing the lands embraced in said entry. The applicant is the owner of 80 shares of stock of the Pinal Mutual Irrigation Company entitling her to water sufficient, as stated, for the irrigation of 80 acres. She states she expects to purchase additional stock sufficient for the irrigation of the remainder of her entry when she is financially able to do so. The system of said company has not been completed, its failure appearing to be due largely to litigation between it and other water companies over rights of appropriation of water and also over a reservoir site, in conflict with a railroad company. Said litigation as between the several water companies, any of which it appears may furnish water for these lands, is yet pending.

There is no law, regulation, or decision of the Department, so far as the Department is aware, requiring that an applicant for an extension of time for the submission of final proof on his desert land entry must own a water right sufficient for the irrigation of his entire entry. Such a rule of general and universal application would not appear to be warranted or wise. Under the circumstances of this case, this applicant should not be compelled to purchase 240 shares of stock in said company in which she now owns 80 shares, as required by the Commissioner, in view of the fact that this company's water rights are in litigation with other water companies which may result adversely to said Pinal Mutual Irrigation Company, rendering her ownership of stock therein of no avail in perfecting her entry. Her good faith in the premises fully appears, also that the failure to complete the irrigation system upon which she has depended for the reclamation of these lands was due to no fault of hers. The application for extension will therefore be allowed.

The decision appealed from is accordingly reversed.

FT. NIobrARA ABANDONED MILITARY RESERVATION.

INSTRUCTIONS.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, June 19, 1914.

REGISTER AND RECEIVER,
Valentine, Nebraska.

SIRS: Replying to your letter dated June 8, 1914, I have to advise you as follows:

Under the regulations approved October 4, 1913 [42 L. D., 282], as amended March 23, 1914, all of said lands which are not entered

by a person who was assigned a number entitling him to make entry, as the result of a drawing held for said lands, prior to June 30, 1914, will on that date become subject to settlement and entry at 9:00 o'clock a. m., under the act of January 27, 1913 (37 Stat., 651), by any qualified person.

Under circular No. 324 dated May 22, 1914, applications for the land may be filed within the period of twenty days prior to said date of June 30, 1914, and such applications will be considered simultaneously with those presented by persons present at your office at 9:00 o'clock a. m. on June 30th. Where such applications conflict, in whole or in part, you will proceed in accordance with Rule 4 of said circular No. 324 and draw for priority of right to make entry.

The law and regulations do not recognize any right of settlement prior to 9:00 o'clock a. m. on June 30th, and therefore no application filed at said hour can contain an allegation of settlement which will give the applicant a prior right. In case an application is filed after 9:00 o'clock a. m., June 30th, but prior to the allowance of an entry for the same land, which application alleges settlement at 9:00 o'clock a. m. and conflicts with an application previously received, where no such right of settlement exists, the application which shows settlement on the land will be given the prior right in accordance with the decision in the case of *Box v. Dammon et al.* (18 L. D., 133), and the case of *Dowman v. Moss* (176 U. S., 413, 417), cited in the case of *Mann v. Bartholf et al.* (36 L. D., 162).

Very respectfully,

D. K. PARROTT,
Acting Assistant Commissioner.

Approved, June 19, 1914:

A. A. JONES,
First Assistant Secretary.

INSTRUCTIONS.

June 20, 1914.

INDIAN OCCUPANTS OF RAILROAD LANDS—ACT OF MARCH 4, 1913.

A railroad company is not entitled to select lieu lands under the act of March 4, 1913, nor the land department authorized to issue patent for land designated as desired by the company in lieu of land proposed to be relinquished or reconveyed by it, prior to the execution and filing of a relinquishment or reconveyance by the company as required by said act; but the company and the Department may enter into an arrangement for the simultaneous delivery of a deed or relinquishment by the company for the land occupied by an Indian and of a patent by the land department for the land selected in lieu thereof.

JONES, *First Assistant Secretary:*

The Department has received your [Commissioner of General Land Office] letter of June 1, 1914, asking for instructions under the act of March 4, 1913 (37 Stat., 1007), entitled, "An act for the relief of

Indians occupying railroad lands in Arizona, New Mexico, or California."

Your request is made in connection with the case of Ellen Clark, an Indian of the Wintu Tribe, who filed allotment application under the act of February 8, 1887 (24 Stat., 388), as amended, for the SE. $\frac{1}{4}$, Sec. 21, T. 36 N., R. 5 W., M. D. M., Sacramento, California. It was alleged in support of her application that Ellen Clark had resided upon and improved this land since 1870.

The land described is within the primary limits of the grant to the California and Oregon R. R. Co., now Central Pacific Railroad Co., under the act of July 25, 1866 (14 Stat., 239), and said land was listed by the company August 1, 1895, and patent issued thereon March 11, 1896. For that reason the local land officers rejected the application of Ellen Clark, and in her appeal from their action it was urged that her claim comes within the act of March 4, 1913, *supra*, which provides:

That the Secretary of the Interior be, and he is hereby, authorized in his discretion to request of the present claimant under any railroad land grant a relinquishment or reconveyance of any lands situated within the States of Arizona, New Mexico, or California passing under the grant which are shown to have been occupied for five years or more by an Indian entitled to receive the tract in allotment under existing law but for the grant to the railroad company, and upon the execution and filing of such relinquishment or reconveyance the lands shall thereupon become available for allotment, and the company relinquishing or reconveying shall be entitled to select within a period of three years after the approval of this act and have patented to it other vacant nonmineral, nontimbered, surveyed public lands of equal area and value situated in the same State, as may be agreed upon by the Secretary of the Interior, provided that the total area of land that may be exchanged under the provisions of this act shall not exceed three thousand acres in Arizona, sixteen thousand acres in New Mexico, and five thousand acres in California.

In pursuance of this legislation, your office, on June 20, 1913, requested the railroad company to reconvey the land embraced in the application of Ellen Clark, in order that it might become available for allotment to her and that the company might select other lands in lieu of the tract thus reconveyed.

It appears that under date of March 21, 1914, the resident attorney for the Central Pacific Railroad Company advised your office that a deed reconveying the land in question to the United States had been prepared and executed and is now in his possession; that the company desires to have patented to it in lieu of the land applied for by Ellen Clark the S. $\frac{1}{2}$ N. $\frac{1}{2}$, Sec. 24, T. 17 N., R. 14 E., M. D. M., California; that he is authorized by the company to allow inspection and examination of said deed "with the distinct understanding, however, that final delivery thereof is not to be made and that no title is to pass until delivery to the company of a patent covering said S. $\frac{1}{2}$ of N. $\frac{1}{2}$ of Section 24, Township 17 North, Range 14 East, M. D. M., California."

It is clear, under the provisions of the act of March 4, 1913, that until the execution and filing of the relinquishment or reconveyance the railroad company does not become entitled to select another tract; nor is the Department authorized by said act to issue patent for the lieu selection of the company prior to such relinquishment or reconveyance, although no reason is seen why the company may not reconvey its land and select lieu land at the same time. What the company evidently desires in this instance, before surrendering its title to the land in question, is some assurance as to the lieu land designated by it. It would doubtless be satisfactory to the company if it were assured that allotment of the land reconveyed would not be made to the Indian until all question as to its securing the title to the lieu land is settled. In any event, however, the lieu land designated could not be patented to the company even though its deed to the reconveyed tract should be found satisfactory in all respects, until an investigation is had of the lieu land to determine whether it is of the condition and character contemplated by the act of March 4, 1913.

After all preliminaries are completed, such as determining that the company's deed conveys valid title and that the lieu land selected by it is of the character contemplated by the act, it is not seen why satisfactory arrangements may not be made for practically simultaneous delivery of the instruments involved—that is, delivery by the company of its deed to the land occupied by the Indian, and by the Department of its patent for the land selected in lieu thereof by the company.

**ENLARGED HOMESTEAD—ADDITIONAL—SEC. 6, ACT FEBRUARY
19, 1909.**

INSTRUCTIONS.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

Washington, June 25, 1914.

REGISTERS AND RECEIVERS,

Salt Lake City and Vernal, Utah.

SIRS: Section 6 of the enlarged homestead act of February 19, 1909 (35 Stat., 639), dispenses with the necessity of residence upon the land entered thereunder. It provides, however, that "after entry and until final proof the entryman shall reside within such distance of said land as will enable him successfully to farm the same as required by this section."

It is apparent that Question 5 to the claimant, and Question 3 to the witnesses, on Forms 4-369 and 4-369a, for proofs in homestead cases, are not strictly applicable to this class of entries. However,

as evidence regarding the entryman's residence is pertinent and, in fact, necessary, the forms mentioned may be used in proofs thereon. The proof-taking officers should elicit, from the claimant and witnesses, testimony as to the place, or places, where he has resided since the date of the entry, and this may be inserted in the blank space following the questions mentioned. They should not satisfy themselves with answers to the sole effect that the entryman has not lived upon the entry, not being required to do so. Moreover, in order to bring out full testimony regarding the entryman's supervision over the farming, the following questions will be asked claimant and the witnesses, being inserted as part of Questions 5 and 3 respectively:

State to what extent you have (or the entryman has) supervised the farming of the entry.

Copies of these instructions (to be furnished shortly) will be transmitted by you to the officers in your districts, authorized to take proofs.

The statute, as modified by the provisions of the act of June 6, 1912 (37 Stat., 123), requires that one-eighth of the area of the entry be cultivated during its second year, and one-fourth during the third, fourth and fifth years, and until submission of proof—unless the requirements in this respect shall have been reduced as provided by the last-named act. Proof should be accepted, if it shows the required cultivation, and good faith on claimant's part, in carrying out the spirit of the law.

Very respectfully,

CLAY TALLMAN,
Commissioner.

Approved, June 25, 1914:

ANDRIEUS A. JONES,
First Assistant Secretary.

INSTRUCTIONS.

June 29, 1914.

HOMESTEAD ENTRY BY GUARDIAN FOR MINOR CHILDREN OF SOLDIER.

Where entry is made by guardian for a number of minors under the provisions of section 2307, Revised Statutes, the homestead right of each is thereby exhausted to the extent of the interest of each in such entry.

JONES, *First Assistant Secretary:*

Under date of June 13, 1914, you [Commissioner of General Land Office] submitted for departmental decision the following question:

Where a soldier dies leaving no widow and several minor children, and such minors make and perfect a joint entry by guardian, as allowed by section 2307,

R. S., could the minors, on attaining their majority, exercise any further homestead right?

The section referred to provides:

In case of the death of any person who would be entitled to a homestead under the provisions of section two thousand three hundred and four, his widow, if unmarried, or in case of her death or marriage, then his minor orphan children, by a guardian duly appointed and officially accredited at the Department of the Interior, shall be entitled to all the benefits enumerated in this chapter, subject to all the provisions as to settlement and improvement therein contained; but if such person died during his term of enlistment, the whole term of his enlistment shall be deducted from the time heretofore required to perfect the title.

Section 2298, Revised Statutes, reads as follows:

No person shall be permitted to acquire title to more than one quarter-section under the provisions of this chapter.

In the case of Adelia S. Royal (15 L. D., 408), the Department held that where a widow of a soldier makes homestead entry under section 2307, Revised Statutes, in her own name and perfects title thereto, she exhausts her right under the homestead laws. In that case it was argued that the widow had two rights, one of which could be exercised under section 2307, Revised Statutes, as the widow of the soldier, and the other under section 2289, Revised Statutes, as her own individual right. The Department held, however, that the limitation expressed in section 2298, Revised Statutes, applied and that the homestead right was exhausted by the first entry made by the widow.

In the case of Louise C. Moran (35 L. D., 520), the Department held that where the minor child of a soldier makes homestead entry under section 2307, Revised Statutes, by a duly appointed guardian and perfects title thereto, the homestead right is thereby exhausted.

The above decisions do not preclude allowance of an additional homestead entry under section 6 of the act of March 2, 1889 (25 Stat., 854), where the former entry embraced less than 160 acres.

The exact question now presented is one which, so far as observed, has never been the subject of departmental adjudication. A somewhat analogous question was involved in the case of *Heirs of DeWolf v. Moore* (37 L. D., 110), as to the qualifications of an entrywoman on account of excess ownership of lands. The entrywoman in that case had one-third interest in an undivided tract of 320 acres. It was held that in estimating the acreage of an undivided fractional interest in said property, for the purpose of determining the qualifications of the entrywoman, she should be charged with that portion of the total acreage of the land owned by her in common with others which is represented by the fractional extent of her undivided interest. This seems to be a natural and logical conclusion in the case

there presented and no reason is seen why the same principle should not be applied to the question now presented.

It is accordingly held that where entry is made by guardian for a number of minors under the provisions of section 2307, Revised Statutes, the homestead right of each is exhausted to the extent of the interest of each in such entry.

ROY T. YOUNG.

Decided July 2, 1914.

HOMESTEAD ENTRY OF BOTH COAL AND NONCOAL LANDS.

A homestead entry under the act of June 6, 1912, may embrace both lands classified as coal and lands classified as noncoal; but in such case the entry will not be subject to commutation, and patent issued thereon must reserve to the United States the coal deposits in the tracts classified as coal lands.

JONES, *First Assistant Secretary*:

Roy T. Young has appealed from decision of June 14, 1913, by the Commissioner of the General Land Office holding for cancellation in part his homestead entry for the reason that it embraced lands classified as coal lands and lands classified as noncoal.

April 25, 1911, the SW. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 32, T. 15 N., R. 52 E., M. M., Miles City, Montana, land district, was classified as coal land and appraised at \$20 per acre.

March 14, 1913, Roy T. Young made homestead entry for the S. $\frac{1}{2}$ SE. $\frac{1}{4}$, S. $\frac{1}{2}$ SW. $\frac{1}{4}$, said section. The Commissioner in the decision appealed from held that said SW. $\frac{1}{4}$ SW. $\frac{1}{4}$ was subject to homestead entry only under the act of June 22, 1910 (36 Stat., 583), which provides for allowance of homestead entries of lands classified as being valuable for coal deposits, with reservation of the coal to the United States. Said act further provides that residence and cultivation of such lands must be performed as required by the enlarged homestead act of February 19, 1909 (35 Stat., 639), which, as amended by the recent act of June 6, 1912 (37 Stat., 123), requires cultivation of one-sixteenth of the area of the entry beginning with the second year of the entry and one-eighth thereafter and until final proof. It is also provided that entries under the enlarged homestead act can not be commuted.

The ruling of the Commissioner was in accordance with the practice established prior to the said act of June 6, 1912, which was a proper ruling at that time because of the different requirements as to residence and cultivation appertaining to entries of the lands thus differing in character with respect to coal deposits. Since the enactment of the law of June 6, 1912, *supra*, this distinction is deemed unimportant and no sufficient reason is seen for refusing to allow the

lands thus differing in character to be embraced in one entry. Of course, it is necessary to take the precaution to note on the application proper references to the laws applicable to the respective tracts and when patent issues the coal deposits must be reserved to the United States as to the tracts found to be coal lands. An entry embracing coal lands will not be subject to commutation. These views are in accordance with instructions to the Commissioner by the Department under date of March 12, 1914, in the case of Nicholas Becker.

The decision appealed from is accordingly reversed and the entry will be allowed to remain intact, unless other objection appear.

HEIRS OF JOHN BROWNSON ET AL.

Decided July 2, 1914.

NAVAL TIMBER RESERVES—CASH ENTRIES.

Where persons were permitted in good faith to purchase lands, bearing valuable live oak and pine timber, reserved under authority of Congress for the United States Navy, and cash certificates of entry were issued to them therefor, such entries should not be disturbed, where the Navy Department has no present use for the lands on account of their valuable timber, but should be permitted to remain intact until such time as Congress shall take action in the matter.

JONES, First Assistant Secretary:

The heirs and legal representatives of John Brownson and Daniel Fisher appealed from decision of the Commissioner of the General Land Office, of July 8, 1913, holding for cancellation cash entry, made by said Brownson and Fisher, at Opelousas, Louisiana, now Baton Rouge, May 27, 1839, for SE. $\frac{1}{4}$, Sec. 34, T. 14 S., R. 11 E., La. M.

The land here described, and that embraced in fourteen other cases herewith decided, was reserved by the President of the United States under authority of Congress for use of the Navy of the United States, the land then bearing valuable live oak and pine timber.

This Department has been advised that the Navy of the United States is no longer in need of this timber reservation and no objection exists, on the part of the Navy Department, to their disposal as public lands. The question was referred to the Attorney-General of the United States who, January 19, 1895, expressed the opinion to the Navy Department that:

In my judgment an order of the President is not sufficient, Congress alone is competent to exercise the discretion by which the land in question shall cease to be held for the special purpose of the Navy Department.

The land and Navy Departments have sought action by Congress for authority to vacate these reservations and, at a former session of

Congress, Senate Bill 3111, 58th Congress, 2nd Session, was pending providing for restoration to the public domain of this live oak timber reservation, but the bill, for some reason, failed to pass.

Notwithstanding the reservation, the local land office at Opelousas, Louisiana, permitted entries of the land, among which is that of Brownson and Fisher, May 27, 1839, cash entry 2603, for the E. $\frac{1}{2}$ NE. $\frac{1}{4}$, SE. $\frac{1}{4}$, Sec. 34, T. 14 S., R. 11 E. The same parties were also permitted to make cash entry, No. 2604, the same day, for lot 3, Sec. 27, entry 2605 for SW. $\frac{1}{4}$, W. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 35, and entry 2607, for lots 1 and 5, Sec. 28, T. 14 S., R. 11 E., all of which were held for cancellation by the Commissioner in letters of the same date as the present entry. The notice was served to show cause why entry should not be canceled and attorneys Foster, Milling, Bryan and Saal protested against cancellation of the entries showing that cash was paid by the entrymen and final cash receipt and certificate of entry were filed in the record and were issued to them; that they have improved the land, have paid taxes to the State of Louisiana ever since the entry, and ended with the prayer:

We therefore respectfully appeal to you from the ruling of the Commissioner of the Land Office, and petition that you overrule his decision, and order that he allow the private entries above described to stand, and that he refrain from disturbing the rights of our clients in the premises.

The United States, having received full consideration seventy-five years ago, and the purposes for which the reservation was made having ceased to exist now that ships are built of steel and not of oak, and the Department being advised by the Secretary of the Navy that the Navy Department has no further use for such reservation, the United States is in no condition, retaining the consideration as it does, to cancel the certificates of entry, though they were improperly allowed.

Congress, moreover, during a former session, took jurisdiction in this matter and considered what disposal of the land it would authorize. In respect to naval reservations, no longer needed, Congress, by act of March 3, 1879 (20 Stat., 470), in respect to abandoned naval reservations in the State of Florida, provided for sale of the lands, with the proviso:

That all persons who have, in good faith, made improvements on said reserved lands so certified at the time of the passage of this act, and who occupied the same, shall be entitled to purchase the part or parts so occupied and improved by them, not to exceed one hundred and sixty acres to any one person at one dollar and twenty-five cents per acre, within such reasonable time as may be fixed by the Secretary of the Interior.

While this applied only to reservations in the State of Florida; it was none the less a declaration of policy showing what, in the opinion of Congress, was due to persons who had been erroneously permitted

to make entry for lands so reserved. Though no provision has been made for like reservations now of no public utility in the States of Alabama and Mississippi, no action adverse to entries there can be properly made in the face of such a declaration of policy. If the entries be canceled, the parties who have in good faith made such entries and have improved the land would be deprived of the rights which Congress gave to persons like situated in the State of Florida. In the view of the Department, therefore, the matter should be left in the condition it is until Congress shall take some action in the matter. The order to show cause is therefore vacated and no action will be taken against any such entry, where the record shows that the purchase was made in good faith for money paid and cash certificate of entry was issued. This order, however, will apply only to lands for which the Navy Department at this time has no present use or purpose on account of its valuable timber.

The schedule of other similar entries pending before the Department is hereto annexed, in which the same order is made and the same course will be observed:

Cash entry 2582, by Pierre Jupiter, May 10, 1839, for lots 2, 3, and 4, Sec. 34, T. 14 S., R. 11 E.

Cash entry 2759, by Daniel Fisher, September 16, 1840, for lots 3 and 4, SW. $\frac{1}{4}$ SW. $\frac{1}{2}$, Sec. 28, T. 14 S., R. 11 E.

Cash entry 2760, by Daniel Fisher, September 15, 1840, for fractional SE. $\frac{1}{4}$, Sec. 29, T. 14 S., R. 11 E.

Cash entry 2761, by Daniel Fisher, September 15, 1840, for SW. $\frac{1}{4}$, Sec. 34, T. 14 S., R. 11 E.

Cash entry 2762, by Daniel Fisher, September 15, 1840, for fractional Sec. 32, T. 14 S., R. 11 E.

Cash entry 2763, by Daniel Fisher, September 15, 1840, for NW. $\frac{1}{4}$ SW. $\frac{1}{4}$, SE. $\frac{1}{4}$, Sec. 33, T. 14 S., R. 11 E.

Cash entry 2799, by Daniel Fisher, October 27, 1840, for E. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 27, T. 14 S., R. 11 E.

Cash entry 2800, by Daniel Fisher, October 27, 1840, for W. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 35, T. 14 S., R. 11 E.

Cash entry 2802, by Daniel Fisher, October 27, 1840, for E. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 34, T. 14 S., R. 11 E.

Cash entry 4081, by Henry Bradley, April 29, 1843, fractional Sec. 38, lots 1 and 2, Sec. 36, T. 15 S., R. 12 E.

Cash entry 4114, by John Alston, December 26, 1843, for lots 3, 4, and 5, Sec. 5, lots 2, 3, 4 and 5, Sec. 6, T. 15 S., R. 11 E.

Cash entry 4115, by J. D. Dawson, December 26, 1843, lots 1 and 2, Sec. 5, lot 1, Sec. 6, T. 15 S., R. 11 E.

ADMINISTRATIVE RULING.

July 15, 1914.

FOREST LIEU, RAILROAD, AND STATE SELECTIONS—WITHDRAWALS.

No such right is acquired by a forest lieu, railroad, or State selection, prior to approval thereof by the proper officer of the United States, as will except the land from withdrawal by the government under the act of June 25, 1910.

LANE, *Secretary*:

Many forest reservations when created included lands claimed by or patented to private parties. Under the law (act of June 4, 1897) these settlers or owners might, if they chose, select other vacant land in lieu of such holdings. So, too, as to railroad grants. If it was found that these contained mineral lands, or were already settled, the railroad concerned was given the right to take other lands. And the States to which the Federal Government made certain grants might, under conditions specified in the law, select other lands in their stead.

Certain of these selectors now claim patents, or ask the approval of their lists of selections. As to most of these selections there can be no question but that patent should issue. As to some, however, the Government itself has intervened, Congress having authorized their withdrawal for certain public purposes.

This question, therefore, is now presented: Is the Secretary of the Interior free to dispose of these selected lands, in the face of the act of Congress withdrawing them from disposition?

It is my conclusion, after a careful study of the authorities, that no such authority has been given to the Secretary of the Interior. The acts of Congress authorizing exchanges are merely offers on the part of the United States to exchange other lands for lands held by the selector, and the right of the selector does not attach nor equitable title pass upon mere presentation of the requisite papers. There remains the necessity for action upon the offer by the duly authorized officer of the United States. Until that acceptance has been given and the equitable title passed, Congress has full authority to devote the land to a public purpose.

The act of June 25, 1910 (36 Stat., 847), specifically authorizes the President to withdraw public lands from disposition and to reserve same "for water-power sites . . . or other public purposes," and directs that such withdrawals or reservations shall remain in force until revoked by the President or by Congress. Congress enumerated in the act the exceptions from the effect of such withdrawals: (1) certain mineral claims; (2) homestead or desert-land entries made prior to withdrawal; (3) lands upon which valid settlement had been made and is being maintained at date of withdrawal.

Thus Congress recognized that there were certain claims which the Government would except from the effect of its own withdrawals; and because no exceptions whatever were made which, in letter or spirit, would apply to exchanges like those involved in forest lieu, State, or railroad selections, I am compelled to the conclusion that Congress intended to make its withdrawal superior to these classes of claims.

Congress having power to withdraw lands and devote them to a public use, notwithstanding the existence of the inchoate claims mentioned, having authorized the withdrawals and reservations by the act cited, and withdrawals having been made for public purposes, as prescribed in the act, the Secretary of the Interior has no power or authority to approve or accept such selections or exchanges or to relieve them from the force and effect of an existing reservation.

AUTHORITIES: *Frisbie v. Whitney* (9 Wall., 187); *Rector v. Ashley* (6 Wall., 142); *Yosemite Valley Case* (15 Wall., 77); *United States v. Hanson* (167 Fed., 881); *Shiver v. United States* (159 U. S., 491); *Russian-American Company v. United States* (199 U. S., 570); *Union Pacific v. Harris* (215 U. S., 386); *Stalker v. The Oregon Short Line* (225 U. S., 142); *Soscol Ranch* (11 Ops. Atty. Gen., 490); *Cosmos v. The Gray Eagle Oil Company* (190 U. S., 301); *Clearwater Timber Company v. Shoshone County* (155 Fed., 612); *Rough-ton v. Knight* (219 U. S., 537); *Daniels v. Wagner* (205 Fed., 235).

INSTRUCTIONS.

April 25, 1914.

CONFIRMATION—CLASSIFICATION OF LAND AS COAL—ACT OF MARCH 3, 1909.

The proviso to section 7 of the act of March 3, 1891, does not operate to confirm an entry against an act of Congress passed prior to the expiration of two years from the date of the issuance of the receiver's receipt upon final entry; and where within the two-year period the land was "classified, claimed or reported as being valuable for coal," and also within such period the act of March 3, 1909, was passed, the entry is not confirmed against said act, and patent if issued must be in accordance therewith; but in case more than two years had elapsed from the date of the issuance of the receiver's receipt upon final entry prior to classification, claim or report that the land was valuable for coal, or prior to the passage of the act of March 3, 1909, nothing would remain for the land department save the ministerial duty of issuing patent.

JONES, *First Assistant Secretary:*

The Department has considered your [Commissioner of General Land Office] memorandum, dated April 2, 1914, directing its atten-

tion to the decision in the case of *Herman v. Chase* (37 L. D., 590), and requesting to be advised if the proviso to section 7 of the act of March 3, 1891 (26 Stat., 1095), is applicable to cases where the character of the land is involved.

In its decision in the case of *Jacob A. Harris* (42 L. D., 611), the Department held:

Syllabus: Under the proviso to section 7 of the act of March 3, 1891, an entry is confirmed against any proceeding by the government, as well as against private contests and protests, unless such proceeding was pending at the expiration of two years from the date of the issuance of the receiver's receipt upon final entry.

The decision in *Mertie C. Traganza* (40 L. D., 300), and all others in conflict with the doctrine announced in the *Harris* case were overruled. This included, of course, the decision in *Herman v. Chase*, *supra*.

In this connection, it is proper to say that while the lapse of more than two years from the date of the issuance of the receiver's receipt upon final entry will bar a contest or protest based upon any charge whatsoever, this rule does not mean that the entry is confirmed against the operation of an act of Congress passed prior to the expiration of the two years. For example, if within the two-year period the land embraced in an entry were "classified, claimed or reported as being valuable for coal," and, if, also within such two-year period, the act of March 3, 1909 (35 Stat., 844), were passed, it is obvious that the entry would not be confirmed against the act, and patent, if issued, must issue in accordance with the act. If, however, more than two years had elapsed from the date of the issuance of the receiver's receipt upon final entry, prior to classification, claim or report that the land was valuable for coal, or prior to the passage of the act, nothing would remain to this Department save the ministerial duty of issuing patent.

JOHN RICHARD HEINZ,¹

Decided April 29, 1914.

SOLDIERS' ADDITIONAL—DECLARATORY STATEMENT.

The mere filing of a soldiers' declaratory statement is not the equivalent of an entry within the meaning of section 2306, Revised Statutes, and is not therefore a proper basis for additional right under that section.

JONES, First Assistant Secretary:

John Richard Heinz has appealed from the decision of the Commissioner of the General Land Office, dated November 22, 1913, reject-

¹ See same case on rehearing, page 300.

ing his application under section 2306, Revised Statutes, for the SW. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 6, T. 4 N., R. 3 E., M. M., Billings, Montana, land district. This application is based, to the extent of 11.49 acres, upon the alleged right of John Farner, who performed the requisite military service, and who, on September 23, 1873, filed his declaratory statement for 80 acres of public land in Nebraska, subject to homestead entry. Farner did not make homestead entry pursuant to this declaratory statement. The Commissioner rejected Heinz's application for the reason that a declaratory statement is not a sufficient basis for the additional right of entry conferred by section 2306, Revised Statutes, and the appeal filed renders necessary the consideration of the origin and the nature of the right conferred by that section.

The act of April 4, 1872 (17 Stat., 49), conferred upon the soldiers and officers therein specified the right—

to enter upon and receive patents for a quantity of public lands (not mineral) not exceeding one hundred and sixty acres, or one quarter-section. . . . *Provided*, That said homestead settler shall be allowed six months after locating his homestead within which to commence his settlement and improvement. . . .

SEC. 5. That any soldier, sailor, marine, officer, or other person coming within the provisions of this act, may, as well by an agent as in person, enter upon said homestead: *Provided*, That said claimant in person shall, within the time prescribed, commence settlements and improvements on the same, and thereafter fulfill all the requirements of this act.

By the act of June 8, 1872 (17 Stat., 333), the language of the act of April 4, 1872, above quoted, was amended to read as follows:

To enter upon and receive patents for a quantity of public lands (not mineral) not exceeding one hundred and sixty acres, or one quarter-section. . . . *Provided*, That said homestead settler shall be allowed six months after locating his homestead, and filing his declaratory statement, within which to make his entry and commence his settlement and improvement.

SEC. 5. That any soldier, sailor, marine, officer, or other person coming within the provisions of this act may, as well by an agent as in person, enter upon said homestead by filing a declaratory statement as in pre-emption cases: *Provided*, That said claimant in person shall within the time prescribed make his actual entry, commence settlements and improvements on the same, and thereafter fulfill all the requirements of this act.

The other provisions of the act of April 4, 1872, were carried into the act of June 8, 1872, without change as to anything affecting the question under consideration.

By the act of June 22, 1874, adopting the revised statutes of the United States, the act of June 8, 1872, was codified as sections 2304, 2305, 2306, 2307, 2308 and 2309. Sections 2306 and 2309 read as follows:

SEC. 2306. Every person entitled, under the provisions of section twenty-three hundred and four, to enter a homestead who may have heretofore entered, under the homestead laws, a quantity of land less than one hundred and sixty

acres, shall be permitted to enter so much land as, when added to the quantity previously entered, shall not exceed one hundred and sixty acres. * * *

SEC. 2309. Every soldier, sailor, marine, officer, or other person coming within the provisions of section twenty-three hundred and four, may, as well by an agent as in person, enter upon such homestead by filing a declaratory statement, as in pre-emption cases; but such claimant in person shall within the time prescribed make his actual entry, commence settlements and improvements on the same, and thereafter fulfill all the requirements of law.

It will be seen that no provision was made by the act of April 4, 1872, for the making of an original entry in the local office, by the soldier, and that it was the purpose of the act of June 8, 1872, to cure this defect and others not necessary to be here considered. It is manifest, from the language of the earlier act itself and the amendment thereto, that the right conferred upon the soldier or his agent to "enter upon" and "locate" a homestead was the right to go upon the land and mark out his claim. Under the terms of the act of June 8, 1872, the actual going upon the land by the soldier or his agent, and the location of the claim upon the ground, was obviated; and the filing of a declaratory statement was substituted for the requirement of the act of April 4, 1872, and became, by the terms of the later act, a constructive entrance upon the land.

It has never been held by the Department that anything, whether by the soldier or his agent, was required by the act of June 8, 1872, prior to or subsequent to the filing of a declaratory statement, except that the soldier should, within six months make homestead entry at the local office, and begin settlement upon and improvement of the land. In this connection it should be observed that the phrase "a declaratory statement as in preemption cases" presupposes at least a constructive entrance upon the land, inasmuch as a preemption declaratory statement not predicated upon some act of settlement or improvement conferred no right.

The right of additional entry conferred by section 2306, Revised Statutes, is restricted to those soldiers and sailors "who may have heretofore (i. e., prior to June 22, 1874) entered under the homestead laws a quantity of land less than 160 acres." That this language contemplates only those who had actually made homestead entries at the local land offices is apparent from the fact that never has a preemption or homestead declaratory statement been held to be an entry; it is distinguished from an entry by Sec. 2309, R. S., itself; and the history of Sec. 2306, R. S., clearly shows what is meant by the word "entered" as used therein.

In the act of April 4, 1872, the right of additional entry conferred by section 2 thereof was upon those who may have theretofore entered under the homestead laws less than 160 acres. It cannot be contended that prior to that act a homestead entry could have been

made through a declaratory statement, or otherwise than at the local office. The amendment of this act by the acts of June 8, 1872, and of June 22, 1874, carried forward this word "entered" and its context unchanged. The purpose of the amendatory act of June 8, 1872, was so obviously, as to the matter here under consideration, limited to the provision for the assertion of the homestead claim in the local office rather than upon the land itself, that there exists no ground, after more than forty years of decisions to the contrary, for indulging the belief that the word "entered" as used in the latter act and carried into section 2306, meant otherwise than land entered at the local office; in other words, the actual entry demanded by section 2309, following the filing of the declaratory statement. And while it must be admitted that the expression used in section 2309, Revised Statutes, permitting the soldier to "enter upon such homestead by filing a declaratory statement as in preemption cases," is obscure, the Department is of the opinion that the real intent of the language used has been correctly as well as uniformly arrived at in previous adjudications upon the subject. In short, as hereinbefore pointed out, the act of April 4, 1872, required the soldier or his agent to actually enter upon and locate a claim, with no provision for its assertion in the local office. Three months later, Congress, anticipating, no doubt, the confusion that would result from such a method, substituted a provision which was intended to be, and has been held to be, the assertion of claim in the local office through a declaratory statement, for the physical entering upon the land and location of the claim upon the ground. In its last analysis this means no more than that the filing of the declaratory statement shall have the legal effect of a previously required going upon the land; a conclusion clinched by the fact that, under the preemption law, the filing of a declaratory statement by one who had never gone upon the land claimed conferred no right.

So much of the argument in support of the pending appeal as is addressed to the fact that the filing of a declaratory statement exhausts the homestead right, may be briefly disposed of. Congress alone has the power to remedy any injustice and inequality that may result from the law itself, rather than from its administration. If it be assumed that this Department should sustain the pending appeal in favor of one who never entered any land under the homestead law, upon the ground that a declaratory statement exhausts the homestead right as effectually as a homestead entry, what logical reason would exist for denying the right of additional entry to a soldier who, under the act of April 4, 1872, "entered upon" a tract of, say, 80 acres, but never asserted any record claim either through declaratory statement or by homestead entry?

The attention of the Department has, from time to time, been directed to the supposed injustice of its rulings with respect to soldiers' declaratory statements, especially those to the effect that the declaratory statement expires by limitation of law, and without necessity for official cancellation, upon the lapse of more than six months without entry and settlement; that a declaratory statement does not segregate the land from other appropriation; and that the declarant has in reality no more time within which to effect settlement upon his claim after the filing of the declaration than has a homestead entryman after the placing of his entry of record. It is unnecessary, for the purposes of this decision, to argue the soundness of the departmental decisions from which these alleged hardships flow. But it is pertinent and appropriate to direct attention to the fact, apparently overlooked, that in 1872, in the then-existent state of the homestead law, the privilege afforded the soldier of filing a declaratory statement gave him a decided advantage over other parties seeking the exercise of their homestead rights. At that time the law, now embodied in section 2291, undoubtedly in terms required that a homestead entryman should establish residence upon his claim promptly upon entry; the soldier was allowed six months for that purpose. The advantage conferred upon the soldier by the statute has disappeared through a long series of departmental decisions which, however unsound, have ripened into a rule of property. The privilege of filing by agent was a distinct advantage granted the soldier over other parties, who were required to appear personally before the local officers to make entry. Finally, the very act authorizing him to file a declaratory statement without previous settlement, gave to him, and his widow and minor orphan children, as an unfettered gift, upon no condition save that of military service and a *former homestead entry* of less than 160 acres of land, the very right sought to be asserted in this case. No injury has followed the enforcement of the rule that the filing of a declaratory statement exhausts the homestead right, that will bear comparison with the evils that would have resulted from a contrary holding. The declarant who failed to make entry has been the beneficiary of all subsequent laws permitting second entry. Had soldiers and sailors each been permitted to tie up for six months 160 acres of land without loss of the homestead privilege by filing a declaratory statement and according it segregative effect, a reign of speculation in the public domain would have been inaugurated, to the shame of the patriotic spirit that gave birth to the law.

Whether viewed from the standpoint of law or equity, the Department after mature consideration, finds no merit in the contentions made in this appeal, and the decision of the Commissioner is accordingly affirmed.

JOHN RICHARD HEINZ (ON REHEARING).

Decided July 30, 1914.

SOLDIERS' ADDITIONAL—DECLARATORY STATEMENT.

A soldiers' declaratory statement which never ripened into a homestead entry is not a sufficient basis for a soldiers' additional right under section 2306, Revised Statutes.

CONFLICTING DEPARTMENTAL DECISION MODIFIED.

Departmental decision in Charles H. Dempsey, 42 L. D., 215, modified.

JONES, *First Assistant Secretary:*

Counsel for John Richard Heinz has filed a motion for rehearing of departmental decision, dated April 29, 1914 [43 L. D., 295], rejecting his application, under section 2306, R. S., for the SW. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 6, T. 4 N., R. 3 E., M. M., Billings, Montana, land district. This application was based, in part, upon the alleged right of John Farner, who performed the requisite military service, and, on September 23, 1873, filed his declaratory statement for 80 acres of public land in Nebraska, subject to homestead entry. Farner did not make homestead entry pursuant to this declaratory statement, and in its said decision of April 29, 1914, the Department held that a declaratory statement which never ripened into homestead entry is not a sufficient basis for the additional right of entry conferred by section 2306, R. S.

It is strenuously urged in the pending motion that the Supreme Court of the United States, in the case of *Whitney v. Taylor* (158 U. S., 85), has decided "that any filing which segregated the land and made known the claim of record was an entry." While the Court, both in the head notes and in the body of the decision, referred broadly and generally to a preemption declaratory statement as an entry, in the sense that it is a claim asserted and entered of record, it decided that an uncanceled and unexpired preemption declaratory statement was such a claim as excepted the land from the grant to the Central Pacific Railroad, by the act of July 1, 1862 (12 Stat., 489). It has never been held, and can never under the law be held, that the filing of a declaratory statement, whether under the preemption or the homestead law, is the equivalent of an entry, as that term is used in the statutes, for in either case the claim initiated by the declaratory statement is forfeited by failure to make entry within the time required. Reference is also made in the motion to the declaration in *Whitney v. Taylor, supra*, to the effect that a—

declaratory statement bears substantially the same relation to a purchase under the preemption law that the original entry in a homestead case does to the final acquisition of title. The purpose of each is to place on record an assertion of an intent to obtain title under the respective statutes. "This statement

was filed with the register and receiver, and was obviously intended to enable them to reserve the tract from sale, for the time allowed the settler to perfect his entry and pay for the land." *Johnson v. Towsley*, 13 Wall. 72, 89.

The decision of the Court, above quoted, while decisive as to the analogy between a preemption declaratory statement and an original homestead entry, has no bearing upon the force and effect of a soldiers' declaratory statement, which does not obviate the necessity of the making of an original homestead entry, and resembles a preemption declaratory statement in form only. As was pointed out in the departmental decision of April 29, 1914, in this case, a preemption declaratory statement was a declaration of intention to acquire title upon a settlement already begun, while a soldiers' declaratory statement is a mere declaration of future purposes both as to settlement and entry.

Reference is also made in the pending motion to the decision in *Charles H. Dempsey* (42 L. D., 215), and to the unreported case of *Tom P. Hughes*, Helena 06918, in which it was held that a withdrawal did not defeat the right of Hughes to perfect a claim initiated by the filing of a soldiers' declaratory statement. While the Department, upon mature consideration, is convinced that the language used in the *Dempsey* case is too broad and should be, and hereby is, modified to conform to the conclusion herein reached, it is obvious that *Dempsey's* claim was properly disposed of. The soldier filed the declaratory statement before the adoption of the revised statutes, but did not make entry until after that date. Under these circumstances, the date of his entry is, by relation, that of the initiation thereof, and the case was both within the letter and spirit of section 2306, R. S. The situation presented under the facts of the *Dempsey* case is wholly unlike that here under consideration, where no homestead entry or "entry under the homestead law" has ever been made, but where, on the contrary, the claim of *Farner* perished under the terms of the statute, because he did not make such an entry. The decision in the *Hughes* case was clearly correct, but is without application in this proceeding.

It is argued that a soldiers' declaratory statement is an entry under the homestead laws, within the meaning of section 2306, R. S., because the filing of the declaratory statement is the initiation of a homestead right. Can it be said that a valid settlement, which is also an initiation of the homestead right, is a homestead entry within the meaning of the statute? It is urged that a soldiers' declaratory statement is an entry under the homestead laws, because it exhausts the homestead right. The ownership of more than 160 acres of land, or the acquisition of title to 320 acres of public land, under the agricultural land laws, exhausts the homestead right. Is the purchase

of private lands, or the making of a desert land entry, the equivalent of a homestead entry within the meaning of section 2306, R. S.? As was pointed out in its former decision in this case, these and all other arguments based upon analogies or upon the supposed injustice and inequality of the law, are of no avail as against the express terms of the statute, which not only do not recognize a soldiers' declaratory statement as an entry, but require the declarant to make an entry under the homestead law within six months, upon penalty of forfeiting all claims under his filing.

The motion is denied.

HESSEY v. NORTHERN PACIFIC RY. CO.

Decided May 20, 1914.

NORTHERN PACIFIC INDEMNITY—LOST MINERAL LANDS.

Indemnity selections by the Northern Pacific Railway Company under the act of July 2, 1864, for lands lost to its grant by reason of being mineral in character, may be made of the nearest available lands within fifty miles of the line of road.

INDEMNITY SELECTIONS OUTSIDE OF STATE IN WHICH LOSS OCCURRED.

In selecting indemnity for the loss of mineral lands, the Northern Pacific Railway Company is not limited to the State in which the loss occurred.

INDEMNITY SELECTIONS NEAREST LOST LANDS.

Lands selected as indemnity by the Northern Pacific Railway Company for mineral lands lost to its grant are not required to be nearest to the lost lands.

INDEMNITY SELECTIONS NEAREST THE LINE OF ROAD.

In view of the fact that the Northern Pacific Railway Company's right of indemnity selection is far in excess of the available lands within the limits of its grant subject to selection, compliance with the provision in the act of July 2, 1864, that the lands selected as indemnity for lost mineral lands shall be nearest to the line of road, will not be required.

JONES, *First Assistant Secretary:*

January 7, 1911, Robert H. Hessey filed in the local office at Duluth, Minnesota, his application No. 08973, to make homestead entry for the SW. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 31, T. 54 N., R. 11 W. No settlement prior to the filing of his application is asserted. This land lies within the second indemnity limits of the grant to the Northern Pacific Railroad, now Railway, Company, under the act of July 2, 1864 (13 Stat., 365), and the joint resolution of May 31, 1870 (16 Stat., 378), and was embraced in the company's indemnity list No. 15, filed in the Duluth, Minnesota, land office, October 17, 1883, and rearranged list 15-b, filed April 10, 1893. This list was finally canceled November 9, 1909. December 9, 1909, the Northern Pacific Railway Company applied to select these lands, with others, per list

No. 551, assigning as base therefor mineral lands lost to its grant in the State of Montana, classified as such pursuant to the provisions of the act of Congress approved February 26, 1895 (28 Stat., 683), (20 L. D., 356).

From a decision of the Commissioner of the General Land Office, dated May 15, 1913, holding his homestead application for rejection for conflict with the pending selection of the railway company, Hesse^y prosecutes this appeal to the Department.

In behalf of appellant it is contended: *First*, that the lands selected are not within the limits granted by the act of 1864, within which the railway company could make indemnity selections in Minnesota; *second*, that the selection is based upon lost mineral lands in the State of Montana, whereas the selected lands are in Minnesota; *third*, that the lands selected are not the nearest to the line of road, as expressly required by the grant; *fourth*, that they are not nearest to the lost lands, as required by necessary implication, in view of the express provisions and character of the grant.

These questions will be treated in their order. The first assignment is conclusively disposed of by the act of July 2, 1864, *supra*, which reads in part as follows:

Provided further, That all mineral lands be, and the same are hereby, excluded from the operations of this act, and in lieu thereof a like quantity of unoccupied and unappropriated agricultural lands, in odd numbered sections, nearest to the line of said road, and within fifty miles thereof, may be selected as above provided.

The words "and within fifty miles thereof" underscored in the above quotation, do not appear in the act as printed in the Statutes at Large, but are in the act as passed and approved and as recorded in the State Department. The lateral limits, within which the railroad company may make indemnity selections for mineral losses, are fixed by said act at fifty miles from the line of road, and within that limit the railroad may select the nearest lands available for such purpose. See opinion of Attorney General (41 L. D., 571.)

The second contention made by appellant was disposed of in the opinion above cited, in which it was stated:

I am of the opinion that in selecting indemnity lands for the loss of mineral lands the company is not limited to the State in which the loss occurred. Attorney General Garland thus answered the question, so far as losses of agricultural lands were concerned, in his opinion of January 17, 1888 (19 Op., 88), and this ruling has been consistently followed by your Department. Northern Pac. R. R. Co., on review (20 L. D., 187); Northern Pac. R. R. Co. v. Shepherdson (24 L. D., 417); Hagen v. Northern Pac. R. R. Co. (26 L. D., 312).

There is no reason for a different ruling in regard to mineral losses.

If the selected lands are not even required to be in the State wherein the lost lands lie, there is no implication, necessary or other-

wise, in the act that they shall be nearest to the lost lands, as urged in the fourth contention made by appellant.

The third contention presents a question not heretofore considered by the Department. Counsel for appellant in his brief and in a letter filed in this case, has given the description of a number of tracts which, he alleges, are nearer the line of road than those selected by the company. A careful examination of the records in the General Land Office discloses, however, that with the exception of four tracts in the State of Wisconsin, all of these lands were, at the date of selection (December 9, 1909) either embraced in filings of one kind or another, or were included in an Indian Reservation, and were not therefore subject to selection by the railway company.

As to the four tracts in Wisconsin, it appears that they were, in fact, vacant at the date of the filing of this selection, but that they have since been embraced in homestead entries. This raises the question as to whether or not the selection proffered in 1909 is invalid because of the fact that there were other vacant tracts nearer the line or road than those selected. The Department is constrained to answer this question in the negative, without the necessity for an investigation, as to whether the four tracts referred to were, in fact, unoccupied by settlers and otherwise subject to selection by the company.

It has been ascertained by the land department that the amount of land which the railway company will receive will be far short of the quantity originally granted, and this is true, were the railway company to receive patent for all the public lands within its limits, both primary and indemnity, now subject to listing or selection. When the act of July 2, 1864, *supra*, was passed, it was undoubtedly contemplated that the railroad company should receive a sufficient quantity of land within its place limits to satisfy the greater portion of its grant, and that the lieu selections necessary to be made to satisfy the losses within the place limits would only require a portion of the lands within the indemnity limits.

It now appears that such is not the case and that there remains a large amount of base which the railroad company will never be able to satisfy from the remaining unappropriated public lands within the limits of said grant.

This grant extends from Ashland, Wisconsin, to Tacoma, Washington, and throughout the entire length of the road, entries and settlements are being made and relinquishments filed daily, constantly changing the status of these lands. It is, therefore, practically impossible for the railroad or this Department to do more than ascertain approximately just what lands are vacant at the time of the filing of a given selection. To place the strict and technical construction upon this statute, insisted upon by the appellant, would be, in effect, to

cut off the right of selection existing in the company, thereby defeating the very purpose of the act.

In construing the paragraph of the act of 1864, hereinbefore quoted, reference must be had to the other provisions of said act in order that the purpose for which it was passed may be understood. The act in its entirety discloses clearly an intent on the part of Congress to donate to the railroad company a specific quantity of land in place, and where losses occurred within the place limits to allow a selection of indemnity in the satisfaction of such losses. This being the intention of the act and the right of selection being far in excess of the available lands subject to selection, the requirement that the lands selected be nearest the line of road becomes a useless and vain requirement. If upon examination of the records it is ascertained that there are other available lands nearer the line of road than those selected, the company could at once, and probably would, file other base therefor. The rejection of the selection upon this ground would simply cause a changing or rearrangement of the base assigned and put the company to unnecessary and useless trouble and expense, since they could proffer other valid base in the selection of any available lands which might be found by the Department subject to selection. The Department is disposed to give to the act in question that construction which will effect the purpose clearly expressed therein. It follows, therefore, that the selection made by the railroad company is valid, and being prior in point of time to the homestead application of appellant, his application was properly rejected. The decision appealed from is affirmed.

JOHN L. LONG.

Decided May 27, 1914.

COAL LANDS IN ALASKA—OPENING AND IMPROVING OF MINE.

The discovery of an outcrop of coal upon a tract of land does not constitute the opening and improving of a mine thereon within the meaning of section 1 of the act of April 28, 1904, providing "that any person or association of persons qualified to make entry under the coal land laws of the United States, who shall have opened or improved a coal mine or coal mines on any of the unsurveyed public lands of the United States in the District of Alaska, may locate the lands upon which such mine or mines are situated," etc.

DISCOVERY OF OUTCROP—STAKING CLAIM—RECORDING NOTICE—APPLICATION.

No right of location and entry under the act of April 28, 1904, is acquired by merely discovering an outcrop of coal, staking the claim, recording the notice of location, and applying for patent.

JONES, First Assistant Secretary:

This is an appeal by John L. Long from a decision of the Commissioner of the General Land Office, dated June 12, 1912, holding

for rejection his coal land application 0263, made under the act of April 28, 1904 (33 Stat., 525), for the Pioneer coal claim embracing lands described by survey 436 in the Fairbanks land district, Alaska.

Notice of location in this case was filed for record March 14, 1907, in the district recorder's office, and on September 5, 1910, application for patent was filed. Payment for the land has not been made.

Upon examination of the proof submitted in support of the application the Commissioner failed to find any allegation that a mine of coal had been opened or improved upon the land as required by law, as a basis for entry of unsurveyed coal lands in Alaska, and for this reason held the application for rejection and declared the location to be null and void. From this action the claimant has appealed to the Department.

Section 1 of the act of April 28, 1904, *supra*, under which this application was made, provides as follows:

That any person, or association of persons, qualified to make entry under the coal land laws of the United States, who shall have opened or improved a coal mine or coal mines on any of the unsurveyed public lands of the United States in the district of Alaska, may locate the lands upon which such mine or mines are situated, in rectangular tracts containing forty, eighty, or one hundred and sixty acres, with north and south boundary lines run according to the true meridian, by marking the four corners thereof with permanent monuments, so that the boundaries thereof may be readily and easily traced. And all such locators shall, within one year from the passage of this act, or within one year from making such location, file for record in the recording district, and with the register and receiver of the land district in which the lands are located or situated, a notice containing the name or names of the locator or locators, the date of the location, the description of the lands located, and a reference to such natural objects or permanent monuments as will readily identify the same.

Section 2 of said act provides as follows:

That such locator or locators, or their assigns, who are citizens of the United States, shall receive a patent to the lands located by presenting, at any time within three years from the date of such notice, to the register and receiver of the land district in which the lands so located are situated an application therefor, accompanied by a certified copy of a plat of survey and field notes thereof, . . .

It is observed in this case that no allegation as to improvements upon the land of any character is made in the location notice which was filed in the office of the district recorder, and in an affidavit, sworn to on July 10, 1907, the claimant states as follows:

I came into possession of said tract of land on the 25th day of March A. D., 1906, and have ever since remained in actual possession continuously; that there is on said claim a valuable mine of coal, the vein being uncovered and exposed for a considerable distance; and actual mining of coal can be begun and carried on without any development work whatever in the nature of sinking shafts, running tunnels, etc., and for this reason no development work is neces-

sary nor have I caused any to be done or expended any money in labor or improvements to open up said mine; that I am not personally acquainted with the character of said described land, but that I have held possession of the same through my duly authorized agent P. R. McGuire of Fairbanks, Alaska, whose affidavit with regard thereto is hereto attached and made a part hereof.

In his applicaion for patent the claimant states—

That I have not expended any money in any development of coal lands on said tract, in labor and improvements, for the reason that there are on said tract several large veins or faces of coal uncovered and exposed for nearly the entire width of the tract, and it would be a useless expenditure of time and money to further develop said veins of coal as actual mining of coal can be begun and carried on without any development work whatever by way of sinking shafts and running tunnels.

It is also observed in this connection that the United States Deputy Surveyor, who surveyed the claim, reports that “no improvements have been made on the claim.”

It is contended by counsel for claimant in a brief filed in support of the appeal, that where coal has been discovered prominently exposed upon a tract of land in outcrops so situated that the deposit can be readily removed without the necessity of preliminary excavation, as it is upon the lands here involved, the requirements of the law as to the opening or improving of a coal mine have been met.

After a careful consideration of the coal land law and of the regulations and decisions thereunder, the Department fails to find any support for the contention advanced. The act of April 28, 1904, *supra*, very plainly provides that only those persons who have opened or improved a coal mine or mines may file a valid location notice and an application for patent for unsurveyed lands in Alaska.

It is deemed advisable at this time to briefly and in a general way consider all acts of Congress relating to the disposition of coal lands.

The present law relating to this subject begins with the act of 1873 (17 Stat., 607), which has been carried into the Revised Statutes and appears as sections 2347 to 2352, inclusive. This act was passed not many years after the Congress had provided for the prospecting for precious minerals and other metals and for the mining of such ores and ultimate sale of the land. The act of 1873, *supra*, in its sixth section, specifically provided—

That nothing in this act shall be construed . . . to authorize the sale of lands valuable for mines of gold, silver, or copper.

This act is entitled “An act to provide for the sale of the lands of the United States containing coal.” It is significant that no mention is made of and no provision made for the prospecting for coal. Evidently it was assumed that the public coal lands were either known, or else indicated by surface croppings. Section one of this

act provided for the entry of vacant coal lands upon payment of the price therefor. This section had no other object in view than the absolute sale of a given quantity of coal land for a price to be paid at the time of entry. It is evident that this section did and could only relate to the surveyed lands. Sections 2 and 3 of the act made provision only for a preference right of entry. This preference right of entry under these sections could be continued for a period of fourteen months from the time of entering into possession of the land. It was a valuable right, and of course should be construed as having been conferred by Congress only upon a valuable consideration. In looking into these sections it is found that this valuable right is conferred only upon those "who have opened and improved, or shall hereafter open and improve, any coal mine or mines upon the public lands, and shall be in actual possession of the same." The conclusion is irresistible that Congress intended by the granting of this privilege to encourage the actual opening of a coal mine with a view to present use of the coal. Any other construction would subject Congress to the criticism of having conferred a valuable right without adequate consideration and without any service performed contributing to the public welfare. The requirement that the persons seeking this privilege "shall be in actual possession of the same," and the further provision in section 4 of the act that the possession shall be followed by "continued good faith," can bear no other construction than that the preferred claimant shall be engaged in good faith in the opening and developing of a producing mine.

The above conclusions are also fortified by the language used in the sections of the act which relate to the procedure prescribed for the obtaining of this preference right. In section 3 of the act it is provided that all claims for this right must be presented to the register of the proper land district within 60 days "after the date of actual possession and the commencement of improvements on the land, by the filing of a declaratory statement therefor." In the case of conflicting claims, as specified in section 5 of the act the preference right is awarded only by reason of "priority of possession and improvements, followed by proper filing and continued good faith."

An examination of the legislation previous to 1873 and of the reasons which were assigned for the passage of the act now under consideration makes it appear that the above interpretation of the act of 1873 is correct. The first act of Congress respecting coal lands was enacted July 1, 1864 (13 Stat., 343), and an act supplemental thereto approved March 3, 1865 (13 Stat., 529). The first of these statutes provided for the sale of coal lands to the highest bidder at a minimum price of \$20 per acre, and any lands which had been

thus offered and not sold were thereafter liable to private entry at the minimum price. The second of these statutes provided:

That in the case of any citizen of the United States who, at the passage of this act, may be in the business of *bona fide* actual coal-mining on the public lands, . . . shall have the right to enter, . . . a quantity of land not exceeding 160 acres, to embrace his improvements and mining premises, at the minimum price of twenty dollars per acre.

The above statutes failed to meet the wants of the citizens as well as the necessities of the Government. The Department of the Interior prepared a bill which in its essential particulars became the present law of March 3, 1873. After the bill had been introduced, it was referred to the Interior Department for a report. A report was prepared by the Commissioner of the General Land Office and submitted to the Senate with the concurrence of the Secretary of the Interior. The report of the Commissioner of the General Land Office sheds much light upon the present law, and is as follows:

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., February 6, 1872.

SIR: I have examined the inclosed bill—Senate 522—"to provide for the sale of the lands of the United States containing coal," referred to this office by the Department proper, and with reference to the subject I have the honor to state as follows:

The only legislation heretofore had by Congress respecting coal-lands is comprehended in the act of July 1, 1864 (Statutes 13, page 343), and the act supplemental thereto, approved March 3, 1865 (same, page 529).

The first of these enactments authorizes the President, after three months' public notice, to dispose of any tracts embracing coal-beds or coal-fields, constituting a portion of the public domain, to the highest bidder, and in suitable legal subdivisions, at a minimum price of twenty dollars per acre, and allows any such tracts not disposed of at such public offering to be thereafter entered at private sale at such minimum. This law is objectionable in affording no protection whatever to parties who may have actually expended their time, labor, and capital in opening up and developing coal mines in the public domain, and also in failing to limit the right of purchase to a given quantity, thus interposing no bar to monopoly.

As no lands have ever been proclaimed for sale under said act, of course no entries have been effected thereunder.

The supplementary act of March 3, 1865, aforesaid, provides in substance that citizens of the United States who were on the 3d March, 1865, in the business of *bona fide* actual coal mining upon public lands for purposes of commerce, may have the right to enter one hundred and sixty acres or less quantity in legal subdivisions, including their mining improvements and premises, at the minimum price of twenty dollars per acre.

The privilege thus granted is a special and not a general one, affording no protection to miners unless they were operating coal-beds or coal-fields on the 3d March, 1865.

Under its provisions several entries have been effected by parties coming within the letter of its requirements where the lands have been surveyed.

The proposed law will, if adopted, guard against monopoly by restricting the right of purchase to a stipulated number of acres, will protect the right of parties who are now developing these mines, or who may hereafter expend their labor and capital in doing so, by giving them a preference right of entry of a specified number of acres embracing their improvements, and will enable the Government to realize a fair price for the tracts so disposed of.

Proximity to completed lines of railroad forms the basis of acre valuation.

The acts of Congress heretofore cited with reference to coal lands are virtually inoperative, and a thorough consideration of the subject leads this office to believe that the proposed legislation would tend greatly to the public interest and enable the Department to deal practically with a question assuming great importance in the administration of our public land system.

With great respect, your obedient servant.

WILLIS DRUMMOND,
Commissioner.

HON. COLUMBUS DELANO,
Secretary of the Interior.

The interpretation put upon the act of 1873 by the Department of the Interior soon after its passage appears to be in harmony with the views hereinbefore announced.

Section 14 of the rules and regulations promulgated April 15, 1873, to govern the disposition of coal lands under this act, provided:

The *opening and improving* of a coal mine, in order to confer a preference right of purchase, must not be considered as a mere matter of form; the labor expended and improvements made must be such as to clearly indicate the good faith of the claimant.

Sections 15, 16, and 17 are also illuminating, and are as follows:

15. These lands are intended to be sold where there are adverse claimants therefor to the party who by substantial improvements, actual possession, and a reasonable industry shows an intention to continue his development of the mines, in preference to those who would purchase for speculative purposes only. With this view, you will require such proof of compliance with the law, when lands are applied for under section two, by adverse claimants, as the circumstances of each case may justify.

16. In conflicting claims, where improvements have been made *prior to March 3, 1873*, you will, if each party make subsequent compliance with the law, award the land *by legal subdivisions*, so as to secure to each, as far as possible, his valuable improvements; there being no provisions in the act allowing a joint entry by parties claiming separate portions of the same legal subdivision.

17. In conflicts when improvements, &c., have been commenced subsequent to March 3, 1873, or shall be hereafter commenced, priority of possession and improvements shall govern the award when the law has been fully complied with by each party. A mere possession, however, without satisfactory improvements, will not secure the tract to the first occupant, when a subsequent claimant shows his full compliance with the law.

The above instructions were in substance and almost in the same language again promulgated, by a circular directed by the Commissioner of the General Land Office to Registers and Receivers, dated July 31, 1882 (1 L. D., 687).

It will be noted that no provision is made for the passing of title to any coal lands until after a regular survey, and the only provision in the act under consideration which relates to unsurveyed land is found in section 3 thereof, which, after requiring the filing of a declaratory statement, provides:

When the township plat is not on file at the date of such improvement, filing must be made within sixty days from the receipt of such plat at the district office.

It follows, therefore, that the only right which can be obtained under this statute upon unsurveyed land is a preference right of entry when the township plats are filed and that such preference right can only be obtained by one who has so complied with the requirements of the law as to entitle him to a preference right of entry upon surveyed land.

This act of 1873 is the only law now in force which provides for the sale of public coal lands within the present limits of the Federal States, except that in 1894 section 2401 of the Revised Statutes was so amended as to permit "persons and associations lawfully possessed of coal lands" which are not surveyed to have the same surveyed in accordance with the provisions of that section.

Bearing in mind the construction of the coal-land laws of the United States as above set forth, no difficulty is encountered in arriving at a correct interpretation of the coal-land laws relating to Alaska. By an act of Congress June 6, 1900 (31 Stat., 658), it was provided:

That so much of the public land laws of the United States are hereby extended to the district of Alaska as relate to coal lands, namely, sections twenty-three hundred and forty-seven to twenty-three hundred and fifty-two, inclusive, of the Revised Statutes.

This act may have been passed without taking into consideration the fact that the public lands in Alaska had not been surveyed, and that even base and meridian lines had not been established. This condition made it impossible for anyone to acquire title to coal lands in Alaska. In order to meet this condition, Congress passed the act of April 28, 1904 (33 Stat., 525). This act of 1904 made provision whereby title could be obtained to coal lands over which the regular public surveys had not been extended. This law, however, did not confer its benefits upon all persons or all citizens of the United States. It was specifically limited to a definite class by providing therein—

That any person or association of persons qualified to make entry under the coal-land laws of the United States, who shall have opened or improved a coal mine or coal mines on any of the unsurveyed public lands of the United States in the district of Alaska, may locate, &c.

It will be observed that the words descriptive of the persons who are entitled to the benefits of this act are precisely the words used in the act of 1873 which designated the persons who, under its provisions, were entitled to a preference right of entry. The last statement is subject only to the exception that the conjunction "and" between the words "opened and improved" as found in the act of 1873, was changed in the act of 1904 to "or," so as to read: "opened or improved." It is believed, however, that this change cannot substantially modify the interpretation to be given to the statute, and the change of the conjunction may be disregarded for all practical purposes. Subsequent legislation affecting coal lands in Alaska has no relation to the subject now under consideration. It follows, therefore, that no one prior to the extension of the regular Government surveys over Alaska is authorized to acquire title to any public coal lands there situate unless and until he has done and performed those acts and things which, if done in the United States, would entitle him to a preference right of entry under the act of 1873 as hereinbefore construed.

The United States Supreme Court in the case of *Marvel v. Merritt* (116 U. S., 11), adopted the definition of Webster that a mine is a—

Pit or excavation in the earth from which metallic ores or other mineral substances are taken by digging, distinguished from the pits from which stones only are taken and which are called quarries.

The Century Dictionary defines a mine as—

An excavation in the earth made for the purpose of getting metals, ores, or coal. . . . No occurrence of ore is designated as a mine unless something has been done to develop it by actual mining operations.

By paragraph 18 of the coal land regulations of July 31, 1882 (1 L. D., 687), it is provided that—

The opening and improving of a coal mine in order to confer a preference right of purchase must not be considered as a mere matter of form; the labor expended and improvements made must be such as to clearly indicate the good faith of the claimant.

Paragraph 7 of the regulations of April 12, 1907 (35 L. D., 665), provides that—

A perfunctory compliance with the law in this respect will not suffice, but a mine or mines of coal must be in fact opened and improved on the land claimed.

In the case of *McDowell v. Crawford*, unreported, decided March 16, 1907, the Department said—

The act of merely clearing the face or surface of an outcrop of coal in order to determine the depth of the coal body was not the opening and improving of a mine within the meaning of the statute.

In the case of *Esther F. Filer* (36 L. D., 360), it was held that (syllabus)—

Cleaning out old coal prospects, at an expense of \$10, does not constitute the opening and improving of a mine of coal within the meaning of section 2348, Revised Statutes; and no such right is thereby acquired as will except the land from withdrawal by the Government.

In the case of *Thad. Stevens et al.* (37 L. D., 723), it was held (syllabus)—

The mere penetration of a bed of coal by means of a drill so small that the work can not be utilized in the mining of coal from the land is not in itself the opening and improving of a mine or mines thereon within the contemplation of the statute, and a preference right of entry is not thereby acquired.

In the case of *Andrew L. Scofield et al.* (41 L. D., 176), involving certain coal claims in Alaska, it was held (syllabus)—

A small amount of open-cut work merely for prospecting purposes does not meet the requirements of the coal land laws conferring a preference right of purchase upon one who opens and improves a coal mine upon the public domain.

It can not be held, therefore, even under the most liberal construction of the law that the claimant in this case by merely discovering an outcrop of coal, staking the claim, recording the notice of location, and applying for patent acquired a right to locate or enter the land.

In view of the foregoing, the decision appealed from is affirmed.

RACE v. LARSON.

Decided May 29, 1914.

EXECUTION OF APPLICATION AND AFFIDAVITS BEFORE LAND IS OPEN TO ENTRY.

It is no objection to an application and the accompanying affidavits that they were executed while the land applied for was embraced in an uncanceled entry or was not at the time open to entry, if in fact the land was then about to be released from the prior entry or was about to be opened under government instructions.

APPLICATION TO ENTER—EXECUTION OF AFFIDAVITS.

Affidavits in support of applications to enter filed on and after October 1, 1914, must be executed within ten days prior to the filing of such applications in the local land office.

JONES, First Assistant Secretary:

Jerry Race has appealed from decision of April 1, 1913, by the Commissioner of the General Land Office holding for cancellation his homestead entry for the NW. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 28, N. $\frac{1}{2}$ SE. $\frac{1}{4}$, SW. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 29, T. 154 N., R. 39 W., 5th P. M., Crookston, Minnesota, land district.

The entry was made October 26, 1912, upon application filed at 11:45 a. m. on that day. A conflicting application was filed by John Larson at 4:25 p. m. on the same day, which was rejected by the local officers because of the prior entry of Race.

It appears that the said land was entered by Tom Hoversten on May 8, 1908, which was canceled under direction of the Commissioner's letter of October 22, 1912. Larson contends that his application was the first legal application filed after the cancellation of the prior entry. It appears that the entry was canceled on the records of the local office on October 26, 1912. The application of Race was the first one filed after the cancellation of that entry. His papers, however, were executed on July 24, 1912, and it is urged that they were void and of no effect for that reason.

It further appears that Larson, on March 22, 1911, filed contest affidavit against the said entry of Hoversten, but action thereon was suspended pending the outcome of proceedings already instituted by the Government against said entry. It is stated by Larson's attorney in an affidavit that said attorney promised to advise Larson immediately upon the cancellation of the prior record entry and that on October 26, 1912, he called at the local office a few minutes after 9 o'clock and was informed that the Commissioner's letter canceling the entry had been received; that he at once tried to communicate this fact to Larson by telephone but was unable to reach him until about 10:30 o'clock; that Larson at once procured an automobile and started for Crookston and reached there at 4:20 p. m. and filed his application as soon as possible after learning that the land was subject to entry; that the said Jerry Race was at or near Hager City, Wisconsin, more than 300 miles from Crookston and the land in question at the time his entry was allowed of record, and that the application of Race had been in possession of his attorney at Crookston for a long time prior to that date.

The Commissioner held that the application of Race was erroneously allowed by the local officers, for the reason that the affidavits in support thereof were executed several months prior to the cancellation of the prior entry of record.

An investigation of the question involved discloses some lack of uniformity in practice pertaining to such cases. One of the earliest circulars of instructions to registers and receivers upon this point is that of January 8, 1878 (4 C. L. O., 167). Said instructions were issued by the Commissioner of the General Land Office under directions of the Secretary. The language of the Secretary, which was incorporated in the instructions, is in part as follows:

In the adjudication of cases arising under the homestead and timber culture acts, it appears that in many cases the affidavit is made prior to the date of

application, and frequently the time which has elapsed between the two is weeks and months. To allow entries upon such affidavits is an erroneous practice on the part of the local officers. . . . In case the affidavit is taken before an officer at a distance from the land office, an explanation of that fact should accompany the papers, and only a reasonable time be allowed to elapse between the date of the same and the application, and in no case is an affidavit to be received which was made while the land was appropriated under a prior entry.

The Commissioner in his own language further instructed the local officers—

not to take or hold in your possession such papers, nor recognize them when presented by attorneys, where you know they have been actually made by the applicant at a date prior to the time when the land applied for was legally liable to disposal by you.

These instructions were followed in the case of *Mills v. Daly* (17 L. D., 345), *Ady v. Boyle* (17 L. D., 529), and cases there cited; *Smith v. Malone* (18 L. D., 482). In the case of *Thompson et al. v. Gregory* (22 L. D., 110), it was held that the validity of an entry is not affected by the fact that the preliminary affidavit is executed before the land is formally declared open to entry, where prior thereto the land in question was restored to the public domain by an act of Congress. In the case of *Selig et al. v. Cushing* (20 L. D., 57), it was held (syllabus):

A homestead entry allowed on preliminary papers executed while the land is covered by the prior entry of another is not void but voidable. The defect in such case may be cured in the absence of any adverse claim, and can not be taken advantage of by one who does not show any priority of right in himself.

A number of decisions were cited in support thereof.

It is observed that the Commissioner of the General Land Office, under date of August 23, 1881, instructed the register and receiver of a local land office (1 L. D., 121), that in view of the passage of the act of May 14, 1880, they were authorized to accept applications received simultaneously with relinquishments, provided the applications and affidavits are received within a reasonable time from the date they bear, with reference to the time required for transmission, but such papers should in all cases be received at the local office within a reasonable time from their date. These instructions do not appear to have been referred to in any of the later published departmental decisions which seem to have considered the prior instructions of 1878, *supra*, as in force. The latest departmental expression upon this subject appears to be under date of November 14, 1912, when the Secretary instructed the local officers at Little Rock, Arkansas, that application papers executed prior to the date of the opening of a certain body of lands could be accepted, if otherwise regular.

The present case seems to come within the ruling in the case of *Selig v. Cushing*, *supra*, and the entry of Race will be permitted to stand. It seems to be generally recognized that the strict rule enunciated in the said circular of 1878, and later followed in some cases, has in recent years been to a great extent ignored or modified. It seems to be a very common practice for applicants to submit their applications by mail, accompanied by a relinquishment of a former entry embracing the land applied for. The Department knows of no recent case where such application has been for that reason denied. This seems to be a matter to be viewed largely from an administrative standpoint. The affidavits are required for the information of the Government with reference to the character and status of the land and the qualifications of the applicant. This applies to all forms of applications to make entry under the public land laws. Application papers have no force until filed in the local land office. The nearer the date of execution of the affidavits approaches the date of filing, the greater the probative force of such affidavits. If all affidavits were executed before the officials at the local land offices, it would be possible for the execution of such affidavits to coincide with the filing. But the law permits such affidavits to be executed before certain other officers more or less remote from the local offices. Therefore, it is not practicable in all cases to require the affidavits to cover the time up to the very moment of filing. The most that can be required is that the execution of the affidavits in support of the application be reasonably near the date of the filing. It is difficult to see the importance of the fact that at the time of the execution of the application papers, including the affidavits, the land to be applied for may be embraced in an uncanceled entry or is not at the time open to entry, if in fact it is about to be released from the prior entry or is about to be opened under Government instructions. The thing of importance is to have the affidavits bear a date as near as practicable to the date of filing.

In view of the confusion which seems to exist, it appears advisable to fix an arbitrary rule marking the limit of the period to be considered by the Department as a reasonable time for filing after the execution of the application papers. It is believed that ten days will afford ample time for the transmission by mail of any such application, with liberal allowance for ordinary delays. It is accordingly directed with reference to applications filed on and after October 1, 1914, that the affidavits in support thereof shall have been executed within ten days prior to the filing of such application in the local land office. The Commissioner will prepare appropriate instructions to this effect and submit the same for departmental consideration.

The decision appealed from is reversed.

RACE v. LARSON.

Motion for rehearing of departmental decision of May 29, 1914, 43 L. D., 313, denied by First Assistant Secretary Jones, August 13, 1914.

GRAND VIEW SEEPAGE RESERVOIRS AND DITCHES.

Decided May 29, 1914.

RIGHT OF WAY—MARGINAL LIMITS OF RESERVOIR.

The high-water line of water having a natural ground shore is the marginal limit thereof within the meaning of section 18 of the act of March 3, 1891, granting rights of way for reservoirs, canals and ditches "to the extent of the ground occupied by the water of the reservoir and of the canal and its laterals, and fifty feet on each side of the marginal limits thereof"; but where the water is confined by a constructed wall, dam or embankment, the marginal limit of such wall, dam or embankment constituting a portion of the reservoir should be taken as the marginal limit in estimating the fifty-foot outward boundary of the right of way.

JONES, First Assistant Secretary:

Appeal has been filed by J. E. Painter for the Grand View Seepage Reservoirs and Ditches, applicant for right of way under the acts of March 3, 1891 (26 Stat., 1095), and May 11, 1898 (30 Stat., 404), from decision of June 2, 1913, of the Commissioner of the General Land Office, holding said application for rejection for the stated reason that same will conflict with the proper operation of the Riverside Reservoir, already existing, in close proximity to which the proposed Grand View Seepage Reservoirs and Ditches, right of way for which is applied for, are located.

The claimed rights herein are as to public lands in Secs. 5, 7 and 8, T. 4 N., R. 61 W., Denver, Colorado, land district. Painter's application was filed February 8, 1910, showing surveys for ditches No. 1 and No. 2 with map and statement of said ditches approved and accepted for filing December 28, 1909, by the Engineering Department of the State of Colorado in compliance with the laws of said State and the regulations of said Department.

Notice of said application being given to the Riverside Reservoir & Land Company, controlling said Riverside Reservoir, said company filed April 22, 1912, protest against said application, setting up that said Riverside Reservoir already constructed covers approximately 3600 acres, has a capacity of 2,500,000,000 feet of water, and has cost upwards of \$800,000; that Painter's proposed reservoirs and ditches depend wholly upon the seepage waters from said Riverside Reservoir, which gather in borrow pits made in constructing the

dam of said reservoir and located in close proximity to the outer foot of said dam; that, from the nature of the soil and such proximity of said pits to said dam, which is 196 feet wide at the base and 42 feet high, Painter's reservoirs and ditches would, if allowed right of way as applied for, tend greatly to impair and destroy said dam and Riverside Reservoir; that the latter reservoir was commenced in 1897 and completed in 1907, and has been in use since for storage and irrigation, it being designed to irrigate 50,000 acres; that, because of the insufficient flow of the South Platte River from which said reservoir derives its water supply, large quantities of water are required to be stored in said reservoir during approximately eight months of each year, producing a large amount of seepage waters, especially in said pits and on the lower lands, which tend to slough away said dam; that said company has hitherto maintained ditches for the drainage of said pits, the storage of water in which and upon such adjacent lands would destroy, it is stated, its said dam and reservoir and entail a loss to it of several million dollars; and that it is necessary therefore for said company to control said pits and adjacent lands in order to maintain on such lands adjacent to its dam obstructions to the action of said seepage waters, as fences, trees, shrubbery, grass, etc., which are, it states, the only means whereby such action can be prevented and its dam preserved. Said company asserts also that said seepage waters contained in said pits have been appropriated under the laws of said State by the Riverside Irrigation District, stated to be the chief owner of said Riverside Reservoir, and that the right thereto is now being adjudicated in the courts of said State.

Painter, on behalf of said Grand View Seepage Reservoirs and Ditches, answering said protest, disputes the stated effect of the seepage reservoirs and ditches, right of way for which is applied for, upon said Riverside Reservoir and dam, or of the maintenance of fences, trees, shrubbery, etc., in protecting said dam and reservoir, or that such have been maintained at all, the great amount of seepage waters being claimed to be due to faulty construction of said dam; and he states also that he has purchased from the State of Colorado the land, 11.2 acres, on which is located his reservoir No. 2, which is, he says, the principal seepage collection. Painter denies the alleged appropriation by the Riverside Irrigation District or said Riverside Reservoir & Land Company of said seepage water, and states he himself has prior appropriation of said waters and that said district and company by force dispossessed and divested him of said land and waters.

It appears the District Court for Weld County, Colorado, found in adjudicating Ditch Claim No. 73 of said Grand View Seepage

Reservoirs and Ditches, that the water supply of said ditch is from two sloughs caused by the accumulation of seepage and percolating waters from the Riverside Reservoir in borrow pits outside of the "embankment," with two head gates, and held that—

by appropriation by original construction and use said ditch (through head gate No. 1) is awarded ditch priority No. 85. . . . to date from May 15, 1907, for 4 cubic feet of water per second of time, not to exceed the needs of 80 acres of land, without prejudice to claim for large appropriation. . . . ; without prejudice to any right the claimant of said Riverside Reservoir or its assigns may have, not adjudicable herein, to intercept by recapture or otherwise to prevent the continuing of seepage and percolating waters from said Riverside Reservoir or to prevent the arrival of the same into said borrow-pit sloughs.

Neither said protest by the Riverside Reservoir Company nor the answer by Painter is corroborated, except as to said priority decree.

Upon investigation a special agent reported that :

I find that the proposed reservoirs are located and are contemplated to occupy the borrow pits at the outside foot or toe of the dam of the Sanborn Draw Reservoir, from which material was moved for the construction of the same, and find that the inner line of the proposed reservoirs, as stated by the engineer, is the base or outer toe of the same.

The creation of this reservoir, of the capacity approved by the Department, necessitated the construction of an earthen dam varying from 20 to 30 feet high, with a necessary base from 60 to 100 feet, and it was substantially so constructed.

A strict construction of the act would limit the right of way along the dam as well as the land margin of the reservoir to 50 feet outside the high water contour along the face of the dam, and that portion of the dam extending beyond would be an unauthorized use and occupancy of the public land and a trespass.

In as much as a dam is necessary for the creation of the reservoir and as it is absolutely essential for its maintenance, care and preservation to have the unobstructed right to the use of sufficient space around the foot of the same for that purpose, it would seem that to restrict the limits of the right of way to within 50 feet from the high water contour, would, in effect, defeat the purpose and intent of the act. I am of the opinion, therefore, that a reasonable construction of the act and one that would render it operative for the full purpose intended would be that the canal or ditch company would have the right to occupy such right of way so far as was necessary for the construction, maintenance and care of the works, and therefore that the right of way would extend around the outer foot of the necessary dam. In this view of the matter, therefore, the application would conflict with the approved right of way for the Sanborn Draw, or Riverside Reservoir, as constructed.

The Commissioner has recommended disapproval of the right of way applied for for the reason that—

though the proposed reservoirs are outside the 50-foot marginal limits of a constructed reservoir, . . . such proposed reservoirs would tend to hinder and impede the owners of the already constructed reservoir in properly maintaining the same,

No hearing has been had in this case nor does any appear to be warranted upon the uncorroborated allegations of either party, as upon consideration of the record presented disapproval of this application for right of way is warranted upon other grounds appearing from said record than that stated in the decision appealed from. It is stated in said decision that the proposed reservoirs are outside of the 50-foot marginal limits of the constructed Riverside Reservoir. This statement is evidently based upon the assumption that said 50-foot limit runs from the high water line on the inside of the dam of said reservoir, in accordance apparently with the literal language of section 18 of said act of March 3, 1891, under which said Riverside Reservoir was constructed and which grants a right of way for reservoirs, canals and ditches "to the extent of the ground occupied by the water of the reservoir and of the canal and its laterals, and fifty feet on each side of the marginal limits thereof," and in accordance also apparently with the regulations requiring the survey and fixing of the high water line within a reservoir, canal or ditch as the marginal limit of such reservoir, canal or ditch, from which said fifty feet are estimated. (36 L. D., 567, 572, par. 11.)

Upon careful consideration of said act granting right of way for irrigation purposes, and of the practical operation thereof, the Department is convinced that such literal following of the statute is not warranted, leading as it does to an absurdity in confining such right of way to the high water line on the inside of a large constructed dam, which places the 50-foot limit far within the embankment of such dam, a large part of such embankment outside of such limit constituting a trespass upon such outlying lands. Necessarily, the high water line of water having a natural ground shore must be taken as the marginal limit of such water, but where the water is confined by a constructed wall, dam or embankment, the marginal limit of such wall, dam or embankment constituting a portion of a reservoir should be taken as the marginal limit, to that extent, of such reservoir in estimating the 50-foot outward boundary of the right of way granted by said act. The physical features of the case necessitate such practical construction of said act. The words contained in said section 18, "fifty feet on each side of the marginal limits thereof," are referable to the words "reservoir," "canal" and "laterals" immediately preceding rather than to the word "water," and the words "marginal limits" refers to the marginal limits of such reservoir, canal and laterals.

It appears from the special agent's report herein, and is not disputed apparently, that the proposed Grand View Seepage Reservoirs and Ditches are located immediately at the foot of the Riverside Dam, and they constitute therefore a conflict on the ground with said

approved and constructed Riverside Reservoir, and the right of way applied for can not therefore for this reason be approved. *Allen et al. v. Denver Power and Irrigation Company* (38 L. D., 207); *T. A. Sullivan* (*ibid.*, 493).

A further reason for not approving this application exists in the nature of Painter's water supply and right. While the Department has no control over the water in such cases, and will not attempt to determine rights thereto, it will look into the same "so far as may be necessary to ascertain whether such *prima facie* right to the use of the water or to store the same has been shown as will enable the grant applied for to be utilized for the purposes contemplated by the act." *Chicala Water Company v. Lytle Creek L. & P. Company* (26 L. D., 520); also, *New Bear Valley Ir. Co. v. Roberts* (30 L. D., 382); and the regulations so require (36 L. D., 567); *Instructions* (41 L. D., 10).

An appropriation of waste or surplus water is insufficient to support an application for a right of way where it appears the original or prior appropriation so largely exhausts the supply that little or no waste or surplus water will or is likely to result. (*Instructions, supra.*)

In Colorado, application and use are required to support a right of way for waste or other water. *Schneider v. Schneider* (36 Col., 518); *Green Valley Co. v. Schneider* (50 Col., 606). A waste water appropriator, however, "acquires no vested rights in any particular quantity" (*Mabee v. Platte Land Co.*, 17 Col. App., 476), and has no right over the water while it remains on the original owner's land, as it does not become waste water until it leaves such land (*Burkart v. Meiberg*, 37 Col., 187), and the original owner may "prevent a drop from running into (the waste water appropriator's) ditch," by using it on his own land (*ibid.*), "when acting in good faith." *Green Valley Company v. Schneider, supra.* He is under no obligation to furnish the waste water and is not an interested party as to the waste water appropriation. (*Ibid.*)

The adjudication by the court in this case as to Painter's ditch priority is not determinative of a right to any quantity of water whatever, but only of a right to a priority as to not more than four cubic feet of water should there be any water to which he may have a right, a question not determined in that proceeding. Further, it appears the right of way applied for was intended for the irrigation of certain desert land entries, made by Painter and two others, all of which were canceled, on contests against same, pursuant to departmental decisions rendered March 19 and June 6, 1912, and petitions for certiorari in each of which, filed by the former entryman, seeking

reinstatement of said entries, were this day denied. See case of Jones *v.* Painter. So that this applicant for right of way now has no interest in the lands for the benefit of which such right of way was intended, and such right of way does not appear therefore to be capable of being utilized as contemplated by the law.

For the foregoing reasons, no hearing is warranted in this case at this time, as above stated. Should a hearing be desired, such corroborated showing of facts should be made as will warrant same. Upon the record presented and the undisputed facts appearing, this application for right of way must be disapproved.

The decision appealed from is, for the foregoing reasons, affirmed.

GRAND VIEW SEEPAGE RESERVOIRS AND DITCHES.

Motion for rehearing of departmental decision of May 29, 1914, 43 L. D., 317, denied by First Assistant Secretary Jones, August 12, 1914.

PROVISO TO SECTION 7, ACT OF MARCH 3, 1891.

INSTRUCTIONS.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, June 4, 1914.

CHIEFS OF FIELD DIVISION.

SIRS: I inclose herewith, for your information, a copy of each of the following departmental decisions:

Decision of December 13, 1913, in *ex parte* Jacob A. Harris, of March 10, 1914, in the same case on rehearing [42 L. D., 611, 614], and of January 2, 1914, in *ex parte* George W. Wood [not reported].

From the decision in the Harris case you will observe that it is held by the Department that an entry of the classes referred to in the proviso to section 7 of the act of March 3, 1891 (26 Stat., 1095), is confirmed against, or, in other words, not subject to attack through, any proceeding by the Government in this Department, not begun prior to the expiration of two years from the date of the issuance of the receiver's receipt upon final entry; and that a proceeding by the Government is not a pending contest or protest within the meaning of said proviso until either a hearing has been directed by the Commissioner of the General Land Office upon a sufficient and specific charge, or the entryman is required by the Commissioner to

make a showing of material fact, or to take some further action toward perfecting his claim.

You will observe that the Department holds in the Wood case that the proviso to section 7 of the act of March 3, 1891, *supra*, applies to entries made for lands which have been embraced in coal withdrawals subsequent to entry, if the receiver's receipt issued more than two years before the passage of the act of March 3, 1909 (35 Stat., 844); in other words, the act of March 3, 1909, has no application to entries upon which the claimant was entitled to patent, under said proviso, prior to the passage of the act.

These departmental decisions call attention to the fact that time under the statute of limitation created by the proviso to section 7 of the act of March 3, 1891, runs from the date of the issuance of the receiver's receipt upon final entry. There is no doubt that Congress chose the date of the receiver's receipt rather than of the certificate of the register as controlling, for the reason that payment by the claimant marks the end of compliance by him with the requirements of law. It would be manifestly unjust to make the right to a patent dependent upon the administrative action of the register, subjecting it to such delays as are incident to the conduct of public business and over which the claimant has no control. Payment, of which the receiver's receipt is but evidence, is, therefore, the material circumstance that starts the running of the statute, inasmuch as a claimant is and always has been entitled to a receipt when payment is made.

In view of these decisions, you will immediately go over the cases pending for hearing in your division and postpone hearings on any which appear to be affected thereby.

You are further directed to go over your dockets and report to this office such cases as are pending for investigation and appear to come within the terms of these decisions. Such cases as have heretofore been reported by you, in which proceedings have been ordered, and in which hearings have not been applied for, or, if applied for, in which the dates for hearing have not been set, should also be reported to this office. You will take action on such cases as are pending for investigation in which the two-year period has not yet expired, in order that reports may be submitted therein in sufficient time to enable this office to consider them before the two-year period expires.

Respectfully,

CLAY TALLMAN,
Commissioner.

Approved, June 4, 1914:

A. A. JONES,
First Assistant Secretary.

ROBERTS v. NORTHERN PACIFIC RY. CO.

Decided June 6, 1914.

NORTHERN PACIFIC GRANT—SETTLEMENT CLAIMS—ADJUSTMENT.

Settlements upon lands within the primary limits of the grant to the Northern Pacific Railway Company, made subsequent to approval but prior to the filing of the township plat, are not settlements in good faith upon unsurveyed lands within the meaning of the adjustment act of July 1, 1898.

JONES, First Assistant Secretary:

August 15, 1912, John Roberts filed in the local office at Vancouver, Washington, application No. 04886, to make homestead entry for lots 1, 2, 3 and 4, Sec. 3, T. 9 N., R. 4 E., alleging settlement July 18, 1912, and continuous residence thereon ever since.

These tracts of land are within the primary limits of the grant to the Northern Pacific Railroad, now Railway, Company, under joint resolution of May 31, 1870 (16 Stat., 378), and are situated opposite that portion of the company's line of road which was definitely located September 13, 1873.

Survey of this land was completed in the field June 30, 1909. The plat of survey was approved August 22, 1910, and was filed in the local office August 15, 1912. August 20, 1912, the Northern Pacific Railway Company filed place list No. 320 for these and other tracts of land, aggregating 3656.35 acres.

On the date the plat of survey was filed in the local office, a number of homestead claimants filed applications to make homestead entries for most of the lands embraced in said place list No. 320, claiming the right of adjustment under the terms of the act of July 1, 1898 (30 Stat., 597, 620), as extended by the act of May 17, 1906 (34 Stat., 197).

From a decision of the Commissioner of the General Land Office, dated May 15, 1913, rejecting the homestead application of the claimant, appeal has been prosecuted to the Department.

It appears from the foregoing statement of facts that settlement was made upon the land three years after survey in the field, and nearly a year after the approval of the plat of survey. Thus identified, the land can not be considered as unsurveyed land, for the purposes of adjustment under the act of 1898, and amendments thereto, nor can it be held that a party going upon a portion of an odd-numbered section so identified is a settler in good faith as against the claim of the railroad company under its grant. Moreover, while it does not appear that demand has been made on the company for the relinquishment of this tract it may be added that had such demand been made it would have been optional with the company whether or not it complied with such demand. (36 L. D., 182, 526.) Under the facts of this case, however, the law did not authorize such demand or permit such relinquishment.

The decision appealed from is accordingly affirmed.

VICTOR PORTLAND CEMENT CO. v. SOUTHERN PACIFIC RY. CO.

Decided June 6, 1914.

RAILROAD GRANT—MINERAL LAND—DEPOSIT OF SHALE.

A deposit of shale suitable only for use in the manufacture of Portland cement does not warrant withholding the land containing it from disposition under a railroad grant.

JONES, *First Assistant Secretary*:

This is an appeal by the Victor Portland Cement Company from the Commissioner's decision of December 3, 1912, dismissing its protest against list No. 149, serial No. 010377, under the act of July 27, 1866 (14 Stat., 292), in so far as it involved Sec. 1, T. 6 N., R. 3 W., S. B. M., Los Angeles land district, California.

Said list was filed April 27, 1910. On May 26, 1910, the Victor Portland Cement Company presented application 010782 for patent to the Cement No. 1 placer mining claim comprising the NW. $\frac{1}{4}$, Sec. 1; Cement No. 2 placer mining claim comprising the NE. $\frac{1}{4}$, Sec. 1; the Silica placer mining claim comprising the SE. $\frac{1}{4}$, Sec. 1, and the White placer mining claim comprising the N. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 12, of the same township and range. The application was rejected for conflict with the railroad company's list. In connection with the appeal by the cement company from that action, it filed a protest against the railroad company's list, charging that the N. $\frac{1}{2}$ and SE. $\frac{1}{4}$ of said section 1 contain "deposits of limestone and aluminum ore" and are embraced in valid and subsisting placer mining locations made on account of such deposits. Hearing was had November 24, 1911, as the result of which the local officers found that the S. $\frac{1}{2}$ NW. $\frac{1}{4}$, S. $\frac{1}{2}$ NW. $\frac{1}{4}$ NW. $\frac{1}{4}$, S. $\frac{1}{2}$ NE. $\frac{1}{4}$, SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ NE. $\frac{1}{4}$, S. $\frac{1}{2}$ NE. $\frac{1}{4}$ NE. $\frac{1}{4}$, NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ NE. $\frac{1}{4}$, N. $\frac{1}{2}$ SE. $\frac{1}{4}$, SE. $\frac{1}{4}$ SE. $\frac{1}{4}$, N. $\frac{1}{2}$ SW. $\frac{1}{4}$ SE. $\frac{1}{4}$, of section 1, is mineral in character, and recommended that the list be canceled, to the extent of said subdivisions. On appeal by the railroad company, the Commissioner, by the decision here complained of, found that none of the lands in section 1, embraced in the mining company's application, is mineral in character and, for that reason, dismissed the protest and held the application, to that extent, for rejection. It also directed that the mining company be called upon to show cause why its application, as to the White placer mining claim, should not be rejected for the same reason.

The record in the case has been carefully examined. It appears that the only mineral value that section 1 is asserted by any of the protestant's witnesses to possess is on account of deposits of shale shown to contain varying percentages of silica, alumina, iron oxide, calcium carbonate, magnesium carbonate, ranging, it appears, from more or less argillaceous or clayey limestone to indurated or hardened calcareous clay, incapable of utilization for any purpose save as an aluminum

silicate ingredient for Portland cement which, it is testified, can be manufactured from such shale in connection with so-called "high lime" which is found on nearby tracts claimed by the protestant company.

In the case of *Bettancourt et al. v. Fitzgerald* (40 L.D., 620), which involved a tract claimed to be mineral in character on account of a deposit of clay alleged to be susceptible of use as a cement material, and for that reason excepted from disposition under the acts of July 1, 1898 (30 Stat., 597), and May 17, 1906 (34 Stat., 197), it was said, page 621:

The Department is of opinion, from an examination of standard authorities on cement materials and manufacture, that clay suitable for use in the manufacture of Portland cement is so widely distributed; that its value in a natural state in place constitutes such a small element of the cost of the manufactured product; and that its practical availability as a cement ingredient is so largely dependent upon the existence of certain extremely favorable artificial as well as natural conditions, it can not properly be regarded in and of itself as a valuable mineral deposit within the meaning of the mining laws.

It was accordingly held that such a deposit is not excepted from disposition under the acts named.

Except as to physical characteristics which, so far as shown, do not add to its value as a cement ingredient, the deposit of shale involved in this case does not materially differ, in a practical point of view, from ordinary clay which is largely used for the same purpose as that for which this shale is alleged to be solely valuable and, for the reasons stated in *Bettancourt et al. v. Fitzgerald*, *supra*, it must be held that this is not such a deposit as would warrant the withholding of a tract on which it occurs from disposition under a grant to a railroad company, nor, under the circumstances of this case, justify the patenting of the tracts in question under the mineral laws.

The decision appealed from is therefore affirmed.

PAUL KOLTISKA.

Decided June 6, 1914.

ENLARGED HOMESTEAD—ADDITIONAL—WITHDRAWAL OF FINAL PROOF.

There is no provision of law permitting a homestead entryman to withdraw the final proof submitted upon his entry with a view to bringing himself within the provisions of section 3 of the act of February 19, 1909, authorizing the entry of contiguous land as additional to an original entry "upon which final proof has not been made."

JONES, First Assistant Secretary:

This case involves homestead entry 03105 made July 16, 1909, by Paul Koltiska for the S. $\frac{1}{2}$ NW. $\frac{1}{4}$ and N. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 26, T. 55 N.,

R. 83 W., Buffalo, Wyoming. He made final proof December 14, 1912, and certificate 03105, issued December 21 of that year. The entry was approved for patenting July 21, 1913. He appears to have filed a consent to receive his restricted patent under the act of June 22, 1910 (36 Stat., 583), and that consent was duly noted on the records of the local office and on the records of the General Land Office.

It appears that the entry was withdrawn from the channel leading to patent July 28, 1913, by an application made by the entryman to withdraw the proof so as to enable him to make an additional entry for the SE. $\frac{1}{4}$ of the same section under the act of February 19, 1909.

The Commissioner of the General Land Office, September 22, 1913, rejected his petition to withdraw the proof. Application to enter was rejected by reason of the fact that the land applied for under the enlarged homestead act was not then, and the records show is not yet, subject to entry under that act because the same has not been designated.

From that action claimant appeals. He contends that it was error to deny petition to withdraw his final proof without prejudice to his rights; that he submitted final proof under a mistake of fact, having been advised that the only way he could make an entry so as to include the said SE. $\frac{1}{4}$, Sec. 26, was by making and submitting final proof for the land described in said petition, which proof he duly submitted. He contends that he should be permitted to withdraw said final proof until such time as he could enter said SE. $\frac{1}{4}$.

The third section of the act of February 19, 1909 (35 Stat., 639), making provision for additional entries under that act, provides that when lands are of the character therein described (duly designated), "upon which final proof has not been made, shall have the right to enter public lands," subject to the provisions of the act, contiguous to the former entry, which should not, together with the original entry exceed 320 acres, and residence upon and cultivation of the original entry shall be deemed residence upon and cultivation of the additional entry.

It is clear that there is no law which authorizes the withdrawal of final proofs for the purpose of making the additional entries under said act of 1909.

The fact that claimant may have been misled and misinformed with respect to the matter can make no difference. Moreover, as stated by the Commissioner, the land is not subject to entry under the enlarged homestead act for the reason that it has not been designated.

After due consideration of all that has been stated in the appeal, the Department finds no sufficient grounds for disturbing the action appealed from which is hereby affirmed.

McDONALD v. NORTHERN PACIFIC RY. CO.

Decided June 13, 1914.

SURVEY—APPROVAL AND FILING OF PLAT—RELATION.

The approval and filing of a plat of survey relate back to the actual making of such survey, and the survey in the field identifies each tract shown thereon and constitutes notice to all intending settlers of the *locus* of tracts previously claimed in terms of government subdivisions, except as may be otherwise provided by statute.

JONES, *First Assistant Secretary*:

George A. McDonald has appealed from the decision of the Commissioner of the General Land Office rejecting his contest affidavit against the Northern Pacific Railway Company's selection, under the act of March 2, 1899 (30 Stat., 993), for the SE. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 30, and N. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 31, T. 42 N., R. 4 E., B. M., Lewiston, Idaho, land district.

It is alleged by McDonald that he settled on the above described land on October 22, 1906, and that he has since continuously resided thereon; that the attempted selection by the Northern Pacific Railway Company is illegal and void, for the reason that the said company wholly failed to post notice of such selection on the land, and that the affiant had no notice thereof, actual or constructive, at the time of his settlement. It is shown by the record that the selection was filed in the local office on July 11, 1901, that the township had been surveyed in the field prior to the date of McDonald's alleged settlement, and that since such alleged settlement the survey has been approved and the plat thereof filed in the local office.

Under the practice then recognized by this Department, the company described the land in controversy in terms of the future survey thereof, that is to say, as "what will be, when surveyed, the SE. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 30, and the N. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 31, T. 42 N., R. 4 E., B. M." No description by metes and bounds, or reference to natural monuments, was attempted, nor does it appear that any notice was posted upon the land.

The Department has under immediate consideration the question of the relative rights of the railway company under a selection like the one here at issue, and of a homestead applicant who alleges settlement prior to the survey of the township in the field. In the case of *F. A. Hyde et al.* (40 L. D., 284), my predecessor held, *syllabus*:

An application to make forest lieu selection of unsurveyed lands not identified with reference to natural boundaries or monuments or such markings upon the ground as would constitute notice to intending settlers, is no bar to the attachment of rights under the act of May 14, 1880; and while approval of the township plat of survey is an identification of the lands as of the date of such ap-

proval, and, by relation, as against the government, as of the date of the filing of the application, it does not and can not so attach as to cut out intervening adverse settlement claims.

Whatever conclusion may be reached ultimately as to the soundness of the holding in the Hyde case as to settlements made prior to survey in the field, the Department is convinced that the reason assigned for the decision in that case has no application to the facts presented on this appeal. If, as was held in the Hyde case, a selection identifying the land sought by reference to natural boundaries or monuments or such markings upon the ground as would constitute notice to intending settlers, is valid as against such intending settlers, then it is obvious that a selection in terms of a future survey will, upon identification by actual survey, charge all subsequent settlers with notice of the selection, where, as in this case, the survey is approved and filed. The act of March 2, 1899, *supra*, requires that the selected land shall be described with a reasonable degree of certainty, and whatever of uncertainty may reside in a description in terms of a future official survey is reasonably removed by the making of such survey, and absolutely removed by its approval.

To the extent that it holds that a selection like this is valid as to description of the land against the Government, the Department agrees with the decision in the Hyde case; but it is constrained to hold, and does hold, that the approval and filing of a plat of survey relate back to the actual making of such survey, and that the survey in the field identifies each tract shown thereon, and constitutes notice to all intending settlers of the *locus* of tracts previously claimed in terms of Government subdivisions, except as may be otherwise provided by statute.

The conclusion hereinbefore reached is based upon these considerations: no reasonably prudent person intending to settle upon the public domain should or will neglect to investigate the records in the local land office, or to examine the land itself; inquiry made by the appellant, at the local office, at the time of his settlement, would have disclosed that this selection was on file; examination of the land at that time would have discovered the monuments of the Government survey; and to now decide that such alleged settlement should prevail over the prior selection, made, it is conceded, in conformity with departmental practice at that time, would be a condonation of failure to make inquiry at the local office or investigation upon the ground of the existence of prior claims. In short, this appellant either knew or could easily have discovered the existence of such claim at the date of his settlement, and the selection, being undoubtedly a proper one as against the Government, under the uniform rulings of the Department, it was a good one against McDonald.

The decision appealed from is accordingly affirmed.

ANNIE L. DICKSON.

Decided June 13, 1914.

NOTARY PUBLIC—MAY BE DESIGNATED TO TAKE TESTIMONY.

A notary public may be designated under Rule 28 of Practice, by order of the register and receiver, to take testimony in a contest case.

JONES, First Assistant Secretary:

Annie L. Dickson has appealed from the decision of the Commissioner of the General Land Office, dated August 23, 1913, holding for cancellation her homestead entry made on June 18, 1908, for the SW. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 31, T. 26 N., R. 24 W., I. M., Woodward, Oklahoma, land district, upon which she offered commutation proof on December 16, 1910, but cash certificate was withheld pending an investigation of the claim.

On August 6, 1912, the Commissioner of the General Land Office directed that proceedings be instituted against this entry upon the charge that claimant had not established and maintained residence on the land, nor cultivated the same. Notice was issued and served upon the claimant, she filed a denial of the charge, and a hearing was had on February 18, 1913, before a notary public at Laverne, Oklahoma.

At the time and place designated in the notice, the Government and the claimant appeared before the notary and offered evidence, upon consideration of which the local officers rendered their decision of March 19, 1913, recommending that the entry be cancelled. The Commissioner affirmed their action.

It is urged in this appeal that a notary public is not an officer qualified to take testimony under Rule of Practice 28; that said Rule of Practice was not complied with, in that no order of the register and receiver appears for the taking of testimony before the notary public, and that the certificate of the notary public is insufficient under said Rule 28.

Inasmuch as a notary public is an officer authorized to administer oaths, it is held, following a long and uniform line of departmental decisions, that a notary public, under Rule of Practice 28, may, by order of the register and receiver, be designated to take testimony in contest cases. With this record is the appointment of the notary public to take depositions in the case, under Rule of Practice 28, at Laverne, Oklahoma, on February 18, 1913, signed by the register and receiver, upon form 4-082, prescribed for use in such cases by the Department. Such a commission fulfills all the requirements of the rule for an order by the local officers, and no question has been raised as to the sufficiency of the notice of the time and place for hearing. The certificate of the notary public is also upon a form adopted by the Department for use in such cases, and all of the

requirements of Rules 24, 25 and 28 were complied with, except that the witnesses did not subscribe the testimony respectively given by them; but the signatures of said witnesses were specifically waived, at the hearing, by the representative of the Government and the attorney for the claimant, in a written stipulation. There is no foundation, therefore, for the technical objections raised, with reference to the regularity of the proceedings before the notary public.

As to the facts of the case, the decision of the Commissioner correctly reviews the evidence, and no restatement thereof is here necessary. The claimant did not establish and maintain residence on the land, nor did she cultivate it; the evidence condemns the proof as false and fraudulent.

The decision appealed from is accordingly affirmed and the entry canceled.

AYERS ET AL. v. ROSE ET AL.

Decided June 18, 1914.

FOREST LIEU SELECTIONS—UNSURVEYED LANDS—SETTLEMENTS.

Forest lieu selections of unsurveyed lands are not defeated by settlements made with full knowledge of such prior claims.

JONES, First Assistant Secretary:

January 2, 1900, C. B. Ayers, by George M. Stone, his attorney in fact, made lieu selection, now 02478, Seattle, Washington, series, under the act of June 4, 1897 (30 Stat., 36), for the unsurveyed SE. $\frac{1}{4}$, Sec. 22, SW. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 23, NW. $\frac{1}{4}$ NW. $\frac{1}{4}$, Sec. 26, NE. $\frac{1}{4}$, E. $\frac{1}{2}$ W. $\frac{1}{2}$, and NW. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 27, T. 33 N., R. 9 E., W. M., containing 600 acres, in lieu of 600 acres within the boundaries of the Olympic and Cascade National Forests.

The plat of survey was filed in the local office April 17, 1913, and on that day an application was filed to adjust the selection to the same descriptions contained in the selection as first given.

On April 17, 1913, there were filed in the local land office four homestead applications involving certain tracts embraced in the said selection. The homestead claimants were Peter Thomas Rose, Richard Lenore Dean, William Lester Byrd, and Aldrich Willson Fenton. Rose alleged settlement on the land December 21, 1911, and continuous residence thereafter; that he had a habitable residence, had cultivated and cleared a portion of the land, and that his improvements were worth about \$900.

Dean alleged settlement on December 22, 1911, and continuous residence thereafter; that he had cultivated a portion of the land, and that his improvements were worth about \$800.

Byrd alleged settlement December 22, 1911, and continuous residence thereafter; that he had cultivated and improved a portion of the land, and that his improvements were worth about \$800.

Fenton alleged settlement December 20, 1911, and continuous residence thereafter; that he had cultivated a portion of the land, and that his improvements were valued at about \$900.

The local officers rejected said homestead applications because of conflict, and the Commissioner, by decision of September 29, 1913, ordered a hearing to determine the merits of the respective claims. Said hearing was ordered, upon condition, however, that the selector furnish a non-occupancy affidavit showing that the land was not occupied at the date of approval of the plat of survey by the Commissioner of the General Land Office.

A petition for certiorari was then filed by the Enterprise Lumber Company, as transferee under the selection. The company requested that the record be considered by the Department, and that the order directing a hearing in the case be vacated. It was represented that the selection was made January 2, 1900, and approved by the Commissioner's letter of June 16, 1902. When the selection was made the land was described by subdivisions, and when the selection was adjusted to the survey the same descriptions were given. On December 21, 1911, a supplemental description of said selection was filed in the local land office, in which said lands embraced in the selection were described by metes and bounds and tied to a permanent Government monument. It was urged that the hearing was ordered by the Commissioner upon an insufficient showing by the homestead claimants with reference to their alleged settlements, inasmuch as it was not shown that they made their alleged settlements without knowledge of the existing prior selection.

The record was transmitted to the Department and it was found that in an affidavit therewith, executed December 20, 1911, by L. D. W. Shelton, which was filed in the local land office December 21, 1911, wherein the lands embraced in the said lieu selection were described by metes and bounds, it was stated that the said Shelton at the request of the Enterprise Company, posted sixteen notices on the said land, beginning on December 12 and ending December 18, 1911, the particular points at which the notices were posted being stated minutely, the courses and distances fully described, and it was stated that all lines were blazed around the entire tract. It further stated that Walter Mayberry and Joe Chenier were present and assisted said Shelton, and that each signed his name to said notices. It further stated that affiant went thoroughly over every part of the land during said survey and posting, and that, of his own knowl-

edge, no portion of said land was occupied by any person or persons, nor was there any settlement or improvement of any nature thereon.

By departmental order of February 6, 1914, the said homestead claimants were required to furnish affidavits stating specifically whether they had notice or knowledge of the existing prior selection and the boundary lines thereof at the time of their respective settlements. It was observed that from the showing in support of the petition the metes and bounds description filed in the local land office December 21, 1911, was constructive notice of the selection to all persons after that date, and that if the lines were run and blazed and notices posted, as stated in said affidavit, it would seem that notice was thus given to all persons, at least after December 18, when that work was completed.

Response has been made to the rule placed upon the alleged settlers concerning the knowledge or notice which they had of the selection prior to their alleged settlements. It is urged by their counsel that the said claimants should not be required to make the showing called for under his view of the law, and he asked a rehearing upon that proposition. He further, however, attempted to comply with the order by furnishing the affidavits of the respective settlers. It is shown by said affidavits that the said homestead claimants knew of the prior selection and that the boundaries had been marked prior to such settlements; that they consulted counsel in regard to the right of claimants and were informed that unsurveyed lands of the United States could not be taken or held in view of the mandatory law confining such selections to surveyed lands.

It is thus seen that the homestead claimants make no pretensions that they settled in ignorance of the selection. They admit they knew of it and the lines of that claim, but they rely squarely upon the assumption that, as a matter of law, the selection was ineffective because of failure to identify the lands by metes and bounds description at the time the selection was made, citing the case of *F. A. Hyde et al.* (40 L. D., 284), as authority for this contention. They then proceed to argue that the selection, having been defective and a nullity according to their view, could not, after the date of the act of June 6, 1900 (31 Stat., 614), and prior to survey, be perfected because said act restricted lieu selections under the act of June 4, 1897, to surveyed lands.

These decisions are more specious than convincing. The doctrine announced in the case of *Hyde, supra*, was intended as a shield to protect *bona fide* settlements made without knowledge of conflicting prior selection of unsurveyed lands without sufficient identifying description, and that case can not be invoked as an arm for an of-

fensive attack against a selection where the settlement was made with full knowledge of the prior claim and for the very purpose of taking advantage of its supposed defects in that regard. The purport of that decision is shown by the following excerpt therefrom:

The act of 1897, *supra*, did not supersede said act of May 14, 1880. It did not provide for the withdrawal of such lands from settlement. This could only have been effected under proffers of the character here involved, by marking the land selected upon the ground, or by reference to such natural boundaries or monuments as would have been notice in fact or in law to intending settlers. A reference to lands as what will be, when surveyed, a technical subdivision of a specified section, gives no such notice either in law or in fact. So it results that until the approval of the survey such settlers had no notice and no means of acquiring information which would have enabled them to avoid conflicts with these selections.

The selector herein had complied with the requirements of the Department and the selection was approved by the Commissioner more than nine years prior to the decision just referred to. Immediately after that decision the selector took steps to meet its requirements by marking out the lines and filing metes and bounds description in the local land office, and posting proper notices of warning to intending settlers or claimants. Also soon after that decision these adverse claimants sought to defeat the selection under advice from their present attorney to the effect that the selection was a nullity, but also with full knowledge of its existence and the boundaries thereof. Under these circumstances, the oft-quoted expression of Justice Brewer that "the law deals tenderly with one who in good faith goes upon the public lands with a view to making a home thereon," has no application to these alleged settlers.

The Department can not accede to the contention that the later description given by the selector in an attempt to meet the ruling in the Hyde case was futile because of the said act of June 6, 1900. That act, while limiting future selections to vacant surveyed non-mineral public lands subject to homestead entry, contained the following proviso:

That nothing herein contained shall be construed to affect the rights of those who, previous to October 1, 1900, shall have delivered to the United States deeds for lands within forest reservations and make application for specific tracts of lands in lieu thereof.

Like provisions are contained also in the act of March 3, 1901 (31 Stat., 1037), referred to by counsel for the homestead claimants.

Such selections filed prior to said act of 1900 for unsurveyed lands, even if defective in some respects, are not nullified by said act but may be completed in the absence of other sufficient objection. Arden L. Smith (31 L. D., 184); Gary B. Peavey (31 L. D., 186). In the present case the alleged settlements offered no bar to the completion of the selection.

For the reasons stated, the order of the Commissioner for hearing to take testimony is hereby vacated and the homestead applications are rejected.

L. D. FOSKETT.

Decided June 18, 1914.

REPAYMENT—MORTGAGEE.

A mortgagee under a mortgage which is merely a lien on the land is not entitled, under either the act of June 16, 1880, or the act of March 26, 1908, to repayment of the moneys paid by the entryman.

JONES, *First Assistant Secretary*:

Appeal has been filed from decision of the Commissioner of the General Land Office dated July 15, 1913, denying the application of L. D. Foskett, mortgagee of Otto Schulze, for repayment of moneys paid by the latter in connection with his commuted homestead entry 01356 for the SW. $\frac{1}{4}$, Sec. 26, T. 155 N., R. 38 W., Crookston, Minnesota.

The record shows that Schulze made homestead entry for the land described October 6, 1905, upon which he submitted commutation proof, and cash certificate was issued March 2, 1909. He executed a mortgage upon the land March 9, 1909, in favor of L. D. Foskett, secured by one note payable November 1, 1914, at the Bank of Crookston, Crookston, Minnesota. No proceedings have been had under the authority contained in the mortgage looking to the sale of the land or of the foreclosure of said mortgage. The entry was canceled January 18, 1913, as the result of proceedings based upon charges preferred by a special agent of the General Land Office that Schulze had neither established and maintained residence upon the land nor cultivated the same.

The act of June 16, 1880 (21 Stat., 287), in section 2 thereof, authorizes repayment in the instances enumerated therein of money paid in connection with an entry "to the person who made such entry or to his heirs or assigns." It was held in the case of California Mortgage Loan and Trust Co. (24 L. D., 246):

A mortgagee is not an assignee, within the intent and meaning of the act providing for repayment, if the mortgage is merely a lien on the land.

In the case of Alexander Fraser (38 L. D., 151), it was set forth and found:

Section 3334, Revised Laws of Minnesota, 1905, construing the word "conveyance," states that it shall include every instrument in writing whereby any interest in real estate is created, aliened, mortgaged or assigned, thus recognizing the distinction between an assignee and a mortgagee. Section

4441 provides that a mortgage on real property is not to be deemed a conveyance so as to enable the owner of the mortgage to recover possession of the real property without a foreclosure. In other words, under the laws of Minnesota a mortgagee is simply a creditor whose debt is secured by means of a lien on the land.

In the case of *United States v. Commonwealth Title Insurance and Trust Company* (193 U. S., 651) it was said:

At common law a mortgage was a conditional conveyance to secure the payment of money or the performance of some act, to be void upon such payment or performance. By more modern law and under the statutes of many States a mortgage is a mere lien upon land. Its dominant attribute is security, but nevertheless it must be regarded as "both a lien in equity and a conveyance at law." Pomeroy, Section 1191. The interest of a mortgagee in the land is therefore conveyed to him by the mortgagor, and even if under the laws of Montana a mortgage is primarily security for a debt and creates a lien only it is a lien which may become the title.

It was held in that case that the mortgagee was an assignee within section 2 of the act of 1880, but the facts in said case were that the mortgage was foreclosed and the property purchased by the mortgagee at sheriff's sale under decree of the court.

It is apparent that repayment to the applicant herein is not authorized under the act of June 16, 1880.

The act of March 26, 1908 (35 Stat., 48), in section 1 thereof, provides for repayment of money where any application, entry, or proof is rejected "to the person who made such application, entry or proof or to his legal representatives," and neither the applicant nor his legal representatives were guilty of fraud or attempted fraud in connection with the transaction. The instructions of April 29, 1908, recognize heirs, executors, and administrators as legal representatives under said act. Upon the facts developed at the hearing in this case the Commissioner of the General Land Office found in his decision, which was affirmed by the Department, that the entryman's bad faith was apparent. Of course an assignee or mortgagee could not have any rights superior to those of the entryman. However, it was held in the case of *Alexander Fraser, supra*:

A mortgagee under a mortgage which is merely a lien on the land is not a "legal representative" within the meaning of the act of March 26, 1908, authorizing repayment of purchase money and commissions to the persons who originally made the payment or their "legal representatives."

It was said in that case:

It is clear that the mortgagee, simply having a lien upon the land for the payment of a debt, is not a legal representative, who certainly must be a party succeeding to all the rights of the entryman.

The decision of the Commissioner of the General Land Office herein denying repayment is hereby affirmed.

EDWIN E. CAINE.

Decided June 18, 1914.

SOLDIERS ADDITIONAL—MINOR ORPHAN CHILDREN.

In contemplation of section 2307, Revised Statutes, the children, male or female, of a deceased soldier, are "minor orphan children" until 21 years of age, notwithstanding the statutes of the State declare that females reach their majority at 18.

JONES, *First Assistant Secretary*:

Edwin E. Caine has appealed from decision of July 24, 1913, by the Commissioner of the General Land Office requiring additional evidence in support of his application to make soldiers' additional entry under Secs. 2306 and 2307, Revised Statutes, for lots 1 and 2 of the NE. $\frac{1}{4}$, Sec. 16, T. 36 N., R. 70 E., M. D. M., Carson City, Nevada.

The application is based on an assignment of 80 acres of the claimed additional right of James G. S. Van Brunt, who, it is alleged, performed military service in the Army of the United States during the Civil War for the required period and made homestead entry in the State of Michigan on September 10, 1866, for 80 acres, which was canceled on relinquishment August 16, 1868.

The assignment was made by the administrator of the estate of the said soldier, appointed by the Probate Court of Lawrence County, South Dakota, showing that the soldier died in that county February, 1899. According to the petition, there were at that time three children of the said soldier, 38, 32, and 30 years of age, respectively. The petition is dated December 22, 1911. According to a statement made by the soldier, in connection with his pension claim, it also appears that he had one daughter who would have been under 21 years of age at the date of his death, above stated.

The Commissioner referred to the case of John H. Mason (41 L. D., 361), wherein the Department held that if there was no unmarried widow of the soldier, his minor children at the date of his death acquired the right to make soldiers' additional entry, which right was without qualification, condition or liability of divestiture, and was not lost by failure to exercise the right prior to reaching the age of majority. He accordingly required further evidence as to the correct names, the dates of the births of the heirs of the soldier, and also the date of their father's death.

Upon appeal it is urged that the additional right was purchased prior to the date of the decision in the Mason case, *supra*, and under the practice theretofore obtaining in the Department the additional right passed to the estate of the soldier in case the minors failed to exercise the same prior to majority. It is also urged that

even under the ruling in the Mason case, the assignment should be accepted for the reason that under the laws of the State of South Dakota the daughters reached majority at the age of 18 and therefore were of age at the date of the soldier's death and were not minors within the contemplation of section 2307, Revised Statutes, or the Mason decision above referred to.

Section 2307, Revised Statutes, is closely related to section 2292 in the chapter of the Revised Statutes on homesteads. Section 2307 prescribes the rights of "minor orphan children" in certain contingencies, without defining the term "minor." Section 2292 also grants certain special rights (under the circumstances therein stated), as to "infant child or children under twenty-one years of age." It may fairly be assumed that Congress intended by this legislation to define the expression infant children to mean those under 21 years of age. Such rule should be applied uniformly and not varied by the laws of the States. A Federal statute of a general nature applies to all the States and should not be construed with reference to the conditions in one State alone. In the case of *Anderson v. Peterson* (36 Minn., 547), it was held that although the law of Minnesota fixes the age of the majority of female children at 18 years, yet such law would not operate to defeat the right granted to the daughter of a soldier who was an adult under the State law but a minor under the Federal law. Where such conflicts are presented between the State and Federal laws, the Federal statute controls, as the latter is the supreme law of the land. Story on the Constitution. (Vol. 2, p. 579.) This question was considered by the Department in the case of *Jonah Lowe* in its unreported decision of September 29, 1909, which involved an assignment of a soldier's additional right by a daughter of a soldier who was under 21 years of age but over 18 years of age. The assignment was made by guardian in the State of Arkansas where females reach majority at 18. It was held that although there seemed to be no authority for the appointment of a guardian for the beneficiary, who was at that time of age under the State law, yet she was under 21 years of age and was entitled to appropriate the right under section 2307, Revised Statutes; that if she had made the assignment in person it would be accepted, and although the assignment was made by guardian without valid authority, and for that reason irregular and of no effect in itself, yet if she accepted the benefit of the attempted sale, or if she had actual knowledge thereof and acquiesced therein she would be estopped from denying the transfer. The assignee was allowed a reasonable time within which to furnish evidence that she accepted the benefit of the assignment or had knowledge thereof and acquiesced therein.

It seems clear from the papers in this case that under the above construction there was a minor at the date of the soldier's death and it is believed that the requirement made by the Commissioner was proper. It also seems necessary to require the applicant to furnish evidence that such minor waived her rights to the said claim or partook of the benefits from the sale. Therefore the decision appealed from is affirmed with the added requirement stated.

EDWIN E. CAINE.

Motion for rehearing of departmental decision of June 18, 1914, 43 L. D., 337, denied by First Assistant Secretary Jones, July 30, 1914.

**RECLAMATION—WATER RIGHT—PROVISO TO SEC. 3, ACT OF
AUGUST 9, 1912.**

INSTRUCTIONS.

**UNITED STATES RECLAMATION SERVICE,
DEPARTMENT OF THE INTERIOR,
Washington, D. C., July 1, 1914.**

The **SECRETARY OF THE INTERIOR.**

SIR: The project managers of the Reclamation Service have requested an interpretation of the meaning of the proviso of section 3 of the act of August 9, 1912 (37 Stat., 265), which reads as follows:

Provided, That no person shall at any one time or in any manner, except as hereinafter otherwise provided, acquire, own, or hold irrigable land for which entry or water right application shall have been made under the said reclamation act of June seventeenth, nineteen hundred and two, and acts supplementary thereto and amendatory thereof, before final payment in full of all instalments of building and betterment charges shall have been made on account of such land in excess of one farm unit as fixed by the Secretary of the Interior as the limit of area per entry of public land or per single ownership of private land for which a water right may be purchased respectively, nor in any case in excess of one hundred and sixty acres, nor shall water be furnished under said acts nor a water right sold or recognized for such excess; but any such excess land acquired at any time in good faith by descent, by will, or by foreclosure of any lien may be held for two years and no longer after its acquisition; and every excess holding prohibited as aforesaid shall be forfeited to the United States by proceedings instituted by the Attorney-General for that purpose in any court of competent jurisdiction; and this proviso shall be recited in every patent and water right certificate issued by the United States under the provisions of this act.

This proviso has been the subject of decision by the Department in two cases, namely, that of Amaziah Johnson (42 L. D., 542) and Keebaugh and Cook (42 L. D., 543).

In the Johnson case the Department decided that as his farm unit contained 69.95 acres of irrigable land he was qualified to purchase the land of his neighbor containing 56 acres of irrigable land provided all instalments on account of the water right contracted for in connection with the tract purchased shall have been paid in full.

In the Keebaugh and Cook case the decision was substantially to the same effect, namely, that Keebaugh having a farm unit of 104 acres of irrigable land and Cook having a farm unit of 77 acres of irrigable land they could not file water right applications for another tract of 78 acres of irrigable land owned by them jointly, no offer being made to pay the charges in full upon the land held by them. These cases plainly decide one feature covered by this proviso, namely, that one having a water right application for a farm unit on which payments are due could not acquire another tract of land and secure water therefor unless payments in full were made for water right for the additional tract. In other words, that a person may hold a water right for but one tract for which he has a water right application not paid in full, either a single farm unit or a tract not exceeding the limit of acreage for land in private ownership as fixed for the project.

Thus far there seems to be no difficulty in determining the meaning of the proviso, but some expressions in the departmental decisions lead to the inference that a person holding a tract upon which payment has not been made in full, may not purchase paid-up water rights for more than 160 acres.

This seems to be based upon the construction placed upon the following portion of the proviso, "nor in any case in excess of 160 acres, nor shall water be furnished under said acts nor water right sold or recognized for such excess." If this expression is construed as applying to the lands for which water right has been paid in full it has the effect of a provision by Congress limiting water rights for private land holdings, after full payment, to water rights for 160 acres. In other words, it is a provision which limits to 160 acres the area for which a man may hold an appurtenant water right even after he has discharged all his obligations to the Government, except for operation and maintenance. Such a limitation is a radical departure from all the public land laws, as apparently there never has been any intent by Congress to limit the amount of land which a man may own after having complied in full with the provisions of the law in order to acquire the title, and as the water right becomes on final payment an appurtenance to the land the same rule governs.

It would seem that a construction of a statute constituting so wide a departure from the previous conditions regarding the rights of individuals should not be adopted in the absence of a plain intent expressed in the law, as it would not only render the law subject to

question on the ground of constitutionality, but would also introduce an entirely new system of land ownership in reclamation projects not applicable to any other public lands or any other lands acquired from the United States.

On the other hand, there is a rational interpretation of this language that is in full harmony with prior legislation and the evident intent of the reclamation law, namely, that a person who holds a farm unit shall not be permitted, before full payment has been made on the appurtenant water right, to acquire other lands with appurtenant water rights unless the water right charges on the latter have been fully paid; similarly that a person may hold private lands with appurtenant water rights up to the limit of single ownership fixed for the project in one or more parcels before full payment of the water right charge, but may not acquire other lands with appurtenant water rights unless the water right charges thereon have been paid in full. Furthermore, that the limit of area of the farm units and of single private land holdings to which water rights are appurtenant (and as to which water right has not been paid in full) shall in no case exceed 160 acres.

I deem the language of the proviso to be fully in accord with an intent on the part of Congress to make such a rule as to the area held in a farm unit or by single ownership under an uncompleted water right application.

It is therefore recommended that the proviso be construed as suggested and that it will accordingly permit the furnishing of water for land on which payment in full has been made of building and betterment charges even when more than 160 acres of such land is owned by one person, provided the annual charges for operation and maintenance are paid and all other requirements are complied with.

Very truly, yours,

WILL R. KING,
Chief Counsel.

Approved, July 22, 1914:

A. A. JONES,
First Assistant Secretary.

MOSES J. WETZEL.

Decided July 2, 1914.

CAREY ACT SELECTIONS—RELINQUISHMENT.

The relinquishment of a Carey Act selection is not effective until approved by the Secretary of the Interior, and the lands covered thereby are not subject to disposition under the public land laws until notation of the approved relinquishment upon the records of the local land office.

JONES, *First Assistant Secretary:*

Appeal has been filed by Moses J. Wetzel from decision of September 10, 1913, of the Commissioner of the General Land Office

affirming the action of the local officers in rejecting the application filed by said Wetzel May 22, 1913, to make homestead entry for the NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ and SW. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 3, T. 1 S., R. 14 E., Bozeman, Montana, land district, for the stated reason said lands were then embraced in selection list No. 3 under the act of August 18, 1894 (28 Stat., 372, 422).

Relinquishment of said selection as to these lands was filed May 8, 1913, and was accepted May 27, to become effective May 31, 1913. On June 3, 1913, one John Ellison is stated to have filed application to make desert land entry for said lands, and on June 5, 1913, said Wetzel is stated to have filed a second application to make homestead entry therefor. Wetzel alleges in this appeal and in his corroborated affidavit filed in support thereof that said lands are not desert in character and asks for a hearing upon said charge.

Relinquishment of a selection made under said act of August 18, 1894, is not within the purview of section 1 of the act of May 14, 1880 (21 Stat., 140), which relates to relinquishment of preemption, homestead and timber culture entries, only. A selection under the former act is not an entry but partakes of the elements of a contract or agreement made with the Secretary of the Interior on behalf of the United States. It is not complete until approved by the Secretary, and his approval is alike essential to give effect to a relinquishment thereof, its status being essentially administrative. In paragraph 13 of regulations of January 10, 1906 (34 L. D., 365), it is stated:

The local officers are not authorized to accept the relinquishment of any State selection. All relinquishments will be forwarded to the General Land Office through the local office, when, if accepted, the local officers will be directed to cancel the same on their records, and after such cancellation is noted, and not before, the land will be subject to general disposition under the public-land laws.

The decision appealed from was proper upon the record, but in view of the corroborated allegation made attacking the application filed by Ellison, the case is remanded for appropriate action as to such charge.

BARTHOLOMA v. McCLURE.

Decided July 22, 1914.

ISOLATED TRACT—IMMEDIATE CASH PAYMENT REQUIRED.

The act of June 27, 1906, and the regulations thereunder, governing the sale of isolated tracts, contemplate a cash sale, and the bidder to whom a tract is awarded must immediately deposit the amount of his bid with the receiver.

CONFLICTING DEPARTMENTAL DECISIONS OVERRULED.

Rosa Alheit, 40 L. D., 145, and John W. Browning, 42 L. D., 1, overruled in so far as in conflict.

JONES, *First Assistant Secretary*:

George Bartholoma has appealed from the decision of the Commissioner of the General Land Office, dated June 27, 1911, dismissing his protest against the public sale to James A. McClure, under the act of June 27, 1906 (34 Stat., 517), of the N. $\frac{1}{2}$ NE. $\frac{1}{4}$ (lots 1 and 2), Sec. 4, T. 1 S., R. 42 W., 6th P. M., Topeka, Kansas, land district. Certificate issued to McClure on March 16, 1911.

It was alleged in the protest and the supporting affidavits that Bartholoma, at whose instance the Commissioner directed the sale, bid the sum of \$203 for the tract, that being all the money in his possession; that he thereupon requested the local officers to be permitted to make a higher bid and go to his home that he might obtain the balance of the money, which request was denied by the local officers, who awarded the land to McClure, who had made the next and highest bid.

It is clear from the provisions of the act of June 27, 1906, *supra*, and the regulations of June 6, 1910 (39 L. D., 10, 13), that only a cash sale was contemplated. The regulations specifically require the purchaser to immediately deposit the amount of his bid with the receiver. The rule announced in Rosa Alheit (40 L. D., 145), and John W. Browning (42 L. D., 1), in so far as they differ from the conclusion herein announced are overruled. It is directed that, hereafter, published notice of sale of an isolated tract shall specifically state that the purchaser will be required to immediately deposit with the receiver cash to the amount of his bid.

In his appeal to the Department Bartholoma alleges, under oath, that at the public sale of this land, "it was knocked off to a man that the salesman called Mr. James, and he was allowed to go out and go down town to get the money." If this averment be true, the action of the local officers constituted such an irregularity as would require the vacation of the sale and the offer of the land anew. The action appealed from was proper upon the record considered by the Commissioner, but in view of the charge now made by Bartholoma, the case is remanded to the General Land Office for such investigation and, if necessary, hearing, as may be deemed proper.

RICE v. SIMMONS.

Decided July 22, 1914.

PRACTICE—LAND DEPARTMENT MAY CONSIDER ENTIRE RECORD.

The government is a party in interest in every contest, and the land department may properly consider all that the record contains in order to do justice in the case, irrespective of technical *inter partes* rules of pleading and practice, and whether the parties themselves are entitled to have any particular portion of the record considered or not.

SETTLEMENT—ENTRY OF RECORD.

A possessory right is acquired by settlement and entry as against all except the government; and so long as an entry remains of record no rights can be acquired as against the entryman by settlement upon and occupation of the land, notwithstanding the statutory life of the record entry has expired.

CONTEST SUBSEQUENT TO PROOF—EQUITABLE ADJUDICATION.

One who files a contest charging default subsequent to the submission of proof is merely a protestant, and acquires by virtue of such contest no such adverse claim as will prevent confirmation of the entry by the Board of Equitable Adjudication.

RESIDENCE—DURESS.

Where a homestead entryman was prevented from establishing residence by persons in occupation of the land embraced in the entry, such persons will not be heard to say that the entryman did not establish residence at the time he attempted to do so and was prevented by them.

JONES, *First Assistant Secretary*:

The Department has considered motion for rehearing filed by Peter Rice in the above-entitled cause wherein decision was rendered March 12, 1914 [not reported], reversing that of the Commissioner of the General Land Office and dismissing the contest filed by said Rice against the homestead entry involved in said cause made by Virginia Esther Simmons.

Since the filing of this motion a number of affidavits have been filed as in support thereof, and as showing either that the contest charge is true or that, as particularly contended in the motion, Rice or others have since the expiration of the time under the law for the submission of proof on Simmons's entry acquired some adverse interest in the lands embraced in said entry which precludes confirmation of the entry by the Board of Equitable Adjudication, as directed in the Department's decision.

These affidavits are not technically entitled to consideration herein as in support of this motion, nor do they appear to afford any sufficient basis for further hearing in the case. Considering the matters stated therein, however, in connection with the motion, reply and briefs filed and oral argument heard at great length and the entire record, the Department finds no reason for modifying its decision herein. The facts in the case were stated in detail in said decision, and no misstatement therein of any material fact appears. As Rice admits in this motion, the testimony in the case is conflicting on many vital questions, and the record fairly warrants the finding of facts as given in said decision. The objection that consideration was improperly given by the Department in said decision to certain letters written by Simmons is not well taken. These letters were in the record of Simmons's entry when Rice filed contest, and the Government being a party in interest in every contest, the Department may properly consider all that the record contains in order to do

justice in a case, irrespective of technical *inter partes* rules of pleading and practice, and whether the parties themselves are entitled to have any particular portion of the record considered or not.

It is admitted this contest filed by Rice is in the interest of the oil company of which he and Schwinn are directors. Whether Schwinn was technically Simmons's agent is immaterial. It is clear from the record that both friendly and business relations of more or less confidence had existed between them, that his acts contributed toward keeping her from reestablishing residence on the land after final rejection of her first submitted proof and until the filing of this contest, and that he was instrumental in connection with Rice, this contestant, and others of the oil company, in their occupation of said lands for oil purposes and in attempting to dispossess her thereof as soon as, if not before, the expiration of seven years from the date of making her entry, when they thought they might technically secure the lands by virtue of such occupation thereof by them and this contest.

Neither such occupation of said lands, however, nor this contest gave Rice or said company any right to or interest in said lands as against Simmons. Her settlement and entry gave her possessory property in said lands as against all except the Government. See cases of *United States v. Buchanan* (232 U. S., 72), and *Gauthier v. Morrison* (*ibid.*, 452).

The fact the time fixed in the homestead law for the submission of final proof on said entry expired October 29, 1910, is immaterial so far as the application of this rule is concerned. So long as an entry remains of record no other rights, by application or settlement, can be acquired as against the entryman. *Circular* (29 L. D., 29); *Emma H. Pike* (32 L. D., 395). Even though the statutory life of the record entry has expired. *Walker v. Snider* (19 L. D., 467); *Zickler v. Chambers* (22 L. D., 208).

The acts of said company and of Rice and Schwinn prior and subsequent to October 29, 1910, were in trespass against Simmons's entry then intact of record, and all her rights thereunder, of which was the right to equitably perfect said entry even after seven years. Such a contestant as Rice, whose contest was based alone upon a charge of Simmons's default on her entry since 1907, has by reason of such contest no such interest in the lands embraced in the contested entry as constitutes an adverse claim to said lands, preventing confirmation of the entry by the Board of Equitable Adjudication. He is a mere protestant. *Walker v. Snider*, *supra*, *Cooke v. Villa* (19 L. D., 442); *McCraney v. Heirs of Hayes* (33 L. D., 21); *Sitzler v. Holzemer* (*ibid.*, 422).

The expiration of the time fixed by law for the submission of final proof on Simmons's entry did not debar her from subsequently sub-

mitting proof thereon. She had never been called upon to show cause why her entry should not be canceled for failure to submit proof within the seven years, as required by the regulations in such cases previous to cancelling an entry for that reason. The submission of proof after that period is not an extension of the entry but is allowable in the equitable perfection thereof. Opinion (34 L. D., 351, 355-356). An amended paragraph 33 of the regulations governing the Board of Equitable Adjudication (39 L. D., 320) expressly provides that there shall be submitted to said board—

All homestead and timber-culture entries in which good faith appears, and a substantial compliance with law, and in which there is no adverse claim, but in which full compliance with law was not effected, or final proof made, within the period prescribed by statute, and in which such failure was caused by any sufficient reason not indicating bad faith.

While Simmons's first submitted commutation proof was rejected as insufficient, no finding of bad faith on her part was then made, and her bad faith has not been established herein. The presumption of her good faith should prevail. She reestablished residence on the land, pursuant to the Commissioner's direction made in October, 1910, that she should do so if she desired to retain it, within a reasonable time after being so directed by him, and attempted to do so at once but was prevented by this contestant and his associates. He and they can gain nothing by reason of such acts, and they can not be heard to say she did not reestablish her residence when she attempted to and was so prevented by them. They have no such claim or interest, by reason of their occupation of the lands or of this contest, as precludes submission of her entry and second proof to the Board of Equitable Adjudication, as directed by the Department.

This motion is accordingly denied.

WILSON v. CARSON.

Decided July 25, 1914.

UNSURVEYED DESERT LAND—ACT OF MARCH 28, 1908.

The act of March 28, 1908, conferring a preference right of entry upon persons who prior to survey take possession of unsurveyed desert land and reclaim or in good faith commence the work of reclaiming the same, has no retroactive effect.

JONES, *First Assistant Secretary*:

Zuie N. Wilson has appealed from the decision of the Commissioner of the General Land Office, dated September 11, 1913, sustaining the action of the local officers in rejecting her desert land

application, filed on March 13, 1909, for lots 2 and 23, Sec. 35, and lots 6, 8, 11, 12, 15, and 18, Sec. 36, T. 14 S., R. 15 E., S. B. M., Los Angeles, California, land district, and holding intact George W. Carson's homestead entry for the same land, allowed on May 20, 1910, upon his application filed on March 1, 1909.

The lands in controversy are situated in the Imperial Valley of California, and are within the area resurveyed under the act of July 1, 1902 (32 Stat., 728). The plat of resurvey was filed in the local office on February 23, 1909.

It is unnecessary to repeat the history of this controversy, which is fully stated in the decision appealed from. From what has been hereinbefore stated, it will be observed that Wilson's desert land application was filed after the presentation of Carson's homestead application; and the application first filed was properly allowed by the local officers. It is urged on behalf of Wilson that she took possession of the tract under the desert land law, making certain improvements thereon and cultivating considerable areas thereof prior to the assertion by Carson of any claim under the homestead or other law. The land has been surveyed public land of the United States since the year 1856, and there has never been any law under which a claim under the desert land law to surveyed public land might be asserted except by the filing of an application to make entry. See *Hart v. Cox* (42 L. D., 592). It appears that Carson made settlement upon this land under the homestead law, in 1907. Therefore, even had the land been then unsurveyed, Wilson would have no claim thereto antedating the presentation of his desert land application, for the reason that under the law, as it stood in 1907, a desert land claim for unsurveyed land could be originated only by the filing of an application in the local office. The act of March 28, 1908 (35 Stat., 52), conferring a preference right of entry upon those who, prior to survey, take possession of unsurveyed desert land and reclaim, or in good faith commence the work of reclaiming, the same, had no retroactive effect.

The decision appealed from is affirmed.

LAHR v. WYATT.

Decided July 27, 1914.

RELINQUISHMENT—RIGHTS OF PURCHASER.

The purchase of the relinquishment of an unperfected homestead entry does not invest the purchaser with any rights appertaining to the entry while it remains of record or with any rights to the lands involved after the entry is canceled upon the filing of the relinquishment.

CONTEST—RELINQUISHMENT—INTERVENING SETTLEMENT.

Where a contestant purchases and files a relinquishment of the entry under contest, executed by the entryman prior to the initiation of the contest, and placed in the hands of another for speculative purposes, no preference right inures to him on the presumption that the relinquishment was the result of the contest; and by thus filing the relinquishment instead of prosecuting the contest, the contestant abandons his contest and all rights thereunder, and the rights of an adverse settler then on the land thereupon attach and bar the allowance of entry to contestant.

JONES, *First Assistant Secretary*:

The Department has considered motion for rehearing filed by Henry Clay Wyatt in the above-entitled cause wherein decision was rendered by the Department April 22, 1914, affirming that of the Commissioner of the General Land Office which held for cancellation said Wyatt's homestead entry for the stated reason that Harrison B. Lahr, a contestant against said entry, was a settler on the lands embraced in such entry at the time Wyatt made the same.

Careful reconsideration has been given to this case upon the record presented and after the hearing of oral argument thereon. The facts appear at length in the decision appealed from and are epitomized in the Department's decision. The issue between these parties arose upon the filing by Wyatt at the time he made entry, October 23, 1909, of a relinquishment of a prior entry made by one Harrington for the same lands, executed May 10, 1909, shortly after Harrington had made his entry, which relinquishment Wyatt had purchased, on the same day he filed it, from one Logan Fain for \$50. There was then pending against Harrington's entry a contest filed by Wyatt September 7, 1909, charging that said entry was made for speculation and with money furnished by one John Doe, to whom Harrington was stated to have given in making his entry a relinquishment thereof; also a contest filed by Lahr October 19, 1909, against Harrington's entry upon the same charge as to speculation and that Wyatt's contest also was speculative. Notice had not issued upon either contest at the time said relinquishment was filed. Lahr filed October 26, 1909, contest against Wyatt's entry, renewing his charge of speculation as to Harrington's entry and Wyatt's contest against same and alleging also that he had settled on said lands October 20, 1909. Hearings were duly had on said contest by Lahr against Wyatt's entry, the local officers recommending dismissal of said contest and the Commissioner holding the entry for cancellation, as above stated.

The testimony shows Harrington's entry was wholly speculative and not made for *bona fide* homestead purposes, and was made by him with moneys furnished by Lahr's father, David H. Lahr, through

one Slaughter, a negotiator, to whom for said David H. Lahr Harrington delivered his relinquishment on the same day he made said entry. Whether said David H. Lahr participated knowingly in the fraudulent making of the entry is not clear and is not material to the issues in this case, nor does the record show that Harrison B. Lahr so participated in or had knowledge of such fraud. The relinquishment filed by Wyatt is not the one held by said David H. Lahr, referred to in Wyatt's contest, but another executed subsequently and held by Fain for sale. Harrison B. Lahr is shown to have settled on said lands October 20, 1909, and to have maintained residence thereon and improved and cultivated the same since then. Wyatt also, within six months after his entry was allowed, established residence thereon and has since maintained same and improved and cultivated a portion of the lands. The homestead good faith of both may be assumed.

Wyatt's entry was erroneously allowed without first according Lahr an opportunity to be heard upon his charge against Wyatt as contestant against Harrington's entry. Under paragraph 5 of the regulations of June 1, 1909 (38 L. D., 23), then in force, Wyatt's application should have been suspended and said Lahr, as junior contestant, notified thereof and of his right also to file application for entry of the lands and upon filing same to prove his charge against Wyatt.

The filing by Wyatt, however, of Harrington's relinquishment, executed shortly after Harrington had made entry and long prior to the filing of Wyatt's contest against said entry, tended to support Lahr's charge against Wyatt and was sufficient to put Wyatt upon his defense. Such relinquishment in itself rebutted any presumption accruing from the filing of a relinquishment while a contest is pending against the entry that such contest induced such filing and called for showing by Wyatt that his contest was in fact the moving inducement and consideration for said relinquishment.

The facts disclosed at the hearing had under Lahr's contest against Wyatt's entry, however, place the rights of the parties upon other bases than their respective contests against Harrington's entry. Harrington's relinquishment filed can not be considered as a result of Wyatt's contest. Its purchase by Wyatt was a voluntary act on his part not compelled by his contest or by any right in Fain as the owner of said relinquishment. The owner of a relinquishment has as such owner no rights over or under the entry or as to any contest against same, as a relinquishment "has no effect upon the entry or the right of the homesteader until it is filed." *Fain v. United States* (209 Fed., 525). The statement in the Department's decision in the

case of *Humphries v. Boyer* (42 L. D., 250), that the sale of a relinquishment "places the entry in the hands of the buyer" was not intended to hold that there is any element of assignability in an unperfected homestead entry or any such assignability in a relinquishment thereof as invests the buyer of such relinquishment with any rights pertaining to such entry while it remains of record or with any rights as to the lands involved after it is canceled upon the filing of such relinquishment. Nor does the decision of the Circuit Court in the case cited authorize such holding.

Whether a contestant may, without prejudice to his contest rights pay the entryman for his relinquishment of the entry as a satisfaction for such contest and in compromise and settlement of the case, so far as the entryman is concerned, without trial of the issues of the contest, the Department will not now decide. Where, however, as in this case, the relinquishment was executed long prior to the contest and was held by another than the entryman merely for his own speculative purposes, its purchase by the contestant is wholly gratuitous on his part, imports no satisfaction for or inducement thereof by the contest, and the presumption, under said regulations of June 1, 1909, that a relinquishment filed pending and before service of contest was due to such contest, is rebutted and overcome by such proven facts with reference to the relinquishment.

A contestant by electing to secure cancellation of the entry through filing a relinquishment thereof so procured instead of by proving the charge in his contest, abandons such contest and all right thereunder, and the rights of a settler then on the land are superior to those of such contestant as an applicant for entry of said land upon the filing of such relinquishment; as relinquishment of an existing entry gives to the party filing same no right but merely an opportunity to make entry for the lands "in case no contest has been instituted against the claim of the homesteader and no adverse settlement has been made." *Fain v. United States, supra*.

The record fully sustains the contest charge made against Harrington's entry and shows said entry was wholly speculative and fraudulent and that no residence was ever established thereon. It shows also the fact of Lahr's settlement on the lands prior to and maintained since Wyatt purchased and filed said relinquishment. Lahr's rights as a settler attached upon the filing of such relinquishment and precluded any right in Wyatt under his application. *Moss v. Dowman* (176 U. S., 413); *Kenfield v. Maginnis* (35 L. D., 285).

The Department's decision is accordingly adhered to and this motion denied.

**IMPERIAL VALLEY LANDS—LIEU SELECTIONS—ACT OF MAY 2,
1914.**

CIRCULAR.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

Washington, July 29, 1914.

REGISTERS AND RECEIVERS,

United States Land Offices, State of California.

SIRS: 1. Your attention is directed to the act of Congress of May 2, 1914 (Public, No. 94—63d Congress), authorizing the State of California or its grantees to select public lands in lieu of certain lands granted to the State in Imperial County, California, and for other purposes:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the State of California or its grantees may, with the approval of the Secretary of the Interior, reconvey to the United States any of the lands heretofore granted to said State in the townships authorized to be resurveyed by the act of July first, nineteen hundred and two (Thirty-second Statutes at Large, page seven hundred and twenty-eight), and select in lieu thereof an equal amount of vacant, unappropriated, surveyed, unreserved, nonmineral public lands within said State: *Provided*, That any application to select land under this act must be presented within three years from the date of its passage: *Provided, further*, That the Secretary of the Interior be, and he is hereby, authorized and directed to issue a patent conveying to Victor E. Shaw, of Los Angeles, California, the south-half of section twenty-six, in township, eleven south, range thirteen east, San Bernardino base and meridian, containing three hundred and twenty acres, in Imperial County, California, upon the express and prior condition that said Victor E. Shaw shall execute and deliver to the Secretary of the Interior a grant and deed satisfactory to the Secretary of the Interior relinquishing and conveying to the Government of the United States all his right, title, and interest in and to the north half of section thirty-six, in township sixteen south, range thirteen east, San Bernardino base and meridian, Imperial County, California, according to the original survey, containing three hundred and twenty acres, now known as part of tract thirty-seven, in township sixteen south, ranges thirteen and fourteen east, San Bernardino base and meridian, according to the resurvey.

Sec. 2. That the Secretary of the Interior may make proper rules and regulations for carrying this act into effect.

Approved, May 2, 1914.

2. Grants and deeds of reconveyance made in pursuance of the act must be executed, acknowledged, and recorded in accordance with the laws of the State of California governing the conveyance of real estate. When the lands are reconveyed to the United States by an individual, the husband or wife of the individual, if married, must join in the execution of the deed in such manner as to bar any

right or estate of dower, curtesy, or homestead, or any other claim whatsoever to the land reconveyed.

3. When the lands are reconveyed by the State, the instrument of reconveyance must be accompanied by a certificate of the proper State official or officials to the effect that the State has not previously patented, granted, conveyed, sold, or disposed of, or contracted to patent, grant, convey, sell, or dispose of, any of said lands, or any part thereof.

4. The instrument of reconveyance must be recorded in the proper office of Imperial County, California, whether executed by an individual or by the State.

5. Within a reasonable time after it is recorded, the instrument of reconveyance must be filed in the land office at Los Angeles, California, and must be accompanied by a certificate from the recording officer of Imperial County, California, and by a satisfactory authenticated abstract of title showing that at the time the instrument of reconveyance was filed for record in the said county office the legal title to the land reconveyed was in the executor of the instrument of reconveyance and that the land was free from liability for taxes, pending suits, judgment liens, and from other incumbrance, and from adverse claims of any sort, unpatented entries excepted. Abstracts of title must be certified by the legal custodian of the county records or by an abstracter of titles, but no abstract of title by an abstracter or abstract company will be accepted, until approval by the General Land Office of a favorable report of the chief of field division, or United States district attorney whose division or district embraces the lands, as to the reliability and responsibility of such abstracter or company.

6. When the instrument of reconveyance and accompanying papers are filed in the land office at Los Angeles, they will be transmitted by that office to the General Land Office, accompanied by a recommendation by the register and receiver and by a report by them as to the status of the reconveyed lands, giving fully all entries and applications pending for said lands or for any part thereof, as shown by the records of the Los Angeles land office.

7. The register and receiver of the Los Angeles land office will not note on their records any reconveyance of lands, until directed to do so by the General Land Office. When the reconveyance is approved, the register and receiver of the Los Angeles land office will be advised thereof and will be directed to note the same on the records of their office. The approval of the reconveyance will become effective as of the date of the receipt of the notice of approval in the Los Angeles land office. After that, the disposition of the lands reconveyed will be considered, and any application for entry

of any of such lands filed prior to receipt of such notice shall be at once rejected.

8. The right of selection of lieu lands is not transferable, and selection must be made by the former owner of the land reconveyed, or by a duly authorized agent or attorney-in-fact, proof of whose authority must be furnished.

9. Selection may be made first for less land than that reconveyed, and afterwards additional selections may be made, until the land reconveyed and the land selected are, as near as practicable, equal in area. The rule of approximation permitted in entries under the homestead and other public land laws may properly be applied to selections under the act, but only one application of said rule will be granted in respect of two or more selections based on one and the same conveyance. A selection may embrace contiguous or non-contiguous legal subdivisions in the same land district, but no selection may embrace less than a legal subdivision of the survey. No more than one serial number must be given to any selection, notwithstanding it may embrace more than one legal subdivision.

10. An affidavit to support a selection must be made by the selector, or other credible person cognizant of the facts, and must be filed with and as a part of the selection. The said affidavit must show that the land contains no salines, coal, or other minerals. The form of affidavit to be used is annexed to these instructions. Selections under the act are authorized to be made only of vacant, unappropriated, surveyed, unreserved, nonmineral lands within the State of California. No selection will be allowed for lands not of the character described in the act.

11. In making selection, the form hereafter designated, or its equivalent, should be used.

12. The selection and accompanying affidavit must be filed in the land office of the district in which the lands selected are located, and by that office the selection will be given a serial number. The register and receiver will on receipt of a selection note the same upon the records of their office, and, if the selection and supporting affidavit are properly executed, and the lands selected appear from their records to be of the character described in the act, they will require the selector, within twenty days from the filing of the selection, to commence publication of notice thereof, at the expense of the selector. Notice of selection of all lands must be given by publication in a newspaper of general circulation in the county in which the lands are located, the newspaper or newspapers to be designated by the register. Such publication must cover a period of five consecutive weeks (or thirty consecutive days, if in a daily newspaper), during which time a similar notice of the selection must be posted

in a conspicuous place in the local land office, and also upon each smallest noncontiguous legal subdivision of the lands included in the selection, and upon each legal subdivision not embraced in a technical quarter section the whole of which has been selected. The notice must describe the land selected, give the date of selection, and state that the purpose thereof is to allow all persons claiming the land adversely, or desiring to show it to be mineral in character, an opportunity to file a statement of objection to such selection with the register and receiver of the land district in which the land is situated, and to establish their interest therein or the mineral character thereof. Proof of publication must consist of an affidavit of the publisher or foreman of the newspaper employed that the notice was published in said newspaper once a week for five successive weeks, or once a day for thirty successive days, if a daily newspaper is employed, and such affidavit must show that the notice was published in the regular and entire issue of the newspaper and was published in the newspaper proper and not in a supplement. A copy of the published notice must be attached to the affidavit. Proof that the notice remained posted upon the land during the entire period of publication must be made by the selector or some credible persons having personal knowledge of the fact. The register will certify to the posting in the local land office. The first and last days of the publication and posting must in all cases be given.

13. After the publication is completed, the register and receiver will forward the selection and accompanying papers to the General Land Office with their regular monthly returns, provided that they do not find the selection as made to be defective in any essential particular, in which case they will reject the selection and give due notice thereof to the parties interested, stating the reasons for the rejection. Appeal from such action may be taken under the rules as in other cases. At the expiration of the time allowed for appeal, the register and receiver will forward the selection and accompanying papers to the General Land Office with appropriate report.

14. If during the period of publication, or at any time, protest or objection shall be filed as to any of the legal subdivisions selected, the register and receiver will forward the same to the General Land Office for consideration in connection with the selection.

15. No fees or commissions are required to be paid in any selection made under the provisions of the act.

16. The act provides that any application to select land under the act must be presented within three years from the date of the passage of said act.

17. The matter of Victor E. Shaw's right to select stands apart by itself under the provisions of the act. It will be necessary for him to execute and file in the Los Angeles land office a grant and deed

relinquishing and conveying to the Government of the United States all his right, title, and interest in and to the N. $\frac{1}{2}$ of Section 36, T. 16 S., R. 13 E., S. B. M., containing 320 acres, according to the plat of original survey approved on March 2, 1857, now known as part of Tract 37, T. 16 S., R. 13 E., S. B. M., and T. 16 S., R. 14 E., S. B. M., according to the plats of resurvey approved on January 5, 1909, and on February 6, 1909, respectively. The part of said Tract 37, which he conveys should be described in the deed and grant. It is understood that said part of Tract 37 is embraced also in Tracts 43, 47, 51, 52, and 68 $\frac{1}{2}$ of the aforesaid townships, which conflict with the Tract 37 in part or in whole. In connection with this matter, it will be necessary to observe paragraphs Nos. 2, 4, 5, 6, 7, and 8 of these instructions.

At the same time that he files the grant and deed of relinquishment and reconveyance in the Los Angeles land office, Victor E. Shaw may file in that office his selection of the S. $\frac{1}{2}$ Section 26, T. 11 S., R. 13 E., S. B. M., containing 320 acres, according to the plat of survey approved on August 21, 1856. He should use the form of selection given below, or its equivalent. No supporting affidavit need be furnished by him, and no fees or commissions will be required of him in connection with his said selection. The register and receiver of the Los Angeles land office will, on receipt of the selection of Victor E. Shaw, give the same a serial number and make proper notations upon the records of their office, and, if all appears regular and satisfactory to them, transmit the selection to the General Land Office with their regular monthly returns.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved, July 29, 1914:

ANDRIEUS A. JONES,

First Assistant Secretary.

(Form.)

SELECTIONS IN LIEU OF LAND GRANTED TO THE STATE.

(Act of May 2, 1914.)

To the REGISTER AND RECEIVER,
United States Land Office,
———, California.

SIRS: I was the owner of the ——— San Bernardino Meridian, containing ——— acres, and, in compliance with the regulations under the act of May 2, 1914 (Public, No. 94, 63d Congress), I filed in the land office at Los Angeles, California, on the ——— day of ———, 19—, a deed and grant of reconveyance to the United States of said lands.

I now select in lieu of the said lands the _____ land district, State of California, and containing _____ acres, under the provisions of the aforesaid act of May 2, 1914, and I ask that a United States patent be issued to me for the lands thus selected.

Dated, _____.

LAND OFFICE AT _____, CALIFORNIA,
_____, 191—.

I, _____, register of the land office, do hereby certify that the land above selected, in lieu of land heretofore reconveyed to the United States, is free from conflict, and that there is no adverse filing, entry, or claim thereto.
_____, Register.

(Form.)

AFFIDAVIT FOR SELECTIONS

(Under act of May 2, 1914, Public, No. 94, 63d Cong.)

To be made by the selector, or other credible person cognizant of the facts, before an officer authorized to administer oaths. Before being sworn, affiant should be advised of penalties of a false oath.

DEPARTMENT OF THE INTERIOR,
UNITED STATES LAND OFFICE,
_____, 191—.

_____, being duly sworn according to law, deposes and says that his post-office address is _____; that he is well acquainted with the character and condition of the following-described land, and with each and every legal subdivision thereof, having personally examined the same, on the _____ day of _____, 19—, to-wit: _____; that his personal knowledge of said land enables him to testify understandingly with respect thereto; that there is not, within the limits of said land, to his knowledge, any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper; that there is not, within the limits of said land, to his knowledge, any deposit of coal, or any placer, oil, cement, gravel, or other valuable mineral deposit; that said land contains no salt spring, or deposits of salt in any form, sufficient to render it chiefly valuable therefor; that no portion of said land is claimed for mining purposes under the local customs or rules of miners, or otherwise; that said land is essentially nonmineral in character, has upon it no mining or other improvements; that the selection thereof is not made for the purpose of obtaining title to mineral land; that the land is not occupied and improved by an Indian; that the land is unoccupied, unimproved, and unappropriated by any person claiming the same other than the selector.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known (or has been satisfactorily identified before me by _____), and I verily

believe him to be a credible person and the person he represents himself to be; and that this affidavit was subscribed and sworn to before me at my office in _____ on this _____ day of _____, 19—.

ALCOTT v. REGENSBURG.

Decided July 30, 1914.

SECOND DESERT ENTRY—CANCELLATION OF FORMER ENTRY ON RELINQUISHMENT.

The cancellation of a desert land entry upon a voluntary relinquishment constitutes a loss, forfeiture, or abandonment of the entry within the meaning of the act of February 3, 1911, granting the right of second entry to desert land entrymen who from any cause have "lost, forfeited, or abandoned" their former entries.

CONTEST BASED ON INFORMATION AND BELIEF.

As a general rule, an affidavit of contest based wholly upon information and belief, and corroborated in the same manner, should not be accepted.

CONTEST—CHARGE THAT THE ENTRY IS SPECULATIVE.

The charge in an affidavit of contest that the entry is speculative and was made in the interest of some other party may be substantiated either by direct knowledge of the illegal agreement, by admissions of the parties thereto, or by circumstantial evidence tending to show the existence of such agreement; and where the contestant has personal knowledge of such agreement his averments should be direct and positive and not upon information and belief, but where he relies either upon admissions or circumstantial evidence, the contest affidavit should set forth sufficient of the facts to show a *prima facie* case upon which his information and belief rest.

JONES, *First Assistant Secretary:*

Edward H. Alcott has appealed from the decision of the Commissioner of the General Land Office, dated November 19, 1913, denying his application to contest desert-land entry No. 019175, made by Josephine M. Regensburg, at Los Angeles, California, for E. $\frac{1}{2}$ NE. $\frac{1}{4}$, NW. $\frac{1}{4}$ NE. $\frac{1}{4}$, and N. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 4, T. 11 S., R. 14 E., S. B. M.

The above is a second desert-land entry made under the provisions of the act of February 3, 1911 (36 Stat., 896). Regensburg had, upon October 24, 1908, made desert-land entry No. 02014 for the same land. She submitted three annual proofs thereon, alleging the expenditure of \$225, \$205, and \$205, respectively. Upon August 19, 1912, she filed an application for extension of time of three years within which to make final proof. This application for extension was denied by the Commissioner May 16, 1913. He stated, however, that the entry would not be canceled for a period of six months, within which she might become enabled to make final proof. June 24, 1913, she filed a relinquishment of her first entry, together with her application to make the second entry, which was allowed the same day.

The contest affidavit charges that the annual proofs, upon the former entry were false in that not to exceed \$100 had ever been expended upon the land, and also that certain statements in connection with the application for extension of time were not true. Such allegations, however, do not state a cause of action against her present entry, which must rest upon her compliance with law as to it. The contest affidavit also contends that she had not abandoned the land, since she filed an application for second entry concurrently with the relinquishment of her former, and that therefore she is not entitled to make second entry under the act of February 3, 1911, *supra*. This act provides:

That any person who, prior to the approval of this act, has made entry under the homestead or desert-land laws, but who, subsequently to such entry, from any cause shall have lost, forfeited, or abandoned the same, shall be entitled to the benefits of the homestead or desert-land laws as though such former entry had not been made.

The law, it should be noted, speaks of the loss, forfeiture, or abandonment of the former entry, and not of the land. In *Lean v. Kendig* (36 L. D., 221) it was held that under the similar second homestead entry act of June 5, 1900 (31 Stat., 267), the cancellation of a previous homestead entry upon a voluntary relinquishment constituted the loss, forfeiture, or abandonment of such entry, and qualified such entryman to make second homestead entry.

The affidavit of contest also contains the following:

Contestant is informed and believes, and upon such information and belief alleges, that said Josephine M. Regensburg did not make desert-land entry No. 02014, nor desert-land entry No. 019175, for her own use and benefit, but for the use and benefit of one Carroll J. Daly, and that both of said entries were made for speculative purposes.

A corroborative affidavit by Edmund Welch states that he is acquainted with the tract and knows from personal knowledge and observation that the statements contained in the contest affidavit are true. It then proceeds.

The allegation on information and belief in said affidavit is also on information and belief of affiant.

This portion of the contest affidavit was rejected by the register and receiver and the Commissioner, because wholly upon information and belief, and also corroborated upon information and belief.

A similar affidavit of contest charging a homestead entry to be speculative and in the interest of another party, upon information and belief, and also likewise corroborated, was held insufficient in *Patterson v. Massey* and *Buckley v. Massey* (16 L. D., 391). It was there stated, at page 395:

The rules require the contestant to fully set forth the *facts* which constitute the grounds of contest, which may be done upon the information and belief of

the contestant; but these allegations must be supported by one or more witnesses. When the affidavit itself is made upon facts within the knowledge of the contestant, they may be supported by witnesses who base their statements upon information and belief; when the allegations of the affidavit itself are based upon the information and belief of the contestant, they must be corroborated by one or more witnesses whose statements must be based upon facts within their knowledge, and not upon mere information and belief.

In *Gage v. Atwater et al.* (21 L. D., 211) the contestant stated in his affidavit that he—

alleges upon information and belief that said homestead entry was not made in good faith, but was made for the purpose of speculation and sale.

The affidavit of the corroborative witness was as follows:

Also appeared at the same time and place Alexander Campbell, who, being duly sworn, deposes and says that he is acquainted with the tract described in the within affidavit of Matthew Gage, and believes from personal observation that the statements therein made are true.

This affidavit was held sufficient, Secretary Smith stating at page 213:

I do not concur in your view as to the sufficiency of this affidavit. I think it does state a cause of action. It alleges that the entry was not made in good faith, but was made for the purpose of speculation and sale. Such affidavit states a proposition of mixed law and fact, which it seems to me renders it a proper predicate for a hearing. It contains something more than a conclusion of law, and it is sufficient to put defendants on notice of the charge to be met.

Concerning the corroborative affidavit, he stated at page 214:

It seems to me that this affidavit is not subject to the criticism that it affords no support to the affidavit of Gage. Its reasonable interpretation is, that from personal observation affiant believes that the entry of defendant was not made in good faith, but was made for the purpose of speculation and sale.

As a general rule, an affidavit of contest based wholly upon information and belief, and also corroborated in the same manner, should not be accepted, as it would permit the filing of many contests having no substantial foundation in fact. However, a charge that an entry is speculative and that it is made in the interest of some other party may be substantiated either by direct knowledge of the illegal agreement, by admissions of the parties thereto, or by circumstantial evidence tending to show the existence of such agreement. Where the contestant has personal knowledge of such agreement his averments should be direct and positive and not upon information and belief. Where he relies either upon admissions or circumstantial evidence, the contest affidavit should set forth sufficient of the facts showing a *prima facie* case upon which his information and belief rest. The present contest affidavit fails to make the showing outlined above, and is therefore insufficient.

The decision of the Commissioner is accordingly affirmed.

IRA P. WETMORE.

Decided July 30, 1914.

SOLDIERS ADDITIONAL—ASSIGNEE—MINOR HEIRS.

The assignee of a soldiers' additional right, claiming through assignment from the administrator of the soldier's estate, the soldier's wife having died prior to his death, will be required, as a prerequisite to recognition of his right to make entry under the assignment, either to show that there were no minor children at the time of the soldier's death, or, if there were any, to file assignments from them or furnish evidence showing affirmatively that they acquiesced in the administration proceedings.

JONES, *First Assistant Secretary*:

This case involves the application of Ira P. Wetmore, assignee of the administrator of the estate of David H. McWilliams, to enter, under sections 2306 and 2307, R. S., the NW. $\frac{1}{4}$ NW. $\frac{1}{4}$, Sec. 22, T. 10 S., R. 20 E., N. M. P. M., Roswell, New Mexico, land district.

The application was based upon assignment by the administrator of David H. McWilliams who, it is alleged, performed military service for the required length of time in the army of the United States during the Civil War and who, it is further alleged, made homestead entry for 40 acres at Brownville, Nebraska, March 18, 1868, which was canceled January 3, 1870, for abandonment.

October 24, 1913, the Commissioner held the application for rejection, for the reason that there was no evidence furnished showing the ages of the children of the soldier at the date of the soldier's death, his wife having previously died, and therefore the Commissioner was unable to determine whether the right vested in the children under section 2307, R. S., under the ruling in the case of John H. Mason (41 L. D., 361). The applicant was allowed 30 days within which to file evidence showing whether any of the children were minors at the time of the soldier's death, and, if so, to file assignments from said minors or to furnish evidence showing affirmatively that they acquiesced in the administration proceedings. Counsel requested additional time within which to furnish the evidence required, which was granted by the Commissioner, and later the applicant requested further additional time which was likewise granted. Still later, the applicant requested reconsideration of the case, and the Commissioner, by decision of April 7, 1914, adhered to his former action. Appeal has brought the case before the Department for consideration.

This case is clearly controlled by the decision in the case of Mason, above referred to. It is insisted, however, that the doctrine in the Mason case should not be retroactively applied to cases where the applications were filed prior to that decision. The same contention was made in the case of Ernest B. Gates on rehearing (41 L. D., 384), wherein the Department upon full consideration declined to apply

the doctrine of *stare decisis*. Furthermore, the doctrine announced in the case of Mason, *supra*, was instantly applied in that case. The principle of *stare decisis* while entitled to consideration and respect is not always to be relied upon, as the courts and the Department often find it necessary to overrule cases decided contrary to principle and especially when contrary to statutory law.

If the sale by the administrator in this case were to be recognized without regard to the rights of the minors, the Department would be denying to them a benefit granted by statute.

Furthermore, where the administrator has distributed the proceeds of the sale among the heirs, it should not be difficult to show this, and such showing would be sufficient evidence of acquiescence in the sale and estop further claim upon the part of the persons who were minors at the time of the soldier's death if they were of age at the time of acceptance of the benefits of the sale.

It may be that in some cases some of the heirs entitled to share in the proceeds of the sale can not be found, but the Department would not be justified for that reason in satisfying such unperfected claim.

The decision appealed from is affirmed.

TOWN LOTS—PATENTS TO TRANSFEREES.

INSTRUCTIONS.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

Washington, August 5, 1914.

REGISTERS AND RECEIVERS,

United States Land Offices.

SIRS: July 9, 1914, an act of Congress was approved (Public No. 126), providing as follows:

That in all cases where town lots were sold by the United States at public sale, and the purchaser at such sale had transferred his interest in any such lot prior to the eleventh day of October, nineteen hundred and eleven, and patent has not been issued in the name of the original purchaser, the Commissioner of the General Land Office may issue a patent in the name of the transferee where full payment of the purchase price has been made and satisfactory evidence of the transfer has been furnished: *Provided*, That it be shown that the original purchaser is dead, or that after due inquiry his whereabouts cannot be ascertained, and that the instrument of transfer given by the original purchaser has been lost or destroyed.

Each applicant for patent by a transferee, under the above act, in order to obtain entry in his own name, for a lot or lots sold at public sale, by the United States, in a townsite, must show, by the testimony of himself and his two witnesses, that the original purchaser prior to the eleventh day of October, 1911, transferred his interest in such lot to the applicant. He must also show, by the testimony of himself and

two witnesses, that full payment of the purchase price has been made, and that the original purchaser is dead, or that after due inquiry his whereabouts cannot be ascertained, and that the instrument of transfer given him by the original purchaser has been lost or destroyed. To establish due inquiry he should show all the means that he has taken to ascertain the whereabouts of the original purchaser.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved, August 5, 1914:

ANDRIEUS A. JONES,
First Assistant Secretary.

FEES—LISTS OF LANDS FOR TAXATION.

INSTRUCTIONS.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, August 5, 1914.

REGISTERS AND RECEIVERS,
United States Land Offices.

SIRS: In furnishing to State officials, under section 2 of the act of March 3, 1883 (22 Stat., 484), lists of lands sold in your respective districts, you will, in listing lands selected by states and corporations under grants from Congress, for railroads and other purposes, charge ten cents for each 160 acres or fraction thereof, computed as are the fees to be collected under paragraph 152 of Circular No. 105.

Very respectfully,

CLAY TALLMAN,
Commissioner.

Approved August 5, 1914:

ANDRIEUS A. JONES,
First Assistant Secretary.

PEARL E. THORNTON.

Decided August 7, 1914.

SECOND HOMESTEAD—FAILURE OF FIRST EXERCISE OF SECOND HOMESTEAD RIGHT.

Where a second homestead entry under the act of February 3, 1911, fails of consummation because of honest mistake of the entryman as to the character of the land, or for other sufficient reason, not the fault of the entryman, such futile effort to obtain the benefits of the act will not be held to exhaust his right of second entry thereunder.

JONES, *First Assistant Secretary:*

Pearl E. Thornton has appealed from decision of September 29, 1913, by the Commissioner of the General Land Office rejecting his

homestead application for the NW. $\frac{1}{4}$ NW. $\frac{1}{4}$, Sec. 21, T. 30 S., R. 64 W., 6th P. M., Pueblo, Colorado, land district.

It appears that Thornton, on March 22, 1910, made homestead entry for the SE. $\frac{1}{4}$, Sec. 17, T. 24 S., R. 49 W., Colorado, which he relinquished February 14, 1911, without consideration and that on December 7, 1911, he made second homestead entry for lot 4, SE. $\frac{1}{4}$, SW. $\frac{1}{4}$, Sec. 31, T. 29 S., and lots 3 and 4, Sec. 6, T. 30 S., R. 64 W., Colorado, containing 156.69 acres, which he relinquished on the same day he filed the present application. In his corroborated affidavit in support of his present application it is stated that he abandoned his second entry because the land is very rough, rocky and poor; that it is impossible to obtain any water for irrigation or stock purposes or for domestic use; that he dug a well 40 feet deep, encountering water so alkaline that it was unfit for any use and that it is necessary to drive seven miles to obtain suitable water. He therefore alleges that under such circumstances the land is of no value for farming purposes and that he relinquishes the same without any consideration.

The Commissioner held that inasmuch as the applicant exercised his homestead right under the provisions of the act of February 3, 1911 (36 Stat., 896), providing for allowance of second entry, no further exercise of the homestead right, could be permitted.

There is at present no specific remedial act restoring the homestead right of persons who since the above act of February 3, 1911, have made homestead entry. But it has been held that the Department, under its broad supervisory authority in relation to the public domain, may permit entry where the homestead right has been exercised in a futile attempt, and through no fault of the entryman title was not acquired, and this supervisory power is not impaired by the fact that the applicant may have made two or more futile attempts instead of only one. The essential consideration is that he has failed to obtain and perfect an entry because of honest mistake as to the character of the land or other sufficient reason, showing earnest endeavor but failure without fault.

In the case of Marmaduke W. Mathews (38 L. D., 406), the Department stated:

early in the history of the homestead law it was recognized that when there was mistake in the character of the land whereby the intent of the law and intent of the entryman for cause not his fault were defeated, the right was deemed not exercised, and right to make entry could be recognized as existing.

Also, after referring to certain remedial acts of Congress restoring the homestead right under certain circumstances, the Department in said decision held:

Those acts are remedial merely. They show no purpose to take away salutary powers long exercised and existing from organization of the land depart-

ment. They are not acts of limitation of power but are grants of right in cases not within the ordinary and long-exercised power of the land department.

The ruling of the Department in the case of Leo Frankenberg, March 8, 1913, is evidently the ruling referred to by the Commissioner in the decision appealed from. That decision was recalled and vacated upon petition for the exercise of supervisory authority under date of July 24, 1913, upon the facts in the case, but in any event it has no application here, for it involved consideration of the act of February 3, 1911, as to whether said act authorized a third exercise of the homestead right or whether it applied only where a second exercise was sought.

The entry here involved is in fact only a second entry. While numerically this is the third application made by Thornton, it will in substance be the only real and effectual exercise of the right to make a second entry conferred by the act of February 3, 1911. His first effort to obtain the benefits of that act was futile because of the impossibility of obtaining water. The principle stated in the Mathews case applies just as effectually to an effort to avail of a second right of entry conferred by a remedial act as to the exercise of the original right.

It is believed upon the facts shown in the present case that the application of Thornton should be allowed. Accordingly the decision appealed from is reversed.

—

SADIE A. HAWLEY.

Decided August 13, 1914.

RECLAMATION HOMESTEAD—MARRIED WOMAN—ASSIGNMENT UNDER ACT JUNE 23, 1910.

A married woman, otherwise qualified, is competent to take an assignment of lands within a reclamation project under the act of June 23, 1910.

CONFLICTING DECISIONS OVERRULED.

Robert C. Newlon, 41 L. D., 421, and Noah A. Snook *et al.*, 41 L. D., 428, overruled, in so far as in conflict.

JONES, First Assistant Secretary:

Sadie A. Hawley has appealed from the decision of the Commissioner of the General Land Office of October 7, 1913, rejecting assignment to her of farm unit E, SW. $\frac{1}{4}$ NW. $\frac{1}{4}$, lot 57, T. 55 N., R. 99 W., Lander, Wyoming, land district, from Herman Althoff, who entered the land under the provisions of the homestead law and subject to the reclamation act, and whose final proof was accepted November 25, 1912. Althoff's assignment was executed under the act of June 23, 1910 (36 Stat., 592), and filed in the local land office December 13, 1913. On authority of departmental decision in the case of Robert C. Newlon (41 L. D., 421) the assignee was required to submit

evidence that if a married woman, her husband is not claiming any other farm unit under the reclamation law.

The record and showing in support of appeal filed by Mrs. Hawley disclose the fact that she is a married woman and that her husband, William Hawley, is the holder of another farm unit of 40 acres in the Shoshone Reclamation Project, upon which all building charges have not been paid.

It further appears from the affidavits submitted that Mrs. Hawley has not acquired title to and is not claiming any other farm unit or entry under the reclamation act; that the purchase of the assignment at bar was made with her own separate money and not for the use and benefit of the husband, and that there is no agreement or understanding by which any interest in the land will inure to his benefit.

The act under which the assignment was made, June 23, 1910 (36 Stat., 592), provides that a homestead entryman in a reclamation project who has submitted satisfactory proof of residence, improvement, and cultivation for the time required by law—

may assign such entry or any part thereof to other persons, and such assignees upon submitting proof of the reclamation of the lands and upon payment of the charges apportioned against the same, as provided in said act of June 17, 1902, may receive from the United States a patent for the lands: *Provided*, That all assignments made under the provisions of this act shall be subject to the limitations, charges, terms, and conditions of the reclamation act.

In the Newlon case, *supra*, the Department held that an assignee must be a person qualified to make entry under the general homestead law, and that the wife of an entryman is not qualified to take an assignment of a portion of her husband's homestead entry. In the case of Noah A. Snook it was held that an attempted assignment by Snook to his wife violated the intent of the reclamation law, in that it would, if permitted, result in the acquisition by one family of two farm units. The requirement that the assignee be a person qualified to make entry under the general homestead laws has been reversed by this Department, but that portion of said decisions which prohibits the assignment to the wife of one holding a farm unit in a reclamation project upon which all payments have not been made is still in force and the Commissioner's ruling was in accordance therewith.

The decisions cited, are, in my opinion, not in accordance with the terms and conditions of the reclamation act and acts amendatory thereof, and impose an unwarranted limitation upon the right to take and hold lands by assignment under the act of June 23, 1910, *supra*. The act of June 17, 1902 (32 Stat., 388), modified the homestead law to the extent of permitting an entryman to take and hold under the homestead laws within a reclamation project not exceeding 160 acres of land, or such portion thereof as the Secretary of the In-

terior might find to be reasonably required for the support of a family, such tracts being commonly designated as farm units. The limit of privately-owned lands within such a project for which a water right might be obtained was fixed at 160 acres. The act of June 23, 1910, *supra*, did not impose new or additional conditions upon entrymen or their assignees, but contemplated and required that the assignee should stand in the shoes of the entryman to the extent of completing the reclamation of the land and the payment of building, operation, and maintenance charges assessed thereagainst as a prerequisite to patent. In other words, the assignee was required to continue to fulfill the requirements of the reclamation law.

August 9, 1912, Congress passed an act, one of the purposes of which was to permit the issuance of patents for homestead entries within reclamation projects, or of water-right certificates upon privately-owned lands, upon payment of all charges then due, reserving to the United States a first lien against the land and water rights for all charges remaining unpaid. It was provided in said act—

That no person shall at any one time or in any manner except as hereinafter otherwise provided acquire, own, or hold irrigable lands for which entry or water-right application shall have been made . . . before final payment in full of all installments of building and betterment charges shall have been made on account of such land in excess of one farm unit as fixed by the Secretary of the Interior as the limit of area per entry of public land or per single ownership of private land for which a water right may be purchased, respectively, nor in any case in excess of one hundred and sixty acres.

Construing the last-described act in the cases of Johnson (42 L. D., 542), Keebaugh and Cook (42 L. D., 543), and in instructions approved July 22, 1914, the Department held that a person may hold a water right for but one tract for which he has a water-right application not paid in full, either a single farm unit or a tract not exceeding the limit of acreage for land in private ownership; also that after payment in full has been made of all building and betterment charges in connection with a farm unit or a tract held in private ownership, the law does not prohibit the acquisition of an additional tract of land by assignment or purchase, subject to the terms and conditions of the reclamation law.

Under the laws of most of the States in which the reclamation law is applicable, and in the case of the State of Wyoming, where the land here involved is located, a married woman is entitled to own and hold real property separate and apart from control of her husband. Mrs. Hawley states under oath, as already set forth, that she acquired this land with her own money for her own use and benefit, and shows herself to be otherwise qualified to take and hold an assignment of a farm unit or entry under the reclamation act.

I am convinced, therefore, that the assignment to her from Althoff should be accepted and noted, and that she should be allowed to take

and hold said farm unit, subject to her future compliance with the terms, conditions, limitations, and charges of the reclamation act applicable to the same. The departmental decisions in cases of Newlon and Snook, *supra*, so far as in conflict herewith, are overruled, and the decision of the Commissioner in this case reversed.

—

CHARLES H. LUCAS.

Decided August 15, 1914.

ADDITIONAL HOMESTEAD—FAILURE OF FIRST EXERCISE OF ADDITIONAL RIGHT.

Where an additional homestead entry under section 6 of the act of March 2, 1889, fails of consummation for good and sufficient reason, not the fault of the entryman, such futile effort to obtain the benefits of said section will not be held to exhaust the entryman's right of additional entry thereunder.

JONES, First Assistant Secretary:

Charles H. Lucas has appealed from decision of December 4, 1913, by the Commissioner of the General Land Office denying his application to make homestead entry for the SE. $\frac{1}{4}$ NW. $\frac{1}{4}$, Sec. 29, T. 1 N., R. 22 W., Guthrie, Oklahoma, land district.

It appears that Lucas made homestead entry for the NE. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 30, T. 1 N., R. 22 W., Guthrie, Oklahoma, land district, commuted March 28, 1911.

August 28, 1912, Lucas made homestead entry for the N. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 29, said township, which was canceled on relinquishment May 8, 1913, on which date he filed the present application.

The Commissioner held that after completion of the first entry Lucas was entitled under section 6 of the act of March 2, 1889 (25 Stat., 854), to make entry for not to exceed 120 acres; that in pursuance of that act he made entry for 80 acres which exhausts his right under that act. Said ruling was in harmony with departmental decision in the case of August Meisner (34 L. D., 294). It does not follow, however, that the claimant may not be allowed a second additional entry under departmental authority where the first failed to reap the benefit of the homestead law for sufficient reason without fault upon his part.

Lucas states in a corroborated affidavit that he relinquished the 80-acre entry voluntarily without receiving any compensation or consideration therefor of any kind or character for either the improvements or for the filing fee. He states that it was not a desirable tract and that he only took it because it was situated near the 40 upon which he had made the final proof, believing that he would be able to utilize it to fair advantage, but when he learned that he could enter the land now applied for he relinquished the said 80 acres, concluding that it would be more profitable to throw away

and abandon the 80-acre tract and lose all that he had spent upon it rather than to lose the chance of obtaining title to the 40 acres embraced in his present application. The doctrine stated in the case of Marmaduke William Mathews (38 L. D., 406) applies equally to an application for second additional entry as for a second exercise of the original homestead right. In the absence of other objection the entry will be allowed. The decision appealed from is accordingly reversed.

SEATTLE COAL CLAIM.

Instructions, August 18, 1914.

COAL LAND LOCATION IN ALASKA—NOTICE.

Where a locator of coal lands in Alaska opened and improved a mine of coal upon his claim, and marked the boundaries thereof by permanent monuments, as required by statute, and within one year filed notice of his location in the recording district as required by the act of April 28, 1904, his claim should not be held defective, in the absence of an intervening withdrawal or adverse claim, merely because notice was not filed in the local land office until after the expiration of one year from the date of the location.

JONES, First Assistant Secretary:

In the papers which have been submitted by your office [General Land Office] in the matter of the Seattle Coal Claim embraced in coal land application No. 0108, Juneau, land district, Alaska, it would appear that only one question is presented, namely, whether or not the locator's failure to present and file in due time in the local land office his coal declaratory statement or notice of claim, is fatal. Associated with said claim and adjacent thereto are the California and Everett coal land claims. The three claims mentioned appear to have been sold to the Controller Bay Company in which Mr. T. P. McDonald is interested. The two claims last mentioned, however, are not here for consideration or action.

Your office has proposed to clear list, and in the absence of other objections, issue patent for the Seattle claim. The only objection to such action is that the notice of location was filed after the statutory period had expired. In view of the decision rendered in the case of Andrew L. Scofield *et al.* (41 L. D., 176), where it was held that notice of location of coal lands in the district of Alaska must be filed within one year from date of location, your office finds it impossible to proceed without instructions.

The act of April 28, 1904 (33 Stat., 525), in part provides:

All such locators shall, within one year from the passage of this act, or within one year from making such location, file for record in the recording district

and with the register and receiver of the land district in which the lands are located or situated, a notice containing the name or names of the locator or locators, the date of the location, the description of the lands located, and a reference to such natural objects or permanent monuments as will readily identify the same.

It would appear that the Seattle claim was first located July 31, 1903, and was after passage of above act relocated May 30, 1904. The notice of location or coal declaratory statement was not filed with the register and receiver until July 6, 1905, which was more than one year after the date of the relocation. The notice of location appears to have been filed in the local recording district within the year. November 12, 1906, by Presidential order, all Alaska coal lands were withdrawn from location or sale, but this order was later modified on January 15, 1907, so as to provide—

Nothing in any withdrawal of lands from coal entry heretofore made shall impair any right acquired in good faith under the coal land laws and existent at the date of such withdrawal.

(See circular of January 21, 1907, 35 L. D., 395.)

It will be observed that the coal declaratory statement for the Seattle claim had been of record for about one year and four months prior to the Alaska coal land withdrawal.

The question is therefore sharply presented as to whether the locator's failure to file his notice in the local land office should be held fatal to the claim and to preclude the Department from recognizing the same or any rights thereunder as the basis for application proceedings and the issuance of a patent.

Referring to Senate report upon Senate Bill No. 2814, 58th Congress, second session (Volume 4, Senate Reports), it is observed that the Department in reporting upon the proposed legislation made the following statement:

It should be constantly borne in mind that the making of surveys in Alaska is difficult and very expensive. For this reason and to encourage the development of coal mines, I think the expense should be lessened as much as possible. For that reason the claimant should be permitted, at the time of his location, to mark his own boundaries, to file his notice in the recording district, and for greater safety and for larger information for the public, should file a copy of it with the register and receiver.

In the regulations of July 18, 1904 (33 L. D., 114), promulgated under the Alaska coal act of April 28, 1904, *supra*, with reference to this question, the Department said:

Persons or associations who fail to record their notices within the time prescribed by the first section of the act, or fail to file application for patent in the time prescribed by the second section, will be considered as having forfeited their rights, providing a valid adverse right has intervened, and parties who file after the time prescribed do so at their own risk.

The above regulation was in full force and effect at the time the declaratory statement for the Seattle claim was filed and such regulation was not modified or altered until the circular of April 12, 1907 (35 L. D., 676). By paragraph 11 of said regulations, it was provided as follows:

Persons or associations of persons who fail to record their notices within the time prescribed by the first section of the act, or fail to file application for patent in the time prescribed by the second section, forfeit their rights to the particular tract located.

It will be observed that these last regulations were made after withdrawal order November 12, 1906.

With reference to the time of filing in the United States section 2349, Revised Statutes, prescribed that all claims for a preference right—

must be presented to the register of the proper land district within sixty days after the date of actual possession and the commencement of improvements on the land, by the filing of a declaratory statement therefor.

In the case of Charles S. Morrison on review (36 L. D., 319), the Department had under consideration a case in which the preference right claimant had failed to file within the sixty days but had filed prior to a withdrawal and after such withdrawal was asserting his right to purchase. It was there held (syllabus):

Notwithstanding a preference-right claimant's failure to file his declaratory statement within the time prescribed by the statute, in the absence of an intervening adverse right in, or disposition of, the land involved, the subsequent presentation of the declaratory statement, within the ensuing year, will thereupon afford him the same security, but not beyond the period which, he would have enjoyed had he filed it within the time so prescribed.

In support of the conclusion there reached, the early case of Johnson v. Towsley (13 Wall., 72, 90), involving rights under the preemption statute, was cited. That law then prescribed that claimants were required to make known their claims in writing to the register of the proper land office—

within three months from the time of the settlement, . . . giving the designation of the tract, and the time of settlement; otherwise his claim to be forfeited, and the tract awarded to the next settler, in the order of time, on the same tract of land, who shall have given such notice and otherwise complied with the conditions of the law. (Sec. 5, act March 3, 1843, 5 Stat., 619.)

The Supreme Court in discussing the statute said:

It declares that where the party fails to make the declaration within the three months his claim is to be forfeited and the tract awarded to the next settler in order of time on the same tract, who shall have given such notice and otherwise complied with the conditions of the law. The words "shall have given such notice," presuppose a case where some one has given such notice before the party who has thus neglected seeks to assert his right. If no other party has made a settlement or has given notice of such intention, then no one

has been injured by the delay beyond three months, and if at any time after the three months, while the party is still in possession, he makes his declaration, and this is done before any one else has initiated a right of preemption by settlement or declaration, we can see no purpose in forbidding him to make his declaration or in making it void when made. And we think that Congress intended to provide for the protection of the first settler by giving him three months to make his declaration, and for all other settlers by saying if this is not done within three months any one else who has settled on it within that time, or at any time before the first settler makes his declaration, shall have the better right. As Towsley's settlement and possession were continuous, and as his declaration was made before Johnson or any one else asserted claim to the land or made a settlement, we think his right was not barred by that section, under a sound construction of its meaning.

The principle announced in the above decision was followed in *Emmerson v. Central Pacific Railroad Company* (3 L. D., 117), and in a continued line of other decisions the construction above set forth has been consistently applied and followed.

The requirement of recording notices of coal locations in Alaska is in a measure analogous to that of the different states which specify that notices or certificates of mining locations must be filed within a designated time. Under these statutes it appears to have been the uniform holding that a failure to record within the statutory time does not render the claim invalid if it is otherwise legal and if adverse rights of third parties do not intervene before record is had. See *Costigan on Mining Law*, Sec. 57, page 218, and authorities there cited; also *Snyder on Mining*, Sec. 421, and *Lindley on Mines*, third edition, Sec. 390. In the case of *Faxon v. Barnard* (4 Fed., 702), which involved a Colorado Statute requiring a certificate of location to be filed within three months next after the discovery of the lode, at page 703, Judge Hallett used the following language:

In terms, the act requires the certificate to be filed within that time; and, to secure the claim from the date of discovery against intervening claimants seeking to locate the same ground, it would seem to be necessary to comply with its provisions. But no reason is perceived for saying that the certificate shall be invalid if not filed within the time fixed by law. The design of the law clearly is to give the discoverer time for doing the acts necessary to a proper location. He may sink his discovery shaft within 60 days; he may put up his discovery notice, and his boundary stakes, and record his certificate of location within three months; failing in this he shall have no right as against one who has been more diligent in fulfilling the statute, although later in point of time. But when all things have been done as the act requires, before any other and better right to the same ground has been perfected, it seems to be just and entirely consistent with the statute to recognize the location as having been properly made.

The above holding was expressly approved by the Ninth Circuit Court of Appeals in *Preston v. Hunter et al.* (67 Fed., 996.) All the court decisions appear to be in harmony with the above views with respect to mining locations.

Congress by the act of May 28, 1908 (35 Stat., 424), entitled, an act to encourage the development of the coal deposits in the Territory of Alaska, recognized the rights and claims of those who by reason of the withdrawal had not filed their notices of location in time. The first section of the act is in part as follows:

All persons . . . who have in good faith . . . made locations of coal lands in the Territory of Alaska in their own interest, prior to November twelfth, nineteen hundred and six, or in accordance with circular of instructions issued by the Secretary of the Interior May sixteenth, nineteen hundred and seven, may consolidate their said claims or locations.

The circular referred to (35 L. D., 572), purported to authorize an enlargement of the statutory time of one year within which locators might file their notices in the district of Alaska where good locations had been made within one year prior to November 12, 1906, and notices had not already been filed. Said circular in paragraph 3, stated that in computing the time within which notices of location may be filed the period intervening between November 12, 1906, and August 1, 1907, will not be considered or counted and notices may be filed within the statutory period of one year from the date of location exclusive of that time.

My attention has also been called to the opinion of the Attorney-General of October 18, 1910 (39 L. D., 322), which in substance reaches the same conclusion as was reached by the Assistant Attorney-General in this Department in his opinion of October 10, 1910 (39 L. D., 327), with respect to the time in which purchase price for the land must be paid. The conclusion of the Attorney-General as stated in the syllabus of his opinion is as follows:

The payment required by section 2 of the act of April 28, 1904, to be made by locators of Alaska coal lands, as a precedent to patent therefor, need not be made, in cases where protest is filed, until after the termination of the protest.

In other words, the conclusion of the Attorney-General is to the effect that the time provisions of the statute with respect to payment are directory rather than mandatory and the opinion cites authorities to cover the point.

I am of the opinion that the Alaska act of April 28, 1904, is primarily a statute for the sale of Alaska coal lands to those locators and their successors who have prior to the location opened or improved a mine or mines of coal upon the tracts sought by them. It is not of material consequence to the Government who the purchaser shall be so long as he is properly qualified and has legally initiated his claim. The provisions with respect to the recordation of the notices of location seem to have been adopted in order that coal locators might be protected as against each other. It would seem that the notice of primary importance and the one in case of conflict to which recourse would be had, would be the notice of location filed

in the local recording district, that being more readily available and much nearer at hand. The requirement of filing a copy in the local land office was as suggested by the Department, "for greater safety and for larger information for the public." If the locator has in fact opened up and improved a mine upon his claim and duly marked the boundaries thereof by permanent monuments, as required by the statute, and has thereafter filed his notices prior to any asserted adverse claim and prior to any withdrawal of the land, such a locator should be protected.

I find that in the Scofield case (41 L. D., 176), charges of fraud and conspiracy in the initiation and making of the claims were preferred and as was found and held in that decision were established at the hearing had.

In the case at bar involving the Seattle claim it is not proposed to prefer charges of fraud or order a hearing in the matter. There seems to be no ground for believing that this claim was fraudulently initiated or rights thereunder are asserted or claimed in violation of the law. Under these circumstances I do not see my way clear to hold that the Seattle claim merely because the notice was filed in the local land office after the expiration of one year must be rejected.

In the absence of other objections, therefore, your office will proceed to adjudicate this application in disregard of the fact that the locator failed to file the notice in the local land office within the year after relocation. If this be the only objection to be urged against the claim, it is my opinion that the same should be passed to entry and patent.

RECLAMATION ENTRIES—MORTGAGE—RELINQUISHMENT.

CIRCULAR.

DEPARTMENT OF THE INTERIOR,
UNITED STATES RECLAMATION SERVICE,
Washington, D. C., August 18, 1914.

The SECRETARY OF THE INTERIOR.

(Through the Commissioner of the General Land Office.)

SIR: On July 11, 1913, the Department approved an amendment of paragraph 41 of the General Reclamation Circular approved February 6, 1913 [42 L. D., 349], relative to mortgages of homestead and desert land entries, which paragraph as so amended reads as follows:

Every such notice of mortgage interest filed as provided in preceding paragraphs, must be forthwith noted upon the records of the project manager and of the local land office, and be promptly reported to the Director of the Reclamation Service, and to the General Land Office where like notation will be made. Relinquishment of a homestead entry, or part thereof, within a recla-

mation project, upon which final proof has been submitted, where the records show the land to have been mortgaged, will not be accepted or noted, unless the mortgagee joins therein; nor will an assignment of such an entry, or part thereof, under the act of June 23, 1910 (36 Stat., 592), be recognized or permitted unless the assignment specifically refers to such mortgage and is made and accepted subject thereto.

In the last sentence as above amended no reference is made to relinquishments or assignments of desert land entries and it is thought that these should be treated the same as relinquishments and assignments of homestead entries. It is therefore recommended that the last part of paragraph 41 be amended to read as follows:

Relinquishment of a homestead or desert land entry or part thereof, within a reclamation project, upon which final proof has been submitted, where the records show the land to have been mortgaged, will not be accepted or noted unless the mortgagee joins therein; nor will an assignment of such a homestead entry or part thereof under the act of June 23, 1910 (36 Stat., 592), nor an assignment of a mortgaged desert land entry where the records show the land to have been mortgaged, be recognized or permitted unless the assignment specifically refers to such mortgage and is made and accepted subject thereto.

Respectfully,

F. H. NEWELL,
Director.

Recommendation concurred in August 29, 1914:

CLAY TALLMAN,
Commissioner of the General Land Office.

Approved August 31, 1914:

ANDRIEUS A. JONES,
First Assistant Secretary.

INSTRUCTIONS.

August 26, 1914.

HOMESTEAD AND DESERT LAND ENTRIES WITHIN RECLAMATION WITHDRAWALS.

Where homestead or desert land entries are included within first-form reclamation withdrawals they should not be suspended but allowed to proceed to final proof, certificate, and patent, and the land, if thereafter needed by the United States for reclamation purposes, reacquired by purchase or condemnation.

PROCEDURE ON PROOF AND ENTRIES.

Directions given that the proper field office of the Reclamation Service be promptly advised, by the local land office of the district wherein the land lies, of the entryman's offer to submit final proof in such cases, and that in cases where through inadvertence of the local land office a filing has been accepted or entry erroneously allowed for lands previously withdrawn under the reclamation act, no final certificate or patent shall issue until the case has been referred to the Washington office of the Reclamation Commission for consideration and recommendation.

CONTRARY DEPARTMENTAL DECISION OVERRULED.

Agnes C. Pieper, 35 L. D., 459, overruled.

JONES, *First Assistant Secretary*:

The Department is in receipt of a communication from the Commissioner of the General Land Office, dated June 4, 1914, relative to the present practice of suspension of entries made under public-land laws in cases where the land is thereafter withdrawn for proposed reclamation works under the first form, act June 17, 1902 (32 Stat., 388), and of report of the Reclamation Commission with respect thereto, dated July 1, 1914.

The Commissioner's suggestion is that in such cases, in view of the hardships entailed upon the entrymen, and of the fact that in the case of homestead and desert-land entries, entrymen are required to perform residence or improvement and cultivation in order to perpetuate their rights, their entries should be allowed to proceed to final proof, certificate, and patent, and the land, if thereafter needed by the United States, reacquired by purchase or condemnation.

The Reclamation Commission states that it has no serious objection to a change in policy in this respect provided that due notice be given to the Reclamation Service of the offer to file final proof in such cases, and that where filings or entries are inadvertently allowed for land previously withdrawn, no final certificate or patent issue without reference to the Washington office of the commission.

The practice referred to is based upon departmental decision in the case of Agnes C. Pieper (35 L. D., 459) and opinion of the Assistant Attorney-General, dated January 25, 1906 (34 L. D., 421), which opinion was to the effect that uncompleted claims to lands so withdrawn should remain in the same status as existed at the time the withdrawal was made, and that the rights of the claimants should be adjusted upon the basis of that status.

The Commissioner calls attention to the fact that this is unjust to homestead and desert-land claimants who, as already stated, are required to continue their cultivation and improvement of the land, and in the matter of homesteads, to continue their residence thereupon.

The Department concurs in the view expressed by the Commissioner, as above set forth, and the rule announced in the Pieper case, *supra*, will no longer be followed. It is hereby directed, however, that the proper field office of the Reclamation Service be promptly advised by the local land office of the district wherein the land may be situate of the entryman's offer to submit final proof in every such case; and that in cases where through inadvertence of the local land office a filing has been accepted or entry erroneously allowed for lands previously withdrawn under the reclamation act, no final

certificate of entry or patent shall issue until the case has been referred to the Washington office of the Reclamation Commission for consideration and recommendation.

KIOWA, COMANCHE AND APACHE LANDS—EXTENSION OF PAYMENTS—ACT OF AUGUST 1, 1914.

CIRCULAR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., September 3, 1914.

REGISTER AND RECEIVER,
Guthrie, Oklahoma.

Sirs: 1. The last paragraph of section 16 of the Indian Appropriation Act of August 1, 1914 (Public, No. 160), reads as follows:

The Secretary of the Interior is authorized in his discretion, to grant a further extension or extensions of time on the payments described in the Act entitled "An Act authorizing the Secretary of the Interior to subdivide and extend the deferred payments of settlers in the Kiowa-Comanche and Apache ceded lands in Oklahoma," approved April twenty-seventh, nineteen hundred and twelve: *Provided*, That accrued and unpaid interest shall be treated as principal: *Provided further*, That no payment shall be deferred beyond the time prescribed in the Act herein cited, and no forfeiture of entry shall be declared except for fraud.

These provisions refer to the ceded Kiowa, Comanche and Apache lands, known as the Big Pasture and the Little Pasture, and opened to entry under the acts of June 5, 1906 (34 Stat., 213), and June 28, 1906 (34 Stat., 550). The status of the law, with reference to the payments for said lands, as fixed by said acts and those of March 11, 1908 (35 Stat., 41), February 18, 1909 (35 Stat., 636), March 26, 1910 (36 Stat., 266), and April 27, 1912 (37 Stat., 91), is as below stated.

2. Under the act of April 27, 1912, the utmost extension for making the payments was to a date eight years from the 1911 anniversaries of the dates of the various entries; and the extension allowable under the present act may, therefore, be until the year 1919. Accordingly, in view of the climatic and other hard conditions which have prevailed in the locality of these lands, an extension until the 1919 anniversaries is, under the authority conferred by the act on the Secretary of the Interior, granted as to all unpaid installments on all entries involved. The time for submission of proofs on the homestead entries is similarly extended.

3. The installments on entries under the act of June 5, 1906, were to mature, by its provisions, in one, two, three and four years after the dates of the entries, without interest. Each installment bears interest from its maturity—at four per cent per annum before the 1910 anniversary of the entry, and at five per cent thereafter until April 27, 1912, subject to such yearly payments of interest as may have been made. The amounts owing, as the halves of the various installments, on April 27, 1912, bear interest at four per cent per annum until the dates when they fall due under the act of that date, namely the 1912 and succeeding anniversaries of the respective entries, the number of installments paid before the passage of the act not being material; after their maturities, as indicated, the interest is again compounded, running at four per cent until paid. In cases where the 1912 anniversaries occurred before April 27, the interest is compounded only once, namely at those times.

4. The installments on the entries under the act of June 28, 1906, were to mature, by its provisions, in one, two, three and four years after the dates of the entries; they bore interest from said dates at six per cent per annum until April 27, 1912, subject to such yearly interest payments as may have been made. After that date, the interest runs at four per cent, being compounded twice, as explained in the preceding paragraph.

5. The act of April 27, 1912, having authorized a subdivision of the installments, the parties in interest may at any time pay a half installment with interest to the date of payment; or they may pay the interest on an installment, or on a half thereof.

6. The provisions of the present legislation apply to entries made by sublessees, under the act of March 11, 1908, which applied to them the provisions of the act of June 28, 1906.

7. All decisions holding entries of these lands for cancellation for nonpayment of parts of the purchase price, which have not been carried into effect by cancellation of the entries, are hereby revoked and held for naught. You will so advise each of such entrymen, or their widows, heirs or transferees, so far as known to you; and you will, furthermore, use all practicable efforts to convey a copy of these instructions to every other holder of a pending unpatented claim for a part of the lands in question.

Very respectfully,

CLAY TALLMAN,
Commissioner.

Approved, September 3, 1914:

A. A. JONES,
First Assistant Secretary.

APPLICATIONS TO ENTER—EXECUTION—FILING.

CIRCULAR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, September 8, 1914.

REGISTERS AND RECEIVERS,
United States Land Offices.

SIRS: On and after October 1, 1914, as directed in a recent departmental decision (*Race v. Larson*, 43 L. D., 313), you will reject all applications to make entry which are executed more than ten days prior to filing.

Such rejections should be subject to the usual right of appeal; also subject to the right to file a new and properly-executed application, or to re-execute the rejected application, prior to the intervention of any valid adverse claim.

Very respectfully,

CLAY TALLMAN,
Commissioner.

Approved, September 8, 1914:
ANDRIEUS A. JONES,
First Assistant Secretary.

HOMESTEAD ENTRIES—LEAVE OF ABSENCE—ACT OF AUGUST 22,
1914.

CIRCULAR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, September 8, 1914.

REGISTERS AND RECEIVERS,
United States Land Offices.

SIRS: 1. Your attention is directed to the act of Congress, approved August 22, 1914 (Public, No. 183), which provides:

That the entryman mentioned in section 2291, Revised Statutes of the United States, as amended by the Act of June 6, 1912, 37 Stat., 123, upon filing in the local land office notice of the beginning of such absence at his option shall be entitled to a leave of absence in one or two continuous periods not exceeding in the aggregate five months in each year after establishing residence; and upon the termination of such absence, in each period, the entryman shall file a notice of such termination in the local land office; but in case of commutation, the fourteen months actual residence, as now required by the law, must be shown, and the person commuting be at the time a citizen of the United States.

2. Under this act, the five-month absence in each residence-year, allowed by the first proviso to section 2291, may, at the option of the homesteader, be divided into two periods, but no more. The homesteader must, at the beginning of each absence, file a notice thereof at the local office, but he need not specify the portion of the five-month privilege of which he intends to avail himself; a notice of his return to the land must be promptly filed at the termination of each absence.

3. If a homesteader has returned to the land after an absence of less than five months, and filed notice of his return, he may, without any intervening residence, again absent himself (pursuant to new notice) for the remaining part of the period within the residence year. Two absences in different residence years, however (reckoned from the date when residence was established), must be separated by a substantial period, if they together make up more than five months.

4. Paragraph 10 of the circular (No. 278) of November 1, 1913 [42 L. D., 511], and paragraph 26 of the circular (No. 290) of January 2, 1914 [43 L. D., 1], are modified to conform to the above.

Very respectfully,

CLAY TALLMAN,
Commissioner.

Approved, September 8, 1914:

A. A. JONES,

First Assistant Secretary.

CLAYTON v. OCHELTREE.

Decided May 7, 1914.

THREE-YEAR HOMESTEAD—CULTIVATION—CONTEST.

A homestead entryman is entitled under the act of June 6, 1912, to the whole of the second year of the entry within which to meet the requirement of that act that one sixteenth of the area of the entry be cultivated during that year; and a contest for failure to cultivate will not lie until the expiration of the second year.

JONES, *First Assistant Secretary:*

December 4, 1913, the Commissioner of the General Land Office authorized a hearing upon the charges made by Oscar S. Clayton in his application to contest the homestead entry of Dennis D. Ocheltree for the NE. $\frac{1}{4}$, Sec. 12, T. 7 S., R. 22 E., S. B. M., Los Angeles, California, land district. The application alleged that Ocheltree had not legally established residence on the land and that he had never cultivated the same or made adequate improvements thereon. The local officers denied the application because of the general insufficiency of the charges. The Commissioner modified that action

and held that the charge with reference to failure of residence was insufficient upon which to permit contest because that charge was considered as merely a continuation of a prior controversy between the parties over the claimed preference right of Ocheltree to make entry. The Commissioner held, however, that the further charge of failure of cultivation was sufficient and he directed a hearing with the distinct understanding that the issue was to be confined to the charge of noncultivation. Ocheltree attempted to appeal from that action but the Commissioner declined to transmit the same, holding said action was merely interlocutory and that appeal therefrom could not properly be allowed.

A petition has now been filed by Ocheltree requesting that the Commissioner of the General Land Office be directed to certify the record for departmental consideration.

The entry was made June 1, 1912. Therefore, under the provisions of the act of June 6, 1912 (37 Stat., 123), cultivation was not required until the second year of the entry. The contest was filed October 13, 1913, which was about 4½ months after the beginning of the second year. The contestee urges that the said law will be complied with if at any time during the second year one sixteenth of the area of the entry be cultivated. The contestant on the other hand insists that cultivation must begin with the second year of the entry, and he cites in support of that contention the language used in said act, as follows:

That the entryman shall, in order to comply with the requirements of cultivation herein provided for, cultivate not less than one-sixteenth of the area of his entry, beginning with the second year of the entry, and not less than one-eighth, beginning with the third year of the entry, and until final proof.

After very careful consideration of the question here raised, the Department is of opinion that contest on the ground of failure to cultivate, within the meaning of said act, should not be permitted until the expiration of the second year of entry. It will then be possible, after full showing with reference to cultivation during that year, to determine whether the requirements of the law in that respect have been met. To permit contest on that ground prior to the expiration of the second year of the entry would bring before the Department for decision the question as to the sufficiency of the acts performed to meet the requirements of the law before the full period for such requirements had expired. No satisfactory adjudication could be made under such circumstances.

The issue between the parties clearly appears from the petition of the contestee and the answer thereto by the contestant and the copies of the Commissioner's decisions filed with the petition, therefore there is no necessity of requiring the record in the case to be certified to the Department. Judgment will be rendered upon the papers now

here. For the reasons above given the action of the Commissioner ordering a hearing is hereby recalled and vacated and the contest is dismissed.

DANIELS v. NORTHERN PACIFIC RY. CO.

Decided August 3, 1914.

SELECTIONS OF UNSURVEYED LANDS—DESCRIPTION.

A selection of unsurveyed lands prior to the regulations of November 3, 1909, designating the selected tracts as what will be, when surveyed, technical subdivisions of specified sections, accepted by the officers of the land department pursuant to then-existing regulations and practice, confers upon the selector a preference right to the lands upon their identification by actual survey.

CONFLICTING DECISIONS OVERRULED.

F. A. Hyde *et al.*, 40 L. D., 234, and all other decisions in conflict herewith, overruled.

JONES, *First Assistant Secretary:*

Frank O. Daniels has appealed from the decision of the Commissioner of the General Land Office dated May 12, 1911, rejecting his affidavit of contest against the selection by the Northern Pacific Railway Company for the S. $\frac{1}{2}$ of the NE. $\frac{1}{4}$, N. $\frac{1}{2}$ of the SE. $\frac{1}{4}$, Sec. 30, T. 42 N., R. 4 E., B. M., Lewiston, Idaho, land district.

The railway selection involved in this proceeding was filed in the local office on July 11, 1901, under the provisions of the act of March 2, 1899 (30 Stat., 993). It embraced the SE $\frac{1}{4}$ of the NE. $\frac{1}{4}$, and the NE. $\frac{1}{4}$ of the SE. $\frac{1}{4}$, Sec. 30, but not the SW. $\frac{1}{4}$ of the NE. $\frac{1}{4}$ and NW. $\frac{1}{4}$ of the SE. $\frac{1}{4}$, said section, as alleged in the affidavit of contest and in the appeal.

The eastern boundary of this township was surveyed between July 29 and August 2, 1903; the northern, southern and western boundaries in April and May, 1905, and the subdivisional lines were run during September, 1905; the township plat of survey was filed in the local office on July 1, 1909, and on July 26, 1909, the railway company filed a rearranged list describing the land under the survey as in its original selection tendered in 1901.

On July 1, 1909, the date on which the plat of survey was filed in the local office, Frank O. Daniels tendered his homestead application for the S. $\frac{1}{2}$ of the NE. $\frac{1}{4}$, and the N. $\frac{1}{2}$ of the SE. $\frac{1}{4}$, Sec. 30, T. 42 N., R. 4 E., B. M., alleging settlement on August 10, 1904, continuous residence since that date and sundry improvements. The local officers rejected this application as to the SE. $\frac{1}{4}$ of the NE. $\frac{1}{4}$, and the NE. $\frac{1}{4}$ of the SE. $\frac{1}{4}$, for conflict with the railway selection. From this action Daniels appealed and subsequently filed an affi-

davit of contest against the selection alleging, in addition to settlement, residence, and improvements on and after August 10, 1904, that the selection was illegal and void, inasmuch as the company had wholly failed to post notice thereof on the land, and that he had had no notice, actual or constructive, of the selection at the date of his settlement. The local officers rejected this affidavit of contest upon the ground that it stated no cause of action. The Commissioner affirmed their decision and Daniels's appeal brings the matter before the Department.

The act of March 2, 1899, *supra*, provides, in Sec. 3, that upon the filing of a proper deed of release or conveyance to the United States of a tract of its granted land within the Mount Rainier National Park, the Northern Pacific Railway Company is authorized to select an equal quantity of nonmineral public land, so classified at the time of survey. In Sec. 4 it is provided that:

In case the tract so selected shall, at the time of selection, be unsurveyed, the list filed by the company at the local land office shall describe such tract in such manner as to designate the same with a reasonable degree of certainty, and within a period of three months after the lands including such tract shall have been surveyed and the plats thereof filed by the said local land office, a new selection list shall be filed by said company describing such tract according to such survey.

It is clear that the act, as to unsurveyed lands, calls for a description at the date of selection, describing and designating the selected tract with reasonable certainty, and that the reasonable certainty of the description is dependent upon facts in existence at the date of selection. In order to dispose of the question raised by this appeal, it will be necessary, therefore, to consider, first, the several acts of Congress permitting settlement upon, location and selection of unsurveyed public lands and the nature of the right acquired by such settlement, location or selection; second, the requirements of the land department as to descriptions of unsurveyed lands selected, located, or entered; third, the sufficiency, under said act of March 2, 1899, of the description given in this case by the railway company, it being conceded that the only description furnished by the company in its original selection list was that the land when surveyed would be the SE. $\frac{1}{4}$ of the NE. $\frac{1}{4}$ and the NE. $\frac{1}{4}$ of the SE. $\frac{1}{4}$, Sec. 30, T. 42 N., R. 4 E., B. M., Idaho; and fourth, was the selected tract nonmineral public land, so classified at the date of survey.

Congress has passed a number of acts permitting the location of scrip upon public lands for the purpose of satisfying and extinguishing legal or equitable claims, among which the most important are those of July 17, 1854 (10 Stat., 304), and of April 5, 1872 (17 Stat., 649).

The act of March 3, 1877 (19 Stat., 377), known as the Desert Land Act, required that the declaration provided for shall particularly describe the land, if surveyed, and, if unsurveyed, shall describe the same as nearly as possible without a survey. Under the provisions of this act and of the amendatory act of March 3, 1891 (26 Stat., 1095), desert-land entries of unsurveyed lands were made until the passage of the act of March 28, 1908 (35 Stat., 52).

The act of February 8, 1887 (24 Stat., 388), provided for the allotment to Indians of unsurveyed lands.

The act of June 4, 1897 (30 Stat., 11, 36), provided:

That in cases in which a tract covered by an unperfected *bona fide* claim or by a patent included within the limits of a public forest reservation, the settler or owner thereof may, if he desires to do so, relinquish the tract to the Government, and may select in lieu thereof a tract of vacant land open to settlement not exceeding in area the tract covered by his claim or patent.

The act of July 1, 1898 (30 Stat., 597, 620), authorizes selection by the Northern Pacific Railway Company of unsurveyed land in "odd-numbered sections, to be identified by the survey, when made." This act also permits a *bona fide* settler upon lands to which the railway grant had attached, to relinquish his claim thereto and make a lieu selection. This act was amended by the acts approved March 2, 1901 (31 Stat., 950), and May 17, 1906 (34 Stat., 197), which do not affect the selection of unsurveyed land. Following the act of July 1, 1898, *supra*, came the act under which this selection was made, and the act of April 21, 1904 (33 Stat., 189, 194), for the selection by the Turtle Mountain Indians of vacant land belonging to the United States.

Early in the history of these acts permitting location and selection of unsurveyed land, the Department was called upon to define the nature and extent of the interest acquired by the locator or selector. The principle was announced by the Supreme Court of the United States in *Frisbie v. Whitney* (9 Wall., 187), *Yosemite Valley* case (15 Wall., 77), and *Buxton v. Traver* (130 U. S., 235), to the effect that no portion of the unsurveyed public domain, except in special cases not affecting the general rule, is open to sale. This principle was applied by the Department to a location of Valentine scrip in the case of *Henry Bruns* (15 L. D., 170), wherein it was held that the act of April 15, 1872, *supra*, conferred upon Valentine, or his representatives, the right to select—

public lands of the United States, in legal subdivisions, whether surveyed or unsurveyed, . . . and thus to initiate an inchoate right to purchase said land in preference to others when it was surveyed and came into market, in the same manner that a settler by the occupation of a tract of land acquires a preference right to purchase the same by taking the proper steps after the filing of the township plats. But it did not deprive Congress of the power to make

any other disposition of the land before it was offered for sale, nor did the United States by these acts enter into any contract with the settler or locator, or incur any obligation to any one that the land so occupied or located should ever be offered for sale. . . .

The filing of this scrip upon unsurveyed land does not segregate the land covered thereby, nor is it such an appropriation of the tract as will prevent others from initiating claims thereto, upon the same principle that more than one settlement may be made and more than one declaratory statement filed for the same tract.

These inchoate rights are all subject to the right of the prior claimant, and, if he fails to perfect his claim after survey within the time required by law, it is then subject to the right of the next claimant in order of priority.

The controversy under consideration is, therefore, between two preference right claimants, one under the act of March 2, 1899, and the other under Sec. 3 of the act of May 14, 1880 (21 Stat., 140). From what has hereinbefore been stated it is clear that the preference right of the railway company first attached if the land was subject to appropriation and the selection was in proper form.

The practice of describing unsurveyed land in terms of a future survey thereof has been in existence for many years, and was never challenged prior to the decision of *F. A. Hyde et al.* (40 L. D., 284). Prior to the date of that decision the Department had promulgated the regulations of November 3, 1909 (38 L. D., 287), which, in addition to a requirement that applications for unsurveyed land should contain an approximate description by section, township, and range, as it will appear when surveyed, required also a description by metes and bounds with courses, distances, and reference to monuments.

Not only have descriptions of unsurveyed land in terms of a future survey been recognized in departmental practice, but, as has been stated, such descriptions are required by the regulations now in force as an essential part of the description in all applications for unsurveyed land. Indeed, in the instructions of May 9, 1899 (28 L. D., 521), under the act of June 4, 1897, *supra*, was incorporated a provision broad enough to cover all selections of unsurveyed land under any act of Congress in which the only requirement as to description was that the land should be designated according to the description by which it would be known when surveyed, if that be practicable. This rule was applied by the land department to all selections of unsurveyed lands until the adoption of the regulations of November 3, 1909, *supra*. See *Hanson et al. v. Northern Pacific Railway Company* (38 L. D., 491), a case which arose under the act of March 2, 1899, *supra*.

The practice of describing unsurveyed lands in terms of a future survey thereof has been followed in many Executive proclamations involving wide areas of public land. See the proclamations of October 15, 1892 (27 Stat., 1034, 1038), December 20, 1892 (27 Stat.,

1049), July 27, 1892 (27 Stat., 1053), September 28, 1893 (28 Stat., 1240), February 22, 1897 (29 Stat., 906, 907, 909, 911), May 10, 1898 (30 Stat., 1771), April 3, 1901 (32 Stat., 1969), March 2, 1909 (35 Stat., 2247).

Congress also, in the act of July 1, 1898, followed the precedent established by departmental practice and sanctioned the propriety and validity of selections in terms of a future survey by specific requirement that the selected lands, under that act, be so described.

The custom of describing unsurveyed lands as was attempted by the railway company in this case is founded upon administrative considerations growing out of the method in which the records of the land department are kept and its business conducted. While the metes and bounds description of selected unsurveyed land should always have been, as it now is, required, it is obvious that without some reference to existing or future surveys such a description could not be so noted upon the public records, especially the tract books of the local office and of the General Land Office, as to advise the public of the existence of the selection. If a selection of a specific tract, identified by reference to a survey, be filed in the local office the register and receiver are enabled to note the claim in its appropriate place. If the land be actually surveyed and the plat of survey be on file the selection gives notice to the world of the existence of the claim in the absence of a requirement of law or regulation that notice be given upon the land selected also. This would be also true of a selection in which the tract, under the act of March 2, 1899, *supra*, is described in terms of a future survey, if such selection complies with the requirement of law that the description designate the land with a reasonable degree of certainty. The only notice of selection required by said act is the filing of the list in the local office.

To be of any avail, as notice, it requires no argument to demonstrate that the land must be described in such a way that the fact of selection may be noted upon the record in its appropriate place.

Selections like the one here under consideration having, therefore, the sanction of departmental practice and regulations, of Executive proclamations, and of at least one act of Congress, and having been predicated upon sound administrative reasons, especially that of notice to the land department and of the public of the approximate locality of the claim, the department will consider the objection that a description in terms of a future survey does not designate the land with a reasonable degree of certainty. Attention has heretofore been directed to the act of July 1, 1898, in which Congress required that a selection of unsurveyed land by the railway company should be of "odd-numbered sections to be identified by the survey, when made." It is a fair inference that Congress, in passing

this law was familiar with the practice of the Department in permitting locations and selections under such description, and advisedly ratified and applied that practice to selections under the act. Had such a description as the one involved in this proceeding lacked any element of reasonable certainty, in the judgment of Congress, no such requirement as to the description of selected unsurveyed land would have been placed in the act of 1898. The requirement in the act of 1899, that the land selected be described with a reasonable degree of certainty must be construed in the light of the act of 1898 which was, in fact, a determination by the law-making branch of the Government that a description in terms of a future survey was sufficient and valid.

It is universally known throughout public land States that theoretically a township is six miles square, and that a section is a mile square. The locus of any section within a township with reference to the other sections thereof is likewise a matter of common knowledge. When, therefore, a selection is filed describing the land as "what will be, when surveyed," Sec. 30, it will be understood as embracing land in a section whose western boundary is the western boundary of the township whose southern boundary is a line one mile north of the southern boundary of the township, and whose eastern and northern boundaries are 5 and 4 miles, respectively, distant from the eastern and northern township lines. If, therefore, at the date of the selection any line of the public survey has been established in the vicinity of the selected land, it is not believed that a selection like the one under consideration lacks, in fact, any element of reasonable certainty. The locus of the section having been ascertained by considering, as the public generally considers, the section line as being one mile long and the township boundaries as six miles in length, the position of a subdivision of section can be readily determined. It is common knowledge, also, that when townships are actually surveyed in the field, many of them display marked eccentricities of outline due to reasons not necessary to be here considered. Such eccentricities might be so marked as to throw section 30, for example, when surveyed, entirely without its theoretical boundaries, with reference to the nearest surveyed township. Such a contingency, however, would have no bearing on the rule hereinbefore announced though it would render necessary an adjustment of the selected tract to its appropriate description under the plat of survey.

The Department is convinced that when, in this case, the selection was filed in the local office, describing the land sought as what will be when surveyed the SE. $\frac{1}{4}$ of the NE. $\frac{1}{4}$ and the NE. $\frac{1}{4}$ of the SE. $\frac{1}{4}$, Sec. 30, T. 42 N., R. 4 E., B. M., the register and receiver and every person who took pains to examine the list understood that the western and

eastern boundaries of the tracts selected were, respectively, three-quarters of a mile and a mile east of the western boundary of the township and that its southern and northern boundaries were one and a quarter and one and three-quarter miles north of the southern township line.

By reference to the plat of survey of township 42 N., R. 4 E., B. M., Idaho, it appears that none of the township boundaries had been surveyed when this selection was filed. The southwest corner of the township, however, had been fixed in July, 1899, through the survey at that time of the southern boundary of township 42 N., range 3 E., B. M. There was in existence, therefore, at the date of the selection, a monument of the public surveys within less than two miles of the land under consideration. More than a year before the date of Daniels's alleged settlement upon the land now claimed by him, the eastern boundary of this township was surveyed, and by running the line from the south end of this township line, due west to the ascertained southwest corner of the township, Daniels could have discovered that the distance was exactly six miles. The precise locus of the land selected by the railway company, could, therefore, not only have been found to a reasonable certainty at the date of the selection, but fixed to a mathematical certainty at the date of Daniels's alleged settlement.

In the case of *Andrew West v. Edward Rutledge Timber Company and Northern Pacific Railway Company*, decided by the District Court of the United States for the district of Idaho, northern division, on July 22, 1913, involving land in this vicinity and a selection by the railway company under the act of March 2, 1899, it was held that a description like the one here under consideration was, in effect, a metes and bounds description and fully complied with the requirement of the law that the selected land should be described with a reasonable degree of certainty.

It has been urged with great force and earnestness that a description of land in terms of a future and nonexistent survey is a nullity and that, therefore, a selection so describing the land is wholly void. This position is entirely without support in any case adjudicated by the land department. Even in the case of *F. A. Hyde et al.* (40 L. D., 284), cited and relied upon by the appellant, it was unequivocally held that such a description was valid as against the Government. If it was a good description against the Government, as it was, and if it conformed to a long and well-established practice and was accepted by the land department as sufficient, it initiated a claim to the land which can not be ignored in favor of a claimant subsequent in point of time.

It is urged that the field notes of survey of this land do not in express terms classify it as nonmineral. It is customary for sur-

veyors, in their returns, to designate mineral land as such, and all land not classified as mineral by them is regarded as having a non-mineral or agricultural classification. This rule is so well understood by surveyors and by officers of the land department that land not returned as mineral is held to be as effectually classified as agricultural land as if so returned in the field notes. It must be assumed that this rule, frequently referred to in the decisions of the land department, was known to Congress when the act of March 2, 1899, was passed. It could not have been the purpose of Congress to confer upon the railway a right of selection incapable of exercise upon any land then surveyed, practically none of which had been in express terms classified as agricultural, and incapable of exercise upon any land to be surveyed in the future under the administrative rule, above referred to.

After mature consideration the Department is constrained to hold that selections of lands made prior to the adoption of the regulations of November 3, 1909, *supra*, describing the tracts in terms of a future survey and accepted by officers of the Department pursuant to its regulations and practice, confer upon the selector a preference right to the lands upon their identification by actual survey. If, as is alleged, the selections were not noted upon the records by the local officers, such default on their part did not affect the right of the railway company, which was complete when they had fulfilled the law's requirements. The case of *F. A. Hyde et al.* (40 L. D., 284), and all others in conflict herewith are accordingly overruled and the decision appealed from is affirmed.

DANIELS v. NORTHERN PACIFIC RY. CO.

Motion for rehearing of departmental decision of August 3, 1914, 43 L. D., 381, denied by First Assistant Secretary Jones, September 26, 1914.

SAMUEL T. B. HIMES.

Decided August 14, 1914.

ADDITIONAL HOMESTEAD ENTRY—HEIRS.

Upon the death of a homestead entryman prior to completion of his entry, his heirs are entitled to make additional entry of contiguous land under section 2 of the act of April 28, 1904, provided they reside upon the original entry.

JONES, *First Assistant Secretary:*

August 8, 1908, the application of Daniel B. Himes, executed June 30, 1908, was allowed as an entry under the act of June 11, 1906 (34 Stat., 233), embracing 91.2 acres described by metes and bounds in

T. 1 N., R. 89 W., 6th P. M., Glenwood Springs, Colorado, land district.

March 27, 1913, Samuel T. B. Himes, a son and the only heir of Daniel B. Himes, made additional entry under said act of June 11, 1906, and the provisions of section 2 of the act of April 28, 1904 (33 Stat., 527), embracing two tracts described by metes and bounds, containing 66.90 acres, contiguous to the land embraced in the original entry made by his father.

It appears that Daniel B. Himes died on or about July 19, 1908, which was prior to the time his entry was allowed by the local officers but after he had filed his application. In support of his application for additional entry, the son stated that his father resided on the land embraced in the original entry up to and at the time of his death and that since the death of his father he has cultivated the land in the original entry.

By decision of November 15, 1913, the Commissioner of the General Land Office held for cancellation the additional entry for the assigned reason that section 2 of the act of April 28, 1904, does not authorize the allowance of additional entries by the heir of an original entryman. Appeal from that action has brought the case before the Department for consideration.

Respecting the authority for allowing additional entry by an heir of the original entryman, there appears to be no substantial ground for distinction between section 2 of said act of April 28, 1904, and section 3 of the act of February 19, 1909 (35 Stat., 639), known as the enlarged homestead act. In the case of Lillie E. Stirling (39 L. D., 346), it was held that the widow of a deceased entryman has the same right to enlarge the entry of her deceased husband by an additional entry under section 3 of the enlarged homestead act as he would have if living, provided she continues to maintain residence upon the original entry. In the case of the heirs of Susan A. Davis (40 L. D., 573) the Department held that upon the death of a homestead entrywoman her heirs are entitled to make additional entry of contiguous land under section 3 of the enlarged homestead act, provided they reside upon and cultivate the original entry.

No reason is seen why an heir could not, under authority of above departmental decisions, make an additional entry upon the conditions stated in said decisions. However, it is not alleged that the heir in the case under consideration has resided on the land embraced in the original entry, and upon the record as now presented it must be held that the action of the Commissioner was proper.

This case is to be distinguished from that of *Oinanen v. Ulvi* (42 L. D., 56) wherein the Department held that actual residence upon the original entry was not necessary as a condition for allowance of additional entry where title had been earned to the original entry.

For in that case title had been earned by actual residence by the entryman upon the original entry for the required length of time, while in this case no such showing is made.

Upon the record as presented the action of the Commissioner is affirmed, but opportunity will be afforded the entryman to show whether actual residence upon the original entry has been performed, as required in the cases of Stirling and Davis, *supra*.

NORTHERN PACIFIC RY. CO.

Decided August 26, 1914.

RAILROAD GRANT—ISLAND—SURVEY.

An island in an odd-numbered section within the limits of the grant made by section 3 of the act of July 2, 1864, to the Northern Pacific Railroad Company, will not be surveyed on application of the company where it appears that said island is occupied as a burial ground by the Indians.

JONES, *First Assistant Secretary*:

May 29, 1912, the Commissioner of the General Land Office submitted with favorable recommendation the application of the Northern Pacific Railway Company for the survey of an island containing about 4 acres situated in Prairie Lake, Sec. 29, T. 50 N., R. 20 W., 4th P. M., Minnesota. The matter was referred to the Commissioner of Indian Affairs for consideration and the tract was examined by the Superintendent of the Fond du Lac School at Cloquet, Minnesota, and under date of June 19, 1912, he reported that he went to Prairie Lake on June 16, 1912, and found three Indians living on the east shore of the lake; that in the middle of the lake is a small island containing about 4 acres which has been used for a burial ground of the Indians for 50 to 75 years; that he found about 25 graves on the island and was told by the Indians living there that there were about 75 bodies buried on the island; that the Indians who have relatives buried there wish to have it remain as a burial ground for Indians and request that the island be retained by the Federal Government so that the bodies buried there will not be removed or disturbed. In view of said report, the Commissioner of Indian Affairs recommended that the island be reserved as a burial ground for the Indians.

It appears that the papers in the case were misplaced in the files, which resulted in delay in taking action upon the matter. Under date of June 29, 1914, the papers were returned to the Commissioner of the General Land Office for reconsideration in view of the report from the Indian Office. The papers have now been returned to the Department by the Commissioner of the General Land Office adhering to his former recommendation.

If this island has been thus dedicated by use as a burial ground, such sacred occupation should be respected. Section 3 of the act of July 2, 1864 (13 Stat., 365), granted to the railway company the odd sections in the area mentioned—

whenever on the line thereof, the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from preemption, or other claims or rights, at the time the line of said road is definitely fixed, and a plat thereof filed in the office of the commissioner of the land office.

The rights of Indian occupants have always been recognized and protected by the Department. See circulars of May 31, 1884, and October 26, 1887, with respect to land in possession of Indian occupants. (3 L. D., 371; 6 L. D., 341; 32 L. D., 382.)

Section 2 of the act of 1864, *supra*, provides for extinguishment of Indian titles to lands falling within the operation of the act, as rapidly as the welfare of the Indians permits, thus recognizing that the grant could not operate without regard to Indian claims. The trend of authority seems to be that lands within the limits of the railroad grant, not reserved but in Indian country and occupied by Indians, passed to the company, subject, however, to the Indian occupation. *Schultz v. Northern Pacific R. R. Co.* (14 L. D., 300); *Northern Pacific R. R. Co. v. Ostlund* (5 L. D., 670); *Buttz v. Northern Pacific R. R. Co.* (119 U. S., 55).

According to these authorities, and others which could be referred to, the fee is in the company while the right of occupancy is in the Indians, provided the nature of the Indian interest in this land is the same as that of occupancy by live Indians, and as to this proposition the Department has no doubt.

Regarding the recognition to be given Indian occupancy, the Supreme Court has said:

The right of the Indians to their occupancy is as sacred as that of the United States to the fee, but it is only a right of occupancy. The possession, when abandoned by the Indians, attaches itself to the fee without further grant. [*Johnson v. McIntosh*, 8 Wheat., 543.]

In the case of *Beecher v. Wetherby* (95 U. S., 517, 525) the court said:

But the right which the Indians held was only that of occupancy. The fee was in the United States, subject to that right, and could be transferred by them whenever they chose. The grantee, it is true, would take only the naked fee, and could not disturb the occupancy of the Indians; that occupancy could only be interfered with or determined by the United States. It is to be presumed that in this matter the United States would be governed by such consideration of justice as would control a Christian people in their treatment of an ignorant and dependent race. Be that as it may, the propriety or justice of their action towards the Indians with respect to their lands is a question of governmental policy, and is not a matter open to discussion in a controversy between third parties, neither of whom derives title from the Indians. The right of the

United States to dispose of the fee of lands occupied by them has always been recognized by this court from the foundation of the government.

It has been held that—

Whether the Government will issue a patent for lands to which an Indian right of occupancy exists, is a question of Executive policy rather than of law. [See State of Florida, 26 L. D., 117, 120.]

The Department has refused to approve lists under the Swamp Land Grant because of Indian occupancy, saying:

Nothing should be done which would tend to disturb or cloud that right while it exists, or which might appear to evidence a greater right in the State than it really has or can get at the present time. [State of Wisconsin, 19 L. D., 519.]

Should the company dispute the alleged use of this island as an Indian burial ground, a hearing will be ordered to determine the facts upon application therefor within 30 days from notice hereof; otherwise the application for survey, which is hereby held for rejection, will be finally rejected unless good reason be shown within the time stated why such action should not be taken.

SAN PEDRO, LOS ANGELES AND SALT LAKE R. R. CO.

Decided September 5, 1914.

RIGHT OF WAY—PROFILE—UNSURVEYED LANDS—SEC. 4, ACT OF MARCH 3, 1875.

Section 4 of the act of March 3, 1875, does not authorize the filing of a profile of the road in advance of the filing of the township plat of survey in the local office.

STATION GROUNDS—CONSTRUCTION OF ROAD.

The actual construction of a railroad over public lands does not fix the boundaries of the station grounds necessary to, desired, and subject to acquisition by the railroad company.

STATION GROUNDS—EXTENT SECURED BY CONSTRUCTION OF HOUSES, ETC.

Except as provided in section 4 of the act of March 3, 1875, station grounds can only be secured under that act by the construction of station houses, sidetracks, etc., and only to the extent of the ground actually occupied by the railroad for such purposes.

STATION GROUNDS—TOWNSITE PATENT—JURISDICTION OF LAND DEPARTMENT.

The land department is without jurisdiction to approve an application for station grounds under the act of March 3, 1875, in so far as it embraces lands covered by a townsite patent.

APPLICATION FOR STATION GROUNDS—LANDS IN SCHOOL SECTION.

No rights are acquired by the filing of an application for station grounds subsequent to the attachment of the right of the State to the lands involved under its school grant.

JONES, First Assistant Secretary:

The San Pedro, Los Angeles and Salt Lake Railroad Company has appealed from the decision of the Commissioner of the General Land Office, dated August 30, 1911, rejecting its application, under the act of March 3, 1875 (18 Stat., 482), for 20 acres of land at Modena, Utah, as depot grounds.

It is shown by the record that, on March 31, 1899, the Utah and Pacific Railroad Company filed in the local office maps of its line of railroad from the State line between Nevada and Utah to Milford, Utah, a distance of 74.79 miles, and, on April 22, 1899, a map of 20 acres at Modena, Utah, desired by it for station grounds. Modena is situated upon said railroad between Milford and the State line. The right of way and station grounds were, as to the tract here under consideration, upon unsurveyed land, and, on June 14, 1900, said maps were, accordingly, accepted by the Commissioner of the General Land Office and filed for information.

On June 3, 1903, the Utah and Pacific Railroad Company conveyed to the San Pedro, Los Angeles and Salt Lake Railroad Company all of its title and interest in said line of railroad, including the right of way and station grounds covered by its filing maps.

On September 2, 1909, after the road had been constructed over the land under consideration, the plat of survey of T. 34 S., R. 19 W., S. L. M., was filed in the local office. Upon comparison of the map filed by the applicant company, on April 22, 1899, with the plat of survey, it appears that the station grounds embrace parts of the W. $\frac{1}{2}$ SE. $\frac{1}{4}$, NE. $\frac{1}{4}$ SW. $\frac{1}{4}$, and lot 1 (or SE. $\frac{1}{4}$ SW. $\frac{1}{4}$), Sec. 36, of said township.

On April 1, 1910, a patent conveying the NW. $\frac{1}{4}$ SE. $\frac{1}{4}$, NE. $\frac{1}{4}$ SW. $\frac{1}{4}$, and lot 1, of said section 36, was issued to the Judge of the Fifth Judicial District of the State of Utah, for the benefit of the inhabitants of the town of Modena. It appears that said patent was issued after due publication and notice under the townsite regulations, and that no objection was made to the issuance thereof.

On March 2, 1911, more than twelve months after the filing of the plat of survey in the local office, the San Pedro, Los Angeles and Salt Lake Railroad Company filed its map of amended definite location, under said act of March 3, 1875, for said station grounds, which was rejected in the decision from which this appeal is prosecuted.

The grounds of his action were stated by the Commissioner as follows:

As the land covered by this application has been surveyed, and lies within a school section, the title thereto is not in the Government, and as no public land is affected by the application, this Department has no jurisdiction in the matter.

It has been held by the Supreme Court of the United States in *Jamestown and Northern Railroad Company v. Jones* (177 U. S., 125) that the grant made by the said act of March 3, 1875, as to the right of way for the railroad, becomes definitely fixed by the actual construction of the railroad before the filing of the profile thereof and that section 4 of said act is a provision for the acquisition of such right of way in advance of actual construction through the filing of a profile of the proposed road. It has never been held that the actual

construction of a railroad over public lands fixed the boundaries of the station grounds necessary to, desired, and subject to acquisition by the railroad company. Such grounds may be on either or both sides of the road and their area and shape will be determined by the necessities of the situation, the topography of the ground, and many other possible considerations. In the case of *Stalker v. Oregon Short Line Railroad Company* (225 U. S., 142), the Supreme Court held:

Possibly station grounds might also have been secured by the actual marking of the boundaries and the construction of station houses, side tracks, etc. This we need not decide. But the fourth section of the act provides a method for securing the benefits of the act in advance of actual construction.

The reference of the Court to the fourth section of the act of March 3, 1875, must be considered in connection with the fact that the case of *Stalker v. Oregon Short Line Railroad Company* involved a claim that attached to *surveyed* lands by the filing of a profile of the road. There is no provision in the fourth section of the act for the filing of a profile in advance of the filing of the plat of survey in the local office.

While the Court, in the paragraph of its decision above quoted, indicated a possibility that station grounds may be secured by the actual marking of the boundaries and the construction of station houses, side tracks, etc., it practically determined, in a subsequent part of the decision, that station grounds could not be secured by marking the boundaries. It will be observed that, in the first section of the act of March 3, 1875, the grants of rights of way for the road bed and for station grounds are couched in the same terms and are subject to the same rules of construction. After quoting, with approval, *Railroad v. Doughty* (208 U. S., 251), which held that the mere surveying and staking of a route was not such actual possession and appropriation as to give effect to the grant and bring the case under the authority of *Railroad v. Jones*, *supra*, the Court said:

The distinction and essential difference between a mere staking out of a route, which, being the act of the company alone, is changeable at its will, and actual construction, which necessarily fixes the position of the route and consummates the purpose for which the grant of a right of way is given, is very obvious, and was carefully pointed out in the opinion of the court in the case referred to.

Another point was involved and decided in the *Doughty* case, namely, that the approval of the map of alignment by the Secretary of the Interior would not relate to the date of the surveying and staking out of the route. This was manifestly so, since that survey and staking was subject to change at any time before the permanent line was located by the filing of a map of such locations for the approval of the Secretary of the Interior. Therefore it is that the doctrine of relation has always been applied in reference to the date when the official action of the department was invoked to confirm the location thus permanently settled. These points were conclusive against the railroad company and were the only questions for decision.

The actual construction of a railroad fixes the limits of its right of way on either side, whereas the construction of a station or side track permanently fixes only the location of such station or side track and in no sense determines the area or position of the tract proper or desired under the grant for station grounds. Except as to the ground actually occupied for station house, side tracks, etc., the station grounds provided for in the act of March 3, 1875, are changeable at the will of the railroad company until fixed by the filing of the profile. It is therefore clear to the Department, under the authority of *Stalker v. Oregon Short Line Railroad Company, supra*, that, save as provided in the fourth section of said act, station grounds can only be secured by the construction of station houses, side tracks, etc., and only to the extent of the ground actually occupied by the railroad for such purposes.

This Department has no jurisdiction over the land embraced in the townsite patent and is therefore without authority of law to approve the application in so far as it relates to such land. Were the application now approved, the approval would relate back only to March 2, 1911, when it was filed; a date long subsequent to the issuance of the patent for the benefit of the inhabitants of the town of Modena.

With reference to the claim of the State to the land under consideration, it is obvious from what has been said that its school grant attached long before the filing of the application here under consideration and the rights of the company, if any exist, must rest upon actual occupancy and use prior to the attachment of that grant.

The decision appealed from, as hereinbefore modified, is affirmed.

GEORGE W. BEACH ET AL.

Instructions, September 18, 1914.

REPAYMENT—ACT OF MARCH 26, 1908.

Directions given that departmental decision in Ernest Weisenborn, 42 L. D., 533, be no longer followed.

JONES, First Assistant Secretary:

You [Commissioner of General Land Office] have submitted statements of account approving claims for repayment under the act of March 26, 1908 (25 Stat., 48), of moneys paid by the following persons in connection with applications or entries made by them under the timber and stone law:

George W. Beach, William W. Gordon, Elpha R. Angel, Otto Paul Meckes, John C. Maguire, Fred Scriven, Robert P. Herrick, Fred Gardiner, Arthur C. Sullivan.

The Department has this day approved the recommendation of your office for allowance of repayment to the above persons. It is

observed, however, that in some of these cases reference is made to the case of Ernest Weisenborn (42 L. D., 533) as authority for the recommendation of your office.

While the decision in that case was correct upon the facts presented, yet the Department has since regarded the rule laid down therein as being somewhat broader than is properly warranted under the act of March 26, 1908. That rule was substantially modified by decision in the case of Dorathy Ditmar (43 L. D., 104), as may readily be seen by reference thereto. Consequently your office will disregard the Weisenborn decision and hereafter follow that in the case of Dorathy Ditmar. See also in connection with that case those of George F. Goodwin (43 L. D., 193) and Maude L. Deering (43 L. D., 234).

EQUITY MINING AND INVESTMENT COMPANY.

Decided September 19, 1914.

MINING CLAIM—APPLICATION FOR PATENT—NOTICE.

Section 2325, Revised Statutes, contemplates that notice of an application for patent for a mining claim shall be posted within the exterior limits of the area applied for; and the posting of notice outside of a claim, and 800 feet distant therefrom, is not such a substantial compliance with the requirements of the law as will warrant submission of the entry to the Board of Equitable Adjudication.

JONES, *First Assistant Secretary.*

This is a petition filed by the Equity Mining & Investment Company for an order directing the Commissioner of the General Land Office to certify to the Department under rules 78 and 79 of practice, the proceedings in the matter of mineral entry [now canceled] 07283, for certain lode mining claims and included mill site, situate in the Montrose land district, Colorado.

The record in the case, which has been informally withdrawn, has been considered by the Department. It appears therefrom that the said former entry was made January 11, 1913, for the Equity Nos. 7-8-9-10 lode mining claims and the Equity mill site, but upon consideration of the record the Commissioner by decision of January 30, 1913, required the claimant to show cause why the entry should not be canceled, for the reason, among others, that the notice and plat was posted outside the limits of the area applied for, and at a distance of 819 ft. therefrom, and by decision of January 12, 1914, the entry, for the same reason, was held for cancellation. It was finally canceled by the Commissioner's letter of August 8, 1914.

It is urged in the petition that the Commissioner erred in not submitting the entry, to the extent of the four lode mining claims, to the Board of Equitable Adjudication under the provisions of section

2450-2457, Revised Statutes, or as an alternative in not requiring a reposting and republication of the notice as to the lode claims, and upon such reposting and republication passing the entry to patent.

By section 2325 of the Revised Statutes it is prescribed that one seeking title to a tract under the mining laws shall file in the local office an application for patent, together with a plat and field notes of the claim, or claims in common—

and shall post a copy of such plat, together with a notice of such application for a patent, in a conspicuous place on the land embraced in such plat previous to the filing of the application for patent, and shall file an affidavit of at least two persons that such notice has been duly posted. . . . At the expiration of the 60 days of publication the claimant shall file his affidavit, showing that the plat and notice have been posted in a conspicuous place *on the claim* during such period of publication.

These provisions clearly contemplate that the notice of the application shall be posted within the limits of the area applied for. The notice of the application for patent to the four lode claims, here in question, was not posted within the limits of any of said claims, but, on the other hand, at a point over 800 ft. outside thereof, and no reason is attempted to be shown why such posting might not have been made at a point within the exterior limits of the area embraced in the application. It is only in those cases "where the law has been substantially complied with" that equitable consideration is authorized by section 2457, R. S., *supra*. The posting of the notice of application for patent to these claims falls far short of constituting a substantial compliance with the provisions of section 2325, R. S., above quoted, and for this reason, even though the entry as to the four lode claims in question were now intact, it would not be entitled to be referred to the Board of Equitable Adjudication. In short, it was illegally allowed, and was properly canceled by the Commissioner for the reason stated.

There is no merit therefore in the petition, and it is accordingly dismissed.

BAY CITY OIL CO. ET AL. v. ALVARADO OIL CO.

Decided September 19, 1914.

MINING CLAIM—LOCATION—DISCOVERY—APPLICATION FOR PATENT.

A mining location is not perfected or completed until a discovery of mineral within the limits of the claim has been made; and where no discovery was made prior to the filing of an application for patent, such application and the proceedings thereunder, being without legal foundation, can not be recognized as a basis for mineral entry or patent.

JONES, *First Assistant Secretary*:

The Alvarado Oil Company has filed a petition for leave to intervene and a motion for rehearing in the matter of mineral applica-

tions 0129 and 0130, presented by the Bay City Oil Company for the Red and Little Billee placer mining claims, covering the N. $\frac{1}{2}$ NE. $\frac{1}{4}$ and the S. $\frac{1}{2}$ NW. $\frac{1}{4}$, respectively, of Sec. 15, T. 32 N., R. 23 E., M. D. M., Visalia land district, California. By decision of April 24, 1914, this Department affirmed the judgment of the Commissioner of the General Land Office, holding said applications for rejection for want of a timely discovery of mineral in order to perfect the locations prior to and as a basis for patent application proceedings.

The Alvarado Oil Company represents that after proof and payment of the purchase price under said applications, it came into possession of said claims under leases and by contract dated July 1, 1910, agreed to sell and assign to the Union Oil Company, all its rights and interests under said leases, and that it put said Union Oil Company in possession of the land; that said contract was contingent upon "confirmation and approval of title" by the final decision of the Interior Department for both of the claims under the pending applications; and that in the event of an adverse decision the Union Oil Company had the privilege of abandoning the purchase of the property without making any further payment pursuant to the contract.

Counsel for the petitioner have been heard in oral argument and have filed briefs. It is contended that the subsequent oil discoveries shown by the evidence adduced at the hearing validated these locations if made before adverse rights attached, and that this principle applies with equal force to these applications because the validity of the applications depends upon the legality of the locations; that no adverse rights could have attached after application because the lands were thereby segregated, and that amendments to show subsequent discovery should be permitted without republication and re-posting of notice, and without further payment of purchase moneys. The cases of *Wight v. Tabor* (2 L. D., 738), and *A. J. Gibson* (21 L. D., 219), are cited and relied upon.

In determining the validity of the present applications and proceedings thereunder, the Department deems it necessary to consider only the matter of discovery.

It is shown by the record that no oil deposit was discovered or disclosed within the limits of either of the claims at or prior to the filing of the applications for patent. The sinking of oil wells and the development of oil occurred sometime after the filing of such applications, and after the expiration of the posting and publication of notices thereon. It is well established that under the Federal mining laws a mineral location is not perfected or completed until a discovery of mineral within the limits of the claim has been made. By section 2320, R. S., it is prescribed that "no location of a mining

claim shall be made until the discovery of the vein or lode within the limits of the claim located."

In the case of *Waskey v. Hammer* (223 U. S., 85, 90), the Supreme Court, speaking through Mr. Justice Van Devanter, said:

The mining laws, Rev. Stat., Sec. 2320, 2329, make the discovery of mineral "within the limits of the claim" a prerequisite to the location of a claim, whether lode or placer.

In *Mining Company v. Tunnel Company* (196 U. S., 337, 345) the Supreme Court used the following language:

Three things are provided for, discovery, location and patent. The first is the primary, the initial fact. The others are dependent upon it and are the machinery devised by Congress for securing to the discoverer of mineral the full benefit of his discovery. . . . The whole scope of the chapter is the acquisition of title from the United States to mines and mineral lands, the discovery of mineral being as stated, the initial fact. Without that no rights can be acquired.

With reference to a purported oil location the Supreme Court of California, in the case of *McLemore v. Express Oil Company* (112 Pac., 59, 60, 61), said:

A location is valid and complete only when after compliance with other requirements, a discovery of valuable mineral in place has been made. . . . Until the perfection of the inchoate and incomplete location by discovery the locator has no vested rights which Congress is obliged to recognize. . . . Where the location is incomplete no question of assessment work is involved.

Mr. Lindley in his work on mines, third edition, section 335, page 764, states that:

If no discovery is made until after the acts of location have been performed, the location will date from the time of discovery.

Numerous authorities are cited in support of the statement.

Mr. Lindley, in section 437, page 1026, third edition, with regard to oil lands, makes the following statement:

Of course, exploitation on adjacent lands might raise a strong presumption that a given tract contained petroleum. An oil-producing well within each of four sections of land surrounding a fifth would produce a conviction that the oil deposit was underneath the fifth section. This fact might justify the Land Department in classifying the section in the category of mineral lands or the Government surveyor in returning it as such, but it would not dispense with the necessity of making a discovery.

The decision of the Department in the case of *Rupp v. Heirs of Healey et al.* (38 L. D., 387), concluded as follows:

The case is remanded with directions that a hearing be ordered for the purpose of ascertaining whether or not there was any lawful lode discovery made within the limits of the claimed ground of the Last Batch location at or prior to the date of the filing of the application for patent, namely December 18, 1895; and if such discovery be not shown the application must be rejected.

In this connection see also *Nevada Sierra Oil Company v. Home Oil Company et al.* (98 Fed., 673); *Smith v. Union Oil Company* (135 Pac., 699), and *Chrisman v. Miller* (197 U. S., 313, 319).

In the case at bar there was, therefore, no legal location or claim upon which the application proceedings could be founded. Proper subject-matter for the applications for patent was wholly lacking. The so-called applications and the posted and published notices not being based upon statutory locations were without force and effect, and gave the applicant no rights and cannot be recognized as a basis for mineral entry or patent. The rights of possible adverse claimants were not affected or concluded by such ineffectual proceedings, and the matter is, therefore, more than one merely between the Government and the claimant. See case of *Rupp v. Healey, supra*.

The Department finds no error in the decision complained of and must decline to permit or entertain any amended or supplemental applications in this matter. This conclusion is without prejudice to the right of the present owner of these claims to institute patent proceedings anew, if so advised.

The petition to intervene is, accordingly, dismissed and the motion for rehearing denied.

RESTORING TO ENTRY LANDS RESERVED FOR RESERVOIR PURPOSES.

CIRCULAR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., September 23, 1914.

REGISTERS AND RECEIVERS,

Cass Lake and Duluth, Minn.

SIRS: Your attention is called to the act of August 6, 1914 (Public, No. 165), which provides for the restoration to the public domain, subject to homestead entry, of certain lands hitherto withdrawn by Executive order in connection with the construction, maintenance, and operation of reservoirs at the headwaters of the Mississippi River and its tributaries, the restoration of which the Secretary of War has recommended or may hereafter recommend to the Secretary of the Interior. A copy of said act is hereto attached.

2. The following described lands affected by the act in question, and which have been recommended for restoration to the Secretary of the Interior by the Secretary of War, are hereby restored to settlement and entry under the terms and conditions of said act and these regulations on and after 9 o'clock a. m., December 1, 1914:

LANDS IN DULUTH DISTRICT.

Description.	Section.	Town- ship north.	Range west.	Merid- ian.	Area.
NE. $\frac{1}{4}$ SE. $\frac{1}{4}$	6	49	22	4	40.00
Lots 2, 3, 4.....	2	49	23	4	97.55
Lots 1, 2, 3, 4, 5.....	4	49	23	4	122.00
Lots 1, 2, 3.....	6	49	23	4	35.80
Lots 1, 2, 3, 4, 5, 6, 7.....	8	49	23	4	92.39
N. $\frac{1}{2}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ NW. $\frac{1}{4}$	10	49	23	4	120.00
Lots 1, 2, 3, 5, 6, 7, 8, 10, 11, SW. $\frac{1}{4}$ SE. $\frac{1}{4}$, SE. $\frac{1}{4}$ SW. $\frac{1}{4}$	18	49	23	4	338.71
Lots 1, 2, 3.....	20	49	23	4	110.70
Lots 1, 2, 3, 4, 5, 6, and NE. $\frac{1}{4}$ NW. $\frac{1}{4}$	30	49	23	4	176.35
Lots 1, 6, 7, 8, and SE. $\frac{1}{4}$ SE. $\frac{1}{4}$	20	50	23	4	134.35
SE. $\frac{1}{4}$ NE. $\frac{1}{4}$, E. $\frac{1}{2}$ SE. $\frac{1}{4}$	26	50	23	4	120.00
Lots 1, 6, E. $\frac{1}{2}$ NE. $\frac{1}{4}$, and SE. $\frac{1}{4}$ SE. $\frac{1}{4}$	30	50	23	4	165.20
Lots 1, 2, 3, 4.....	32	50	23	4	42.45
Lots 3, 4, NE. $\frac{1}{4}$ SE. $\frac{1}{4}$	34	50	23	4	112.75
Lots 1, 2, 3, 4, 7, 8, 9, 10, 11.....	2	48	24	4	220.43
Lots 2, 3, 4, 5, 6, 7, 8, SE. $\frac{1}{4}$ SW. $\frac{1}{4}$	10	48	24	4	201.80
Lots 2, 3, 4, N. $\frac{1}{2}$ SE. $\frac{1}{4}$, SW. $\frac{1}{4}$ SE. $\frac{1}{4}$	14	48	24	4	227.35
Lot 3.....	2	49	24	4	41.48
Lots 1, 2, 3.....	12	49	24	4	82.10
Lots 1, 4, 5, NE. $\frac{1}{4}$ SW. $\frac{1}{4}$, E. $\frac{1}{2}$ SE. $\frac{1}{4}$	24	49	24	4	232.50
Lot 1, NE. $\frac{1}{4}$ SE. $\frac{1}{4}$, SW. $\frac{1}{4}$ SE. $\frac{1}{4}$	26	49	24	4	114.50
NE. $\frac{1}{4}$, N. $\frac{1}{2}$ SE. $\frac{1}{4}$, SE. $\frac{1}{4}$ SE. $\frac{1}{4}$	20	135	28	5	280.00
E. $\frac{1}{2}$ NW. $\frac{1}{4}$, SW. $\frac{1}{4}$ NW. $\frac{1}{4}$, NW. $\frac{1}{4}$ SW. $\frac{1}{4}$	32	136	28	5	160.00
Lot 4.....	2	134	29	5	30.60
Lot 1.....	4	134	29	5	2.40
NE. $\frac{1}{4}$ SW. $\frac{1}{4}$	10	134	29	5	40.00
Lot 3, and NE. $\frac{1}{4}$ NE. $\frac{1}{4}$	4	135	29	5	77.75
NW. $\frac{1}{4}$ NW. $\frac{1}{4}$	32	135	29	5	40.00
SW. $\frac{1}{4}$ SE. $\frac{1}{4}$	34	136	29	5	35.72
Total.....					3,514.88

LANDS IN CASS LAKE DISTRICT.

Description.	Section.	Town- ship north.	Range west.	Merid- ian.	Area.
Lots 6, 7, 10, 11, 12.....	6	54	24	4	185.00
Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10.....	8	54	24	4	305.65
Lots 3, 6, 8.....	1	54	25	4	105.25
Lot 5.....	3	54	26	4	31.55
Lot 8.....	7	55	26	4	34.75
Lot 1.....	14	55	26	4	.05
Lot 12.....	15	55	26	4	3.00
Lot 9.....	17	55	26	4	17.00
Lot 7, or NE. $\frac{1}{4}$ NE. $\frac{1}{4}$	19	55	26	4	39.10
Lot 7.....	21	55	26	4	9.45
Lot 4.....	29	55	26	4	9.20
Lot 1.....	14	55	27	4	3.00
Lot 2.....	24	55	27	4	34.00
Lot 1.....	25	55	27	4	39.80
Lots 1, 6.....	35	144	25	5	55.20
Lot 6.....	31	145	25	5	3.75
NE. $\frac{1}{4}$ SW. $\frac{1}{4}$	23	144	26	5	40.00
NE. $\frac{1}{4}$ SW. $\frac{1}{4}$, S. $\frac{1}{2}$ SE. $\frac{1}{4}$	15	142	27	5	120.00
NE. $\frac{1}{4}$ SW. $\frac{1}{4}$	24	142	27	5	40.00
Lot 5.....	35	144	27	5	8.70
NE. $\frac{1}{4}$ SE. $\frac{1}{4}$	9	143	28	5	40.00
N. $\frac{1}{2}$ SW. $\frac{1}{4}$	14	143	28	5	80.00
E. $\frac{1}{2}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ NW. $\frac{1}{4}$	15	143	28	5	120.00
NW. $\frac{1}{4}$ SE. $\frac{1}{4}$	25	143	28	5	40.00
SE. $\frac{1}{4}$ NE. $\frac{1}{4}$	26	143	28	5	40.00
Lot 5.....	7	147	28	5	6.00
Lots 3, 4.....	17	147	28	5	29.50
Lots 7, 9, 10, E. $\frac{1}{2}$ SW. $\frac{1}{4}$, and SW. $\frac{1}{4}$ SE. $\frac{1}{4}$	18	147	28	5	217.60
Lot 2.....	1	147	29	5	35.72
Lot 1, SW. $\frac{1}{4}$ NW. $\frac{1}{4}$	24	148	29	5	76.60
Lot 6.....	23	143	32	5	3.25
SE. $\frac{1}{4}$ NW. $\frac{1}{4}$	2	145	32	5	40.00
Total.....					1,813.02

3. Persons who have made actual settlement on any of said lands prior to January 1, 1914, and made improvements thereon have, under section 3 of the act, a preferred and prior right to enter and file on said lands under the homestead law for the period of 90 days following the time fixed for the restoration of the lands, viz, 9 a. m. December 1, 1914. Persons claiming preference rights must file with their homestead applications affidavits showing the date settlement was made and improvements placed upon the land claimed and setting out the value and character of such improvements.

4. Under section 4 no rights of any kind, except as specified in the foregoing paragraph, shall attach by reason of settlement or squatting upon any of the lands restored to entry before the hour and date mentioned in paragraph 2, on which such lands shall become subject to homestead entry at the several land offices, and until said time no person shall enter upon and occupy the same, except in the cases mentioned in the foregoing paragraph, and any person violating this provision shall never be permitted to enter any of said lands or acquire any title thereto.

5. Any person not claiming a preference right by reason of settlement and improvements prior to January 1, 1914, applying to make homestead entry on said lands, will, if within 90 days from the date said lands are opened to entry, be required to file an affidavit stating that the land is not claimed or occupied by anyone who became a settler thereon prior to January 1, 1914. Such person must also state in said affidavit that he did not enter upon and occupy any portion of said lands restored to entry after August 6, 1914, the date of said act, and prior to the hour and date on which the same became subject to entry.

6. Persons who settled upon and occupied any of said lands on January 1, 1914, or subsequent thereto, prior to August 6, 1914, gained no rights by such settlement and occupancy.

7. All homestead applications, and accompanying affidavits, for the lands herein affected, may be executed in the manner prescribed by law and, with the required fee and commissions, filed in the proper local land office in person, by mail, or otherwise, within the period of 20 days prior to December 1, 1914, the date herein fixed for the restoration of such lands. No priority will be secured nor right forfeited by the presentation of such application in the manner and within the time prescribed prior to December 1, 1914, and all such applications shall, with those presented by persons present at the local office at the hour the lands become subject to entry, be held and treated as simultaneously filed at 9 a. m., December 1, 1914. Applications presented after the lands become subject to entry will be received and noted in the order of their filing. You will carefully compare all applications simultaneously filed as aforesaid and will dis-

pose of them in the manner prescribed by Circular No. 324 of May 22, 1914 [43 L. D., 254], as far as applicable.

8. In the event an application is filed within the 90-day period after December 1, 1914, by a person alleging a preference right to make entry in accordance with paragraph 3 and such application is in conflict with an entry which has been allowed by you, you will require the entryman, within 30 days from notice, to show cause why his entry should not be canceled to the extent of such conflict and to serve copy of such showing upon the preference-right applicant, proof of which service must be furnished. Thereafter the preference-right applicant will be allowed 20 days within which to file an answer to such showing and serve copy of such answer upon the entryman, proof of which service must be furnished. Upon such showing and answer you will submit the matter to this office with your recommendation.

9. Section 2 reserves to the United States the right to overflow the lands restored, or any part thereof, by existing reservoirs, or any which may hereafter be constructed, and provides that all patents for the lands restored shall expressly reserve to the United States such right of overflow. You will therefore indorse on all homestead entries allowed by you for these lands the following: "Subject to the right of the United States to overflow. See section 2, act of August 6, 1914 (Public, No. 165)."

10. You will post a copy of these regulations in your office in a conspicuous place and allow it to remain until after the date above specified and you will furnish copies hereof to the various postmasters in your district and to newspapers for insertion by them as a matter of news without expense to this office. You will also transmit copies hereof to any persons known by you to be settlers upon any of the lands in question.

Very respectfully,

CLAY TALLMAN,
Commissioner.

Approved:

ANDRIEUS A. JONES,
First Assistant Secretary.

[PUBLIC, No. 165.]

AN ACT Restoring to the public domain certain lands heretofore reserved for reservoir purposes at the headwaters of the Mississippi River and tributaries.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there is hereby restored to the public domain for entry under the homestead laws, pursuant to such rules and regulations as the Secretary of the Interior may prescribe, subject to the

easement provided for in section two hereof, any and all lands in the counties of Aitkin, Saint Louis, Crow Wing, Cass, Itasca, and Beltrami, approximately six thousand acres, and outside of the boundaries of the Minnesota National Forest Reserve hitherto reserved by Executive order in connection with the construction, maintenance, and operation of reservoirs at the headwaters of the Mississippi River and its tributaries, the restoration of which the Secretary of War has recommended or may hereafter recommend to the Secretary of the Interior: *Provided, however,* That this act shall not apply to lot two, in section four, in township fifty-four north, range twenty-six west, and the southeast quarter of the southwest quarter of section thirty-three, in township fifty-five north, range twenty-six west, said tracts described in this proviso being hereby reserved and excluded from the lands subject to homestead entry.

SEC. 2. That the lands hereby restored shall forever be and remain subject to the right of the United States to overflow the same or any part thereof by such reservoirs as now exist or may hereafter be constructed upon the headwaters of the Mississippi River, and all patents issued for the lands hereby restored shall expressly reserve to the United States such right of overflow.

SEC. 3. That the time when such restoration shall take effect as to any of such lands shall be prescribed by the Secretary of the Interior; and in all cases where actual settlement has been made on any of said lands prior to January first, nineteen hundred and fourteen, and improvements made, the said settlers shall have a preferred and prior right to enter and file on said lands under the homestead law for the period of ninety days following the time fixed hereunder for the restoration of the lands.

SEC. 4. That no rights of any kind, except as specified in the foregoing section, shall attach by reason of settlement or squatting upon any of the lands hereby restored to entry before the hour on which such lands shall be subject to homestead entry at the several land offices, and until said lands are opened for settlement no person shall enter upon and occupy the same except in the cases mentioned in the foregoing section, and any person violating this provision shall never be permitted to enter any of said lands or acquire any title thereto.

Approved, August 6, 1914.

MINING CLAIMS—OIL AND GAS—ACT OF AUGUST 25, 1914.

INSTRUCTIONS.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, September 24, 1914.

REGISTERS AND RECEIVERS,
United States Land Offices.

SIRS: The act of Congress approved August 25, 1914, Public, 187, permits the entering into agreements between the Secretary of the Interior and applicants for patent for lands under the mining laws, which are valuable for oil or gas, for the disposition of the oil or gas produced from said lands pending final determination of the title thereof.

It will be observed that the privileges granted under this act are conferred only on those who have already filed, or may hereafter file,

applications for patent for oil or gas lands, included in any order of withdrawal.

Any mineral applicant for such lands desiring to avail himself of the privileges of this act must file in the proper local land office a petition, in duplicate, addressed to the Secretary of the Interior, requesting consideration of his case, with a view to the entering into an agreement for the disposition of the products of the lands involved in his application, pending final determination of the title. This petition should be under oath, and should be corroborated by two persons. It should show the facts upon which the petitioner relies to bring himself within the provisions of the act. Among other things it should contain complete statements on the following points:

Whether the application is based upon locations made by the applicant himself, or upon those taken by assignment and purchase.

The date when work leading to the discovery of oil or gas was initiated and of what such work consisted, and date when drilling was begun.

Date when oil or gas was actually discovered.

Initial production from wells now producing.

Present production from such wells.

Whether wells are flowing or being pumped.

If pumped, how long has each well been on pump.

Is well being pumped singly or in combination? If latter, in what units?

Present cost of production per barrel of oil and per thousand cubic feet of gas.

Expenditures from initiation of work looking to discovery of oil or gas to date of discovery thereof and nature of such expenditures.

Expenditures from date of discovery of oil or gas to date of petition.

Petition must be accompanied by clear and accurate plat showing location of claim by section, township and range and also showing location of all producing, dry and abandoned wells on claim or claims covered by petition and location of such wells with reference to wells on adjoining properties, giving names, numbers, or other designations of all such wells so far as known, and indicating whether wells are oil or gas wells.

Whether dry or abandoned wells shown on plats have been plugged, and manner in which plugged.

Manner in which contents of overlying water strata, if any, have been excluded from bore of well and depth at which such strata encountered.

Gravity of oil.

Whether water is being produced with oil.

What percentage of water is being produced.

Has there been any increase in percentage of water produced. If so, when was such increase noted and what is amount thereof.

Whether casing-head gas is utilized. If so, in what manner. What proceeds, if any, are derived therefrom.

Whether production now being disposed of. In what manner. If not now being disposed of, manner in which production was previously disposed of.

Cost of transportation and other items entering into placing the production on the market.

Market value of oil and gas at date of execution of petition.

The data required herein should be given in detail and the items of expenditure or cost should be detailed.

It must be distinctly understood that the filing of an application by any mineral applicant, entitled to do so, will not in any way bind him to accept such terms as may be offered by the Government, after a consideration of the matter, but that said petition is to be deemed only a presentation of the facts in the case to the Government with a view to its making a proposition as authorized under the terms of the act.

You are directed to cause a copy of these instructions to be furnished to all persons, or corporations, shown by your records to have filed applications for mineral patents for lands valuable as oil or gas, and to take like action with regard to anyone hereafter filing such an application for patent.

Upon the filing of such a petition in your office, you will assign it the same serial number as that carried by the application for patent, and immediately transmit it, by separate letter to this office.

Respectfully,

CLAY TALLMAN,
Commissioner.

Approved, September 24, 1914:

FRANKLIN K. LANE,
Secretary.

RECLAMATION—WATER-RIGHT CHARGES—ACT AUGUST 13, 1914.

PUBLIC NOTICE.

DEPARTMENT OF THE INTERIOR,
Washington, September 24, 1914.

1. In pursuance of the provisions of the Reclamation Extension Act of August 13, 1914 (Public, No. 170), notice is hereby given that the charges for a water right for lands under the several projects and units thereof for which public notice or notices have heretofore

issued are of two kinds: (1) a charge per irrigable acre for the building of the irrigation system termed the construction charge; (2) an annual charge for each acre-foot of water delivered, payable at such time as may hereafter be fixed, for the operation and maintenance of the project or a unit thereof. Each acre of irrigable land, whether irrigated or not, will be charged with a minimum operation and maintenance charge based upon the charges for delivery of not less than one acre-foot of water.

2. The amount of the construction charge per irrigable acre for lands for which entry under the provisions of the Reclamation Act of June 17, 1902 (32 Stat., 388), or water-right application has heretofore been made, shall be the amount fixed in the several public notices heretofore issued for the respective lands and therein termed "the building charge," and will not be increased, except as provided in said Reclamation Extension Act.

3. Any person whose land or entry has heretofore become subject to the terms and conditions of the reclamation law, may secure the benefits of the extension of the period of payments, provided for in the said Reclamation Extension Act, by notifying the Secretary of the Interior of his acceptance of all the terms and conditions of said act. Such notice of acceptance shall be in the form prescribed by the Secretary, and may be obtained from the Project Manager on application. Such acceptance must be filed with the Project Manager within six (6) months from the date of this public notice. The construction charge, for the lands or entries of persons so accepting the benefits of the period of extension, or so much thereof as may remain unpaid at the time of filing said notice of acceptance, must be paid in not more than twenty (20) annual instalments; the first of which instalments will be due December 1, 1914, and the subsequent instalments due December 1 of each year thereafter. The first four of such annual instalments shall be each two (2) per centum and the next two instalments each four (4) per centum, and the remaining fourteen instalments each six (6) per centum of the said construction charge, or of the portion thereof remaining unpaid at the time of filing said notice of acceptance as the case may be. The whole or any part of the construction charge may be paid within any shorter period than 20 years if so desired.

4. The method of determining the annual operation and maintenance charge, the penalties for failure to pay the construction charges and the operation and maintenance charges when due, the reclamation requirements, and the discount allowed for prepayment of the operation and maintenance charges are prescribed by the said Reclamation Extension Act.

FRANKLIN K. LANE,
Secretary of the Interior.

**SECOND HOMESTEAD AND DESERT-LAND ENTRIES—ACT OF SEP-
TEMBER 5, 1914.**

CIRCULAR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, September 26, 1914.

REGISTERS AND RECEIVERS,

United States Land Offices.

SIRS: Your attention is directed to the act of Congress, approved September 5, 1914 (Public, No. 194), entitled, "An act providing for second homestead and desert-land entries," a copy of which is hereto appended. Said act governs the disposition of every application for second homestead or desert-land entry, where the applicant, at any time before filing same, had made an entry, or entries, of the same character, but failed to perfect same.

2. The question whether the first entry, or entries, were made before or after the passage of the act is entirely immaterial. Moreover, it will be seen that the act imposes upon the Land Department the duty of passing upon the good faith of the applicant, there being no hard and fast provision, as in the act of February 3, 1911, limiting its benefits to a clearly defined class of persons. In order that there may be uniformity of rulings thereon, no applications will be allowed by the local officers on their own initiative, but all will be forwarded to the General Land Office for consideration.

3. In order that the General Land Office may properly pass upon the right of an applicant for second entry, he must (besides filing in the proper local office an application to enter a specific tract) furnish his affidavit showing the following facts:

(a) Data from which his first entry (or entries) may be identified, preferably its series and number, as well as a description of the tract by section, township, and range.

(b) What examination of the land and what inquiries as to its character he made prior to filing his previous application (or applications) for entry and, in case of desert-land entries, what reason he had to believe that the required proportion of the tracts could be reclaimed by him through irrigation.

(c) With reference to a homestead entry, whether he established residence upon the tract, and, if so, how long he lived there and what cultivation he effected; as to a desert-land entry, whether he took possession of the tract, and if so, how long he continued to exercise acts of ownership thereover.

(d) What improvements, if any, he made upon the land, describing in detail their nature and cost.

(e) The date of his abandonment of the claim and the reason therefor and whether he ever executed a relinquishment of the entry.

(f) What consideration, if any, he received for abandoning or relinquishing the entry; also whether he sold the improvements on the tract, giving full details as to said sale, if any, including the date thereof and the consideration received.

4. This affidavit must be executed before an officer authorized to administer oaths in homestead cases; that is, the register or receiver of the district where the land is situated, or a United States commissioner, or judge or clerk of a court of record within said district or within the county in which the tract lies. Its statements must be corroborated on all matters susceptible of corroboration by at least one witness having knowledge of the facts, or there may be several witnesses, each testifying on some material point; affidavits of witnesses may be executed before any officer authorized to administer oaths and having an official seal. Appropriate blank forms will be furnished in the near future.

5. If the affidavit of the claimant be not properly executed or be not corroborated by at least one witness, or if both do not appear to bear upon all the points above mentioned, you will call upon the applicant for supplemental evidence or for reexecution of the affidavit, as the case may be. After service of notice of your requirements and the lapse of the proper period, you will forward the application, together with such supplemental papers as may be filed.

6. You will be careful to note on your records the date and hour of the filing of each application, and in transmitting the same to this office make full report and recommendation.

Very respectfully,

CLAY TALLMAN,
Commissioner.

Approved:

ANDRIEUS A. JONES,
First Assistant Secretary.

[PUBLIC, No. 194.]

AN ACT Providing for second homestead and desert-land entries.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person otherwise duly qualified to make entry or entries of public lands under the homestead or desert-land laws, who has heretofore made or may hereafter make entry under said laws, and who, through no fault of his own, may have lost, forfeited, or abandoned the same, or who may hereafter lose, forfeit, or abandon same, shall be entitled to the benefits of the homestead or desert-land laws as though such former entry or entries had never been made: *Provided,* That such applicant shall show to

the satisfaction of the Secretary of the Interior that the prior entry or entries were made in good faith, were lost, forfeited, or abandoned because of matters beyond his control, and that he has not speculated in his right nor committed a fraud or attempted fraud in connection with such prior entry or entries.

Approved, September 5, 1914.

WESTERN PACIFIC RY. CO.

Decided September 26, 1914.

RIGHT OF WAY—STATION GROUNDS—ACT OF MARCH 3, 1875.

Section 1 of the act of March 3, 1875, making a grant of not to exceed 20 acres of public lands for station purposes for each ten miles of road, contemplates that the railroad company may take any amount of land not exceeding 20 acres for each station; and the Secretary of the Interior is without authority to determine how much land may be necessary or to restrict the area which may be taken for a station so long as it does not exceed 20 acres.

CONFLICTING DEPARTMENTAL DECISIONS OVERRULED.

Departmental decisions in Western Pacific Ry. Co., 40 L. D., 411, and 41 L. D., 599, overruled.

JONES, *First Assistant Secretary*:

The Western Pacific Railway Company filed its application under the provisions of the act of March 3, 1875 (18 Stat., 482), for 20 acres of land in Sec. 14, T. 1 S., R. 18 W., S. L. B. & M., Salt Lake City, Utah, land district, as station grounds. The decision of June 6, 1913, of the Commissioner of the General Land Office required the railway company to make satisfactory showing as to the necessity for said station grounds, from which decision the railway company has appealed.

Section 1 of the act of March 3, 1875, *supra*, provides as follows:

That the right of way through the public lands of the United States is hereby granted to any railroad company duly organized under the laws of any state or territory, except the District of Columbia, or by the Congress of the United States, which shall have filed with the Secretary of the Interior a copy of its articles of incorporation and due proof of its organization under the same, to the extent of 100 feet on each side of the center of the line of said road; also, the right to take, from the public lands adjacent to the line of said road, material, earth, stone and timber necessary for the construction of said railroad; also ground adjacent to such right of way for station-buildings, depots, machine shops, side-tracks, turn-outs and water-stations, not to exceed in amount 20 acres for each station, to the extent of one station for each ten miles of its road.

It is contended by the railway company that under this act it is entitled to take as a matter of right any amount of land not to exceed 20 acres adjoining its right of way for station purposes; that the ground is a grant *in praesenti*; and that the Secretary of the Interior has no discretion to determine the amount of land necessary for station purposes. In the case of *Stalker v. Oregon Short Line Rail-*

road Company (225 U. S., 142), the court held that the act of 1875, gave the road the "right to take" land for station ground purposes. That act does not in express terms confer upon the Secretary of the Interior authority to determine the amount of land which shall be taken under the grant, and unless there are words of limitation therein conferring upon the Secretary this authority or the language used in the act shows that Congress did not fix the amount of land necessary for station purposes, the supervisory power of the Secretary would not extend to the determination of this question. The phraseology of the act is similar to that of various other acts of Congress providing for the disposition of public lands. Section 2259, Revised Statutes, confers the right to enter "any number of acres not exceeding 160 acres or a quarter section of land;" section 2289, Revised Statutes, "one quarter section or a less quantity;" section 2304, Revised Statutes, "a quantity of land not exceeding 160 acres or one quarter section;" and the act of March 3, 1877 (19 Stat., 377), "a tract of desert land not exceeding one section."

All of those acts have been construed as allowing the applicant to elect what amount of land he would take not exceeding the maximum quantity specified in the act under which his application was made.

In the case of the United States *v.* Denver and Rio Grande Railroad Company (150 U. S., 1), the court in considering the act of 1875 held that said act operated as a general law and therefore was entitled to such liberal construction as would clearly carry into effect the purposes of Congress and that in construing the same due regard should be had for conditions existing at the time of the passage thereof and the beneficiaries thereunder, saying—

It is undoubtedly, as urged by the plaintiffs in error, the well settled rule of this court that public grants are construed strictly against the grantees, but they are not to be so construed as to defeat the intent of the legislature, or to withhold what is given either expressly or by necessary or fair implication. In *Winona and St. Peter Railroad v. Barney*, 113 U. S., 618, 625, Mr. Justice Field, speaking for the court, thus states the rule upon this subject: "The acts making the grants . . . are to receive such a construction as will carry out the intent of Congress, however difficult it might be to give full effect to the language used if the grants were by instruments of private conveyance. To ascertain that intent we must look to the condition of the country when the acts were passed, as well as to the purposes declared on their face, and read all parts of them together."

Looking to the condition of the country, and the purposes intended to be accomplished by the act, this language of the court furnishes the proper rule of construction of the act of 1875. When an act, operating as a general law, and manifesting clearly the intention of Congress to secure public advantages, or to subserve the public interests and welfare by means of benefits more or less valuable, offers to individuals or to corporations as an inducement to

undertake and accomplish great and expensive enterprises or works of a *quasi* public character in or through an immense and undeveloped public domain, such legislation stands upon a somewhat different footing from merely a private grant, and should receive at the hands of the court a more liberal construction in favor of the purposes for which it was enacted.

Construing the act of March 3, 1875, *supra*, in accordance with the views expressed in the decision above quoted, it is clear that Congress intended to establish the maximum amount of land which the railway company might take for station purposes, and the minimum distance these stations should be apart, and that having thus determined the amount of land reasonably necessary for station purposes no authority is vested in the Secretary of the Interior to determine how much the railway company may take up to and including 20 acres.

It was held by the Department in the case of the Western Pacific Railway Company (41 L. D., 599), that in making a showing to support the application for station ground purposes under the act of March 3, 1875, the company was not limited to the immediate necessities but may include the reasonable demands of the future based upon existing probabilities. It is not believed that this construction of the act is sound. The act allows the railway company to obtain rights in advance of construction, by complying with certain provisions thereof, and what the reasonable necessities of a railroad company may be after its line is built and the country settled is impossible of determination other than as Congress has determined them at the time when the road is unconstructed and the country unsettled, conditions which it must be presumed Congress had in mind at the time the act was passed.

To avoid uncertainty as to the scope and effect of the right granted by the act, Congress determined what reasonable necessities of the road would be with reference to station grounds and in fixing the maximum amount fixed the rights of the beneficiaries under the act. Prior to the decision of the Department in the case of the Western Pacific Railway Company (40 L. D., 411), and the case of the Western Pacific Railway Company (41 L. D., 599), a railway company entitled to the benefits of the act was allowed to take, as a matter of course, any amount of land up to 20 acres for station ground purposes, and it is believed that the rule laid down by the Department in the cases above cited is erroneous. Said decisions are accordingly hereby overruled. The decision appealed from is reversed and the case remanded for further proceedings in accordance with the views herein expressed.

DISPOSAL OF CEDED LANDS IN CROW INDIAN RESERVATION.

BY THE PRESIDENT OF THE UNITED STATES

A PROCLAMATION

WHEREAS the Act of Congress directing the disposal of lands within a specified part of the Crow Indian Reservation, in the State of Montana, approved April 27, 1904 [33 Stat., 352], provides among other things:

That when, in the judgment of the President, no more of the land herein ceded can be disposed of at said price, he may by proclamation, to be repeated at his discretion, sell from time to time the remaining land subject to the provisions of the homestead law or otherwise as he may deem most advantageous, at such price or prices, in such manner, upon such conditions, with such restrictions, and upon such terms as he may deem best for all the interests concerned;

AND WHEREAS proclamations issued on September 9, 1910, and August 9, 1912, under said act, directed the sale of certain lands, all of which have not been disposed of;

AND WHEREAS, in my judgment, the undisposed-of lands affected by said proclamations can be most advantageously disposed of in the manner hereinafter prescribed;

Now therefore, I, WOODROW WILSON, President of the United States of America, do hereby proclaim and direct that all the unsold, unentered, nonmineral, unreserved lands affected by said act, which are not withdrawn under the reclamation act, shall be disposed of in the following, manner and not otherwise:

1. *Units and fractional units.*—The lands shall be disposed of in units and fractional units. Prior to May 15, 1915, the contiguous land subject to disposition in the north or south half of any section shall be deemed a unit if it makes as much as 240 acres and a fractional unit if it makes less than that area; and on and after that date such land in any section shall be deemed a unit if it makes as much as 480 acres and a fractional unit if it makes less than that area.

2. *Purchase and special additional homestead.*—On and after October 10, 1914, any person owning less than 320 acres acquired under the provisions of the homestead laws may execute an application to purchase, and any person who has a valid homestead entry for less than 320 acres, may execute an application to enter as a special additional homestead, the land in the unit or fractional unit in the half section in which the major portion of the land so owned or entered is situated, and if such land is situated in equal parts in two or more such half sections the owner thereof or entryman may elect to purchase or enter any one of such units. Beginning May 15, 1915, when a section shall constitute the unit that may be acquired here-

under, any person who, prior to that date, shall have purchased or entered the land in any half section unit may purchase or enter the remaining contiguous land in such enlarged unit, if then undisposed of.

3. *Special homesteads.*—After October 26, 1914, any person who is the head of a family or has arrived at the age of twenty-one years, is a citizen of the United States or has declared his intention to become such citizen, and is not the proprietor of more than 160 acres of land in the United States, may execute an application to enter as a special homestead the land in any unit or fractional unit, or the land in two or more contiguous fractional units if the combined area does not exceed approximately 320 acres; and on and after May 15, 1915, the land in any unit or fractional unit, or the land in two or more contiguous fractional units if the combined area does not exceed approximately 640 acres.

4. *Omission of part of unit or fractional unit.*—No purchase, special additional homestead or special homestead will be allowed for part only of a unit or fractional unit.

5. *Settlement before entry.*—No right can be acquired under the provisions of this proclamation by settlement before entry.

6. *Price of lands and terms.*—The price of the lands shall be three dollars per acre if entered or purchased prior to September 15, 1915, and two dollars per acre if entered or purchased on or after that date. One-third of the price must be paid when entry or purchase is made. In the case of a purchase, the balance of the price must be paid in two equal payments, one year and two years thereafter, unless paid sooner, and, in the case of an entry, in two equal payments three years and four years thereafter, unless paid sooner. A purchaser may make payment of the unpaid installments at any time before they become due, and final certificate will issue, in the absence of objection, upon such payment being made. An entryman must make final payment when proof is submitted, if it is submitted before four years from the date of entry.

7. *Execution and presentation of applications.*—Applications to purchase or enter may be executed before the register or the receiver of the United States land office for the district in which the land is situated, or before a United States Commissioner, or a judge or a clerk of a court of record residing in the county in which the land is situated, or before any such officer who resides outside the county and in the land district and is nearest and most accessible to the land. All applications must be presented, with the required payment, to the register and receiver, in person, by mail, or otherwise.

8. *Disposition of applications to purchase and to make special additional homesteads.*—All applications to purchase or to make

special additional homesteads received by the register and receiver at or prior to nine o'clock a. m., standard time, on October 26, 1914, will be treated as filed simultaneously; and where there is no conflict such applications, if in proper form and accompanied by the required proofs and payments, will be allowed immediately thereafter; and, in the case of conflicts, where the applicants show that they are equally entitled to enter or purchase, the rights of the several parties shall be disposed of by a drawing, which will begin at ten o'clock a. m., standard time, on October 27, 1914, in the manner hereinafter provided for the disposition of conflicting applications to make special homesteads. Applications to purchase, or to make special additional homesteads, received after nine o'clock a. m., on October 26, 1914, will receive equal consideration with, but will not be preferred over applications to make special homesteads.

9. *Allowance of applications.*—All applications received by the register and receiver after nine o'clock a. m., standard time, on October 26, 1914, and at or prior to nine o'clock a. m. on November 10, 1914, will be treated as filed simultaneously; and where there is no conflict such applications, if in proper form and accompanied by the required payments, will be allowed immediately thereafter. Where there are such applications conflicting in whole or in part, the right of the several applicants will be determined by a public drawing, which will begin at ten o'clock a. m., standard time, on November 11, 1914. The names of such applicants will be written on cards and each of these cards shall be placed in an envelope upon which there is no distinctive or identifying mark. These envelopes shall be thoroughly and impartially mixed, and then drawn, one at a time, by some disinterested person. As the envelopes are drawn, the cards shall be numbered, beginning with number 1, and fastened to the applications of the respective persons, which shall be the order in which the applications shall be acted upon and disposed of. If an applicant fails to secure any of the land applied for, his application shall be rejected. If he obtains part but not all of the land applied for, he shall, on or after November 11, 1914, be allowed thirty days from receipt of notice within which to notify the register and receiver whether to allow his application for the part obtained or to reject it in whole. If he does not notify the register and receiver within the time allowed, the application will be rejected in whole. If any other fractional unit or fractional units are subject to disposal and to inclusion in an entry with the land secured by such applicant, he may amend his application to include such lands, provided he is the prior applicant therefor and makes the necessary

payment. Applications to purchase, to make special additional homesteads, and to make special homesteads, presented after nine o'clock a. m., standard time, on November 10, 1914, will be received and noted in the order of their filing and acted upon and disposed of after all applications presented at or before that time have been acted upon and disposed of.

10. *Payments.*—Each person presenting an application to purchase or enter must accompany such application with the required first payment. If an application is not allowed in whole, but is allowed in part, the moneys deposited in excess of the required payment will be returned; and if an application is rejected in whole the sum will be returned. The payment must be made in cash, by a certified check on a national or state bank or trust company which can be cashed without cost to the Government, or by a postoffice money order, made payable to the receiver of the land office. No other form of payment will be accepted.

11. *Requirements.*—In order to obtain title to an entry allowed under the provisions of this Proclamation, the entryman must comply with the general provisions of the homestead laws and regulations not in conflict herewith for three years. No entry allowed under the provisions of this Proclamation shall be subject to commutation. The requirements as to residence must be strictly complied with, but the Secretary of the Interior may reduce the prescribed area of cultivation if proper application and sufficient showing are made to warrant such reduction. In the case of a special additional homestead, the residence of the entryman may be upon the land used as a base in the allowance thereof and nothing herein shall prevent such entryman from making full payment and acquiring title to the additional homestead when he can complete title to the base or the original entry.

12. *Forfeitures.*—If an entryman fails to make any payment when it becomes due, or fails to comply with the requirements of the homestead law as herein modified, his entry will be canceled and all payments theretofore made on the purchase price of the land will be forfeited; and such payments will also be forfeited if the entry is canceled for any other reason and repayment is not authorized under the law.

13. *Lands re-entered.*—If any entry heretofore made for nonmineral lands under the provisions of the act of April 27, 1904, *supra*, or if any entry or purchase made under the provisions of this proclamation is canceled, the land may be re-entered or purchased at the price at which it was formerly entered or purchased and not otherwise.

14. *Forms, rules and regulations.*—The Secretary of the Interior is hereby authorized to make and prescribe such forms, rules and regulations as may be necessary to carry the provisions of this proclamation into full force and effect.

IN WITNESS WHEREOF I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this twenty-eighth day of September, in the year of our Lord nineteen hundred and [SEAL] fourteen and of the independence of the United States the one hundred and thirty-ninth.

WOODROW WILSON.

By the President:

W. J. BRYAN,
Secretary of State.

DISPOSAL OF CEDED LANDS IN CROW INDIAN RESERVATION.

REGULATIONS.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., October 3, 1914.

The COMMISSIONER,
GENERAL LAND OFFICE.

SIR: The President's proclamation of September 28, 1914 [43 L. D., 413], authorizing the disposal of certain lands within the ceded part of the Crow Indian Reservation, in Montana, provides, in paragraph 14:

The Secretary of the Interior is hereby authorized to make and prescribe such forms, rules and regulations as may be necessary to carry the provisions of this proclamation into full force and effect.

Pursuant to the said proclamation, the following rules and regulations, and form of application to purchase or enter, are made and prescribed:

1. *Disposition of applications.*—The register of the land office will note on all applications received at or prior to nine o'clock a. m. on November 10, 1914, the date and hour of receipt, and whether the land applied for is subject to disposition, according to the land office records, and deliver the applications, so marked, to the Superintendent of Opening and Sale of Indian Reservations, or to his representative. Each of the drawings provided for in the proclamation will be conducted under the supervision of the said superintendent, or his representative, who will, after the drawings, certify to

the register the order in which the applications shall be acted upon and disposed of. Applications received after nine o'clock a. m. on November 10, 1914, will be acted upon and disposed of by the register in the usual way.

2. *Mineral land*.—The proclamation does not affect the status of undisposed-of mineral land within the reservation. Such land may be entered, at the required price, under the mineral land laws, and, if coal land, surface homestead entries may be made therefor at \$4.00 per acre, subject to the provisions of the Act of Congress approved June 22, 1910 (36 Stat., 583).

3. *Nonmineral land*.—The undisposed-of nonmineral land within the reservation may be appropriated under the provisions of the proclamation in three ways:

(a) *Purchases*.—Lands may be purchased without any requirement as to residence, cultivation, or improvements only by persons owning less than 320 acres of lands, acquired, either by themselves, or by others, under the homestead law, which are contiguous to, and, if purchased prior to May 15, 1915, are in the north or south half of the section, or, if purchased on or after said date, are in the section, in which an equal portion or the major portion of the lands so owned are situated.

(b) *Special additional homesteads*.—Lands may be entered as special additional homesteads only by persons having valid, unperfected homestead entries of less than 320 acres for nonmineral lands, or for the surface of coal lands, which are contiguous to, and, if entered prior to May 15, 1915, are in the north or south half of the section, or, if entered on or after said date, are in the section in which an equal portion or the major portion of the lands so held are situated.

(c) *Special homesteads*.—A special homestead may be made by any person who is the head of a family or has arrived at the age of twenty-one years, is a citizen of the United States or has declared his intention to become such citizen, and is not the proprietor of more than 160 acres of land in the United States.

4. *Enlargement of purchases, special additional homesteads and special homesteads*.—If any nonmineral lands in the section in which a purchase, special additional homestead, or special homestead is situated are not entered prior to May 15, 1915, such purchase, special additional homestead or special homestead may, on or after that date, be enlarged to include such nonmineral land, if contiguous.

5. *Supporting affidavits*.—An application to purchase, or to make a special additional homestead, must be supported by the affidavits of two disinterested witnesses, showing, in the former case, that applicant owns the whole title to the contiguous land, or base for his

application, and that such land was acquired under the homestead law, and, in the latter case, that the contiguous land, or base, is embraced in a valid, unperfected homestead entry, held by him. The supporting affidavits must also show, if executed prior to May 15, 1915, that an equal portion or the major portion of all contiguous land owned by the applicant or held by him under a valid entry is in the north or south half of the section, and, if executed on or after said date, that an equal portion or the major portion of all such land is in the section, in which the land applied for is situated. These supporting affidavits may be executed before any officer in the United States having a seal and authority to administer oaths.

6. *Disposition of moneys.*—Moneys tendered with applications presented at or prior to nine o'clock a. m. on November 10, 1914, will be deposited by the receiver of the land office as "Trust Funds (Unearned Moneys)." If the applications are allowed in whole, or in part, the moneys affected by the allowance will be deposited to the credit of the Treasurer of the United States as "Sales of Crow Indian lands—Act of April 27, 1904 (33 Stat., 352);" and if the applications are rejected in whole, or in part, the moneys affected by the rejection will be returned to the applicants by the official check of the receiver. If an applicant fails to secure all the land applied for, and amends his application to embrace other lands, the payment theretofore made will be applied on account of the required payment under the amended application. If it is not sufficient, the applicant will be required to pay the deficiency, and, if it is more than sufficient, the excess will be returned to him by the official check of the receiver. Moneys tendered with applications presented after nine o'clock a. m. on November 10, 1914, will be deposited by the receiver as provided for in paragraph 81 of Circular No. 105, as amended, of the General Land Office.

7. *Proof for special additional homesteads.*—Proof may be made for a special additional homestead when proof is submitted for the base or original entry, by showing the necessary residence, cultivation and improvements for the additional entry up to that time and making payment of all unpaid purchase money. Proof is not required to be submitted at that time, but, if it is not, the requirements as to residence, cultivation and improvements for the additional entry must be continued until that entry is three years old, if proof and final payment are not made before that time.

8. *Form of application.*—The following is prescribed as the form of application:

DEPARTMENT OF THE INTERIOR.

(State whether purchase, special additional homestead or special homestead.)

U. S. Land Office _____ Serial No. _____

Receipt No. _____

APPLICATION.

I, _____,
(Full Christian name.) (Male or female.)

(St. and No. or other address.) (City or town.)

(County.) (State.), do hereby apply to

(State whether application is to purchase, to make special additional homestead or to make special homestead.)

under the President's proclamation of September 28, 1914, and the Act of Congress approved April 27, 1904 (33 Stat., 352), the

Section _____, Township _____, Range _____ E., Mon-
tana Principal Meridian, containing _____ acres, within the
_____ land district, and I do solemnly
swear (See (a) that said land is contiguous to the __________ Section _____,
Township _____, Range _____ E., said meridian, contain-
ing _____ acres, _____

(Applicant must state whether contiguous land is owned by him and was acquired under the homestead law, or whether it is held by him as a valid homestead entry. If possible the former or existing entry should be identified by number and land office.) that the lands described as the base for this application include all contiguous lands owned by me or held by me as aforesaid; (See (b) that I am not the proprietor of more than 160 acres of land in the United States; that I _____

(Applicant must state if native born, naturalized, or if he has declared intention to become citizen. If not native born, certified copy of naturalization or declaration of intention, as case may be, must be furnished.)

citizen of the United States and am _____

_____ ;)
(State whether the head of a family, married or unmarried, or over twenty-one years of age, and if not over twenty-one application must set forth facts which constitute applicant the head of family.)

that this application is made for my own use and benefit and not for the use or benefit of any other person, persons or corporation; that I will faithfully and honestly endeavor to comply with all the requirements necessary to acquire title to the land applied for; that I am not acting as agent of any person, corporation, or syndicate to give them the benefit of the land entered, or any part thereof, or the timber thereon; that I have not directly or indirectly made, and will not make, any agreement or contract in any way or manner, with any person or persons, corporation or syndicate whatsoever, by which the title which I may acquire from the Government of the United States will

(a) Blanks within these brackets to be filled out only in case of application to purchase or to make special additional homestead.

(b) Blanks within these brackets to be filled out only in case of application to make special homestead.

inure in whole or in part to the benefit of any person except myself; that I am well acquainted with the character of the land herein applied for and with each and every legal subdivision thereof, having personally examined same; that there is not to my knowledge within the limits thereof any vein or lode of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, or copper, nor any deposit of coal, placer, cement, gravel, salt spring, or deposit of salt, nor any other valuable mineral deposit; that no portion of said land is claimed for mining purposes under the local customs or rules of miners, or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that the land is essentially non-mineral land, and that my application therefor is not made for the purpose of fraudulently obtaining title to mineral land; and that the land is not occupied and improved by any Indian.

(Sign here with full Christian name.)

NOTE.—Every person swearing falsely to the above affidavit will be punished as provided by law for such offense. (See Sec. 125, U. S. Criminal Code, over.)

(Following to be printed on back of application.)

I HEREBY CERTIFY that the foregoing affidavit was read to or by affiant in my presence before affiant affixed signature thereto; that affiant is to me personally known (or has been satisfactorily identified before me by -----

(Full Christian name.)

(St. and No. or other address.)

(City or town.)

(County.)

(State.)

-----; that I verily believe affiant to be a qualified applicant and the identical person hereinbefore described; and that said affidavit was duly subscribed and sworn to before me, at my office, in

(City or town.)

(County.)

(State.)

-----, within the -----
----- land district, this ----- day
of -----, 19-----

(Official designation of officer.)

UNITED STATES LAND OFFICE.

-----, 19-----

I HEREBY CERTIFY that the foregoing application is for surveyed land of the class which the applicant is legally entitled to enter, that there is no prior valid adverse right to the same, and has this day been allowed.

Register.

UNITED STATES CRIMINAL CODE.—Chap. 6.

SEC. 125. Whoever, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, shall willfully and contrary to such oath state or subscribe any material matter which he does not believe to be true, is guilty of perjury, and shall be fined not more than two thousand dollars and imprisoned not more than five years. (Act, March 4, 1909, 35 Stat., 1111.)

Very respectfully,

Bo SWEENEY,
Assistant Secretary.

DEPARTMENT OF THE INTERIOR.

Washington, D. C., October 5, 1914.

The COMMISSIONER,
GENERAL LAND OFFICE.

SIR: Applications to purchase or enter, presented under the President's Proclamation of September 28, 1914, must, in addition to the required first payment of purchase money, be accompanied by the necessary fees and commissions. The fees and commissions which will be required in connection with such purchases and entries will be the same as those which are exacted in connection with entries allowed under the enlarged homestead act of February 19, 1909 (35 Stat., 639), where the price of the land is \$1.25 per acre.

Very respectfully,

Bo SWEENEY,
Assistant Secretary.

FORT BRIDGER ABANDONED MILITARY RESERVATION.

INSTRUCTIONS.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., October 16, 1914.

REGISTER AND RECEIVER,
Evanston, Wyoming.

SIRS: Your attention is invited to the act of Congress approved August 27, 1914, Public No. 190, entitled "An act to extend the

general land laws to the former Fort Bridger Military Reservation in Wyoming," which reads as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the lands on the former Fort Bridger Military Reservation in Wyoming are hereby made subject to appropriate entry under the land laws of the United States: *Provided,* That nothing in this act shall be held to provide any refundment of moneys heretofore paid for lands in the said reservation or to relieve entrymen from payments due or to become due on entries heretofore made.

The reservation in question originally embraced 317,390.85 acres but was relocated by authority of the act of February 24, 1871 (16 Stat., 430), to comprise only 10,941.06 acres. By the act of July 10, 1890 (26 Stat., 227), the part not included in such relocated reservation was made subject to disposal under the homestead laws. The lands in the reduced reservation were turned over to this Department October 2, 1890, and were appraised and made subject to disposition under the homestead laws by instructions approved April 9, 1895, each settler being required to pay an appraised price as provided in the act of August 23, 1894 (28 Stat., 491). The lands were within railroad granted limits and each settler was required to pay not less than \$2.50 per acre.

The act of May 31, 1902 (32 Stat., 283), also permits persons who completed title to homestead entries for lands within said reservation, to make a purchase of 160 acres additional as grazing lands by paying \$1.25 per acre.

The law now under consideration extends the general land laws to the undisposed-of lands in said reservation and specifically provides that there shall be no refundment of moneys heretofore paid for lands in said reservation, and that existing entrymen are not relieved from payment due or to become due on entries heretofore made.

You will be governed accordingly in disposing of the remaining lands in said reservation.

Said reservation originally embraced lands in Ts. 12, 13, 14, 15, 16, N., Rs. 113, 114, 115, 116 W., and the reduced portion is in Ts. 15 and 16 N., R. 115 W.

Very respectfully,

JOHN McPHAIL,
Acting Assistant Commissioner.

Approved October 16, 1914:

Bo SWEENEY,
Assistant Secretary.

COAL LAND—ACT JUNE 22, 1910—PROSPECTING ENTERED LAND.

INSTRUCTIONS.

DEPARTMENT OF THE INTERIOR,
Washington, October 26, 1914.

The COMMISSIONER OF THE GENERAL LAND OFFICE.

SIR: Paragraph 2 of subdivision 6 of departmental instructions dated September 8, 1910 (39 L. D., 179, 183), under the act of June 22, 1910 (36 Stat., 583), is hereby amended to read as follows:

As a condition precedent to the exercise of the right mentioned in this act to prospect for coal, the person desiring so to prospect must file in the office of the Commissioner of the General Land Office, for submission to the Secretary of the Interior for his approval, a bond or undertaking to indemnify the non-mineral claimant in lawful possession under this act from all damages that may accrue to the latter's crops and improvements on such lands by reason of such prospecting, the right to prospect to date from receipt of notice of approval of the bond. There must be filed with such bond evidence of service of a copy thereof upon the non-mineral claimant. The bond must be executed by the prospector as principal, with two competent individual sureties or a corporate surety that has complied with the provisions of the Act of August 13, 1894 (28 Stat., 279), as amended by the act approved March 23, 1910 (36 Stat., 241), in the sum of \$1,000, as per form hereto annexed. Except in the case of a bond given by a qualified corporate surety, there must be filed therewith affidavits of justification by the sureties, and a certificate by a Judge or Clerk of a Court of record, a United States District Attorney, a United States Commissioner, or a United States Postmaster, as to the identity, signatures, and financial competency of the sureties. Coal declaratory statements for and applications to purchase the coal deposits in lands entered, selected, or withdrawn under the reclamation act, as provided in section 2 of act, will be received and filed at any time after such entry or selection has been received and allowed of record or such withdrawal has become a matter of record in your office; coal declaratory statements for and applications to purchase the coal deposits in those lands embraced in non-mineral entries, selections, or locations made in good faith, described in, and protected by, the proviso in section 1 of the act, will be accepted and filed after it shall have been determined and become a matter of record in your office that such non-mineral entryman, selector, or locator shall receive the limited patent prescribed in the act: *Provided always*, That such lands, or the coal deposits therein, have then been restored to disposition under the coal-land laws and the regulations in force.

Respectfully,

ANDREWS A. JONES,
First Assistant Secretary.

J. H. SEUPELT.

Motion for rehearing of departmental decision of May 29, 1914, 43 L. D., 267, denied by First Assistant Secretary Jones, October 26, 1914.

LEWIS C. BOYLE.

Decided September 30, 1914.

SWAMP LANDS—MINNESOTA DRAINAGE LAWS—ACT OF MAY 20, 1908.

Where lands made subject to the drainage laws of the State of Minnesota by the act of May 20, 1908, were sold for taxes under said act, and the purchaser at the tax sale subsequently waives and assigns all rights under such purchase to one duly qualified to make entry under the homestead laws, such transferee is entitled, in the absence of any intervening adverse entry under the act, to make homestead entry of the land, subject to the provisions of said act.

SWEENEY, *Assistant Secretary*:

Lewis C. Boyle has appealed from the decision of April 1, 1914, in the above entitled action directing him to show cause why his homestead entry 09463, made under the act of May 20, 1908 (35 Stat., 169), for the SW. $\frac{1}{4}$, Sec. 11, T. 157 N., R. 38 W., Crookston, Minnesota, land district, should not be canceled for illegality.

It appears that the aforesaid lands were sold by a duly qualified officer of the State, pursuant to a real estate tax judgment entered against said tract for taxes; and that one Edwin Hueffeimer appeared at the sale and purchased the same, paying therefor the sum, with interest, etc., adjudged to be due thereon. Thereafter Hueffeimer transferred the certificate of tax judgment sale and purchase to Lewis C. Boyle.

No point is made to the qualification of either of the parties as homestead entryman. Both appear to have been duly qualified, and as such entitled to make homestead entry. The only question, therefore, presented for consideration is whether Hueffeimer could make a valid assignment of the tax certificates which were the evidence of his rights and property in the land aforesaid.

It would not be seriously contended that a purchaser at a sale of this kind could thereafter do a thing the result of which would defeat the purpose of the provisions of law governing at such sales; that is to say, in this case, the purchaser was allowed 90 days from the date of purchase in which to comply with the terms of sale, and upon his noncompliance therewith—

Any person having the qualifications of a homestead entryman may pay to the proper receiver for not more than 160 acres of land, for which such payment has not been made, the unpaid fees, commissions and purchase price to which the United States may be then entitled, the sum at which the land was sold at the sale for drainage charges . . . and thereupon the person making such payment shall become subrogated to the rights of such purchaser to receive a patent for said land.

This right which extends to "any person having the qualifications of a homestead entryman" to make payments and receive patent for the lands on default of the purchaser is a right guaranteed

under the act itself, and could not be defeated by an attempted assignment of a right personal to the purchaser and not transferable.

But a distinction must be drawn between an assignment in such case and a waiver of an interest in and to the thing waived. In this case the purchaser, it appears, undertook to do no more than assign or waive his right or interest, whatever that was, to Boyle. He certainly could not assign, or waive that which he did not have; and whatever the assignee, or transferee, acquired by the assignment, or waiver, he could in no way assert against the right of an intervening entry of another guaranteed under the act.

The action taken, therefore, by the purchaser, Hueffeimer, was not in derogation of the act. He did no more than exercise a right not inconsistent with the regulations and the law in this case; and there seems to be, accordingly, no good reason why the entry of Boyle, apparently regular and lawful, should be canceled. Nothing else appearing, it will be allowed to stand.

The decision is reversed.

HEIRS OF EPHRAIM P. HASTINGS ET AL.

Decided September 21, 1914.

CONFIRMATION—PROVISO TO SECTION 7—FINAL ENTRY.

The proviso to section 7 of the act of March 3, 1891, contemplates a receiver's receipt upon a final entry based upon an existent application or original entry; and the submission of final proof and payment of fees and commissions upon a canceled entry, and the issuance of register's certificate thereon, do not constitute a final entry within the meaning of said proviso.

TRANSFeree AFTER FINAL CERTIFICATE.

The transferee of an entry after the issuance of final certificate takes only such right as the entryman himself has.

JONES, *First Assistant Secretary:*

W. J. Kilpatrick, to whom the land had been transferred, has appealed from the decision of the Commissioner of the General Land Office, dated March 14, 1913, affirming the action of the local officers and adhering to the cancellation on March 25, 1902, of the timber culture entry made by Ephraim P. Hastings, on May 11, 1887, for the SE. $\frac{1}{4}$, Sec. 28, T. 1 N., R. 50 W., 6th P. M., now in the Sterling, Colorado, land district.

It appears from the record that notice of the expiration of the time within which final proof might be submitted upon this entry was duly mailed to the entryman on December 9, 1901, but the letter containing the notice was returned unclaimed to the local office. On March 20, 1902, Hastings submitted before the Clerk of Courts of Clarion County, Pennsylvania, his own testimony on final proof.

On March 25, 1902, the Commissioner of the General Land Office canceled the entry for failure to submit proof within the statutory period, following the report of the local officers that they had mailed expiration notice to the claimant, as above stated.

On March 29, 1902, the testimony of two proof witnesses was submitted before the receiver of the local land office, and on that day the receiver's receipt on final entry and register's certificate were issued. It does not appear that any publication of intention to submit proof was made. Proceedings against the entry, on behalf of the Government, were directed by the Commissioner of the General Land Office, on May 24, 1906, upon the charges that claimant had not complied with the requirements of the timber culture act, and that he had wholly abandoned the land and had no intention of submitting final proof until induced to do so by one D. W. Irwin. It was further charged that Hastings sold the land to W. J. Kilpatrick, prior to the date of proof. Hastings was duly notified of the charges and acknowledged service thereof in writing, on December 6, 1906. He died on January 17, 1911, and subsequently his heirs and Kilpatrick were served with notice of the charges. The transferee denied the truth of the charges and applied for a hearing, which was had. The Government and Kilpatrick appeared at this hearing and submitted testimony.

The facts in this case with reference to Hastings's failure to comply with the law are sufficiently set forth in the decision of the local officers and of the Commissioner, and need not, therefore, be herein recited. The entry was properly canceled under the regulations on March 25, 1902, and nothing has been presented which will warrant the reinstatement of said entry. The submission of final proof and payment of fees and commissions upon a canceled entry are a mere nullity, and it is obvious that such proof and payment, though reinforced by an improvidently issued register's certificate, do not constitute a final entry. The rule announced in *Jacob A. Harris* (42 L. D., 611), has no application to a case like the one under consideration. The proviso to section 7 of the act of March 3, 1891 (26 Stat., 1095), contemplates a receiver's receipt upon a final entry based upon an existent application or original entry.

It is urged on behalf of the transferee that he is an innocent purchaser and should therefore receive patent, notwithstanding the entryman's failure to comply with the law. It sufficiently appears that the land was sold to Kilpatrick after the issuance of final certificate. Under such circumstances he took only such right as the entryman himself had. See *Mary M. Shields et al.* (35 L. D., 227).

The decision appealed from must be and it is accordingly affirmed.

ANDREW HOLTE.

Decided October 20, 1914.

TIMBER AND STONE APPLICATION—APPRAISEMENT.

Under paragraph 19 of the timber and stone regulations an applicant under the timber and stone act is entitled to purchase, in the absence of an appraisal of the land within nine months from the tender of his sworn statement, at the price named in his sworn statement; and in the absence of fraud or misrepresentation, there is no authority for an appraisal or reappraisal of the land after the application has been or is entitled to be allowed.

SWEENEY, Assistant Secretary:

On July 17, 1911, Andrew Holte filed timber and stone sworn statement for the SE. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 17, and NE. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 20, T. 26 S., R. 14 W., W. M., alleging that the land was worth \$40, and the timber thereon, estimated at 500,000 feet, was worth \$250. On November 23, 1911, the local officers issued final certificate showing that payment had been made in the sum of \$200. In explanation of their action the register and receiver reported that the land and timber had been appraised at \$200 in connection with a timber and stone sworn statement filed by one Todd, and that Todd's application had been rejected for the reason that the land was not chiefly valuable for timber. As a matter of fact the land was appraised under Todd's sworn statement at \$50.

On May 11, 1912, Holte's entry was held for cancellation by the Commissioner of the General Land Office for the reason that it had been allowed without authority of law, and, on August 30, 1912, this action was vacated in order to allow him a hearing for the purpose of determining the character of the land.

On July 16, 1913, a special agent of the General Land Office reported that a date had been set for a hearing; that the land had been cruised and found to contain 900,000 feet of timber, and that the land, exclusive of the timber, was worth \$40, and the timber \$395. The special agent, with the approval of the Chief of Field Division, recommended that the order of hearing be vacated and Holte's entry remain intact.

In his decision of May 18, 1914, the Commissioner held that the appraisal by the special agent constituted a reappraisal of the land under paragraph 35 of the timber and stone regulations (40 L. D., 244), and required Holte to pay the additional sum of \$235. His appeal brings the matter before the Department.

It is provided in paragraph 31 of the timber and stone regulations, that lands appraised or reappraised thereunder, but not sold, may be entered under the timber and stone law at the appraised or reappraised value, if subject thereto. It is obvious that this paragraph

did not warrant the allowance of Holte's application under the appraisal in connection with Todd's application, since the land had been held to be not subject to appropriation under the timber and stone law. This would have been true had the land and timber been appraised at \$200, as erroneously held by the local officers, instead of at \$50.

No appraisal of this land having been made under his application, Holte was, at the expiration of nine months from the tender of his sworn statement, entitled to purchase at the price named in such sworn statement, under paragraph 19 of the timber and stone regulations. It was clearly the purpose of the timber and stone regulations to empower the Commissioner to appraise the lands within nine months from the date of application, and paragraph 35, in a proper case, authorizes a reappraisal at any time prior to its allowance. In the absence of fraud or misrepresentation it is not believed that the regulations or good administration will justify either an original appraisal or a reappraisal after the application has been allowed, or is entitled to be allowed. Under the facts disclosed by this record, the Department is of the opinion that Holte should be required to pay an additional sum of \$90, and that the entry should pass to patent in the event that he makes such payment within thirty days from notice to that effect. The decision appealed from is reversed.

WILLIAM S. McCORNICK.

Decided October 29, 1914.

COAL LANDS—PROOF AND PAYMENT—REGULATIONS WAIVED.

In view of the ambiguity in the coal-land regulations of April 12, 1907, as amended November 30, 1907, respecting the time of payment, the delay of the field officer in making his return in this instance, the acceptance of payment and allowance of entry without demur by the register and receiver, and the undoubted good faith of the applicant, the requirement of paragraph 18 of said regulations, that claimant shall within thirty days after the expiration of the period of newspaper publication furnish the proofs specified in said paragraph and tender the purchase price for the land, is waived in this case, the departmental decisions of March 3, April 30, and June 12, 1913, 41 L. D., 661, 666, are recalled and vacated in so far as in conflict herewith, and patent directed to issue upon the entry without requiring payment of the increased price as fixed by reappraisal.

JONES, First Assistant Secretary:

William S. McCornick has filed a motion for reconsideration of the Department's decisions of March 3, 1913, April 30, 1913, and June 12, 1913 (41 L. D., 661), affirming the action of the Commissioner of the General Land Office, dated November 14, 1911, holding

for cancellation his coal entry No. 07078 made July 13, 1911, at Salt Lake City, Utah, for the NW $\frac{1}{4}$, Sec. 22, T. 17 S., R. 7 E., S. L. M., within the Manti National Forest, established by proclamation of May 29, 1903 (33 Stat., 2308). Execution of the Department's decisions has been deferred pending action by Congress upon Senate Bill No. 2657, 63d Congress, 1st Sess., entitled, "A Bill For the Relief of William S. McCornick," and the entry is still intact upon the records.

The material facts are as follows: The land involved was classified July 3, 1907, as coal land disposable at \$25 per acre. McCornick filed his application to purchase January 16, 1911, and at that time offered to pay the purchase price, but was informed by the chief clerk of the local land office that payment would not be accepted until after the publication of notice. This notice, which stated that all persons having adverse claims or desiring to object, should file their protests not later than March 2, 1911, was published and posted January 28th to February 27, 1911. By the Commissioner's letter of March 18, 1911, received in the local land office March 21, 1911, the tract was reclassified and revalued at the following prices: NE $\frac{1}{4}$ NE $\frac{1}{4}$, \$135 per acre; NW $\frac{1}{4}$ NE $\frac{1}{4}$, \$122 per acre; SW $\frac{1}{4}$ NE $\frac{1}{4}$, \$117 per acre, and the SE $\frac{1}{4}$ NE $\frac{1}{4}$, \$130 per acre. April 4, 1911, the applicant paid in the sum of \$4000, the appraised value as fixed July 3, 1907. Proof of publication was filed April 8, 1911, and of continuous posting April 11, 1911. A favorable report upon the application by a special agent was received by the local officers July 13, 1911, upon which day they issued final certificates. The purport of the previous decisions was that the entry should be canceled for failure to make proof and payment within thirty days after the period of newspaper publication as required by paragraph 18 of the regulations of April 12, 1907 (35 L. D., 667), as amended November 30, 1907 (36 L. D., 192), unless the entryman should pay the increase in price as fixed March 18, 1911.

The regulations involved in the consideration of this matter are:

The claimant will be required within thirty days after the expiration of the period of newspaper publication, to furnish the proofs specified in said paragraph and tender the purchase price of the land. Should the specified proofs and purchase price be not furnished and tendered, within this time, the local land officers will thereupon reject the application, subject to appeal.

Paragraph 18, Coal-Land Regulations, November 30, 1907 (36 L. D., 192).

When it is sought to purchase, either by ordinary cash entry or in the exercise of a preference right, the register, if he finds the tract applied for is vacant, surveyed, and unappropriated, and that the claimant has complied with all the laws and regulations relating to the acquisition of coal lands, will so certify to the receiver, stating the prescribed purchase price, and the applicant must then pay the same.

Paragraph 20, Coal-Land Regulations (35 L. D., 672).

The receiver will then issue to the purchaser a duplicate receipt, and at the close of the month the register and receiver will make returns of the sale to the General Land Office, whence, if the proceedings are found to be regular, a patent will be issued.

Paragraph 21, Coal-Land Regulations (35 L. D., 672).

Paragraphs 5, 6 and 7, Regulations of April 24, 1907 (35 L. D., 681):

In all cases of application to make final proof, final entry, or to purchase public lands under any public land law, the Register and Receiver will at once forward a copy thereof to the Chiefs of Field Division of Special Agents. . . .

Registers and Receivers will not issue final certificate or its equivalent in any case until the copy of notice mentioned in paragraph 5 is returned with the Chief of Field Division's indorsement thereon. The Chief of Field Division will in every case return the copy of notice prior to date for final proof or purchase.

When the copy of notice is returned with an indorsement not protesting the validity of the entry, the Register and Receiver will act upon the merits of the proof as submitted. Where the returned indorsement of Chief of Field Division or other officer protests the validity of the entry, the Register and Receiver will forward all papers to this office without action.

In the case of William B. Rosser (42 L. D., 571), in which the applicant had been prevented from publishing and posting notice and making payment prior to the revaluation of the land at a higher price by the delay of the local officers in issuing the notice for publication, it was held at page 572—

The classification of the land on July 3, 1907, and its then opening to entry at \$25 per acre, constituted an offer on the part of the United States to sell the tract at that price, such offer to be accepted by the filing of a proper application, the publication and posting of notice, and payment of the purchase price, as required by the regulations. Rosser had performed the first step necessary for the acceptance of the Government's offer, but was prevented from performing the remainder until after the reclassification of the land by virtue of the delay on the part of the local officers. The question, therefore, is, whether he is to be prejudiced by such delay and should be required to purchase at the price existent at the time of filing his application, or at the higher valuation made after such filing.

At page 573, it was also said:

Rosser applied for the land while it was classified at \$25 per acre and promptly prosecuted his application to entry. He has accepted the offer of the Government and has complied with the conditions of the offer and should, therefore, even conceding the legal power on the part of the United States to demand a higher price, as a matter of fair dealing, be permitted to complete his purchase without additional payment.

In the present case McCornick also has accepted the offer of the United States to sell at \$25 per acre by the filing of an application, the publication and posting of notice and the payment of the pur-

chase price. The issue presented is whether the sale which was approved by the register and receiver should be set aside because of the applicant's delay in filing his proof of publication and posting and making payment beyond the time limited by paragraph 18 of the Coal Land Regulations, *supra*.

In the first place it should be pointed out that said paragraph 18 required the making of proof and payment within thirty days after the expiration of the period of newspaper publication, while paragraph 20 required payment only when the register certified to the receiver that the lands were subject to acquisition under the coal land laws. The regulations themselves, therefore, were in conflict and left the exact time for payment ambiguous. Further, final certificate could not be issued until the register and receiver had received a favorable return from the Chief of Field Division (Paragraph 6, Instructions of April 24, 1907, *supra*).

This return was not received until July 13, 1911, and not until that time could the register have properly issued his final certificate. The Chief of Field Division was required to return the copy of the proof notice prior to the date for final proof or purchase which, however, he did not do, and so one of the officers of the United States, entrusted with the administration of the coal-land laws, was also in default. Assuming that paragraph 18, and not paragraph 20, controlled as to the time of payment, the situation that confronted the applicant was that he was compelled to pay the sum of \$4,000 to the United States without receiving any evidence of title in return, or knowing whether he would ever receive it, the money in the meantime being turned into the Treasury. Also if the Chief of Field Division had protested the application, the applicant would not have been required to make proof and payment until the expiration of the protest proceedings. (See Opinion of the Attorney General, October 18, 1910, 39 L. D., 322, and Opinion of Assistant Attorney General Lawler, 39 L. D., 327, as to an analogous situation under the Alaskan Coal Land laws.)

The requirements of paragraph 18 are not made by statute, but are merely regulations of this Department and may be waived. In view of the ambiguity in the regulations as to the time of payment, the delay of the field officer in making his return, the acceptance of payment and allowance of entry without demur by the register and receiver, and the undoubted good faith of the applicant, I am of the opinion that they should be waived in this case, and that a technical default should not be insisted upon as the basis of a demand for the higher price.

The previous decisions as far as in conflict herewith are accordingly vacated and recalled, and patent will be issued upon the entry in absence of other objections.

GILFEATHER v. NORTHERN PACIFIC RY. CO.

Decided October 29, 1914.

NORTHERN PACIFIC GRANT—ADJUSTMENT—SETTLEMENT ON UNSURVEYED LANDS.

Departmental decision in Northern Pacific Ry. Co. v. Violette, 36 L. D., 182, holding that the provision in the act of July 1, 1898, respecting relinquishments by the railway company in favor of settlements made upon unsurveyed lands after January 1, 1898, is not mandatory upon the company, but merely extends a privilege to the company to select other lands for such as it may relinquish, and thus protect settlements made at a time when it could not be reasonably ascertained whether they would fall upon odd- or even-numbered sections, reconsidered and adhered to.

JONES, First Assistant Secretary:

Motion for rehearing of departmental decision of June 20, 1914 [not reported], has been filed on behalf of the above named plaintiff, wherein the Department affirmed a decision of the Commissioner of the General Land Office, rejecting the homestead entry of said plaintiff. The facts in this case are as follows:

August 15, 1912, Arthur Gilfeather filed in the local office at Vancouver, Washington, his application to make homestead entry for the E. $\frac{1}{2}$ NE. $\frac{1}{4}$, and E. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 17, T. 8 N., R. 4 E., together with his election to retain said tracts under the act of July 1, 1898 (30 Stat., 597, 620), alleging settlement thereon October 8, 1907. The lands involved are within the primary limits of the grant to the Northern Pacific Railroad, now Railway, Company, under the joint resolution of May 31, 1870 (16 Stat., 378), and are situated opposite that portion of the company's line of road definitely located September 13, 1873. The plat of survey of this land was approved August 22, 1910, and filed in the local office August 15, 1912, and on August 20, 1912, the company filed place lists therefor.

As Gilfeather alleged settlement upon the land October 8, 1907, with continuous residence and improvements thereon since that time, the Commissioner of the General Land Office, on April 16, 1913, prepared a list embracing, with other tracts, the land involved, and requested the Northern Pacific Railway Company to relinquish under the terms of the act of July 1, 1898. May 1, 1913, the railway company responded to said request, declining to relinquish, upon the grounds that the lands were unfit for agricultural purposes, being covered with a heavy growth of timber, and that the company had sold the land, on March 1, 1902, and that the purchaser was unwilling to release the company from its contract of sale. The Department in the decision complained of held that as the settlement of Gilfeather was initiated subsequent to the passage of the act of July 1, 1898, *supra*, relinquishment of said tract by the railway company was

optional, citing in support of this ruling the case of the Northern Pacific Railway Company *v.* Violette (36 L. D., 182).

In the motion it is contended that the Violette decision is unsound; that the act of 1880 authorizes settlement upon the unsurveyed public lands generally; that the act of 1898 is an amendment of the original grant to the Northern Pacific Railway Company and recognizes the rights initiated under the act of 1880; that the settlements made subsequent to the passage of the act of 1898 are subject to adjustment under the act; and that it is not optional, but compulsory, with the railway company to relinquish upon being furnished with a list of the lands upon which settlement has been made. The provisions of the act of 1898, under which claimant's contention is made, reads as follows:

That whenever any qualified settler shall in good faith make settlement in pursuance of existing law upon any odd-numbered sections of unsurveyed public lands within the said railroad grant to which the right of such railroad grantee or its successor in interest has attached, then upon proof thereof satisfactory to the Secretary of the Interior, and a due relinquishment of the prior railroad right, other lands may be selected in lieu thereof by said railroad grantee or its successor in interest, as hereinbefore provided, and patents shall be issued therefor.

The section above quoted will be found, upon a careful reading of the entire text of the act, to be a separate provision referring exclusively to settlements made subsequent to the passage of the act, and contains no reference to the lists prepared by the Commissioner and furnished the company, as being compulsory upon the company to relinquish. The case of *Humbird v. Avery* (195 U. S., 480), clearly defines the purpose for which the act of 1898 was passed, which was to facilitate the adjustment of controversies arising between the railway company and settlers through erroneous decisions and rulings of the Department.

Section 3 of the act of May 14, 1880 (21 Stat., 141), provides for making settlement upon the unsurveyed public lands of the United States. Uniformly, however, this act has been construed as prohibiting the settlement upon any lands which are reserved for any purpose by the Government, or to which adverse claims have attached prior to the initiation of the settlement. By the definite location of its line of road the right of the railroad company attached to the lands within its limits, as specified by the act of 1864. The contention made by the plaintiff that the grant is one of quantity and not in place is not sound, because the language of the act of 1898 clearly does not manifest any intention on the part of Congress to change the grant to the railway company, but rather was intended to settle controversies between a large number of claimants and the railway company. For the purpose of accomplishing this end the act offered

a substantial inducement to the company to make such adjustment by providing for what was in effect an exchange of lands. After the definite location of the line of road had become known, notice was given to prospective settlers on the public domain within the grant that the odd-numbered sections within specified limits belong to the railroad company, and settlements made subsequent to the definite location of the road were with notice of this fact. The conditions which existed in favor of the settlers which the act of 1898 was primarily passed to benefit do not apply to the same extent to settlements made upon land within the limits of the grant after the definite location of the road. In the former case the Department had held that Duluth was the eastern terminus of the line of road, while the court subsequently held in a case brought before it that Ashland was the eastern terminus of the road. The land lying between Duluth and Ashland, it having been held by the Department that the line of road did not extend to Ashland, and the place lists and indemnity selections filed by the railway company having been rejected, was opened to appropriation and individuals were allowed to settle thereon, and it was for the benefit of these settlers that the act of 1898 was primarily passed. The section hereinbefore quoted, however, authorized adjustments to be made where settlements were made upon unsurveyed lands within the grant subsequent to the passage of the act, and where it might be difficult for settlers to ascertain what lands were or were not within odd-numbered sections.

Considering the conditions which induced the passage of the act of 1898, it is manifest that Congress did not intend to alter or change the grant of 1864 in its entirety, but in connection with the grant to provide for a settlement of the contention arising out of the erroneous decisions of the Department, affording an equitable adjustment to both the settlers and the railway company. Had the act provided for the same adjustment of settlements made subsequent to said act upon the same terms and conditions as those made prior thereto, it would have been an invitation to the public to settle upon the unsurveyed lands within the grants of the road, with an absolute guarantee to the settler of protection and the carefully drawn distinction between settlements made prior to January 1, 1898, in the first section of the act, and settlements made subsequent thereto, provided for in the section hereinbefore quoted, would not have been made.

The Department has held in the recent case of *Daniels v. Northern Pacific Railway Company*, decided August 3, 1914 [43 L. D., 381], that a selection under the act of March 2, 1899 (30 Stat., 993), of lands described as "what will be when surveyed" a certain section, is a sufficiently definite description to apprise intending settlers of the *locus* of the tract selected. By analogy it is manifest that set-

tlers locating upon unsurveyed lands within the limits of the grant are charged with notice that the odd-numbered sections are within the grant, although the location of such sections may be difficult of determination. Having in mind the difficulties to which settlers might be subjected in making their settlements, Congress provided for adjustments under the act of 1898 by extending to the railway company the privilege of relinquishing lands claimed by settlers, and selecting other lands in lieu thereof, as stated in the Violette decision, "under such terms as would reasonably induce a relinquishment."

The contention made by the plaintiff, in effect, that the act of 1864 was amended by the act of 1880, cannot be sustained. The well settled rule of statutory construction is that an act is not to be considered as repealed unless expressly so provided in the subsequent act, or the provisions of the subsequent act are in direct contravention of the former act, necessitating the implication that it was the intention of the legislative body to repeal the former act. If, however, a construction may be given the acts which carries into effect the purposes and provisions of each, then such construction must obtain. The construction heretofore placed upon the acts of 1864, 1880 and 1898 by the Department is believed to carry into full force and effect the provisions of each of said acts, and the intention of Congress, signified by the language used therein. After further and mature consideration of the question presented, the Department is of the opinion that the rule laid down in the case of *Violette v. Northern Pacific Ry. Co.* is sound and should not be disturbed. The motion for rehearing is denied.

ROSE VOITA.

Decided October 30, 1914.

THREE-YEAR HOMESTEAD LAW—RECLAMATION ENTRIES—CULTIVATION.

The provisions of the three-year homestead law respecting cultivation do not apply to entries made subject to the reclamation act.

NATURALIZATION—DECLARATION OF INTENTION.

The fact that an honorably-discharged soldier is entitled under section 2166, Revised Statutes, to naturalization without previously declaring his intention to become a citizen does not entitle his widow, where he dies without making declaration of intention, to naturalization without previous declaration of intention on her part.

CITIZENSHIP—RESIDENT AT TIME OF ADMISSION OF STATE INTO UNION.

An alien woman did not by virtue of being a resident of Arizona at the date of the admission of the State into the Union become a citizen of the United States.

JONES, *First Assistant Secretary:*

July 25, 1914, the Department on appeal affirmed the action of the Commissioner of the General Land Office rejecting the homestead

proof of Rose Voita submitted October 19, 1912, on her homestead entry made February 4, 1909, for the NW $\frac{1}{4}$, Sec. 29, T. 1 N., R. 1 E., G. & S. R. M., Phoenix, Arizona, land district. Motion for rehearing has been filed.

Said entry was made subject to the provisions of the Reclamation Act of June 17, 1902 (32 Stat., 388). The farm unit plat in connection with the project has not as yet been formulated and approved and public notice has not issued that water is available for irrigation of said land. In no event could the entry be perfected until the land has been reclaimed by irrigation as provided by the Reclamation Act. But if sufficient residence and cultivation have been performed to meet the conditions of the ordinary requirements of the homestead laws, then the entrywoman should be relieved from the necessity of further residence and also from further requirement of cultivation, except such as may be required under the Reclamation Act. Whether the proof with respect to residence and cultivation be sufficient or insufficient, the entrywoman would be privileged to defer efforts to reside thereon and develop the claim until the Government shall be ready to furnish water for irrigation of the land.

Upon reconsideration, however, it is believed that the proof should be held sufficient to meet the ordinary requirements of the homestead laws with respect to residence and cultivation. As to residence, the prior decisions of the Commissioner and the Department held the proof sufficient. The cultivation was not considered satisfactory because it was not clearly shown that the claimant had planted any crops except during the year just prior to proof. The entrywoman in her own testimony claimed that in the year 1909 she planted 20 acres to crops and cropped the same area during every year thereafter. The proof witnesses stated that crops were planted in the year 1912 and that plowing was done in the prior years.

While this proof was submitted as three-year proof, the provisions of the three-year act as to cultivation do not apply to entries made subject to the Reclamation Act. It was therefore not necessary to meet the strict terms of the three-year act as to cultivation. It is shown that this is arid land not susceptible of growing grain with any degree of certainty of profit without irrigation. It is believed that under the circumstances no fault should be found with the proof as to cultivation, especially as the good faith of the entrywoman is apparent from the extensive improvements which she has made upon the claim.

The further objection to the proof was that the entrywoman is not a citizen of the United States. It was held in the prior decision that it would be necessary for her to file a declaration of intention to become a citizen and wait the required length of time before she might become a citizen of the United States. Upon this suggestion

she filed declaration of intention under date of August 10, 1914. She further urges, however, in support of the motion for rehearing that she is entitled to citizenship by virtue of her husband's military service in the Army of the United States. This contention is sufficiently answered by the citation given in the former decision, viz, the case of *U. S. v. Meyer* (170 Fed. Rep., 983). That case was in all essential respects the same as this so far as the question of citizenship is concerned. It is also suggested by claimant that she is entitled to be a citizen by virtue of being a resident of Arizona at the time of the admission of the territory into the Union as a State. She states that she is an elector of the State of Arizona. The Enabling Act provided that to be entitled to vote upon the question of admission it was necessary to be a male citizen of the United States. It is not believed, therefore, that the claimant became a citizen upon the admission of the State into the Union under the doctrine announced by the Supreme Court in the case of *Boyd v. Thayer* (143 U. S., 135).

It is accordingly held that the claimant is relieved from further residence and cultivation as she has met the requirements of the ordinary provisions of the homestead laws in those respects, but issuance of final receipt must be deferred until she shall become a citizen of the United States and has met the requirements of the Reclamation Act, unless as to the latter the land shall have been eliminated from the project and freed from the requirements of that act.

The former departmental decision is accordingly modified as above indicated.

RECLAMATION—HUNTLEY PROJECT, SECOND UNIT—WATER SERVICE.

PUBLIC NOTICE.

DEPARTMENT OF THE INTERIOR,

Washington, November 3, 1914.

1. In pursuance of the provisions of Sec. 5 of the act of April 27, 1904 (33 Stat., 352), of Sec. 4 of the Reclamation Act of June 17, 1902 (32 Stat., 388), and acts amendatory thereof and supplementary thereto, notice is hereby given that water will be furnished under the Huntley project, Montana, in the irrigation season of 1915 and thereafter for the irrigable lands of the Second Unit of said project designated upon farm unit plats of Township 3 North, Ranges 30 and 31 East, Montana Principal Meridian, approved by the Secretary of the Interior September 19, 1914, on file at the office of the Project Manager, Huntley, Montana, and at the local land office at Billings, Montana.

2. Homestead entries of the farm units in said Second Unit embracing public lands of the United States shown on said plats may be made in the manner, and on and after the date, fixed therefor in the land office notice hereinbelow, under the provisions of said act and acts amendatory thereof and supplemental thereto; and water-right application therefor must be made to the Project Manager prior to such entry accompanied by the first instalment of the construction charge hereinafter described.

3. The limit of area per entry representing the acreage which in the opinion of the Secretary of the Interior, may be reasonably required for the support of a family upon the lands is fixed at the amounts shown on the plats for the several farm units.

4. Water-right applications for lands in private ownership included in said Second Unit may be made on and after the date of this notice. The limit of area for which water-right application may be made for lands in private ownership shall be 160 acres of irrigable land for each land owner.

5. The charges per acre of irrigable land upon said entries and upon all other lands in said Second Unit shown upon said plats are of two kinds, namely: (a) A charge of \$60 per acre for the building of the irrigation system, termed the construction charge; (b) An annual charge for operation and maintenance due March 1 of each year. In addition, there will be, for all homestead entries, a charge of \$4.00 for each acre of land included within the entry, whether irrigable or not, to cover the Indian price of the land. Each acre of irrigable land, whether irrigated or not, shall be charged with a minimum operation and maintenance charge which shall be the charge for one acre-foot of water.

6. An initial payment of \$3.00 per irrigable acre on account of the construction charge and \$1.00 per acre on account of the Indian cost of the land, shall be made at the time of making water-right application or entry of a farm unit. The remainder of the construction charge \$57.00 per irrigable acre, shall be paid in fifteen annual instalments, the first five of which shall be \$3.00 each and the remainder \$4.20 each. The first of the said annual instalments shall become due and payable on December 1 of the fifth calendar year after the initial instalment, and subsequent instalments shall become due on December 1 of each calendar year thereafter. Any water-right applicant may, if he so elects, pay the whole or any part of the construction charges owing by him within a shorter period. The balance of the payment on account of the Indian cost of the land shall be made in four equal annual instalments, the first of which shall be due on Dec. 1 of the year following the date of entry.

7. In all cases where application for water-right for lands in private ownership or lands held under entries not subject to the reclamation law shall not be made within one year after the date of this notice, the construction charges for such land shall be increased five per centum each year until such application is made and an initial instalment is paid.

8. The operation and maintenance charge for the season of 1915 shall be based on the quantity of water delivered with a minimum charge per irrigable acre, whether water is used or not. The amount of such charge shall be hereafter announced and payment thereof will become due after the close of the irrigation season. The operation and maintenance charge for the irrigation season of 1915 will be due March 1, 1916. The method of determining the amount chargeable for operation and maintenance, and the penalties for failure to pay the construction charges and the operation and maintenance charges when due, are prescribed by act of Congress of August 13, 1914 (Public, No. 170).

ANDRIEUS A. JONES,

First Assistant Secretary of the Interior.

RECLAMATION—HUNTLEY PROJECT, SECOND UNIT—SETTLEMENT AND ENTRY.

INSTRUCTIONS.

DEPARTMENT OF THE INTERIOR,

Washington, November 3, 1914.

THE COMMISSIONER OF THE GENERAL LAND OFFICE.

SIR: It is directed that the farm units within the Second Unit of the Huntley Reclamation Project, in Montana, be opened to settlement and entry under the provisions of the Reclamation Act of June 17, 1902 (32 Stat., 388), and acts amendatory, and be settled upon, occupied and entered in the following manner and not otherwise.

1. *Application for registration.*—Any person who is qualified to make entry under the Reclamation Act may present an application for registration for any farm unit, which must be fully and specifically described according to legal subdivision, section, township and range, and also by farm unit description. An applicant must swear to his application before any qualified notary public and present the same for registration at the Billings, Montana, local land office, on November 23, or November 24, 1914, depositing at the time a sum equal to five per cent of the construction charge, plus one dollar per acre on account of the Indian price of the lands, for the unit applied

for with the Special Fiscal Agent of the U. S. Reclamation Service who will be at the Billings land office on the dates above fixed and thereafter at Huntley, Montana, and must deliver the application, properly executed, to the officer in charge of the opening, or to some person designated by him to receive such application at Billings, Montana. The payment on account of the Indian price of the land will later be turned over to the receiver of the local land office, to whom will be paid all future instalments on account thereof. No person shall be permitted to present an application for registration by agent or through the mail, or to present more than one application, or to swear to his application elsewhere than at Billings, or before or after the dates mentioned, and no person shall be permitted to present an application who is not qualified to make entry under the Reclamation Act.

2. *Form of deposit.*—The deposit required must be in cash, by a certified check on a national or state bank or trust company which can be cashed without cost to the Government, or by a post-office money order, made payable to the said Special Fiscal Agent. Payment will not be accepted in any other form.

3. *Examination of lands.*—Applicants may examine the lands before presenting their applications for registration but will not be required to do so. Those who do not, and who secure the right to make entry, must examine the lands before presenting their applications to enter, as they must swear in those applications that they have examined and are familiar with each legal subdivision of land applied for.

4. *Plats for public inspection.*—A copy of each farm unit plat shall be conspicuously posted for public inspection, on which will be indicated the farm units for which applications have been presented during the period of registration.

5. *Drawing and dates for entries.*—A public drawing will be conducted at the said city of Billings beginning at 10.00 o'clock a. m., on November 25, 1914, at which not more than one application for each tract will be impartially drawn. If two or more applications were presented for any tract, before the application is drawn, each one shall be inclosed in a separate envelope which shall not indicate on the outside the name of the applicant. The name and address of each successful applicant, and a full and specific description of the tract applied for shall be publicly announced when the application is drawn.

6. *Notices to successful applicants.*—On the day of the drawing a notice will be mailed to each successful applicant, addressed to him at Billings, Montana, fully and specifically describing the tract applied for and stating that entry must be made November 30, or

December 1, 1914. A copy of these regulations will be inclosed with the notice. An applicant will not be permitted to make entry after the time allowed on account of the miscarriage of his notice in the mails, or on account of any other delay.

7. *Return of deposit.*—As soon as possible after the drawing the Special Fiscal Agent will return the deposits made by all persons whose applications were not selected and notify them that they were unsuccessful. No deposit will be returned until after collection has been made, if tender was in any form other than cash or post-office money order.

8. *Presentation of applications to enter.*—In order to make entry applicants must, on November 30 or December 1, 1914, present a properly executed application for water right to the Project Manager of the U. S. Reclamation Service at Huntley and a proper application to enter to the Register and Receiver of the U. S. Land Office at Billings. The application to enter may be sworn to before the Register or the Receiver, or before a United States Commissioner or a Judge or Clerk of a court of record residing in the county in which the land is situated, or before any such officer who resides outside the county and in the Billings land district and is nearest and most accessible to the land. A certificate from the Project Manager showing that a proper application and the necessary payment for construction charges have been made, must be filed with the application to enter. If an applicant must make any special showing, such as evidence of citizenship, or the right to make second entry, it must also be filed with the application to enter.

9. *Requirements of entrymen.*—Persons making entry of these units will be required to comply with all the terms and conditions of the homestead laws, and, before patents are issued, they will be required to reclaim one-half of the irrigable area of the land entered and to pay the Indian price for the land, the construction charge fixed in the public notice and the yearly operation and maintenance charge determined from time to time.

10. *Death of applicant.*—If any person dies after obtaining the right to make entry for any unit and before the time allowed for entry has expired, his widow or any one of his heirs may make entry in her or his own right, within the time allowed, but not thereafter. Where such entry is made the deposit made by the deceased applicant will be returned to his estate, and the person who makes entry must himself make the first payment on the construction charge for the unit applied for. Such person must furnish with his application to enter his affidavit, corroborated by the affidavit of at least one person, showing the fact and time of the successful applicant's death.

11. *Rejected applications.*—If an applicant applies to make entry within the time allowed, and the application is rejected by the Register and Receiver, subject to the right of appeal, the next applicant for that tract, if any, will be notified that he may, if he desires, present an application to enter it, subject to the right of the prior applicant under the rejected application.

12. *Form of application for registration.*—The following form is prescribed as the application for registration:

I, _____ of _____
 (Street and number or other address)

 (City or town) (County) (State)
 age _____ years, height _____ feet _____ inches, and weight _____ pounds,
 in support of this, my application for registration for tract No. _____
 or farm unit _____ embracing the _____
 Section _____ Township _____ N., Range _____ E.,
 Montana Principal Meridian, do solemnly swear that I am a citizen of the
 United States, or have declared my intention to become such; that I am not
 the owner of more than 160 acres of land, in the United States, and have not
 heretofore made any entry or acquired any title to public lands which dis-
 qualifies me from making entry under the Reclamation Act; that I honestly
 desire to enter public lands for my own personal use as a home and for settle-
 ment and cultivation, and not for speculation or in the interest of some other
 person; that I present this application for that purpose only, and have not
 presented and will not present any other affidavit of this kind.

 The foregoing was subscribed and sworn to before me, after it was read to
 or by affiant, at Billings, Montana, _____, 1914.

Notary Public.

U. S. Reclamation Service,
 Huntley, Mont., _____, 1914.

The above-named applicant has deposited with me a sum equal to five per
 cent of the construction charge for the above-described unit, for which I have
 this day issued receipt No. _____ for \$ _____.

Special Fiscal Agent.

13. *Units not entered under successful application.*—The units
 which are not entered within the time allowed for entry by persons
 who were successful in the drawing, if any, will become subject to
 appropriation under laws applicable, by any qualified persons, at
 nine o'clock a. m., on December 3, 1914.

Very respectfully,

A. A. JONES,
First Assistant Secretary.

MARRIAGE OF FEMALE CITIZEN, PUBLIC LAND CLAIMANT, TO ALIEN.

INSTRUCTIONS.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, November 4, 1914.

REGISTERS AND RECEIVERS,
United States Land Offices.

SIRS: Your attention is directed to the act of Congress approved October 17, 1914 (Public, No. 213), copy appended, entitled "An act to provide for certificate of title to homestead entry by a female American citizen who has intermarried with an alien."

1. This act is applicable to all cases in which a female citizen of the United States, either native-born or naturalized, has initiated a valid claim to a tract of public land by settlement or by filing an application to enter, or to acquire title under any of the public-land laws.

2. Where a woman who is a native-born citizen of the United States, or who has been fully naturalized, has initiated a claim to a tract of public land and marries before completing title thereto, it will not hereafter be necessary to require her to furnish evidence of her husband's citizenship, but, if he be foreign-born, she must show, by affidavit, that he is or may hereafter be himself entitled to become a citizen of the United States in accordance with the laws in that behalf made and provided. (Sec. 2169, U. S. Revised Statutes; Sec. 14, Act of Congress of May 6, 1882, 22 Stat., 58, 61; Sec. 7, Act of Congress of June 29, 1906, 34 Stat., 596.)

3. Where a woman who has declared her intention to become a citizen of the United States, or who occupies the status of a person who has declared such intention, has initiated a valid claim under some public-land law requiring full citizenship before completing title thereto, her marriage to an alien will not excuse her from showing either that she herself became fully naturalized before her marriage or that her husband is a citizen of the United States, as required by the regulations heretofore in force.

Very respectfully,

C. M. BRUCE,
Acting Commissioner.

Approved, November 4, 1914:

A. A. JONES,
First Assistant Secretary.

[PUBLIC—No. 213.]

An Act To provide for certificate of title to homestead entry by a female American citizen who has intermarried with an alien.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any female citizen of the United States who has initiated a claim to a tract of public land under any of the laws applicable thereto, and who thereafter has complied with all the conditions as to the acquisition of title to such land prescribed by the public-land laws of the United States, shall, notwithstanding her intermarriage with an alien, who is entitled to become a citizen of the United States, be entitled to a certificate or patent to such entry equally as though she had remained unmarried or had married an American citizen.

Approved, October 17, 1914.

**PROOF ON HOMESTEAD ENTRY BY DESERTED WIFE—ACT OF
OCTOBER 22, 1914.**

CIRCULAR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, November 13, 1914.

REGISTERS AND RECEIVERS,
United States Land Offices.

SIRS: By act of Congress approved October 22, 1914 (Public, No. 221), it is provided that where the wife of a homestead settler or entryman, while residing upon the homestead claim and prior to the submission of final proof, has been abandoned and deserted by her husband for more than one year, she may submit proof (by way of commutation or otherwise) on the entry, and secure patent in her own name, being allowed credit for all residence and cultivation had, and improvements made, either by herself or by her husband.

2. Upon the wife's filing notice of intention to submit proof, together with an affidavit alleging desertion, as above stated, and all information in her possession as to the entryman's whereabouts, including his last-known post-office address, and the address near the land where he received his mail, the register will prepare and issue a summons in substantially the following form, and deliver it to the wife for service:

To (here insert name), homestead entryman:

You are hereby notified that (here insert name), claiming that she is your wife, and that you have abandoned and deserted her for more than one year last past, has filed application to be allowed to submit proof upon your homestead entry, serial No. . . . , for (here insert description of the land), to the end that patent for the land may issue in her name. This proceeding is author-

ized by the provisions of an act of Congress approved October 22, 1914, and you will be allowed thirty days after notice hereof within which to file in this office your denial of the charges. If such denial be filed, you may, at the time to be set for taking of proof, or on a date to be then fixed, offer testimony in support of such denial.

3. Personal service of the summons must be made if possible; such service may be made by any person over the age of eighteen years, or by registered mail. When served by registered mail, proof thereof must be accompanied by post-office registry return receipt, showing delivery of the letter to the entryman; where service is made otherwise than by mail, proof thereof must be by written acknowledgment of the entryman, or by affidavit of the person serving the summons, showing its delivery to the entryman. If personal service can not be made, the summons must be sent by registered mail to the last-known address of entryman and to the post-office nearest the land, or to that, near the land, named by the wife in her preliminary affidavit; proof of such attempted service shall be by affidavit of the person mailing the letters, to which should be attached the postmaster's receipts therefor.

4. Within thirty days after service of summons, the entryman may file his affidavit denying the charge of abandonment and desertion. The denial must bear evidence that a copy thereof has been served on the wife.

5. After the expiration of thirty days from personal service of the summons, or forty days from the date of mailing, unless a denial by entryman be sooner filed, the register will issue notice of intention to submit proof. The form in general use must be modified to show that the proof is to be submitted by the deserted wife, and must contain a paragraph as follows:

The entryman (here insert name), is notified that, by submission of said proof, his wife (here insert name) seeks to obtain patent for the land in her own name.

6. If the entryman shall have filed denial of the alleged desertion and abandonment, and appears, in person or by agent or attorney, on the day set for the taking of proof, testimony may be submitted to determine the facts relative to the alleged desertion, and the final proof testimony will be taken in accordance with existing regulations. But the register and receiver, for any reason deemed sufficient, may continue the hearing to a later date.

(a) At the hearing on the denial of desertion, the entryman must pay the costs of taking the testimony.

(b) All hearings and subsequent proceedings shall be in accord with the rules of practice pertaining to contests.

7. If entryman fails to deny the charge of desertion, or if same be sustained and the case closed, final certificate shall issue in the name of the deserted wife, provided the proof be in all respects sufficient.

Very respectfully,

D. K. PARROTT,

Acting Assistant Commissioner.

Approved, November 13, 1914:

A. A. JONES,

First Assistant Secretary.

(Public—No. 221—63d Congress.)

An Act To provide for issuing of patents for public lands claimed under the homestead laws by deserted wives.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in any case in which persons have regularly initiated claims to public lands as settlers thereon under the provisions of the homestead laws and the wife of such homestead settler or entryman, while residing upon the homestead claim and prior to submission of final proof of residence, cultivation, and improvement as prescribed by law, has been abandoned and deserted by her husband for a period of more than one year, the deserted wife shall, upon establishing the fact of such abandonment or desertion to the satisfaction of the Secretary of the Interior, be entitled to submit proof upon such claim and obtain patent therefor in her name in the form, manner, and subject to the conditions prescribed in section twenty-two hundred and ninety-one of the Revised Statutes of the United States and acts supplemental thereto and amendatory thereof: *Provided,* That in such cases the wife shall be required to show residence upon, cultivation, and improvement of the homestead by herself for such time as when, added to the time during which her husband prior to desertion had complied with the law, would aggregate the full amount of residence, improvement, and cultivation required by law: *And provided further,* That the published and posted notices of intention to submit final proof in such cases shall recite the fact that the proof is to be offered and patent sought by applicant as a deserted wife, and, prior to its submission, notice thereof shall be served upon the husband of the applicant in such a manner and under such rules and regulations as the Secretary of the Interior shall prescribe.

Approved, October 22, 1914.

**PARAGRAPH 5 OF GENERAL RECLAMATION CIRCULAR OF
FEBRUARY 6, 1913, AMENDED.**

INSTRUCTIONS.

DEPARTMENT OF THE INTERIOR,

Washington, November 14, 1914.

The DIRECTOR OF THE RECLAMATION SERVICE.

The COMMISSIONER OF THE GENERAL LAND OFFICE.

GENTLEMEN: For the reasons stated in communication signed by Chief Counsel of the Reclamation Service, October 27, 1914, and

concurrent in by the General Land Office, paragraph 5 of the General Reclamation Circular, approved February 6, 1913 (42 L. D., 349), is hereby amended by eliminating therefrom the following clause:

If no such certificate is filed, the register and receiver will notify the applicant that unless such certificate is filed within thirty days the homestead application will be rejected without further notice and the case closed. If such certificate be filed before rejection, the application will be allowed, if otherwise regular.

Said paragraph as now amended is to be in force from and after receipt of copies thereof at the respective local land offices and project office of the Reclamation Service, and is as follows:

Homestead entries of lands platted to farm units and covered by public notice are made practically in the same manner as the ordinary homestead entry and registers and receivers will allow homestead applications for such lands, if found regular, and accompanied by a certificate of the project manager showing that water-right application has been filed and the proper water-right charges deposited. No application to make homestead entry of lands within a reclamation project and covered by public notice will be received unless accompanied by such certificate of the project manager.

Very respectfully,

A. A. JONES,
First Assistant Secretary.

RIGHTS OF WAY UPON UNSURVEYED NATIONAL FOREST LANDS.

REGULATIONS.

Washington, November 14, 1914.

The following regulation will govern and control procedure in the Department of the Interior and the Department of Agriculture in the consideration and disposition of applications for rights of way upon unsurveyed national forest lands, act of March 3, 1891 (26 Stat., 1095):

(1) On the filing of maps involving unsurveyed lands within national forests, the General Land Office will inform applicants that the maps are accepted for filing for general information, but that such acceptance gives no rights upon the ground so long as the land remains unsurveyed; that the Secretary of Agriculture holds that it is necessary to secure a permit before construction can be commenced upon the national forests; and that, therefore, a copy of the map has been transmitted to the Forester of the Department of Agriculture, who will take action upon the application.

(2) The Forest Service will accept the map so transmitted as an application for a permit to occupy and use, pending survey, the lands indicated upon the map and will forward a copy of the map to its

field officers, with instructions to issue a permit for the lands applied for, unless there should be good reasons for disapproving the application. Upon issuance of permit a copy thereof will be forwarded to the General Land Office as information of action taken by the Department of Agriculture and in order to clear the record of the General Land Office.

ANDRIEUS A. JONES,
Acting Secretary of the Interior.
D. F. HOUSTON,
Secretary of Agriculture.

HOMESTEAD FEES.

CIRCULAR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, November 14, 1914.

REGISTERS AND RECEIVERS,
United States Land Offices.

SIRS: In view of the departmental decision in *Kermode v. Dankwardt* (42 L. D., 557), Circular No. 80 (40 L. D., 399) is hereby vacated, and in the future where the area embraced in a homestead application is less than 81 acres you will collect a fee of \$5 only. If the area applied for is 81 acres or more, the fee to be collected is \$10.

Very respectfully,

D. K. PARROTT,
Acting Assistant Commissioner.

Approved, November 14, 1914:

A. A. JONES,
First Assistant Secretary.

FRANK STROUF.

Decided November 14, 1914.

DESERT LAND ENTRIES—WATER RIGHTS—APPROPRIATION BY DIVERSION AND USE.

The procedure for the appropriation of water provided by the act of March 9, 1907, of the legislature of Montana, is not exclusive and mandatory and does not bar appropriation by actual diversion and use; and the land department will recognize as *prima facie* sufficient to support final proof upon a desert land entry for lands in the State of Montana an appropriation by actual diversion and use of water, whether from an adjudicated or an unadjudicated stream, provided it shall appear by satisfactory evidence that there are unappropriated waters sufficient to satisfy such appropriation and to permanently reclaim the lands.

JONES, *First Assistant Secretary:*

Appeal was filed herein by Frank Strouf from decisions of June 20, 1913, and March 3, 1914, holding for cancellation the desert land

entry made by said Strouf September 2, 1907, for the NW. $\frac{1}{4}$, Sec. 29, T. 18 N., R. 13 E., Lewistown, Montana, land district, on which final proof was submitted December 16, 1911, for the stated reason that said Strouf had no water right duly adjudicated by decree of court, as required by said decisions, and by letter "G" of May 24, 1912, subject to the procurement by him of such decree within 90 days.

This case was before the Department on appeal from said decision of May 24, 1912, and the Department then held, April 5, 1913, that Strouf misunderstood the requirement made by that decision, and that a judicial ascertainment and determination in Strouf's favor was not required but only that it be shown that no previous adjudication in the waters of Wolf Creek in which he claims an appropriation had been made which might preclude him from the right claimed by him; and that if the water rights of said creek have not been adjudicated, all he is required to furnish is a certificate to that effect.

Strouf furnished, accordingly, a certificate from the clerk of the district court for Fergus County, Montana, stating said Wolf Creek has not been adjudicated except as to certain amounts aggregating 1770 inches to certain parties decreed October 1, 1887, in the case of *Thomas v. Viall et al.*; and also as to 150 inches decreed July 26, 1902, to each in succession of the two parties litigant, in the case of *Campbell v. Woodhurst*.

The Commissioner held in his decision of June 20, 1913, that said adjudications constitute said Wolf Creek an adjudicated stream within the meaning of the act of March 9, 1907, of the Legislature of the State of Montana, providing for appropriations from streams in which the water rights therein have been adjudicated, and that the General Land Office "has no discretion but to require compliance with the said law," by requiring Strouf to furnish a certified copy of a supplemental order of court allowing his claimed appropriation from said creek, in accordance with the provisions of said act. This conclusion was adhered to in said decision of March 3, 1914, reviewing at length the laws of Montana as applicable to this case.

Before considering this case, with a view to its final disposition, the Department, on September 5, 1914, called upon Strouf for evidence as to the approximate amount of water flowing in said Wolf Creek during the irrigating season and the sufficiency of the unappropriated waters therein, if any, at such time to satisfy his appropriation and irrigate the lands embraced in his entry; also for copy of the alleged decree in the case of *Thomas v. Viall*, or other evidence as to that being a general adjudication of the waters of said creek.

The evidence called for as to the flowage of said creek has not been furnished, the attorney stating it is practically impossible to furnish same as there has been no measurement of said waters; that said creek is a long one—more than 50 miles—with numerous tributaries, as

heretofore stated by him; and that the fact of Strouf's actual use of sufficient water for reclaiming these lands during three years, as shown in his proof, without protest by anyone, should be accepted as sufficient evidence in this case. There has been filed also, a further certificate by the clerk of the district court for Fergus County, stating that the case of Thomas *v.* Viall was only a controversy between two ranchers over a water-right from said creek, and "was not in any way, or at all, a general adjudication of the waters of Wolf Creek, as shown by the files in the case"; also that there is no decree of record in the case, and the files therein show only trial and verdict; and that the case of Campbell *v.* Woodhurst likewise "was not in any way a general adjudication of the waters of Wolf Creek," but a suit over conflicting rights of the two parties litigant only.

Upon consideration of the entire record, the Department is of the opinion that Strouf has a water right which is sufficient in law and in fact for the reclamation of the lands embraced in his entry. The proof shows he actually used sufficient water in the year 1909 to irrigate 30 acres, in 1910 to irrigate the same, and in the year 1911 to irrigate 130 acres—practically all of the entry; and he filed a duly recorded notice of appropriation made June 1, 1911, of 200 inches from said Wolf Creek. This entry is shown to have been in fact fully reclaimed, and the only question presented is whether Strouf has a legal or valid water right under the laws of that State.

The Department has repeatedly held that it has no jurisdiction over water rights within a State, and only considers them so far as to determine whether they are *prima facie* sufficient for the purpose of the entry involved.

The questions, what is an adjudicated stream within the purview of said act of March 9, 1907, of the laws of Montana, and whether the statutory procedure prescribed in that act for the appropriation of water from such streams is mandatory or exclusive, do not appear to have been directly passed upon by the courts of said State. In the view taken by the Department, hereinafter stated, as to the latter question, the former question is not important or material in this case. In the case of Bailey *et al.* *v.* Tintinger *et al.* (45 Montana, 154), the Supreme Court of said State considered as necessary to the disposition of the question as to the validity of the water-right involved in that case, "a consideration of much if not all of the law of water appropriation," and consideration was given accordingly by the court in that case to the entire law of water appropriation and legislation of the State up to the date of its decision March 5, 1912, including said act of March 9, 1907, which the court stated made no "substantial change" in the method of statutory appropriation, the legislation prior to that act providing also a statutory method of appropriating water. The court held in

a full discussion of the law of the State that the primary and still existing law of appropriation of water in said State was and is the law of "early custom," by actual diversion and use; that this is "a part of our unwritten law . . . the common law of this country," recognized by State and national legislation and by decisions of courts; that the statutory method of appropriating water was designed only to fix the relation of the right to a time prior to the diversion and use of water; that such statutory procedure was in addition to and not in abrogation of the right of appropriation under such early custom; and that the right on compliance with the statutory provision is complete in that State without actual diversion and use.

This holding as to the nature and validity of an appropriation by custom or by actual diversion and use, notwithstanding the fact of statutory procedure also for appropriating water, is in accord with the holdings of the federal court for that circuit in the case of *Morris v. Bean* (146 Fed., 423), and of the Supreme Court of California, from whose laws those of Montana were largely copied. (*De Necochea v. Curtis*, 80 Cal., 397; *Wells v. Mantes*, 99 Cal., 583.)

While the provisions of said act of March 9, 1907, were not specifically considered in themselves by the court in said case of *Bailey v. Tintinger*, and that case was not one arising under that act, said provisions were included in the court's consideration of the main question involved therein, of the relation between appropriations by diversion and use and appropriations by statutory methods; and the court stated expressly that said act made no substantial change in the method of statutory appropriations.

The principles announced by the court upon the general question thus passed upon in that decision are authoritative declarations of what the law of that State is as to such question, which this Department is bound to respect in the construction of that act. To hold that the provisions of said act are mandatory and exclusive would be unwarranted in view of said decision. Said act did not in terms void or invalidate appropriations not made in the manner and form therein prescribed, and it did in terms provide that appropriations from streams in which the waters had not been adjudicated should be in the manner provided by law at the time of the passage of said act. Statutes in derogation of common or of long-existing rights are strictly construed, and repeals by implication are not favored in law. Said act appears to have contemplated two changes only in existing law, first as to the evidential effect of water-right decrees, making them conclusive instead of, as before, only *prima facie* evidence of the facts found therein, and consequently of the right of appropriation decreed thereby; and, secondly, as to the statutory procedure to be followed in the case of streams in which the waters have been adjudicated, requiring in such cases an ultimate decree to perfect

such statutory right, whereby the benefit of the doctrine of relation may be gained, as held in the decisions cited to be the object and purpose of statutory methods of water appropriation. No reason in the nature of the case appears why the statutory procedure provided in said act, any more than the statutory procedure theretofore provided should be held to preclude an appropriation by actual diversion and use. That question can only be important as between conflicting claimants, or where protection is desired prior to diversion and use, as the right acquired under statutory procedure is complete without any such actual diversion and use. (*Bailey v. Tintinger, supra.*)

The fact that in Montana a general adjudication embracing all claimants to the waters of a stream is not compulsory (*Beach v. Spokane R. & W. Co.*, 25 Mont., 379; *Sloan et al. v. Byers et al.*, 37 Mont., 503; *Bennett v. Quinlan*, 47 Mont., 247), is not in itself sufficient warrant for holding that the provisions of said act of March 9, 1907, as to the statutory procedure therein prescribed, is mandatory and exclusive, in view of the authoritative declarations of the court in said case of *Bailey v. Tintinger* as to the fundamental appropriation law of that State and the principles governing appropriations in general. Such questions are properly for the courts and not for this Department to decide.

In the absence, therefore, of an authoritative construction by the courts of said act, this Department will, consistently with the decisions in the cases cited, recognize as sufficient to support final proof on a desert land entry for lands in the State of Montana an appropriation by actual diversion and use, whether from an adjudicated or an unadjudicated stream, provided it shall appear by satisfactory evidence that there are unappropriated waters sufficient to satisfy such appropriation and to permanently reclaim the lands.

Statutory procedure being considered as directory only a right once acquired by actual diversion and use is not lost by subsequently posting notice. (*Brown v. Newell*, 12 Idaho, 166); nor does one who posts a notice lose a right to appropriate thereafter by actual diversion and use, without completing the statutory procedure commenced by such posting of notice, and he loses only a right of relation, his right in such case dating from such diversion and use. (*Wells v. Mantes, supra.*)

The real question in any case is whether there is water, sufficient for the purposes of the entry, actually in use under claim of right *prima facie* valid. It appears in this case that Strouf has had since 1909, without protest from any one, the actual use of water for the irrigation of these lands from a stream of such considerable size, and with prior appropriations therefrom shown of a comparatively small amount, not sufficient to preclude his appropriation, as to enable

him to reclaim said lands in fact. He has, therefore, a water right which is *prima facie* sufficient in law and in fact, as above stated, for the purposes of his entry, and his proof is therefore approved.

The decision appealed from is accordingly reversed.

MAYES v. COATES.

Decided November 14, 1914.

PRACTICE—FINDING OF FACTS.

It is not the duty of the land department to make a finding of facts in a case completely disposed of upon other grounds.

SILETZ HOMESTEAD—REINSTATEMENT—ACT OF MARCH 4, 1911.

After finding that reinstatement of a homestead entry within the former Siletz Indian reservation, under the act of March 4, 1911, is barred by an intervening adverse homestead application, and the case is disposed of on that ground, the land department declines to make any further finding respecting alleged occupation, cultivation, and improvement of the land.

JONES, *First Assistant Secretary*:

Counsel for William D. Coates has filed a motion requesting the Department to make a finding of fact as to his—

compliance with the requirements of the act of March 4, 1911, as to entry, occupation, cultivation, and improvements, to the end that when patent issues to the heirs of Oscar Mayes pursuant to the departmental decision of March 12, 1914, the case may be transferred to the courts for decision as to the correctness of the departmental ruling under which petitioner's application for the reinstatement of his entry was denied, viz: that on March 27, 1911, Oscar Mayes had the equivalent of an entry of record within the meaning of the act of March 4, 1911, which constituted a bar to the reinstatement of movent Coates' entry.

Coates upon July 31, 1902, made homestead entry No. 0399, for the NW. $\frac{1}{4}$, Sec. 33, T. 8 S., R. 9 W., Portland, Oregon, land district, within the former Siletz Indian Reservation. Final proof was offered July 28, 1903, but final certificate of entry withheld pending investigation. The entry was ordered canceled by the Department in its decision of February 4, 1909, a motion for review being denied May 26, 1909, and a petition for the exercise of supervisory power August 31, 1909 (38 L. D., 179-181).

In the latter decision the Department found:

The clearing and cultivation of the land by Coates is so nominal as to amount to a mere pretense and the improvements are of a minor character. Upon the essential question as to whether any actual residence for three years or any other period was established, while the evidence is conflicting, the great preponderance thereof is to the effect that he did not maintain any such residence, but, on the contrary, made visits to the land, which were of a mere transitory and temporary character.

Upon application filed in behalf of Coates for the reinstatement of his entry under the act of March 4, 1911, *supra*, the Department

in its decision of January 28, 1914, held reinstatement to be barred because of the intervening homestead application of Oscar Mayes, filed March 15, 1910, accompanied by payment required by law and based upon an alleged settlement made December 10, 1909, and thereafter maintained. Motion for rehearing of the latter decision was denied March 12, 1914. Request of counsel is to the effect that the Department now make finding with respect to the alleged occupation, cultivation, and improvement of the land by Coates.

In the view of the Department, the first question to be determined in this and similar cases arising under the act of March 4, 1911, *supra*, is whether or not reinstatement is barred under the provisions of that statute, which provides reinstatement may not be permitted where a contest or other adverse proceeding had been commenced against the entry and notice thereof served before the submission of proof or within two years thereafter, or where another entry is of record covering such land. If it be determined that a statutory bar to reinstatement exists, further findings are entirely unnecessary and outside of the requirements of a case, other questions becoming "moot." In the view of this Department, as expressed in said decisions of January 28 and March 12, 1914, reinstatement is prohibited by the statute of 1911, because of the intervening homestead application of Mayes, which finding completely disposes of the case, so far as this Department is concerned.

It is not, in my opinion, the duty of this Department to make a finding of facts in a case completely disposed of upon other grounds, and this, I am informed, has been the general practice. The same practice is followed in the courts, as shown by numerous decisions. If the practice were to obtain in the courts and in this Department of deciding questions which have become moot or unnecessary to be considered because of the disposition of the case on other grounds, it would seem that to that extent the decisions would become in the nature of dictum and not binding or conclusive. Such a practice would be not only unnecessary but in many instances objectionable and embarrassing, not only to the courts and the Departments, but to litigants.

The Department therefore declines to depart from its established practice in this respect and to at this time make findings of fact in the case of *Mayes v. Coates*, finally disposed of by it upon the ground heretofore stated, that reinstatement is barred by the express terms of the statute.

It may be suggested that a finding of the facts as to occupation, cultivation, and improvements in said case at this time is not essential to a proceeding by Coates in a court of competent jurisdiction to determine the legal question involved.

INSTRUCTIONS.

April 2, 1914.

RECLAMATION HOMESTEAD—ASSIGNEE—ACT OF JUNE 23, 1910—RESIDENCE.

An assignee under the act of June 23, 1910, of a homestead entry within a reclamation project, made under the provisions of the reclamation act, is not required to reside upon the land or in the vicinity thereof as a condition prerequisite to obtaining a patent and water right.

JONES, *First Assistant Secretary*:

I am in receipt of your [chief counsel of Reclamation Service] letter of March 17, 1914, wherein you state that the question has arisen as to whether, in case of a homestead entry within a reclamation project, and made subject to the provisions of the reclamation act of June 17, 1902 (32 Stat., 388), an assignee under the act of June 23, 1910 (36 Stat., 592), is required to reside upon the land or in the neighborhood thereof in order to perfect a water right, as in case of lands in private ownership.

The reclamation act of June 17, 1902, *supra*, authorizes the furnishing of water for irrigation to two classes of lands: first, public lands of the United States entered under the homestead laws, such entryman being required by section 5 of the act to comply with the homestead laws and in addition thereto reclaim at least one half of the irrigable area of the entry, and before receiving patent pay to the government the charges apportioned against the land, as provided in section 4; second, for the furnishing of water for the irrigation of lands in private ownership, the conditions imposed with respect thereto being that no right to the use of water shall be sold for a tract exceeding 160 acres to any one landowner, and that no sale be made unless the landowner is—

an actual *bona fide* resident on said land or an occupant thereof residing in the neighborhood of said land, and no such right shall permanently attach until all payments therefor are made.

The act of June 23, 1910, *supra*, which relates exclusively to lands within reclamation projects entered under the homestead laws and the provisions of the act of June 17, 1902, *supra*, provided that after the filing by entrymen with the Commissioner of the General Land Office of satisfactory proof of residence, improvement, and cultivation for the five years required by law, such entrymen—

may assign such entries or any part thereof to other persons, and such assignees, upon submitting proof of the reclamation of the lands and upon payment of the charges apportioned against the same, as provided in the said act of June seventeenth, nineteen hundred and two, may receive from the United States a patent for the lands: *Provided*, That all assignments made under the provisions of this act shall be subject to the limitations, charges, terms, and conditions of the reclamation act.

It is evident from the language of the act that to become entitled to the right to assign such a homestead entry the original entryman must have fully complied with the requirements of the homestead law as to residence, and in practice such an entryman is not required to reside upon the land or in the neighborhood after he has submitted satisfactory proof of such residence, improvement, and cultivation for the period required by the homestead laws. It seems to follow that no greater or additional obligations should be imposed upon the assignee than were imposed upon the original entryman, and that such assignee should not be required to repeat or duplicate, with respect to the lands secured by assignment, the conditions already satisfied by the original entryman. It has been contended that assignees under this act must possess all the qualifications of a homestead entryman, but this contention was disapproved by this Department, it being held that the law contains no warrant for imposing such a limitation.

The conditions which remain to be fulfilled by the assignee of a homestead entryman in such a case are the payment of charges specifically mentioned in the act of June 23, 1910, and such other conditions as may be imposed by the law, which may include the reclamation of one half the irrigable area of the land, provided that this requirement has not been previously fulfilled by the original entryman. As intimated, the original entryman, if he retains the land entered, is not required to continue his residence upon the land or in the vicinity after submitting satisfactory proof of residence, and nothing in the law seems to impose the requirement of residence upon an assignee. His assignor has already fulfilled all the requirements of the law in this particular, and it remains for the assignee only to complete the unfulfilled conditions.

The owner of private land within a reclamation project occupies a somewhat different status from the homestead entryman, in that he is not specifically required to reside upon the land and perform improvement and cultivation, his land is not subject to division into farm units, nor is his entry subject to cancellation for noncompliance with law as in the case of the entryman. Whether this be the reason or not, it is apparent that Congress imposed different conditions upon the owners of private lands than upon homestead entrymen, and the residence required of the private landowner has no particular bearing upon the construction of the law with respect to the homestead entryman.

Upon careful consideration of the entire subject, I am of the opinion that neither the act of June 23, 1910, nor any other existing reclamation laws contemplate or require the assignee of a homestead entryman under the act first mentioned to reside upon the land or in the vicinity thereof as a condition prerequisite to the obtaining of a patent and a water right by such assignee.

COLEMAN v. De BONNIOT.

Decided June 2, 1914.

CONTEST OF ENTRY WITHIN FOREST RESERVE—PREFERENCE RIGHT.

A preference right of entry is acquired by a successful contest against an entry within a forest reservation, but such right remains suspended until the land shall be restored and become subject to entry.

JONES, First Assistant Secretary:

Thaddeus P. Coleman has appealed from decision of August 1, 1913, by the Commissioner of the General Land Office affirming the action of the local officers rejecting his application to make timber and stone entry for lots 3 and 4 and E. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 18, T. 1 S., R. 47 E., La Grande, Oregon, land district.

It appears that Gean Rainseyer made homestead entry for said land on February 15, 1904, which was contested by Pierre De Bonniot July 17, 1908, charging abandonment. Pending the contest the entry was relinquished and the contestant was notified, but inasmuch as the land was embraced in a national forest reservation, which was made prior to the initiation of the contest, and existed at the time of the cancellation of the entry, the land was not subject to entry and therefore the preference right remained suspended.

The land was eliminated from the forest reservation and restored to settlement October 22, 1910, and to entry November 21, 1910. De Bonniot was not notified until April 14, 1913. He filed timber and stone application for the land on May 2, 1913, and the application of Coleman to make timber and stone entry, which had been filed on April 14, 1913, was rejected because of De Bonniot's preference right of entry. The Commissioner in the action appealed from affirmed the action of the local officers, as above stated, in the rejection of Coleman's application.

It is urged on appeal that De Bonniot was not entitled to a preference right of entry for the reason that the lands were reserved at the date of the initiation of the contest and at the time of the cancellation of the entry, and as the land was not then subject to entry no preference right could be allowed.

There is no difference in principle as to the allowance of preference right upon contest of an entry, whether embraced in a forest reservation or embraced in a withdrawal made under the Reclamation Act. In the case of Joseph F. Gladioux (41 L. D., 286) it was held that a preference right of entry was acquired by successful contest of a homestead entry although the land was embraced in a reclamation withdrawal, but that said preference right could not be exercised during the existence of such withdrawal as the land was not subject to entry. The right to make entry under the preference

gained through contest was postponed until the land became subject to entry, should the withdrawal be vacated. See also case of Long v. Lee (41 L. D., 326).

The decision appealed from is clearly correct and is accordingly affirmed.

**PATENTS FOR OIL LANDS IN WITHDRAWN AREAS—ACT OF
AUGUST 25, 1914.**

INSTRUCTIONS.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, November 20, 1914.

The SECRETARY OF THE INTERIOR.

SIR: I beg to submit herewith for your consideration and approval proposed instructions and forms of application and agreement for use under the act of August 25, 1914 (Public, No. 187), authorizing the Secretary of the Interior, under certain conditions in the act provided, to enter into agreements with the applicants for patents for oil lands in withdrawn areas pending determination of title.

The papers submitted consist of (a) form of application, (b) instructions, and (c) form of agreement. It is intended if these instructions and forms are approved to print same entirely on one double sheet of paper.

I have the honor to recommend the approval of the papers submitted.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved, November 21, 1914:

A. A. JONES,

First Assistant Secretary.

APPLICATION FOR AGREEMENT UNDER THE ACT OF AUGUST 25, 1914 (PUBLIC, 187).

-----, 191

The undersigned, -----, hereby applies for an
(Name of applicant.)

agreement or contract with the Secretary of the Interior for the disposition of oil and gas from the lands hereinafter described, as authorized under the act of Congress, approved August 25, 1914 (Public, 187). In support of said application this applicant respectfully represents as follows, which representations the said applicant hereby warrants to be true and correct.

1. That _____ is the identical person or corporation, who under date of _____ (He or it.) _____ filed in the local land office at _____, State of _____, mineral application, serial number _____ for the _____ placer claim, embracing _____ of Section _____, Township _____, Range _____, in the _____ land district, State of _____

2. That the applicant desires the contract or agreement herein applied for to embrace the following described lands: _____

3. That oil or gas was discovered, or was being produced, upon the lands covered by this application on or before August 25, 1914, or drilling operations were in actual progress on October 3, 1910.

(Strike out whichever is not appropriate.)

4. That, so far as known to applicant, the following enumerated persons or corporations are the only ones claiming any right, title, or interest in and to said lands or any portion thereof, or to the oil or gas produced therefrom, and their respective interests are herein set forth.

Name.

Interest.

(A fuller statement of interest may be attached if desired.)

5. That the number of wells being operated on the land covered by this application for an agreement or contract is _____ and the approximate daily gross production of each well at the present time is as follows: _____

6. That contracts for the sale and purchase of the oil and gas products arising from the operations to be carried on under the agreement herein applied for, on the lands covered thereby, have been entered into with the following and no others: _____

Duly authenticated copy of each of said contracts is hereto attached and made a part of this application.

7. That the portion of the gross proceeds arising from the sale of the oil and gas which is to be placed in escrow during the life of the contract or agreement herein applied for, will be deposited in the _____ Bank,

(Must be a national bank.)

There is hereto attached a statement by the _____ of said _____ (Officer.)

bank which sets forth the rate of interest to be allowed on said escrow deposit and the method by which said interest is to be computed.

8. That there are hereto attached duly executed waivers by each and every one of the parties claiming an interest as specified in paragraph four, releasing the United States from any claim or demand whatsoever arising from the execution of this agreement by the Secretary of the Interior.

(Name of applicant.)

(Corporate seal if corporation be the applicant.)

(Address.)

----- being first duly sworn, deposes and says he is the _____ named in the foregoing application; that he has read the foregoing application

and knows the contents thereof and that the facts therein stated are true according to the best of his knowledge, information, and belief.

Subscribed and sworn to before me this _____ day of _____

Notary Public.

INSTRUCTIONS.

1. This application can be made and the contract executed only by an applicant for mineral patent for oil or gas lands embraced in an order of withdrawal.

2. The application and the contract must be executed in triplicate and filed in the local land office in the district in which the lands are situated. One set only of the exhibits accompanying the application need be authenticated, but the others must be true copies.

3. In the option of the applicant, the application and contract may cover all the land embraced in the application for patent or one or more legal subdivisions thereof.

4. The form of waiver provided for in section 8 of the application must be absolute and unconditional, and if by a corporation, proper evidence of authority for the execution of such instrument must be attached.

5. Immediately upon filing of the application and contract, properly executed, the Register and Receiver will assign to them the same serial number that the application for patent bears and will forthwith transmit them by special letter to the Commissioner of the General Land Office.

AGREEMENT.

Under Act of August 25, 1914 (Public No. 187), for disposition of oil and gas products pending determination of proceedings for patent.

THIS AGREEMENT made and entered into by and between the Secretary of the Interior, acting for and in behalf of the United States, party of the first part, and _____, hereinafter called the applicant, party of the second part:

WITNESSETH, That for and in consideration of the attached application and of the mutual covenants and agreements hereinafter provided, and the rights and privileges hereby granted, the parties hereto agree as follows:

1. That this agreement is made on the basis of the statements and representations made by the applicant in the attached application, which statements and representations the applicant warrants to be true and correct; it being further agreed that in case such statements and representations shall be found by the Secretary of the Interior to be untrue or incorrect in any material respect, such finding shall render this agreement subject to cancellation by said Secretary at his option and on notice to the party of the second part.

2. That commencing on the date of this agreement, and continuing for the period pending the determination by the Secretary of the Interior of the title to the land embraced in the attached application, or such other disposition of the same as may be authorized by law, under the rules, regulations, and practice of the land department of the United States, said applicant and all persons claiming by, through or under him, as indicated in the attached application, shall be authorized to work and operate in and upon said lands for the

production of oil and gas therefrom, in the manner and on the terms and conditions herein provided and not otherwise.

3. That the applicant shall conduct all drilling, pumping, and other operations for the production, storage, and sale of the oil and gas products from said land in workmanlike manner in accordance with approved practices and methods of operation for the prevention of waste or damage to said lands, or to other lands, for oil and gas producing purposes; and to this end applicant agrees to comply promptly and at his own expense with all reasonable rules, regulations, and requirements of the said Secretary of the Interior, his duly authorized agents and representatives for the prevention of damage and waste as aforesaid.

4. That all of the oil and gas products of a marketable character arising from the operations provided for in the last preceding paragraph shall be sold and disposed of in accordance with the contract or contracts for the sale and purchase of such products submitted with, and as a part of, the attached application, or such other contract or contracts as may hereafter be entered into with the approval of the Secretary of the Interior.

5. That one-eighth of the gross proceeds, arising from the sale of such oil and gas products, as provided in the preceding paragraph, shall be deposited by the purchaser or purchasers thereof, in the national bank designated in said application, to be held by said bank in escrow, as in this contract provided, such payments to be made monthly on or before the tenth day of each month for all oil and gas sold during the preceding month; the balance (seven-eighths of such gross proceeds) shall be paid to the party or parties entitled thereto; full and detailed statements of accounts of sales and purchases, as aforesaid, shall be made by said purchaser in triplicate, one to accompany the payment to said bank, one to the Chief of Field Division of the General Land Office in whose division said land is situated, and one to the party of the second part.

6. That said portion of the gross proceeds, to be deposited in said bank in escrow, as provided in the last preceding paragraph shall be subject to change by the Secretary of the Interior at any time on 30 days notice: *Provided*, That in case such portion shall be increased, it shall be optional with the second party to continue under this agreement: *Provided further*, That notice to discontinue operations hereunder shall be filed in the proper United States Land Office within 10 days after the receipt of notice of such increased amount to be deposited in escrow.

7. That all interest accruing on the portion of such gross proceeds, deposited in said bank in escrow as aforesaid, shall be added to the principal at regular intervals in accordance with the previous understanding with said bank as indicated in the attached application; that in case the land department of the United States shall finally determine that under the law, rules, and regulations controlling the granting of patents to mineral lands, said second party is entitled to a patent to the land and premises described and applied for in said mineral application, and embraced by this contract, then and in that case, on the issuance of said patent the Secretary of the Interior shall so certify to said bank, whereupon said bank shall be authorized and deemed instructed by the parties hereto, to pay over all moneys deposited therein under the terms hereof, with accumulated interest, to the second party; but in case the land department of the United States shall finally determine, in accordance with the law, its rules, regulations, and practice, that the second party is not entitled to patent for the lands and premises embraced in this agreement, and same shall be finally rejected, *then* on receipt of the certificate of the Secretary of the Interior to that effect, said bank shall be authorized, and it shall be deemed to be in-

structed by the parties hereto, to pay over all of said payments and accrued interest to the Treasurer of the United States, whereupon all and every claim, right, title, or interest in said funds and accumulated interest, either on the part of the second party or any person claiming by, through or under him, shall cease and terminate; in either of the cases above described, operations under this contract shall cease and terminate on the issuance of the certificate of the Secretary of the Interior as aforesaid; but in case this contract shall, under any of the provisions hereof, be canceled prior to the final determination of the matter of said application for patent, any moneys theretofore deposited in escrow shall nevertheless remain so deposited until said application for patent shall be finally approved or rejected:

8. That in case a portion of the land embraced in this agreement shall be finally patented to applicant, and patent shall be denied for the remainder thereof, then such escrow deposits and accumulated interest hereinabove provided for shall be paid to the applicant and to the Treasurer of the United States in such proportion as the area patented shall bear to the area for which patent shall be denied, as shown to said bank by the certificate of the Secretary of the Interior.

9. That the said purchaser of the oil and gas products and the said bank shall be furnished with copies hereof by the party of the first part, and same shall be deemed and constitute joint instructions to them respectively in so far as applicable.

10. That all the workings, operations, premises, equipment, books, and records of the second party, or any person claiming by, through, or under him, pertaining to, or included in, the subject-matter of this agreement, shall, at all times, be subject to inspection by the authorized representatives of the Department of the Interior, and such books, records, and accounts shall be kept and such reports made as the first party by the Secretary of the Interior or his authorized representatives shall, from time to time, direct.

11. Such deposits in escrow, when paid over to the Treasurer of the United States as herein provided, shall be and constitute full and complete payment, settlement, accord, and satisfaction of all claims of the United States for trespass for any and all oil and gas removed from said premises during the period of, and under and subject to, this agreement, as against the applicant, producer or purchaser of such oil or gas products, who shall have in good faith and without collusion done and performed each and every act herein required to be performed by him or it strictly in accordance with this agreement, even though said application for patent shall be denied.

12. That this contract shall be binding on the heirs, assigns, and legal representatives of the second party hereto.

13. That in no case and under no circumstances or conditions shall the United States become liable to any person whatsoever under or by reason of this contract, or any of its provisions.

14. That failure or default on the part of the second party to comply strictly with the terms hereof shall render this contract subject to cancellation by the Secretary of the Interior at his option immediately on notice of such cancellation to the second party, and the decision of the said Secretary shall be final on the question of the existence of such failure or default.

15. That no Member of or Delegate to Congress, or Resident Commissioner, or officer or employee of the Department of the Interior, is or shall be admitted to any share or part in this agreement, or derive any benefit which may arise therefrom, and the provisions of section 3741 of the Revised Statutes of the

United States, and sections 114, 115, and 116 of the Codification of the Penal Laws of the United States, approved March 4, 1909 (35 Stat., 1109), relating to contracts, enter into and form a part of this agreement, so far as the same may be applicable.

IN WITNESS WHEREOF, the said parties hereto have caused the execution of these presents by themselves or by their duly authorized officers, agents, or representatives, as of the _____ day of _____, 191

Secretary of the Interior.

ACKNOWLEDGMENT OF INDIVIDUAL.

State of _____ }
County of _____ } ss:

Before me, a notary public, in and for said county and State, on this _____ day of _____, 191 , personally appeared _____ to me known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that _____ executed the same as _____ free and voluntary act and deed for the uses and purposes therein set forth.

Notary Public.

(My commission expires _____)

ACKNOWLEDGMENT OF CORPORATION.

State of _____ }
County of _____ } ss:

On this _____ day of _____, A. D. 191 , before me, a _____ within and for the _____ and _____ aforesaid, personally appeared _____ and _____ to me personally known, who being by me duly sworn, did each say that _____ is the _____ president and _____ is the _____ secretary of _____, a corporation, and that the seal affixed to the foregoing and annexed instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors; and said _____ and _____ duly acknowledged that they each had in their said official capacities executed the foregoing instrument as the act and deed of the said company for the consideration and purposes therein mentioned and set forth.

Witness my hand and official seal this _____ day of _____, 191

(My commission expires _____)

PARKER v. PETERSON.

Decided November 24, 1914.

CONTEST—AFFIDAVIT—SCRIP.

A contestant against a homestead entry must file with his contest an affidavit stating specifically the law under which he intends to acquire title; and where he proposes to acquire title by means of scrip, he must state specifically the class of scrip he intends to file.

JONES, First Assistant Secretary:

Clarence C. Peterson made homestead entry April 19, 1913, for the SE. $\frac{1}{4}$, Sec. 3, T. 22 N., R. 2 E., M. M., Great Falls, Montana, land district, and on June 26, 1914, Stanley Parker filed contest against the same, charging abandonment and lack of cultivation and improvements.

The contestant, Parker, has now appealed from the Commissioner's decision of August 28, 1914, requiring him to—

file an affidavit, stating specifically the law under which he intends to acquire title, that is, the class of scrip he intends to file.

The decision is correct and is affirmed.

H. T. MECUM.

Letter of December 9, 1914.

TIMBER CUTTING ON MINING CLAIM IN NATIONAL FOREST.

Jurisdiction over matters relating to the cutting of timber upon lands within the surface area of mining claims within national forests is vested in the Department of Agriculture and not in the Department of the Interior.

Letter of Acting Assistant Commissioner Parrott, approved by First Assistant Secretary Jones, to Mr. H. T. Mecum, 615 41st St., Oakland, California.

This office is in receipt of your letter of October 12, 1914, in which you quote the contents of a letter addressed to you by this office under date of March 12, 1914, in reply to a former letter from you dated February 19, 1914, relative to the right of a mining locator to cut timber from the surface of his location. You state that acting upon the advice of the information received from this office in its letter of March 12, 1914, *supra*, you proceeded to cut and remove and use certain timber upon lands within the area of the surface of your mining claims for the improvement and development of your property, and that thereupon you were advised by the Forest Supervisor,

stationed at Sisson, California, relative to the purposes for which you can cut timber from the lands in question, according to the interpretation of the Solicitor of the Department of Agriculture, and that the cutting of timber for other purposes will be considered wilful trespass. You intimate in your letter that you are of the opinion that the advice given you by the Forest Service is too restrictive and not sustained by the intent of the statute, and you requested this office to consider the subject in connection with the opinion given to you by the Forest Supervisor and to further instruct you in the premises.

The information given you by this office in its letter of March 12, 1914, *supra*, had reference to its interpretation of the right of a mining locator to use the timber on the surface within the limits of his claim upon the public domain outside of national forests. It would appear from the context of your letter of October 12, 1914, *supra*, that the mining locations to which you refer are within the limits of a national forest. That fact could not, however, be inferred from your former letter since you did not definitely describe any particular tract or tracts of land therein.

Among the provisions relating to the control and administration of national forests contained in the act of June 4, 1897 (30 Stat., 36), is the following:

Nor shall anything herein prohibit any person from entering upon such forest reservations for all proper and lawful purposes, including that of prospecting, locating and developing the mineral resources thereof, provided that such persons comply with the rules and regulations covering such forest reservations.

Under the terms of the act of February 1, 1905 (33 Stat., 628), the jurisdiction of national forests was transferred from the Department of the Interior to the Department of Agriculture. Section 1 of said act contains the provision that matters affecting the surveying, prospecting, locating, appropriating, entering, relinquishing, reconveying, certifying or patenting of any of the lands within a national forest are still within the jurisdiction of the former Department.

While the Department of the Interior still maintains jurisdiction, in accordance with the provisions contained in the preceding paragraph, over matters relating to the patenting of mining claims and over other questions incidentally involved therein, yet this office considers that the jurisdiction over matters relating to the cutting of timber upon the lands within the surface area of a mining claim within a national forest is vested in the Forest Service, Department of Agriculture.

In view of the foregoing, the information given you in office letter of March 12, 1914, *supra*, was not intended to apply to a case such as the one presented by you, and I do not consider myself warranted in advising you as to your rights in the premises.

EXECUTION OF APPLICATIONS IN ALASKA.

INSTRUCTIONS.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, December 9, 1914.

REGISTERS AND RECEIVERS,

Fairbanks, Juneau, and Nome, Alaska.

SIRS: Circular No. 352 [43 L. D., 378] directed registers and receivers to reject all applications to make entry which are executed more than ten days prior to filing.

Until such time as the transportation facilities in Alaska are improved, the provisions of said circular will not be held applicable to applications filed in your office.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved, December 9, 1914:

A. A. JONES,

First Assistant Secretary.

PERRIN v. SANTA FE PACIFIC R. R. CO.

Decided December 16, 1914.

RAILROAD GRANT—PURCHASER—JURISDICTION OF LAND DEPARTMENT.

The land department is without jurisdiction to compel the Santa Fe Pacific Railroad Company to carry out contracts made by its predecessor, the Atlantic and Pacific Railroad Company, to select certain lands under the indemnity provisions of the grant made to said company by the act of July 27, 1866, for the benefit of the parties with whom such contracts were made; nor is the land department authorized to suspend action upon pending indemnity selections by the Santa Fe company for the purpose of forcing that company to carry out such contracts.

JONES, *First Assistant Secretary:*

The above entitled petition involves 21,793.88 acres of land within the indemnity limits of the grant to the Atlantic and Pacific Railroad Company under the act of July 27, 1866 (14 Stat., 292).

In brief the petitioner represents that by virtue of a deed to him dated October 15, 1896, by the Atlantic and Pacific Railroad Company, through its receiver, C. W. Smith, said company agreed to select the above lands for him and secure patents inuring to his benefit from the United States. The prayer of the petition is as follows:

E. B. Perrin, by Hamilton, Yerkes & Hamilton, and John M. Rankin, his attorneys, hereby petitions the Honorable The Secretary of the Interior to exercise the authority reposed in him by statute to compel the Santa Fe Pacific Railroad Company, successor to the Atlantic and Pacific Railroad Company, to

immediately fulfill and complete the terms of a certain contract and deed of conveyance entered into between the said E. B. Perrin *et al.* and the Atlantic and Pacific Railroad Company, a copy of which is filed herewith (Ex. "A").

The petitioner also prays the Honorable Secretary to suspend action on all of the Santa Fe, Pacific Railroad Company's pending lists, or applications of any character, the granting of approval of which would tend to reduce the possibility of fully satisfying his claim, until the issue hereby raised shall have been disposed of and said company shall have completed said contract and deed.

He contends that the Santa Fe Pacific Railroad Company, as successor in interest to the Atlantic and Pacific Railroad Company, is liable upon the aforesaid deed or contract of October 15, 1896, by virtue of certain deeds to the trustees upon foreclosure sale, their deeds to the Santa Fe Pacific Railroad Company, and the provisions of the act of March 3, 1897 (29 Stat., 622), conferring upon such purchasers and a company to be incorporated, all the rights theretofore granted to the Atlantic and Pacific Railroad Company. The particular provisions of the act of March 3, 1897 (*supra*), sought to be invoked are as follows:

Provided further, That nothing herein contained shall be construed as in any manner affecting the vested rights of any purchaser or purchasers of said lands from said company; *And provided further*, That in case any uncompleted contracts for the purchase of land shall be pending at the time of such foreclosure sale, such new company shall, upon payment to it of any unpaid balance of purchase money for such land at the time provided in such contracts for the sale thereof, convey and release to the holders of such contracts all its title, interest, and estate in and to the land embraced in such contracts.

The matter has been orally argued before the Department, both parties appearing by counsel. Counsel for the Santa Fe Pacific Railroad Company contend that, there being no claim to public land now pending for adjustment, the matter is merely a dispute between private parties and not one within the jurisdiction of the Secretary of the Interior; further, that the contract or deed of October 15, 1896, imposed no liability upon the Atlantic and Pacific Railroad Company to select these lands on behalf of Perrin, and also that, if such a liability did exist on the part of the Atlantic and Pacific Railroad Company, such liability was not assumed nor did it pass by operation of law to the Santa Fe Pacific Railroad Company.

Of the lands claimed 18,680 acres are still unsurveyed and, therefore, not yet subject to indemnity selection. Of the 3,113.88 acres which have been surveyed, 1,000 acres have been patented to the Santa Fe Pacific Railroad Company, and 80 acres to Mrs. Fannie Drew, and have accordingly passed beyond the jurisdiction of this Department. Three thousand nine hundred acres are within the limits of the Prescott National Forest.

The right to make indemnity selections is conferred upon the Atlantic and Pacific Railroad Company, the predecessor in interest of the Santa Fe Pacific Railroad Company, by section 3 of the act of July 27, 1866, *supra*, which provided that the indemnity lands "shall be selected by said company . . . under the direction of the Secretary of the Interior." Counsel for the petitioner contend that under the above quoted language and the general supervisory authority of the Secretary of the Interior, this Department has power to compel the Santa Fe Pacific Railroad Company to complete the alleged contract with the Atlantic and Pacific Railroad Company, or to suspend the pending selections of the Santa Fe Pacific Railroad Company until the alleged contract with Perrin has been fulfilled.

It is my opinion that the counsel for the petitioner are endeavoring to place an unwarranted interpretation upon the phrase "under the direction of the Secretary of the Interior." Such direction of course contemplates that only lands properly subject to selection shall be approved to the grantee railroad company. It cannot confer upon the Secretary the power and jurisdiction to interpret and adjudicate contracts between the grantee company and private individuals as to the ultimate passing of title, nor does it confer upon the Secretary power to dictate to the grantee company what particular tracts within the indemnity limits it should select.

In the administration of railroad grants the Department, in the absence of a special statutory provision, always deals with the grantee itself and not with parties claiming to be in privity with it. See *Southern Pacific Land Company* (42 L. D., 522), and some of the language therein used is pertinent to the issue herein presented. At page 523 it was said:

There is lack of apparent necessity for the action invoked, and besides it is thought that such action would set a precedent justifying the same action upon the application of any equitable owner of public lands and thereby entail upon the Land Department a mass of quasi-judicial work which would seriously embarrass it in the administration of the public-land laws.

The following quotation from the decision of Secretary Noble in *Chicago, St. Paul and Minneapolis Railroad Company* (11 L. D., 607), at page 618, applies to the request here made:

For the officers of the government thus to go outside of their legitimate duties to settle disputes and enforce contracts between parties to which the United States is in no way privy, would be entering upon an undertaking of more vast proportions than the business of the government itself. The questions and complications of law and facts incident to such an inquiry would be endless, and, as probably the railroad company had sold, or contracted to sell, other lands, more perhaps than it will receive patents for, if the door is thrown open under the present application doubtless other petitioners would set up like

claims with equal or even greater equities, and the executive department, organized for the administration of the public laws, would be converted into a tribunal for passing upon, determining and enforcing private rights.

It is my opinion that the determination of the controversy between the parties hereto as to the liability of the Santa Fe Pacific Railroad Company upon the alleged contract between Perrin and the Atlantic and Pacific Railroad Company, dated October 15, 1896, is not a matter falling within the jurisdiction of this Department, or properly determinable by it; nor can I find anything in the law which would warrant this Department in suspending action upon the pending indemnity selections of the Santa Fe Pacific Railroad Company, for the purpose of forcing that company to make a settlement of an alleged pending controversy between it and Mr. Perrin. In short, the matters presented in the petition are of a nature properly subject to disposition by a court of competent jurisdiction, if at all, and not by this Department.

The petition is accordingly denied.

ANNA R. ROSE.

Decided December 16, 1914.

SCHOOL LANDS—INDEMNITY SELECTION—TRANSFEEEE.

Where the State of California, after the approval of a school indemnity selection, sold and patented to another the lands assigned as base for such selection, the State should be given opportunity to protect its transferee by selection, on good and sufficient base, of the land so erroneously sold and patented; and in case the State should fail to make such selection, the transferee should be given opportunity to make appropriate entry for the land so purchased from the State.

JONES, *First Assistant Secretary*:

April 3, 1912, lots 1, 2, 3 and 4, the E. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$, the S. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$, and the SW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$, Sec. 36, T. 5 N., R. 17 W., S. B. M., were restored to homestead entry under the act of June 11, 1906 (34 Stat., 233), and on April 22, 1912, the local officers at Los Angeles, California, allowed Anna R. Rose to make homestead entry therefor.

From a decision of the Commissioner of the General Land Office, dated June 3, 1913, holding for cancellation the said entry, appeal has been prosecuted to the Department.

It appears from the records of the General Land Office that the State offered the E. $\frac{1}{2}$ of Sec. 36, T. 5 N., R. 17 W., S. B. M., as base for the selection of the W. $\frac{1}{2}$ of Sec. 14, T. 7 N., R. 29 W., M. D. M., San Francisco, California, land district. This selection was approved in clear list No. 15, on July 1, 1870. It appears, how-

ever, that on February 14, 1888, the State issued patent for lots 1, 2, 3 and 4 to Thomas Delano, and on April 18, 1892, patent was issued to Eufemia M. Urtasun for the SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ of said section, township and range.

Section 4 of the basis of adjustment entered into between the United States and the State of California, approved by the Department, June 16, 1911, provides:

That lands in sections 16 and 36 which, under the provisions of the act of Congress approved March 1, 1877 (19 Stat., 267), are the property of the United States, and which have been sold or encumbered by the State, are to be selected by the State.

This agreement appears to have been entered into for the purpose of allowing the State to protect the title of its transferees in cases where a mistake had been made in the disposition of its lands. The records of the General Land Office do not show, however, that the State has ever made selection of this land. The record further discloses that certain parties are in possession of this land, claiming under color of title from the State. Under the circumstances above set out, the State should be given an opportunity to select this land. *Burtis v. State of Kansas* (34 L. D., 304). The Commissioner of the General Land Office is therefore directed, *first*, to notify the State that it will be allowed thirty days within which to proffer a selection for this land, submitting therefor good and valid base; *second*, in case the State should fail to file such selection within the time required, then the Commissioner is directed to notify its transferees that they will be given thirty days within which to file application to make appropriate entry for the land which they allege to have purchased from the State; *third*, in case neither a selection is made by the State, nor an application is filed by the transferee of the State to make appropriate entry, the homestead entry of Anna R. Rose will be permitted to remain intact, otherwise, said entry will be canceled.

The decision appealed from is accordingly remanded for further proceedings in accordance with the views herein expressed.

HATTIE FISHER HALL.

Decided December 23, 1914.

HOMESTEAD—QUALIFICATIONS—OWNERSHIP OF LAND.

The disqualification under the homestead law arising from the ownership of land is determined as of the date of entry; and an Indian entitled under section 6 of the act of February 8, 1887, to make homestead entry as a citizen of the United States, is not disqualified to make such entry by reason of the fact that he has a right *in futuro* to an allotment of 320 acres of Indian land.

JONES, *First Assistant Secretary*:

This an appeal by Hattie Fisher Hall, formerly Hattie Fisher, a Pine Ridge Sioux Indian, from decision of the Commissioner of the General Land Office, dated June 9, 1913, holding for cancellation her homestead entry for the S. $\frac{1}{2}$ SE. $\frac{1}{4}$, NE. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 11, and SW. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 12, T. 4 S., R. 17 E., containing 160 acres, Rapid City, South Dakota.

The date of Hattie Fisher's entry is May 12, 1908. In her homestead application, which was made under section 2289 of the Revised Statutes, she stated that she is a native born citizen of the United States. A notation in red ink was made on said application, as follows: "Sec. 6, act of Feb. 8, 1887 (24 Stat., 388-390)." No fees and commissions were paid at the time of making entry, and there was a certificate from the Indian agent, dated May 7, 1908, setting forth that "Hattie Fisher is a Government ward belonging to the Pine Ridge Reservation, S. D." The General Land Office treated the entry as one made under the Indian homestead act July 4, 1884 (23 Stat., 96), which provides that Indians then or thereafter located on public lands might avail themselves of the provisions of the homestead laws as fully and to the same extent as citizens of the United States, and that no fees or commissions are to be charged on account of entries or proofs.

August 4, 1910, Hattie Fisher submitted commutation proof, paying the purchase money, from which it appears that she established residence on the land October 3, 1908, her house having been built October 1, 1908, that she had lived upon the land since settlement, and that her improvements were valued at \$750. It further appears that she was married April 6, 1910, to one Hall, a white man. Final certificate issued on said entry August 15, 1910.

The General Land Office subsequently ascertained, by inquiry at the Indian Office, that 320 acres of land were allotted in the name of Hattie Fisher on the Pine Ridge Reservation, the allotting agent's certificate bearing date of March 31, 1910. This allotment was approved by the Department August 8, 1910, and trust patent was issued thereon January 12, 1911. By direction of the General Land Office the local land officers made an investigation and reported that the Hattie Fisher who received the allotment was the same person as the one who made the homestead entry.

In decision of May 14, 1912, the General Land Office held the homestead entry and final certificate for cancellation. After referring to the act of March 3, 1891 (26 Stat., 1095), amendatory of section 2289 of the Revised Statutes, which provides that—

no person who is the proprietor of more than 160 acres of land in any State or Territory, shall acquire any right under the homestead law.

It was stated in said decision:

As 320 acres of land are held in trust by the United States for this Indian, with a promise to convey the same to her, after a certain time, it is considered that she is the proprietor of said land, within the meaning of the statute, and therefore is not entitled to make homestead entry.

The local land officers, under date of June 26, 1912, transmitted an affidavit from Hattie Fisher, in answer to the foregoing decision, in which it is alleged that she was advised by the special allotting agent and the Indian agent at Pine Ridge Reservation, as well as by the local land officers, that the taking up of a homestead on public lands would not interfere with her right to an allotment on the reservation. It was urged in her affidavit that inasmuch as her allotment was not approved at the time she made homestead entry and, in fact, not until after she had submitted final proof, she was not at said time the proprietor of more than 160 acres of land, and that the subsequent allotment did not affect her homestead rights.

The General Land Office reconsidered the case and in decision of November 20, 1912, agreed that the subsequent allotment of 320 acres did not affect Hattie Fisher's homestead right, "the question depending on how much land she owned at the time of entry and not on the land subsequently acquired." It was further stated in said decision:

It is thought that the right to take public land under the Indian homestead law, and under the general allotment law, are not materially different in their general purposes (32 L. D., 657). This being the case, it is not considered that an Indian who has a right *in futuro* to an allotment of lands in severalty, then held by the tribe in common, also has the right to go upon the public domain and take an Indian homestead thereon, thereby receiving both the benefits coming to him as a member of a tribe of Indians and also receiving the benefits intended for Indians who have no such tribal rights to landed property.

It is, therefore, held that Hattie Fisher was not entitled to make the said entry under the Indian homestead act.

That office at the same time directed the local land officers to advise Hattie Fisher—

that on receipt of an application to change her Indian homestead entry to a regular homestead entry, accompanied by the tender of the necessary fee and commissions, this office will consider the question as to whether such change can be allowed, in view of her present ownership of 320 acres.

The local land officers subsequently reported that Hattie Fisher had paid the requisite fee and commissions, and following this report the General Land Office again considered the case in its decision of June 9, 1913, from which the present appeal is taken. It is stated in said decision in further support of the General Land Office's view,

that an entry under the Indian homestead act of July 4, 1884 (23 Stat., 96)—

such as had been initiated by Hattie Fisher, could not be made by an Indian who had a right *in futuro* to an allotment in severalty of lands then occupied in common by the tribe to which she belonged—

as follows:

It may be safely assumed that the area of the lands within the reservation and which would be subject to allotment was a matter of more or less exact knowledge, and that, hence as early, at least, as June 30, 1907, it was sufficiently well established that Hattie Fisher was a member of said band of Indians, and would be entitled to and would receive an allotment of 320 acres of the lands of that reservation, though the exact location and description of the lands which she could thus secure had not been definitely fixed and ascertained.

In view of the foregoing, and for other reasons stated by the General Land Office, which it is not deemed necessary here to consider, that office concluded that the change of Hattie Fisher's—

Indian homestead entry to an entry under section 2289 of the United States Revised Statutes could not be granted, but must be denied, and, further, that said homestead entry must be canceled.

It appears that at the time of making her homestead entry Hattie Fisher had abandoned her tribal relations and was living separate and apart from her tribe. In fact, the General Land Office in its decision of November 20, 1912, found as follows:

Inasmuch as this Indian has lived upon the public domain, separate and apart from a tribe, this office can make no objection to the commutation of her entry, if she had the right to make the same.

It is provided in section 6 of the act of February 8, 1887 (24 Stat., 388), as follows:

And every Indian born within the territorial limits of the United States to whom allotment shall have been made under the provisions of this act, or under any law or treaty, and every Indian born within the territorial limits of the United States who has voluntarily taken up, within said limits, his residence separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life, is hereby declared to be a citizen of the United States, and is entitled to all the rights, privileges and immunities of such citizens whether said Indian has been or not, by birth or otherwise, a member of any tribe of Indians within the territorial limits of the United States without in any manner impairing or otherwise affecting the right of any such Indian to tribal or other property.

This section was amended by the act of May 8, 1906 (34 Stat., 182), but that portion applicable here, namely—

and every Indian born within the territorial limits of the United States who has voluntarily taken up, within said limits, his residence separate and apart

from any tribe of Indians therein, and has adopted the habits of civilized life, is hereby declared to be a citizen of the United States, and is entitled to all the rights, privileges and immunities of such citizens—

was reenacted without change in the amendatory section.

The homestead application of Hattie Fisher was on the regular form of blanks prescribed for making entry under section 2289 of the Revised Statutes. She described herself as a native born citizen of the United States. Reference in the red ink notation on her application to section 6 of the act of February 8, 1887, indicates that she was applying to make entry as such citizen. There is nothing to show that it was her intention to make entry under any other than the regular homestead law, or in any other capacity than that of a citizen of the United States. Her application was treated as one made under the Indian homestead act of July 4, 1884, apparently because of the Indian agent's certificate that she was an Indian of the Pine Ridge Reservation, and because no fee and commissions were paid. No trust patent, however, was issued to her, as provided by the act of 1884, and she was allowed to commute her entry, which she could not have done if it were one made under the act of 1884, as Indian homesteads can not be commuted. (Circular of the General Land Office of 1904, page 29.) No statement was made when commutation proof was submitted as to Hattie Fisher being an Indian, and there was nothing in said proof to indicate that the entry was made other than by a citizen of the United States.

Under section 6 of the act of February 8, 1887, and the facts of this case, Hattie Fisher was a citizen of the United States and entitled, as such, to make homestead entry of public lands the same as any other citizen. As stated, the fact that the General Land Office treated her entry as one made under act of July 4, 1884, and that she was not charged fee and commissions, was presumably due to the statement in the Indian agent's certificate that she was an Indian of the Pine Ridge Reservation. Other than the matter of fee and commissions, the transactions in connection with this entry, including the making of said entry, the submission of commutation proof and issuance of final certificate, were had with Hattie Fisher as a citizen of the United States. Said Sec. 6, which declared Indians situated as was Hattie Fisher to be citizens of the United States, also provided, that such Indians should be entitled to all the rights and privileges of other citizens, which includes the right to make homestead entry under section 2289 of the Revised Statutes as amended. But in making entry thereunder she would, of course, be required to establish her qualifications in the same manner and to the same extent as any other applicant under said law. Therefore, the only question involved here under appeal from a decision hold-

ing her homestead entry for cancellation is whether Hattie Fisher was the proprietor of more than 160 acres of land at the date of her entry.

The record shows that Hattie Fisher's homestead entry was made and commutation proof submitted thereon prior to approval of her allotment on Pine Ridge Reservation. The homestead law which attaches the condition that a person must not be the proprietor of more than 160 acres of land, only defines the qualifications of such person at date of entry. The disqualifications under the homestead law arising from the ownership of land is to be determined by the conditions existing at date of entry. (*Vaughn et al. v. Gammon*, 27 L. D., 647). The law fixes no limit to the quantity of land a person can thereafter own at date of final proof or date of issuance of patent. It is conceded in the decision appealed from that the right of Hattie Fisher to an allotment was one *in futuro* at the time she made entry. It is immaterial that she was subsequently allowed an Indian allotment.

In accordance with a long line of well-settled decisions on the subject, the Department concludes, under the facts of this case, that Hattie Fisher was not disqualified by reason of the ownership of more than 160 acres of land from making the homestead entry she did. Her entry having been made as a citizen, and having earned title as any other citizen, she is entitled, the requisite fees and commissions having been paid, to retain said entry under the general homestead law. The decision appealed from is accordingly reversed.

INSTRUCTIONS.

December 24, 1914.

RAILROAD SELECTIONS—MINERAL LANDS—PUBLICATION OF NOTICE.

The requirement of the instructions of July 9, 1894, that notice of a selection by a railroad company of lands within a known mineral belt, or within six miles of a mining claim, shall be published for a period of sixty days, is discontinued; but prior to clear listing any such selection, the lands must be found, by examination in the field or by hearing, to be nonmineral within the meaning of the granting act.

JONES, *First Assistant Secretary*:

With respect to the requirements of circular of July 9, 1894 (19 L. D., 21), I have considered the reports of your [Commissioner of the General Land Office] office of January 20, 1913, and September 23, 1912. That circular, among other things, requires publication of notice for 60 days of all railroad selections for lands within a known mineral belt, or within six miles of a mining claim.

In your communication of September 23, 1912, it was stated that said requirement does not now appear necessary in view of the precaution taken under present practice to inquire, through government officials, into the question of the mineral character of all lands so selected; that examination of such tracts is made in the field by an agent of your office, or reported upon by the Geological Survey, or both where necessary; that it imposes a great amount of clerical labor upon your office to examine the records as to all lands within six miles of such location to see whether there be any mineral claim of record within that area, thus delaying the adjudication of the selections.

The extra precaution now taken, as above stated, to guard against erroneous issuance of patent to mineral lands would seem to be adequate without the publication required by the circular referred to. Therefore, the requirement of publication in such cases will be discontinued; but prior to clear-listing any such selection, the lands must be found to be nonmineral within the meaning of the granting act, either through an examination in the manner above stated, or by hearing upon the question of the mineral character of the land, where such question may be in dispute. It is not intended, however, to interfere with the operation of circular of February 21, 1908 (36 L. D., 278), which requires publication and posting with respect to lands embraced in lieu selections and scrip locations.

BARNETT AND MORROW LAND, IRRIGATION AND ORCHARD CO.

Decided December 26, 1914.

REPAYMENT—RELINQUISHMENT IN FACE OF CONTEST.

The relinquishment of an entry in the face of a contest, where the Department in a companion case held the entry there involved for cancellation, is not a "voluntary relinquishment" within the meaning of the act of March 26, 1908, and is no bar to repayment under that act.

REPAYMENT—ASSIGNMENT OF DESERT LAND ENTRY.

The assignment of a desert land entry carries with it all rights to repayment of moneys paid in connection with the entry.

JONES, *First Assistant Secretary:*

The Barnett and Morrow Land, Irrigation and Orchard Company, transferee of Mary P. Morrow, appealed from decision of March 31, 1914, in this case, rejecting its application for repayment of purchase money paid by Mary P. Morrow on final proof of her desert-land entry (Roswell 368), made May 21, 1904, and canceled, on relinquishment, April 1, 1907. Charles E. Waldron contested this entry, and contest was dismissed.

The Commissioner of the General Land Office rejected final proof and thereupon entrywoman and her transferee relinquished all right to the land and the entry was canceled. The Commissioner denied repayment on an implication that relinquishment and cancellation were due to the discovery of false and misleading representations of the entrywoman. Nothing in the record shows such fact.

The present entry and one made by Katie Barnett were contested after submission of final proof by separate parties. The Barnett contest was first heard and the evidence, by stipulation of the parties, in that case, so far as applicable, was made the evidence in the present one. The local office, in the present case, found in substance that the land involved had not been reclaimed from its desert condition; that the system of ditches was and is wholly inadequate for conducting water on each legal subdivision; no irrigation except upon a very small portion of the land; that water carried in the main ditch was simply turned into the ditch on said land for a short time and was not sufficient to irrigate an adjoining orchard of 160 acres and from 20 to 40 acres of other land, for which purpose it was used. On these facts, the local office recommended cancellation of the entry and rejection of the final proof. There was no finding of fraud, but insufficiency of water supply.

The evidence shows, without question, that strenuous efforts had been made by the parties to irrigate their lands. They had constructed a second and perhaps a third dam, their work being washed away at each recurring season.

After the finding of the local office, contestant dismissed his contest and claimant Morrow did not appeal but, joined by her husband and transferee, the orchard company, relinquished the land to the United States, giving up further attempt at reclamation.

The case is substantially like that of Dorathy Ditmar (43 L. D., 104), wherein it was held:

For purposes of administration of this repayment law, it is held that wherever an application, entry or proof fails or is defeated for any cause short of the voluntary abandonment or relinquishment of the applicant or entryman, it is rejected within the meaning of the statute; and where the application or entry is relinquished, as under the circumstances disclosed by this record, such relinquishment will not be regarded, necessarily, as voluntary. The Commissioner of the General Land Office should, in all cases involving repayment, require a positive showing of the facts relied upon by the applicant, and where, as in this case, the entry has been relinquished, such showing must include evidence that the relinquishment was not voluntarily made. The claimant's affidavit that she relinquished her entry solely to avoid the expense and uncertainty of a contest with the Government is, *prima facie*, sufficient upon that issue.

The evidence here shows that in the companion case of Michelet against Katie Barnett, the land office, November 23, 1905, held the

water right insufficient, and that finding was affirmed by the Department, December 3, 1906 (unreported), and, as consequence of that decision, Morrow relinquished her entry, so that it was in no proper sense voluntary.

There remains an additional point to consider. The Commissioner denied repayment, on the ground of its assignment, citing as authority the decision in Tollef Oakland (42 L. D., 181). That case is not applicable. It involved repayment made upon a timber and stone purchase, which entry is not assignable, but a desert-land entry is expressly made assignable by the statute. It is a principle of equity jurisprudence that, if a conveyance may lawfully be made, the conveyance of itself operates as an equitable assignment of every right in the thing sold. This is recognized by the land department in case of soldiers' additional right. If land be located under soldiers' additional right, a conveyance of the land by deed operates to convey the right itself, if the title to the land fails.

The case here is similar. When Mrs. Morrow deeded her land she deeded all the rights that arose from her entry, which included the right to repayment.

The decision is reversed and, if no other objection appear, repayment will be made.

JOHN MARCKLE.

Decided December 30, 1914.

COAL DECLARATORY STATEMENT—EXPIRATION—REJECTION.

Upon expiration of the period allowed by the statute within which to make proof and payment for lands included within a coal declaratory statement, without action by the declarant, the declaratory statement expires by limitation of law; and subsequent action by Commissioner of the General Land Office holding the declaratory statement for rejection is unnecessary and without legal effect and furnishes no ground for appeal to the Department.

JONES, First Assistant Secretary:

December 7, 1910, Robert Mathieson made homestead entry 015084, at Glasgow, Montana, for the SW. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 32, T. 27 N., R. 58 E., and lots 2, 3, 4, and 5, Sec. 5, T. 26 N., R. 58 E., M. M., together with other lands, subject to the provisions of the act of June 22, 1910 (36 Stat., 583). The land was classified as coal land at \$20 per acre, and restored to entry by Executive order of March 31, 1911.

August 11, 1913, John Marckle filed coal land declaratory statement No. 023128, the statement having been executed December 14, 1912, which alleged that he entered into possession of the land upon December 1, 1911, and had opened a mine of coal upon February 20, 1912, at an expenditure of \$750, the improvements consisting of an

entry about 120 feet long, air shaft, etc. This statement was rejected by the register and receiver, August 11, 1913, for the reason that it conflicted with the homestead entry of Mathieson. Marckle appealed to the Commissioner, who, upon January 19, 1914, held that Marckle had forfeited any preference right that he might have acquired by virtue of opening and improving a coal mine, by his failure to file his declaratory statement, and make application within the fourteen months allowed by Revised Statutes, sections 2349 and 2350, but that he would be allowed thirty days from notice within which to file an application to purchase. Marckle has appealed from that decision. The appellant, therefore, relies upon possession dating from December 1, 1911, and the opening and improving of a coal mine February 20, 1912. He alleges that the delay in filing of his statement was due to an oversight of the local land officers. It further now appears that under advice from the register and receiver he upon December 15, 1913, filed another coal land declaratory statement No. 024245 for the same land, alleging practically the same state of facts. He requests that he be allowed one year from and after the date of the acceptance of his second declaratory statement, that is, one year from and after December 15, 1913, within which to make proof and payment for the lands.

Section 3 of the act of June 22, 1910, *supra*, provides as follows:

The coal deposits in such lands shall be subject to disposal by the United States in accordance with the provisions of the coal-land laws in force at the time of such disposal. Any person qualified to acquire coal deposits or the right to mine and remove the coal under the laws of the United States shall have the right, at all times, to enter upon the lands selected, entered, or patented, as provided by this act, for the purpose of prospecting for coal thereon upon the approval by the Secretary of the Interior of a bond or undertaking to be filed with him as security for the payment of all damages to the crops and improvements on such lands by reason of such prospecting.

The regulations of September 8, 1910 (39 L. D., 179), paragraph 6, require that as a condition precedent to the exercise of the right mentioned to prospect for coal, a bond or undertaking to indemnify the nonmineral claimant must be approved, the right to prospect to date from receipt of notice of approval of the bond. No such bond was furnished with declaratory statement No. 023128, but has been filed with the second declaratory statement, and the sufficiency of this bond is still under consideration by the Commissioner. However, it is not necessary to here pass upon the legality of the coal claimant's entry into possession and the digging of a coal mine prior to the submission and approval of the bond. Section 2349, Revised Statutes, requires the filing of a declaratory statement within sixty days after the date of actual possession and commencement of improvements on the land. Such statements may be filed for lands

entered under the act of June 22, 1910, at any time after such entry has been allowed of record in the local land office. (Paragraph 6, Regulations of September 18, 1910, *supra*.) Section 2350 requires all persons claiming a preference right under section 2348, Revised Statutes, to prove their respective rights and pay for the lands filed upon within one year from the time prescribed for filing their respective claims, and upon failure to do so the land becomes subject to entry by any other qualified applicant.

Upon the expiration of the period allowed by the statute within which to make proof and payment for the lands included within the declaratory statement, without action by the declarant, the said coal declaratory statement expired by limitation of law. See paragraph 12, Coal Land Regulations, approved April 12, 1907 (35 L. D., 665), and Northern Pacific Railway Company *v.* DeLacey, 174 U. S., 622. Such being the fact, the Commissioner's decision holding or purporting to hold for rejection the said declaratory statement has no legal basis and afforded no ground for an appeal to this Department, nor could the coal claimant be granted a preference right to purchase the land for any time exceeding that limited by the statute. Further, the claimant has now filed another declaratory statement which is in course of adjudication by the Commissioner.

Accordingly, and for the foregoing reasons, the appeal is dismissed.

FREE USE OF COAL IN UNRESERVED PUBLIC LANDS IN ALASKA.

REGULATIONS.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

Washington, December 30, 1914.

REGISTERS AND RECEIVERS,

United States Land Offices at Fairbanks,

Juneau, and Nome, Alaska:

Section 10 of the act of October 20, 1914 (Public, 216), provides:

That in order to provide for the supply of strictly local and domestic needs for fuel the Secretary of the Interior may, under such rules and regulations as he may prescribe in advance, issue to any applicant qualified under section three of this act a limited license or permit granting the right to prospect for, mine, and dispose of coal belonging to the United States on specified tracts not to exceed ten acres to any one person or association of persons in any one coal field for a period not exceeding ten years, on such conditions not inconsistent with this act as in his opinion will safeguard the public interest without payment of royalty for the coal mined or for the land occupied: *Provided*, That the acquisition or holding of a lease under the preceding sections of this act shall be

no bar to the acquisition, holding, or operating under the limited license in this section permitted. And the holding of such license shall be no bar to the acquisition or holding of such a lease or interest therein.

Owing to the legal embarrassment occasioned by existing claims and there being no settlements or local industries in or adjacent to the Bering River or Matanuska coal fields, these regulations and the permits provided for, shall not at present apply to coal deposits in those fields.

Qualifications.—Under the terms of the act, expressed in section 3 thereof, only citizens of the United States above the age of twenty-one years, associations of such citizens, corporations and municipalities organized under the laws of the United States or of any State or Territory thereof, provided the majority of the stock of such corporations shall at all times be owned and held by citizens of the United States, are eligible to receive a permit to prospect for and mine coal from the unreserved public lands in Alaska.

Who may mine coal for sale.—All permittees may mine coal for sale except railroads and common carriers, who by the terms of section 3 of the act are restricted to the acquirement of only such an amount of coal as may be required and used for their own consumption.

Duration of permits.—Permits will be granted for two years, beginning at date of filing, if filed in person or by attorney, or date of mailing, if sent by registered letter, subject to the approval of the Commissioner of the General Land Office; and upon application and satisfactory showing as to the necessity therefor, may be extended by the Commissioner for a longer period, subject to such conditions necessary for the protection of the public interest as may be imposed prior to or at the time of the extension. Misrepresentation, carelessness, waste, injury to property, the charge of unreasonable prices for coal, or material violation of such rules and regulations governing operation as shall have been prescribed in advance of the issuance of a permit, will be deemed sufficient cause for revocation.

Limitation of area.—The act limits the area to be covered in any one permit to ten acres. It is not to be inferred from this, however, that the permits granted thereunder shall necessarily cover that area. The ground covered by a permit must be square in form and should be limited to an area reasonably sufficient to supply the quantity of coal needed.

Scope of permit.—Permits issued under section 10 of the act of October 20, 1914, grant only a license to prospect for, mine, and remove coal free of charge from the unreserved public coal lands in Alaska, and do not authorize the mining of any other form of mineral deposit, nor the cutting or removal of timber.

How to proceed to obtain a permit.—The application should be duly executed on Form 4—020, and the same should either be transmitted by registered mail to, or filed in person with, the Register and Receiver of the United States land office of the district in which the land is situated. Prior to the execution of the application the applicant must have gone upon the land, plainly marked the boundaries thereof by substantial monuments, and posted a notice setting forth his intention of mining coal therefrom. The application must contain the statement that these requirements have been complied with and the description of the land as given in the application must correspond with the description as marked on the ground. The permit, if granted, should be recorded with the local mining district recorder, if the land is situated within an organized mining district.

When coal may be mined before issuance of a permit.—In view of the fact that by reason of long distances and limited means of transportation many applicants may be unable to appear in person at the United States land office to file their applications, it has been deemed advisable to allow such applicants the privilege of mining coal as soon as their applications have been duly executed and sent by registered mail to the proper United States land office. Should an application be rejected, upon receipt of notice thereof all privileges under this paragraph terminate, and the applicant must cease mining the coal.

Action by Register.—The Register will keep a proper record of all applications received and all actions taken thereon in a book provided for that purpose. If there appear no reason why the application should not be allowed, the Register will issue a permit on the form provided for that purpose. Should any objection appear either as to the qualifications of the applicant or applicants, or in the substance or sufficiency of the application, the Register may reject the application or suspend it for correction or supplemental showing under the usual rules of procedure, subject to appeal to the Commissioner of the General Land Office. Upon the issuance of a permit the Register will promptly forward to the Commissioner of the General Land Office, by special letter, the original application and a copy of the permit, and transmit copies thereof to the Chief of the Alaskan Field Division, and to the local representative of the United States Bureau of Mines, for their information and use in the event that it should be found necessary or advisable to make investigations or inspections.

Note.—These regulations are intended merely as a temporary arrangement to meet immediate necessities, as authorized by section 10 of the act of October 20, 1914, and are not to be construed as applying to the leasing of public coal lands in Alaska provided in

other sections of the act. Full regulations governing the matter of leasing will be issued as soon as practicable.

Very respectfully,

CLAY TALLMAN,
Commissioner.

Approved:

FRANKLIN K. LANE,
Secretary.

4-020

APPLICATION FOR PERMIT TO MINE COAL IN ALASKA UNDER SECTION 10 OF THE ACT OF OCTOBER 20, 1914 (PUBLIC, 216).

-----, 191-
The Commissioner of the General Land Office, Washington, D. C.

SIR: The undersigned, -----
(Name of applicant.)

of -----, hereby appl for a permit to
(Post-office address.)
prospect for, mine, and remove coal from the following-described land: -----
(Describe

the land by legal subdivision if surveyed, and by metes and bounds with reference to
some permanent natural landmark if unsurveyed.)

containing approximately ----- acres, situated within
the ----- land district, ----- miles -----
(Direction.)

of -----, Alaska, and in support of this application
make the following representation as to qualifications to receive a permit:

(Citizenship of applicant or applicants must here be shown. If the applicant is a
municipality or corporation, it must be shown under what laws it is organized; and
if the latter, it must also be shown whether a majority of its stock is owned and held
by citizens of the United States.)

The applicant further represent that ----- ha not, within
(He, they, or it.)

two years last past, applied for or received a permit to mine coal under the
provisions of section 10 of the act of October 20, 1914, in the coal field in which
the land described in this application is situated, -----
(State exceptions here, if any.)

and that the coal herein applied for is to be mined for the purpose of supplying
the following demands, for which approximately ----- tons are
required annually: -----

(Here itemize the various uses to which the coal is to be applied,
stating the number of tons necessary for each use.)

It is further represented that the boundaries of the tract described in this
application have been plainly marked by substantial monuments, and that a
proper notice describing the land and showing the intention of the applicant to

apply for a free permit to mine coal therefrom, has been posted in a conspicuous place upon the land.

On consideration that a permit be granted, the applicant hereby agree :

1. To exercise reasonable diligence, precaution, and skill in the operation of the mine, with a view to the prevention of injury to workmen, waste of coal, damage to Government property, and to comply substantially with the instructions and the rules and regulations printed on the back of this application.

2. To charge only such prices for coal sold to others as represent a fair return for the labor expended and reasonable earning value to which the investment in the enterprise is entitled, without including any charge for the coal itself.

3. Not to mine or dispose of, either directly or indirectly, any coal from the area covered by said permit for export or any purpose other than "strictly local and domestic needs for fuel."

4. To leave the premises in good condition upon the termination of the permit, with all mine props and timbers in the mine intact, and with the underground workings free from refuse and in condition for continued mining operations.

Signature of applicant _____

The foregoing application was signed by _____

of _____, the applicant therein, in the presence of the undersigned, who, at _____ request and in _____ presence and in _____ (His or their.) (His or their.) the presence of each other, have subscribed our names as witnesses to the execution thereof.

Dated this _____ day of _____, 19____, at _____, Territory of Alaska.

Name _____ Residence _____

Name _____ Residence _____

OFFERINGS AT PUBLIC SALE—SECTION 2455, R. S.—ACT MARCH 28, 1912.

CIRCULAR.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

Washington, January 11, 1915.

REGISTERS AND RECEIVERS,

UNITED STATES LAND OFFICES.

SIRS: The sale of isolated tracts of public land is authorized by section 2455 of the Revised Statutes, as amended by the act of June 27, 1906 (34 Stat., 517); tracts which are mountainous or too rough for cultivation, though not isolated, may be sold under the first proviso to the act of March 28, 1912 (37 Stat., 77), see page 490; special provisions as to lands in Western Nebraska are found in the act of March 2, 1907 (34 Stat., 1224).

The present instructions constitute a revision of those of July 17, 1913 (42 L. D., 236), the paragraphs changed being those numbered 2, 6, 8, 10, 12, and 14, and the regulations as to offerings of rough or mountainous land, and of the surface of coal land, now

designated as paragraphs 15, 16, and 17. The prescribed forms are also changed.

As revised, the regulations provide (1) that an applicant or purchaser need not be a citizen of the United States, but must at least have declared his intention to become such; (2) that the highest bidder must immediately pay to the receiver the amount of his bid, and (3) that a sale shall not, as heretofore, be kept open for an hour, but shall be declared closed when those present in the office at the hour named therefor have ceased bidding, and the highest bidder has paid for the land.

GENERAL REGULATIONS.

1. Applications to have isolated tracts ordered into market must be filed with the register and receiver of the local land office in the district wherein the lands are situated.

2. Applicants must show by their affidavits, corroborated by at least two witnesses, that the land contains no salines, coal, or other minerals; the amount, kind, and value of timber or stone thereon, if any; whether the land is occupied, and if so, the nature of the occupancy; for what purpose the land is chiefly valuable; why it is desired that same be sold; that applicant desires to purchase the land for his own individual use and actual occupation and not for speculative purposes, and that he has not heretofore purchased under section 2455, Revised Statutes, or the amendments thereto, isolated tracts the area of which, when added to the area now applied for, will exceed approximately 160 acres; and that he is a citizen of the United States, or has declared his intention to become such. If applicant has heretofore purchased lands under the provisions of the acts relating to isolated tracts, same must be described in the application by subdivision, section, township, and range.

3. The affidavits of applicants to have isolated tracts ordered into market and of their corroborating witnesses may be executed before any officer having a seal and authorized to administer oaths in the county or land district in which the tracts described in the applications are situated.

4. The officer before whom such affidavits are executed will cause each applicant and his witnesses to fully answer the questions contained upon the accompanying form and, after the answers to the questions therein contained have been reduced to writing, to sign and swear to same before him.

5. No sale will be authorized upon the application of a person who has purchased under section 2455, Revised Statutes, or the amendments thereto, any lands the area of which, when added to the area applied for, shall exceed approximately 160 acres.

6. Only one tract may be included in an application for sale, based upon the isolation thereof, and no tract exceeding approximately 160 acres in area will be ordered into the market.

7. No tract of land will be deemed isolated and ordered into the market unless, at the time application is filed, the said tract has been subject to homestead entry for at least two years after the surrounding lands have been entered, filed upon, or sold by the Government, except in cases where some extraordinary reason is advanced sufficient, in the opinion of the Commissioner of the General Land Office, to warrant waiving this restriction.

8. The local officers will, on receipt of applications, note same upon the tract books of their office, and if the applications are not properly executed or not corroborated they will reject the same, subject to the right of appeal. Applications found to be properly executed and corroborated will be disposed of as follows:

(a) If the applicant does not show himself qualified, or if the tract appears not to be subject to disposition under the provisions of paragraph 7, or if all the land is appropriated, the local officers will reject the application subject to the usual right of appeal; if part of the tract is appropriated, they will reject the application as to that part, and, in the absence of an appeal after the usual notice, they will eliminate the description thereof from the application and take further action as though it had never been included therein. Where an appeal is filed, the Commissioner of the General Land Office, if he decides to order into market a part, or all, of the lands, will call upon the local officers and the chief of field division for the reports as next provided for, concerning the value of the land.

(b) If all of the land applied for is vacant and not withdrawn or otherwise reserved from such disposition and the status of the surrounding lands is such that a sale might properly be ordered under paragraph 7, the local officers, after noting the application on their records, will promptly forward the same to the chief of field division for report as to the value of the land and any objection he may wish to interpose to the sale, and the register will make proper notations on his schedule of serial numbers in the event the application is not returned in time to be forwarded with the returns for the month in which it is filed. Upon receipt of the application from the chief of field division, with his report thereon, the local officers will attach their report as to the status of the land and that surrounding, the value of the land applied for, if they have any knowledge concerning the same, and any objection to the sale known to them, and forward the papers to the General Land Office with the returns for the current month.

9. An application for sale under these instructions will not segregate the land from entry or other disposal, for such lands may be entered at any time prior to the receipt in the local land office of the letter authorizing the sale and its notation of record. Should all of the land applied for be entered or filed upon while the application for sale is in the hands of the chief of field division, the local officers will so advise him and request the return of the application for forwarding to the General Land Office. Likewise, should any or all of the land be entered or filed upon while the application for sale is pending before the General Land Office, the local officers will so report by special letter.

10. Upon receipt of letter authorizing the sale the local officers will at once examine the records to see whether the tract, or any part thereof, has been entered. If the examination of the record shows that all of the tract has been entered or filed upon, the local officers will not promulgate the letter authorizing the sale, but will report the facts to the General Land Office, whereupon the letter authorizing the sale will be revoked. If a part of the land has been entered, they will so report and note on the tract book, opposite such portion of the tract as is found to be clear, that sale has been authorized, giving the date of the letter. Thereupon the land will be considered segregated for the purpose of sale. The minimum price set by the order for sale should also be noted on the records. In the event no sale is had the price so noted will be effective as to any subsequent application for offering, filed within three years after the date of the report of the chief of field division.

The local officers will prepare a notice for publication on the form hereinafter given, describing the land found to be unentered, and fixing a date for the sale, which date must be far enough in advance to afford ample time for publication of the notice, and for the affidavit of the publisher to be filed in the local land office prior to the date of the sale. The register will also designate a newspaper as published nearest to the land described in the notice. The notice will be sent to the applicant with instructions that he must publish the same at his expense in the newspaper designated by the register. Payment for publication must be made by applicant directly to the publisher, and in case the money for publication is transmitted to the receiver, he must issue receipt therefor, and immediately return the money to the applicant by his official check, with instructions to arrange for the publication of the notice as hereinbefore provided.

If evidence of publication is not filed at or before the time set for the offering, the local officers will close the case on their records, and will report the default to the General Land Office, which will, without letter, close the case on its records.

11. Notice must be published once a week for 5 consecutive weeks (or 30 consecutive days, if in a daily paper) immediately prior to the date of sale, but a sufficient time should elapse between the date of last publication and date of sale to enable the affidavit of the publisher to be filed in the local land office. The notice must be published in the paper designated by the register as nearest the land described in the application. The register and receiver will cause a similar notice to be posted in the local land office, such notice to remain posted during the entire period of publication. The applicant must file in the local land office; prior to the date fixed for the sale, evidence that publication has been had for the required period, which evidence may consist of the affidavit of the publisher, accompanied by a copy of the notice published.

12. At the time and place fixed for the sale the register or receiver will read the notice of sale and allow all qualified persons an opportunity to bid. Bids may be made through an agent personally present at the sale, as well as by the bidder in person. The register or receiver conducting the sale will keep a record showing the names of the bidders and the amount bid by each. Such record will be transmitted to this office with the other papers in the case.

When all persons present shall have ceased bidding, the local officers will, in the usual manner, declare the sale closed, announcing the name of the highest bidder; the highest bid will be accepted and the offerer thereof (or his principal) will be declared the purchaser, provided he immediately pay to the receiver the amount of the bid; in the absence of such payment the officers will at once proceed with the sale, excluding bids by him, and starting with the highest bid not withdrawn. The accepted bidder must, within 10 days after the sale, furnish evidence that he is a citizen of the United States or has declared his intention to become such; also, a nonmineral affidavit or (in the States where that is sufficient) a nonsaline affidavit. Upon the filing of these papers the local officers will issue final certificate.

13. No lands will be sold at less than the price fixed by law, nor at less than \$1.25 per acre; but a minimum price will be set by the letter ordering the sale, based upon the report of the chief of field division. Should any of the lands offered be not sold, the same will not be regarded as subject to private entry unless located in the State of Missouri (act of Mar. 2, 1889, 25 Stat., 854), but may again be offered for sale in the manner herein provided.

14. After each offering where the lands offered are *not* sold, the local officers will close the case on their records and report by letter to the General Land Office. No report by letter will be made when the offering results in a sale; but the local officers will issue cash papers as in ordinary cash entries, noting thereon the date of the

letter authorizing the offering, and report the same in their current monthly returns. With the papers must also be forwarded the affidavit of publisher showing due publication and the register's certificate of posting. In all cases where no sale is had the land will, in the absence of other objection, become subject to entry or filing at once without action by this office.

ACT OF MARCH 28, 1912 (37 STAT., 77).

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section twenty-four hundred and fifty-five of the Revised Statutes of the United States be amended to read as follows:

"Sec. 2455. It shall be lawful for the Commissioner of the General Land Office to order into market and sell at public auction, at the land office of the district in which the land is situated, for not less than one dollar and twenty-five cents an acre, any isolated or disconnected tract or parcel of the public domain not exceeding one-quarter section which, in his judgment, it would be proper to expose for sale after at least thirty days' notice by the land officers of the district in which such land may be situated: *Provided*, That any legal subdivisions of the public land, not exceeding one-quarter section, the greater part of which is mountainous or too rough for cultivation, may, in the discretion of said commissioner, be ordered into the market and sold pursuant to this act upon the application of any person who owns lands or holds a valid entry of lands adjoining such tract, regardless of the fact that such tract may not be isolated or disconnected within the meaning of this act: *Provided further*, That this act shall not defeat any vested right which has already attached under any pending entry or location."

REGULATIONS UNDER FIRST PROVISIO TO ACT OF MARCH 28, 1912.

15. The first proviso to the act copied above authorizes the sale of legal subdivisions not exceeding one-quarter section, the greater part of which is mountainous or too rough for cultivation, upon the application of any person who owns or holds a valid entry of lands adjoining such tract and regardless of the fact that such tract may not be actually isolated by the entry or other disposition of surrounding lands. It is left entirely to the discretion of the Commissioner of the General Land Office to determine whether a tract shall be sold, and it will not be practicable to prescribe a set of rules governing the conditions which would render a tract susceptible to sale under the proviso. Applications will be disposed of by you in accordance with the "General Regulations," except paragraph 7, which is not applicable. Applications may be made upon the form provided (4-008b) and printed herein, properly modified as necessitated by the terms of the proviso. In addition the applicant or applicants must furnish proof of his or their ownership of the whole title to adjoining land, or that he holds a valid entry embracing adjoining land, in connection with which entry he has met the re-

quirements of the law, stating how he has complied therewith; also detailed evidence as to the character of the land applied for, the extent to which it is cultivable, and the conditions which render the greater portion unfit for cultivation; also a description of any and all lands theretofore applied for under the proviso or purchased under section 2455 or the amendments thereto. This evidence must consist of an affidavit by the claimant, corroborated by the affidavits of not less than two disinterested persons having actual knowledge of the facts.

An application under the proviso may include two or more tracts (not making more than 160 acres), provided each is contiguous to the same body of land owned or held by applicant; no person will be allowed more than one application thereunder unless he shows conditions which prevented inclusion therein of all the tracts in question. And in no event will an application be entertained where the applicant has purchased under section 2455, or the amendments thereto, an area which, when added to the area applied for, shall exceed approximately 160 acres.

16. In the notices for publication and posting, where sale is authorized under the proviso, you will add after the description of the land, "This tract is ordered into the market on a showing that the greater portion thereof is mountainous or too rough for cultivation."

ISOLATED TRACTS OF COAL LAND.

17. The act of Congress approved April 30, 1912 (37 Stat., 105), provides:

That * * * unreserved public lands of the United States, exclusive of Alaska, which have been withdrawn or classified as coal lands, or are valuable for coal, shall * * * be subject * * * to disposition * * * under the laws providing for the sale of isolated or disconnected tracts of public lands, but there shall be a reservation to the United States of the coal in all such lands so * * * sold, and of the right to prospect for, mine, and remove the same in accordance with the provisions of the act of June twenty-second, nineteen hundred and ten, and such lands shall be subject to all the conditions and limitations of said act.

In administering this act the foregoing regulations should be followed, in so far as they are applicable, and these additional instructions are prescribed:

An application to have coal land offered at public sale must bear on its face the notation:

Application made in accordance with and subject to the provisions and reservations of the act of June 22, 1910 (36 Stat., 583).

In the printed and posted notice of sale will appear the statement:

This land will be sold in accordance with, and subject to, the provisions and reservations of the act of June 22, 1910 (36 Stat., 583).

The purchaser's consent to the reservation of the coal in the land to the United States will not be required, but the cash certificate and patent will contain respectively the provisions specified in paragraph 7 (b) of the circular of September 8, 1910 (39 L. D., 179).

Very respectfully,

CLAY TALLMAN,
Commissioner.

Approved:

ANDRIEUS A. JONES,
First Assistant Secretary.

(Form 4-008b.)

APPLICATION FOR SALE OF ISOLATED OR DISCONNECTED TRACTS.

DEPARTMENT OF THE INTERIOR,
UNITED STATES LAND OFFICE,

_____, 19__

To the COMMISSIONER OF THE GENERAL LAND OFFICE:

_____, whose post-office address is _____ respectfully requests that the _____ of section _____, township _____, range _____, be ordered into market and sold under Sec. 2455, Revised Statutes, at public auction, the same having been subject to homestead entry for at least two years after the surrounding lands were entered, filed upon, or sold by the Government.

Applicant states that he is a _____ (here state whether native-born or naturalized citizen of the United States, or has declared his intention to become a citizen, as the case may be); that this land contains no salines, coal, or other minerals, and no stone except _____; that there is no timber thereon except _____ trees of the _____ species, ranging from _____ inches to _____ feet in diameter, and aggregating about _____ feet stumpage measure, of the estimated value of \$_____; that the land is not occupied except by _____ of _____ post office, who occupies and uses it for the purpose of _____, but does not claim the right of occupancy under any of the public-land laws; that the land is chiefly valuable for _____, and that applicant desires to purchase same for his own individual use and actual occupation for the purpose of _____, and not for speculative purposes; that he has not heretofore purchased public lands sold as isolated tracts, the area of which when added to the area herein applied for will exceed approximately 160 acres. The lands heretofore purchased by him under said act are described as follows: _____

If this request is granted, applicant agrees to have notice published at his expense in the newspaper designated by the register.

(Applicant will answer fully the following questions:)

Question 1. Are you the owner of land adjoining the tract above described? If so, describe the land by section, township, and range.

Answer. _____

Question 2. To what use do you intend to put the isolated tract above described should you purchase same?

Answer. _____

Question 3. If you are not the owner of adjoining land, do you intend to reside upon or cultivate the isolated tract?

Answer. _____

Question 4. Have you been requested by anyone to apply for the ordering of the tract into market? If so, by whom?

Answer. _____

Question 5. Are you acting as agent for any person or persons or directly or indirectly for or in behalf of any person other than yourself in making said application?

Answer. _____

Question 6. Do you intend to appear at the sale of said tract if ordered, and bid for same?

Answer. _____

Question 7. Have you any agreement or understanding, expressed or implied, with any other person or persons that you are to bid upon or purchase the land for them or in their behalf, or have you agreed to absent yourself from the sale or refrain from bidding so that they may acquire title to the land?

Answer. _____

(Sign here with full christian name.)

We are personally acquainted with the above-named applicant and the land described by him, and the statements hereinbefore made are true to the best of our knowledge and belief.

(Sign here with full christian name.)

(Sign here with full christian name.)

I certify that the foregoing application and corroborative statement were read to or by the above-named applicant and witnesses in my presence before affiants affixed their signatures thereto; that I verily believe affiants to be credible persons and the identical persons hereinbefore described; that said affidavits were duly subscribed and sworn to before me at my office, at _____ this _____ day of _____, 19__.

(Official designation of officer.)

(Forms 4-348c and 4-348d.)

ISOLATED TRACT—PUBLIC LAND SALE.

DEPARTMENT OF THE INTERIOR,
UNITED STATES LAND OFFICE,

_____, 19__

Notice is hereby given that, as directed by the Commissioner of the General Land Office, under the provisions of Sec. 2455, Revised Statutes, pursuant to the application of _____, Serial No. _____, we will offer at public sale, to the highest bidder, but at not less than \$_____ per acre, at _____ o'clock __ m., on the _____ day of _____ next, at this office, the following tract of land:-----

The sale will not be kept open, but will be declared closed when those present at the hour named have ceased bidding. The person making the highest bid will be required to immediately pay to the receiver the amount thereof.

Any persons claiming adversely the above-described land are advised to file their claims or objections on or before the time designated for sale.

Register.

Receiver.

REVISED FORMS FOR FINAL PROOFS ON HOMESTEAD ENTRIES.

CIRCULAR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., January 12, 1915.

REGISTERS AND RECEIVERS,
UNITED STATES LAND OFFICES.

SIRS: On November 14, 1914, the department approved a revision of Forms 4-369 (testimony of claimant) and 4-369a (testimony of witnesses), for final proofs on homestead entries. A supply of the revised forms is being sent to all district offices.

On and after March 1, 1915, you will not accept proofs made on other forms.

Because of the fact that many proof-taking officers have supplied themselves with the blank forms heretofore in use, you will, until further advised, during the last week of each month, forward to each officer enough of the new forms for the next month's business, the number to be sent to be determined by an actual count of the cases theretofore set before each officer. Under no circumstances should the number be estimated, and you are cautioned to exercise great care in carrying out the above directions.

A copy hereof should be sent to each proof-taking officer in your respective districts.

Very respectfully,

CLAY TALLMAN,
Commissioner.

Approved:

ANDRIEUS A. JONES,
First Assistant Secretary.

EXTENSION OF PUBLIC SURVEYS IN ALASKA—HOMESTEAD PROOFS.

CIRCULAR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, January 12, 1915.

REGISTERS AND RECEIVERS,
UNITED STATES LAND OFFICES,
Juneau, Nome, and Fairbanks, Alaska.

SIRS: Where the public surveys of the United States have been extended over a township in Alaska in which a homestead claim has

theretofore been located under the act of March 3, 1903 (32 Stat., 1028), or where it is initiated after such extension, then the provision of the act that patent shall issue "under the procedure in the obtaining of patents to the unsurveyed lands of the United States, as provided for by section 10" of the act of May 14, 1898 (30 Stat., 409), has no application; for its effect is limited to cases in which the settler submits proof (by way of commutation or otherwise) before the inclusion of his claim in the public survey system.

2. Unless a special survey of his claim shall have been already approved, the settler must file an application for homestead entry thereof, as provided by section 2289, United States Revised Statutes, same being conformed to legal subdivisions, including his settlement so far as practicable. Publication and posting of notice of his intention to submit proof on the entry shall be made after its allowance by the local officers, in the manner prescribed by the act of March 3, 1879 (20 Stat., 472); and the proof will be submitted, as provided by the laws and regulations applicable to homestead entries in the public-land States, due regard being had to section 7 of the act of March 2, 1889 (25 Stat., 854), amendatory of the act last mentioned. Provided proper compliance with the law is shown, no adverse claim appears on the local records, and all sums due are paid, the register will issue final certificate on the entry.

3. Such an entry may be contested or protested and proceedings had thereunder in accordance with the rules and regulations applicable to similar entries in the public-land States. The questions involved will not be litigated in the courts, but in the land department under the general rules of practice.

4. Proof on a homestead entry must be submitted within the land district in which it is situated; but, subject to that condition, the extension of the system of surveys does not preclude the taking thereof, and the execution of all other papers in connection with the entry, before any of the officers indicated in section 10 of the act of May 14, 1898.

Very respectfully,

CLAY TALLMAN,
Commissioner.

Approved:

ANDRIEUS A. JONES,
First Assistant Secretary.

GEORGE W. MORRISON.

Decided September 26, 1914.

RESERVOIR LANDS RESTORED BY ACT OF MARCH 3, 1905—SOLDIERS ADDITIONAL.

Lands formerly embraced in a withdrawal for reservoir purposes and restored to the public domain by the act of March 3, 1905, "subject to homestead entry only," are not subject to appropriation by location of soldiers' additional rights.

JONES, First Assistant Secretary:

George W. Morrison has appealed from decision of the Commissioner of the General Land Office holding for rejection his application to enter, under sections 2306 and 2307, Revised Statutes, the SW. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 33, T. 143 N., R. 27 W., Minnesota, on the ground that the lands are not subject to such an entry.

The lands were formerly embraced in withdrawal made by executive order for reservoir purposes, and were, by the act of March 3, 1905 (33 Stat., 990), "restored to the public domain" upon condition that they should be "subject to homestead entry only." Section 4 of the act contained a warning against settlement prior to the day on which the lands were to be made subject to homestead entry, and the title of the act "An act to cause certain lands heretofore withdrawn from market for reservoir purposes to be restored to the public domain, subject to entry under the homestead law, with certain restrictions," clearly indicates the purpose of Congress to dispose of these lands only under the legislation commonly known as the "homestead law," which requires not only entry, but residence, improvement, and cultivation for a prescribed period as a prerequisite to title, and negatives the idea that the lands were to be disposed of under soldiers' additional homestead rights or in any other manner inconsistent with the basic principles of the homestead law, even though such rights may have been based upon homestead entries or be regarded in the broadest meaning of the term as homestead entries. In other words, the intent of Congress, as shown by the language used, was, as above stated, to permit the disposition of these lands only under the homestead law in the limited sense of the body of the law, which requires residence, improvement, and cultivation. It is therefore held that the lands are not subject to the application of Morrison, and the Commissioner's decision rejecting the application is affirmed.

GEORGE W. MORRISON.

Motion for rehearing of departmental decision of September 26, 1914, 43 L. D., 496, denied by First Assistant Secretary Jones, December 26, 1914.

HUGHES v. GREATHEAD.

Decided November 24, 1914.

DESERT ENTRY—UNSURVEYED LAND—ACT OF MARCH 28, 1908.

The act of March 28, 1908, according a preference right to make desert land entry, after survey, to one who has taken possession of and reclaimed or commenced to reclaim a tract of unsurveyed desert land, has no application to lands which, although theretofore surveyed and plat thereof filed, have been suspended from all forms of entry or disposal pending a resurvey.

JONES, First Assistant Secretary:

The lands in township 1 south, range 7 east, G. & S. R. M., Phoenix, Arizona, land district, were suspended from all forms of entry or disposal July 22, 1911, pending resurvey. The plat of resurvey of said township was filed in the local office March 10, 1913, and on same day Nicholas M. Greathead made desert-land entry 021622 for the SW. $\frac{1}{4}$, Sec. 17, said township.

March 28, 1913, Frank A. Hughes filed his contest affidavit against said entry, alleging:

That on the 20th day of February, 1912, said land being then withdrawn from entry for the purpose of survey, but being open to settlement, affiant located upon said tract of land; that affiant filed in the office of the county recorder of Maricopa County, State of Arizona, and within the county wherein said land is located, a written notice of location on said tract of land and a declaration of his intention to acquire title thereto under the existing land laws of the United States when said land should be restored to entry. That affiant recorded said notice and plainly marked the boundaries of said land on the 23rd day of February, 1912, and immediately began the reclaiming and improving of said land and ever since has continued to reclaim and improve the same and has expended more than \$250 within the past year in reclaiming and improving the said land. That said land was restored to entry on the 10th day of March, 1913, and that upon said date affiant was engaged in the reclaiming and improving of said land by his employees. That on the 10th day of March, 1913, affiant was absent, in the Republic of Mexico, on business matters requiring his urgent attention, and that owing to the state of war which then and ever since has continued to exist in said Republic he was unable to return to the United States upon the date said land was restored to entry, but that affiant did return with all speed and dispatch to the United States for the purpose of entering said land, but on arriving at Phoenix in said Phoenix Land District on the 26th day of March, 1913, he discovered that said land had been entered by said N. M. Greathead on the 10th day of March, 1913. That at the time said N. M. Greathead entered upon said land he well knew that said land was claimed by this affiant and had actual knowledge and well knew that said land was occupied and had notice and well knew that this affiant had improved and reclaimed said land with a view to entering upon the same when restored to entry, but with intent to defraud this affiant the said N. M. Greathead falsely and fraudulently represented that said land was open and unoccupied, when in fact he well knew said representations were untrue.

Notice was served, and July 5, 1913, answer filed denying each and every allegation of said contest affidavit and alleging that contestant was not on the 20th day of February, 1912, nor at any time since qualified to make or hold a desert-land entry in Arizona. Upon due proceedings therefor the hearing was before the local officers in October, 1913, both parties appearing and submitting testimony. December 11, 1913, the local officers joined in decision recommending cancellation of the entry, concluding as follows:

Between the dates of July 22, 1911, and March 10, 1913, the land in question had the same status as unsurveyed land, and it appears from the testimony that the contestant has had *bona fide* acts of settlement done upon the same during this time, and that this action was begun within ninety days from the official filing of the plat of resurvey in this office.

This action of the local officers was based upon the conclusion that Hughes obtained a preference right under the act of March 28, 1908 (35 Stat., 52), to make desert-land entry for the land in question.

April 22, 1914, the Commissioner of the General Land Office, considering the case upon appeal, reversed the action of the local officers and dismissed the contest of Hughes, basing such action upon a finding that he had not personally examined the land in controversy and each and every subdivision thereof until March 26, 1913, and that such personal examination on his part was necessary before he could obtain any rights under the provisions of said act of March 28, 1908. Some question also was raised as to whether or not contestant was a *bona fide* resident of the State of Arizona.

In the view the Department takes of this case none of these questions need be considered. The land in controversy was not unsurveyed land, as it had been previously surveyed and plat filed and the tract with other land suspended from all forms of entry or disposal pending resurvey. The provisions of the act of March 28, 1908, therefore had no application whatever to the lands in controversy. This is the inevitable conclusion from the views expressed in the case of *Hart v. Cox* (42 L. D., 592), and cases therein cited, as also departmental decision of January 29, 1914, unreported, in same case of *Hart v. Cox*, on petition for exercise of supervisory authority. The language of said act of March 28, 1908, clearly specifies its application to lands taken possession of prior to survey and that was not the condition of the land in controversy in this case. Departmental decisions that lands suspended for resurvey occupy the status of unsurveyed lands for administrative purposes is not in conflict with the view herein expressed. The only way in which Hughes could have acquired any right in connection with the lands in question was by application to make desert entry therefor.

The decision appealed from is affirmed.

ARCHIE McCORMICK.

Decided December 16, 1914.

MINING CLAIM—IMPROVEMENTS—CERTIFICATE OF SURVEYOR GENERAL.

The certificate of a surveyor-general as to the requisite improvements upon or for the benefit of a lode mining claim, made by the applicant or his grantors, is required whether the applicant be one who is relying upon an application under section 2325, R. S., or one who seeks patent as the successful litigant in an adverse suit under section 2326.

AMENDMENT OF REGULATIONS—IMPROVEMENTS—CERTIFICATE OF SURVEYOR-GENERAL.

Paragraph 49 of the mining regulations of March 29, 1909, amended to authorize surveyors-general to accept corroborated affidavits as the basis for certificates that the improvements returned by mineral surveyors were made by the mining claimants, or their grantors, for the benefit of the claims surveyed.

JONES, *First Assistant Secretary*:

This case is before the Department on what purports to be a motion for rehearing filed by Archie McCormick *et al.* in the matter of their entry for the Kendall lode mining claim, which has been the subject of three previous decisions by the Department. In effect, however, it is an appeal from the action of the surveyor-general of Montana, declining to issue a certificate of improvements with respect to said lode, and will be so treated.

Appellants were successful litigants in an adverse suit instituted by them against applicants for patent to the Golden Rod mining claim, which conflicted to a considerable extent with the Kendall, and the judgment rendered therein awarded said appellants the right of possession to the conflict area. A certified copy of the judgment roll in that proceeding was filed by the Kendall claimants in the local office as a basis for patent, but was not accompanied by the surveyor-general's certificate of improvements. Pursuant to departmental requirements, said claimants applied to the surveyor-general for such certificate, asserting that the Kendall was entitled to be credited with certain improvements which it appears had been previously returned, by the surveyor of the Golden Rod, and asserted by the surveyor-general as having been made by the claimants of the Golden Rod, or their grantors, for the benefit of that claim.

The showing, upon which the Kendall claimants relied, consists of a diagram prepared by Abraham Hogeland, a former mineral surveyor, on the face of which is written the following:

I hereby certify that the diagram above correctly represents the conflict claimed to exist between the "Golden Rod lode" and the "Kendall lode" as actually surveyed by me. And I further certify that the value of the labor and improvements made by the adverse claimants and their grantors is greater than Five Hundred Dollars.

ABRAHAM HOGELAND,

U. S. Deputy Mineral Surveyor at the time survey was made.

Also an affidavit by Mr. Hogeland, who avers that, as a United States mineral surveyor, he made the above-mentioned plat which was attached to the adverse claim of McCormick *et al.* from data obtained as the result of an actual survey of the Kendall claim; that the improvements shown upon the plat were represented to him on the ground by the claimant of the Kendall lode to have been placed thereon by them or their predecessors in interest; that affiant was present as a witness at two trials had upon the adverse claims in the District Court of Fergus County, Montana, and heard all the testimony of the witnesses given upon both sides of the controversy as to improvements upon the claims, and that this evidence showed without any contradiction that with the exception of the Golden Rod discovery shaft, the improvements upon the area in conflict between the Kendall and Golden Rod claims were placed thereon by the claimants of the Kendall lode or their predecessors in interest, and that said improvements were of the value of more than Five hundred dollars. This affidavit was corroborated by the attorney for the Kendall claimants.

The surveyor-general declined to issue his certificate of improvements on this showing, advising the claimants under date of June 22, 1914, that—

my certificate of the value of the labor and improvements made upon mining claims must be (and always is) based upon the report of the U. S. mineral surveyor who surveyed the claim. In the case at issue I have already certified that five hundred dollars worth of labor has been expended or improvements made upon Sur. No. 7687, Golden Rod lode, by the claimants thereof, or their grantors, hence it is obvious why I cannot now certify that these same improvements have been made upon or for the benefit of the Kendall lode by the claimants of that claim.

He further informed them, however, that upon receipt of a report by a United States mineral surveyor of labor and improvements made upon or for the benefit of the Kendall lode, he would issue such certificate.

Section 2325 of the Revised Statutes prescribes that an applicant for patent to a lode mining claim—

at the time of filing his application, or at any time thereafter, within the 60 days of publication, shall file with the register a certificate of the United States surveyor-general that five-hundred-dollars-worth of labor has been expended, or improvements made upon the claim by himself or his grantors.

And by section 2326 it is provided that after judgment in an adverse proceeding prosecuted thereunder shall have been rendered—

the party entitled to the possession of the claim, or any portion thereof, may without giving further notice, file a certified copy of the judgment-roll with the register of the land office, together with a certificate of the surveyor-general that the requisite amount of labor has been expended or improvements made thereon, . . . whereupon . . . patent shall issue thereon for the claim, or such

portion thereof as the applicant shall appear, from the decision of the court to rightfully possess.

The certificate of a surveyor-general as to the requisite improvements upon or for the benefit of a lode mining claim, made by an applicant or his grantors, is, therefore, required, whether the claimant be one who is relying upon an application under section 2325, or one who seeks patent as the successful litigant in an adverse suit. It is declared however, by paragraph 49 of the mining regulations (37 L. D., 728, 768), that:

The surveyor-general may derive his information upon which to base his certificate as to the value of labor expended or improvements made from the mineral surveyor who makes the actual survey and examination upon the premises, and such mineral surveyor should specify with particularity and full detail the character and extent of such improvements, but further or other evidence may be required in any case.

While under the provisions of the foregoing paragraph surveyors-general are authorized to base said certificates as to improvements upon the returns of mineral surveyors (who, by paragraph 156 of the Mining Regulations, are instructed to include in their estimates all actual expenditures and mining improvements made by the claimant or his grantor, having a direct relation to the development of the claim), and are also authorized in any case to require "further or other evidence," said paragraph, nevertheless, does not, except by uncertain or remote implication, authorize surveyors-general to accept the sworn statement of private individuals as a sole basis for a certificate that improvements shown to be upon a claim were placed there by the claimant, or his grantor, for the benefit of that claim. The surveyor-general of Montana was, therefore, under said paragraph of the regulations, warranted in declining to certify that the improvements on the Kendall lode were placed there by the Kendall claimants, or their grantors, until the improvements had been returned by a mineral surveyor as having been so made. Furthermore, the same improvements had been returned by the mineral surveyor as having been made for the claimants of the previously asserted Golden Rod location for the benefit of that claim.

It is obvious, however, that in the great majority of cases mineral surveyors can have no personal knowledge that the improvements found by them upon mining claims and returned by them as having been made by the claimant thereof, or his grantor, were, in fact, made by such person or persons, but of necessity must rely for this information upon statements made to them by others which, it is believed, are rarely, if ever, under oath. There is no reason why these statements, in the form of corroborated affidavits, should not be made to surveyors general, and, if sufficiently definite, specific, comprehensive and reliable, accepted by them as appropriate bases for certificates

that improvements returned by mineral surveyors were made by the claimants, or their grantors, for the benefit of the claims surveyed.

Paragraph 49 of the mining regulations will accordingly be amended to read as follows:

49. The surveyor general may derive his information upon which to base his certificate as to the value of labor expended or improvements made from the mineral surveyor who actually makes survey and examination of the premises, in so far as such matters rest in the personal knowledge of the mineral surveyor. The mineral surveyor should specify with particularity and full detail the character and extent of such improvements. As to when and by whom the improvements were made and other essential matters not within such mineral surveyor's personal knowledge recourse may be had by the surveyor general to corroborated affidavits by persons possessing such personal knowledge, or the best evidence in this behalf otherwise obtainable. This showing should accompany the report of the mineral surveyor as to improvements.

With respect to the affidavits of claimants' attorney and Mr. Hogleland, it is to be noted that the averments therein contained as to when or by whom the improvements on the Kendall claim were made, and the purpose thereof, are predicated upon statements made by others and not upon their own personal knowledge. The Kendall lode appears, by the record, to have been located in 1903, and no reason is suggested why the affidavits of persons having personal knowledge as to the making of said improvements and the purpose thereof, cannot now be procured. It does not appear, therefore, that the showing now made in this behalf is the best obtainable. Hence, on the present state of the record, the Department does not feel warranted even under the above amendment to paragraph 49, in requiring the surveyor general to accept the showing now made as a basis for his certificate of improvements.

The action of the surveyor general is accordingly affirmed, and unless within reasonable time a more satisfactory showing is presented, the entry will be canceled.

BAILEY v. MOLSON GOLD MINING CO.

Decided December 16, 1914.

MINING CLAIM—CHARACTER OF LAND—JUDGMENT ON DEFAULT.

While a judgment on default in favor of the mineral claimant, in a proceeding between a mineral and an agricultural claimant involving the character of the land in dispute, renders the question as to the character of the land *res judicata* as between the parties, it will not be accepted as establishing the character of the land as between the government and the mineral claimant, and constitutes no bar to further inquiry as to the character of the land involved.

JONES, *First Assistant Secretary:*

This is an appeal by George A. Bailey from the decision of the Commissioner of the General Land Office of January 12, 1914, dis-

missing his protest against mineral applications 011609, 011610, filed by the Molson Gold Mining Company for respectively the Peerless placer mining claim, survey 1053, and the Realty and other lode mining claims, survey 1039.

It appears from the uncontroverted statements contained in the Commissioner's decision that on April 1, 1912, upon the relinquishment by one John Harkins, of his homestead entry 07883, then under contest by the mineral applicants, Bailey applied to make homestead entry of the NE. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 11, and W. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 12, previously covered by Harkins's entry, and the NW. $\frac{1}{4}$ NW. $\frac{1}{4}$, Sec. 13, all in T. 40 N., R. 29 E., Waterville land district. Bailey's application was, however, as stated by the local officers, suspended, "pending the exercise of preference right," by the mineral claimants. September 3, 1912, the latter filed the applications here in question, which included portions of the area embraced in Bailey's homestead application, and on September 27, 1912, the mineral claimants filed a protest against the homestead application, alleging the area included in surveys 1039 and 1053, to be mineral in character. Pending this protest, Bailey was, on October 8, 1912, allowed to make entry of the tracts applied for by him. Thereafter certain proceedings were had on the mineral claimants' protest, which resulted, on April 15, 1913, in the cancellation of Bailey's homestead entry to the extent of its conflict with said mineral applications, Bailey, it appears, having made default in said protest proceedings.

After further proceedings not necessary to be here stated, Bailey, on August 8, 1913, filed the protest here in question against the mineral applications, charging in substance and effect that the areas included in the Peerless placer claim and the Oro Libre, Charles F., Kismet, and Northland lode claims are nonmineral in character, and praying that the applications be rejected to the extent that they include areas embraced in his former entry. This protest was rejected by the Commissioner in the decision appealed from, on the ground that the default judgment rendered against Bailey in the proceedings had on the protest against Bailey's homestead entry constituted a mineral adjudication of the tracts, and that the question as to the character of the land is now, therefore, *res judicata*.

In this conclusion of the Commissioner the Department is unable to concur. As between two private individuals invoking the jurisdiction of the land department in a proceeding instituted with a view to a determination of their respective rights in or to a certain tract of public land, and involving incidentally a question as to the character of the tract, a judgment in favor of one might, and in most cases doubtless would, be regarded as rendering *res judicata* all matters of fact essential to the support of such judgment. The Department, however, is unwilling to accept a default judgment rendered

in favor of a mineral claimant as establishing, as between the Government and the mineral claimant, the character of the tract, and hence must hold that such a judgment does not bar further inquiry as to the character of the tract.

The protest filed by Bailey alleges as above stated that the areas included in the Oro Libre, Charles F., Kismet and Northland lode mining claims and the Peerless placer mining claim, are nonmineral in character, and in this connection it may be here said that Bailey shows good and sufficient reason for his failure to make response to the protest of the mineral claimant against his former entry. Since Bailey's protest was filed, however, and since the Commissioner's decision dismissing the same was rendered, the Department in its decision of September 18, 1914, in the case of Alfred Hagelberg, involving the latter's homestead entry for the NE. $\frac{1}{4}$, Sec. 14, T. 40 N., R. 29 E., has adjudged the areas embraced in the Kismet, Charles F., and Oro Libre lode mining claims to be mineral in character. This being true the character of the land included in said locations should not be again inquired into except upon a protest which sets up definite and specific facts which if established at a hearing would clearly show the land to be nonmineral. See *Coleman et al. v. McKenzie et al.* (28 L. D., 348), and cases therein cited. The allegations contained in the protest by Bailey are general in character and for that reason do not warrant a further hearing with respect to the three claims last named. As to the Northland lode mining claim and the Peerless placer, the Department is of opinion that the protest is sufficient and that under all the circumstances disclosed opportunity should be afforded the protestant to substantiate his charges as to these two claims. The decision of the Commissioner is modified and a hearing will be ordered on the protest so far as it relates to the Peerless placer claim and the Northland lode. As to the Oro Libre, Charles F., and Kismet lodes it will stand dismissed.

RACHEL J. HAMILTON.

Decided December 16, 1914.

INDIAN ALLOTMENT—SETTLEMENT—SECTION 4, ACT OF FEBRUARY 8, 1887.

The benefits conferred by the 4th section of the act of February 8, 1887, are upon Indians as such who make settlement upon the public lands; and an Indian woman who is living on the public domain with her husband, who is a settler thereon under the general homestead law, is not by reason thereof a settler within the meaning of said section and is therefore not entitled to make an allotment thereunder for her minor child.

JONES, *First Assistant Secretary:*

Appeal has been filed from decision of the Commissioner of the General Land Office holding for rejection Indian allotment appli-

cation filed by Rachel J. Hamilton, claiming to be an Indian of the Ponca Tribe, on behalf of her minor child, Earl T. Hamilton, under the fourth section of the act of February 8, 1887 (24 Stat., 388), which provides in part as follows:

That where any Indian not residing upon a reservation, or for whose tribe no reservation has been provided by treaty, act of Congress, or Executive Order, shall make settlement upon any surveyed or unsurveyed lands of the United States not otherwise appropriated, he or she shall be entitled, upon application to the local land office for the district in which the lands are located, to have the same allotted to him or her, and to his or her children, in quantities and manner as provided in this act for Indians residing upon reservations.

The section was amended by the act of February 28, 1891 (26 Stat., 794), the first part thereof being changed to read "that where any Indian entitled to allotment under existing laws, shall make settlement, etc."

The application was held for rejection by the General Land Office upon report from the Indian Office recommending that the same be rejected "for the reason that this application was filed on behalf of this minor Ponca Indian, born after the allotments were completed to the Indians of the Ponca Tribe, and therefore, this child is not entitled to the benefit of the act authorizing allotments on the public domain."

It appears that the mother, Rachel J. Hamilton, has received an allotment on the Ponca Reservation. She is the wife of Jason H. Hamilton, a white man, who on March 17, 1910, made entry under the homestead law at Bellefourche, S. D. Both the grandfather and father of the child, Earl T. Hamilton, for whom the mother, on March 24, 1910, applied for allotment under the fourth section, are white men. The father moved his family to the land embraced in his entry in March, 1911, which, so far as the record shows, has been his actual place of residence ever since.

The benefits conferred by the fourth section of the act of 1887 are upon *Indians as such*, who make settlement upon public lands under the provisions of said section and such Indian settlers are also authorized to have allotments made to their minor children. It was said in instructions (43 L. D., 125, 127):

The fourth section provides that an applicant for allotment thereunder shall make settlement upon the land he desires to have allotted to him. The circular of September 17, 1887, requires, among other things, that such Indian applicant shall make oath to that effect. The fourth section also authorizes an Indian, upon application, to have allotments made to his minor children. This authority, however, extends only to those cases where the parent has made settlement upon the public domain under said section (40 L. D., 148). The law, as construed, only permits *one entitled himself* under the fourth section to take allotments thereunder on behalf of his minor children or of those to whom he

stands in *loco parentis* (41 L. D., 626). The above qualifications must, therefore, appear in addition to the showing that an applicant under the fourth section is a recognized member of an Indian tribe or is entitled to be so recognized.

It was held in the case of *Ellen Bourassa et al.*, 43 L. D., 149 (syllabus):

An Indian woman who by reason of her marriage to a white man is prevented from complying with the terms and conditions of the 4th section of the act of 1887, is not entitled to an allotment thereunder; and for the same reason her minor children living under her care and protection are not so entitled.

In the decision of that case, which involved facts in all material respects similar to those here, it was said:

The abandonment of her tribe by an Indian woman, for the purpose of assuming marriage relations with a citizen of the United States, brings her within the sixth section of the act of February 8, 1887, which declares every Indian who has taken up his residence separate and apart from his tribe and adopted the habits of civilized life a citizen of the United States; but this provision does not conflict with the fourth section of said act, because separation or living apart from his tribe for the purpose of settlement upon public lands, is an essential part of the procedure under said section for the acquirement of such lands by an Indian. The fact of marriage by an Indian woman to a white man, a citizen of the United States, may not of itself necessarily deprive her of the right to allotment under the fourth section, but by assuming such relation she is thereby rendered incapable of complying with the terms and conditions of said section, as shown from the facts of the case now under consideration. For the same reason her minor children, born of such a marriage, are deprived of the benefits of said section, and not necessarily because of the infusion of white blood or the citizenship of the father, but because the Indian mother, regarded as head of the family, is not able, by reason of her marriage relation and the new conditions surrounding her, to comply with the provisions of the fourth section in respect to her minor children.

Therefore it is immaterial in this case whether the child for whom allotment application is made was born prior to or after the completion of allotments to the Ponca Tribe, as such settlement is not shown on the part of the parent as is contemplated by the fourth section of the act of 1887. The fact that the Indian mother may be living on the public domain with her husband, who is a settler thereon under the general homestead law, is not sufficient to entitle her to make an allotment for her minor child under the fourth section, as this does not meet the requirement of said section in the matter of settlement.

Reference is made in the appeal to the act of March 3, 1909 (35 Stat., 781, 782), authorizing the Secretary of the Interior "to allot to any Indian on the public domain who has not heretofore received an allotment." This act was repealed by the act of June 25, 1910 (36 Stat., 855, 859), without a saving clause as to previously filed

applications. It was held in the case of Louisa Walters (40 L. D., 196):

Applications for allotment on the public domain filed under the act of March 3, 1909, and not approved at the date of the act of June 25, 1910, repealing the act of 1909, must be rejected.

The action of the Commissioner of the General Land Office, rejecting the application herein, is affirmed.

HAWKES v. WILKINS.

Decided December 16, 1914.

DESERT LAND ENTRY—ANNUAL PROOF—IMPROVEMENTS.

Departmental decision in *Herren v. Hicks*, 41 L. D., 601, to the effect that a desert land entryman is not entitled, in making annual proof, to credit for improvements placed upon the land by a former entryman, is not applicable to proofs submitted and approved prior to the date of that decision.

JONES, *First Assistant Secretary*:

March 30, 1911, Burt A. Wilkins made desert-land entry 015099, for the S. $\frac{1}{2}$ NE. $\frac{1}{4}$, and lots 1 and 2, Sec. 4, T. 9 N., R. 65 W., 6th P. M., 161.33 acres, Denver, Colorado, land district. Proof of expenditures for the first and second year was submitted March 26, 1912, and duly approved.

June 24, 1913, David W. Hawker filed contest affidavit against said entry, alleging:

That said entryman has not from date of entry to the present time expended the sum of one dollar per acre in the necessary irrigation, reclamation and cultivation of said land, or in the purchase of water rights for the irrigation of same, and that entryman has not from the date of entry to the present time complied with the provisions of the desert-land law and amendments thereto, under which said entry was made.

Upon due proceedings therefor the hearing took place before the local officers in August, 1913, both parties appearing in person with counsel and witnesses and submitting testimony.

February 13, 1914, the local officers joined in decision recommending dismissal of the contest upon the holding that the charges were not sustained by the evidence.

August 13, 1914, the Commissioners of the General Land Office, considering the case upon appeal, affirmed the decision of the local officers and dismissed the contest. From this decision Hawker has appealed to the Department.

The facts shown by the testimony are clearly and sufficiently set forth in the Commissioner's decision and a correct conclusion reached therefrom as follows, upon the ground that annual proofs submitted and approved under departmental ruling then existing can not

properly be attacked, because of a departmental ruling made at a later date, the Commissioner saying:

In the case at bar, the proof was submitted on March 26, 1912, nearly one year before the aforesaid decision was rendered, and Wilkins paid Morrison the full value of the improvements.

This entry having been made and allowed under the rulings of the Department then in force, and not being in conflict with the law as then interpreted, it is believed that the entry should be allowed to stand and that the entryman should not now be prejudiced because those rulings have been changed.

Further, it will be noticed that the decision in the case of *Herren vs. Hicks*, *supra*, states that.

"Hereafter no expenditures, except those made on account of the entry can be credited on the annual proofs."

The word "hereafter" was evidently used advisedly, and intended to convey the meaning that proofs thereafter made on desert land entries would be governed by the principle announced in said decision, and that it was not the intent and purpose of the decision to reach back and strike down proofs made before the said decision was rendered.

After careful consideration of all the facts and circumstances of the case, and in view of the fact that the lifetime of the entry has not expired, and final proof has not been submitted, this office is of the opinion that the entry should not at this time be canceled.

The decision appealed from is affirmed.

INSTRUCTIONS.

January 7, 1915.

NEZ PERCE INDIAN LANDS—DESIGNATION UNDER ENLARGED HOMESTEAD ACT.

Lands in the Nez Perce Indian reservation are not subject to designation under the enlarged homestead act.

JONES, *First Assistant Secretary*:

I received your [Director of Geological Survey] letter of July 16, 1914 (E. H. P. 7074), in which you request to be advised whether lands in the Nez Perce Indian Reservation are subject to designation under the enlarged homestead act.

The act of February 8, 1887 (24 Stat., 388), for the opening of Indian reservations, provides:

That all lands adapted to agriculture, with or without irrigation so sold or released to the United States by any Indian tribe shall be held by the United States for the sole purpose of securing homes to actual settlers and shall be disposed of by the United States to actual and bona fide settlers only in tracts not exceeding one hundred and sixty acres to any one person, on such terms as Congress shall prescribe.

The act of August 15, 1894 (28 Stat., 332), provides for the opening of the unallotted, unreserved lands embraced within the limits of the Nez Perce Indian Reservation to entry under the "homestead, townsite, timber and stone, and mineral" laws, and requires payment

of \$3.75 per acre for agricultural lands and \$5 per acre for mineral lands. The free homes act, of course, relieved homestead entrymen from the payment of the \$3.75 per acre, where final three or five-year proofs are submitted.

Section 1 of the act of June 17, 1910 (36 Stat., 531), provides:

That any person who is a qualified entrymen under the homestead laws of the United States may enter, by legal subdivision, under the provisions of this act, in the State of Idaho, three hundred and twenty acres or less of arid nonmineral, nonirrigable, unreserved, and unappropriated, surveyed, public lands which do not contain merchantable timber, located in a reasonably compact body and not over one and one-half miles in extreme length: *Provided*, That no lands shall be subject to entry under the provisions of this act until the lands shall have been designated by the Secretary of the Interior as not being, in his opinion, susceptible of successful irrigation, at a reasonable cost, from any known source of water supply.

In the case of *Washington v. Miller*, decided on December 14, 1914, the Supreme Court of the United States, discussing implied repeals, held:

First, such repeals are not favored, and usually occur only where there is such an irreconcilable conflict between an earlier and a later statute that effect reasonably cannot be given to both (*United States v. Healey*, 160 U. S., 136, 146; *United States v. Greathouse*, 166 U. S., 601, 605); second, where there are two statutes upon the same subject, the earlier being special and the later general, the presumption is, in the absence of an express repeal, or an absolute incompatibility, that the special is intended to remain in force as an exception to the general (*Townsend v. Little*, 109 U. S., 504, 512; *Ex parte Crow Dog*, Id. 556, 570; *Rogers v. United States*, 185 U. S., 83, 87-89); and third, there was in this instance no irreconcilable conflict or absolute incompatibility, for both statutes could be given reasonable operation if the presumption just named were recognized.

The Department is of the opinion that there is neither irreconcilable conflict nor absolute incompatibility between the acts of February 8, 1887, and June 17, 1910, and that both may be given reasonable operation, if the presumption that the former act is intended to remain in force as an exception to the later be recognized; it is therefore held that lands in the Nez Perce Indian Reservation are not subject to designation under the enlarged homestead act.

AMENDMENTS OF GENERAL RECLAMATION CIRCULAR.

CIRCULAR.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

Washington, January 14, 1915.

The SECRETARY OF THE INTERIOR.

SIR: Pursuant to your instructions of August 26, and October 20, 1914, I would respectfully recommend that the general reclamation

circular of February 6, 1913, as amended to September 6, 1913 [42 L. D., 349], be amended as follows:

1. Paragraph 19 is amended to read as follows:

19. In the event any lands embraced in any unapproved or uncertified selections are needed in the construction and maintenance of any irrigation works (other than for right of way for ditches or canals reserved under act of August 30, 1890), under the reclamation law, the Government may cancel such selection and appropriate the lands embraced therein to such use.

2. Paragraph 20 is revoked.

3. Paragraphs 46 and 47 of said circular are amended to read as follows:

46. Where the tract covered by a homestead or desert-land entry has been withdrawn under either the first or the second form after the date of said entry, the register and receiver are directed to immediately furnish to the project manager a copy of any notice of intention to submit proof thereon, this being in addition to the copy furnished in all cases to the chief of field division. The Reclamation Service may file such papers as are thought proper, bearing on the question whether there has been such compliance with the law on claimant's part as entitles him to final certificate and patent on the entry. Final certificates will, in the absence of other objection, issue, pursuant to the proof, as in other cases, if the testimony appears to warrant such action, and no papers have been filed by the Reclamation Service, conducing to disprove the testimony; in the event of the filing of such papers, however, the record will be forwarded to the General Land Office for consideration.

47. Where an entry has been made after withdrawal of the tract under the second form, a copy of the notice of intention to submit proof will be sent to the project manager; in such cases, the register and receiver will forward the proof, if found to be regular, to the General Land Office, without issuance of final certificate, unless there has been submitted a final affidavit, duly corroborated by two witnesses and approved by the project manager, showing compliance with the reclamation act as to payment of all charges due to date, and reclamation of one-half of the irrigable area in the entry, as provided for in paragraph 55. If such affidavit showing reclamation and payment of charges is filed, and the final proof of compliance with the ordinary provisions of the homestead law as to residence, improvements and cultivation is found, on examination by the local land officers, to be sufficient, they will issue final certificate on the case as hereinafter provided.

Very respectfully,

CLAY TALLMAN,
Commissioner.

The above is concurred in:

A. P. DAVIS.

Approved, February 16, 1915:

ANDRIEUS A. JONES,

First Assistant Secretary.

NOLAN v. OLSON.

Decided January 17, 1915.

HOMESTEAD ENTRY—DESERTED WIFE.

Where a husband fails to provide a habitable house and proper food for his wife, and the place and mode of living provided by him are grossly unfit, and she is forced on that account to leave him, such separation, under the laws of Montana, constitutes desertion on the part of the husband; and the wife is qualified to make a homestead entry as a deserted wife.

JONES, *First Assistant Secretary:*

February 23, 1912, Grace Nolan filed application 014273, to make homestead entry for the NE. $\frac{1}{4}$, Sec. 32, T. 32 N., R. 8 E., M. M., Havre, Montana, land district.

Such application was suspended pending exercise of Bertha M. Olson's preference right to the land based upon her successful contest against a former entry of the same land made by John P. Quinlivan. Pursuant to notice of her preference right, Olson, April 9, 1912, filed her application 014731, to make homestead entry for said tract, alleging that she was a deserted wife. March 26, 1912, Nolan filed protest against the allowance of Olson's application, alleging that:

the said Bertha M. Olson is not a qualified entrywoman, as she is not deserted by her husband, that her husband is not an invalid, and that her husband is now holding a homestead in his own name within the Havre Land District, and that the said contest of Bertha M. Olson, was instituted for the benefit of others.

May 7, 1912, hearing took place before the local officers but owing to a controversy which arose over the payment of costs of the proceeding, testimony on behalf of the protestant only was submitted. Upon the record then made, the local officers recommended that the protest or contest be dismissed because of the refusal of Nolan to pay all costs. Upon appeal to the Commissioner it was held that protestant Nolan was not required to pay for other than her own testimony, and that, upon the showing made, Olson was not qualified to make the entry applied for as a deserted wife, and Nolan's application to make entry was allowed. From this decision Olson appealed, and by departmental decision of September 8, 1913, it was held that inasmuch as the protestee had relied upon the ruling of the local officers, which was clearly erroneous, she should be allowed opportunity upon due notice and proper payment of fees, to present such testimony as she might desire to present in support of her claim of qualification to make entry, and the case was remanded to the Commissioner.

Upon due proceedings therefor, in November, 1913, further hearing took place before the Commissioner, pursuant to said departmental order, the protestant appearing by attorney and protestee Olson in person with counsel.

Upon consideration of the record, as it appeared after such further hearing, the register of date December 18, 1913, recommended that the application of Olson be rejected, and the application of Nolan allowed, and on same date, the receiver recommended that the protest of Nolan be dismissed and application of Olson be allowed.

February 26, 1914, the Commissioner of the General Land Office considering the case upon appeal by both parties, affirmed the action of the register, rejected the application of Olson and allowed that of Nolan. From this decision, Olson has appealed to the Department. The only question presented is as to the qualifications of Olson to make entry as a deserted wife. In disposing of the case, the Commissioner holds in substance that while the husband of applicant Olson, "was lazy and shiftless, and failed to provide a comfortable living for his wife," such facts do not constitute desertion, and that because she left the place where he failed to provide sustenance for herself and her children, it is desertion on her part and not on his part, and she is, therefore, not qualified to make entry as a deserted wife. The testimony shows that the house on the husband's claim was not habitable for his wife and two children during the winter; that they were left there with substantially no provisions, having at times only bread and tea, and that he practically left them to starve unless the mother cared for herself and children, who were of tender age. The Department does not concur in the conclusion that because the woman with her children left the place under these circumstances, it was desertion on her part. Such is not the holding of the courts, and section 3653 of the Code of Montana, on this subject, provides:

Section 3653. If the place or mode of living selected by the husband is unreasonable and grossly unfit, and the wife does not conform thereto, it is desertion on the part of the husband from the time her reasonable objections are made known to him.

This is the law of the State in which the transaction occurred, and her departure from the place was not desertion on her part. It further appears that he followed her to her relatives and lived upon them without attempting to earn anything until they refused to longer support him, whereupon he left her and the children, before the date of her application to make homestead entry, and has since failed to, in any manner, provide for his wife or children, and that of date May 5, 1914, in the District Court of the 12th Judicial District of the State of Montana, in and for the County of Hill, Bertha M. Olson obtained a decree of absolute divorce from her husband, Erick Martines Olson, on the ground of desertion by him on the 7th day of June, 1911, and that she was given the custody of the two minor children. Under all the conditions and circumstances

disclosed by the record, the Department is of the opinion that Bertha M. Olson, was, at the date of her application, qualified to take homestead entry as a deserted wife, and that if no other sufficient objection appears, her application should be allowed, and that of Grace Nolan rejected and her protest dismissed, and it is so directed.

The decision appealed from is reversed.

NORTHERN PACIFIC RY. CO. v. JACOBS.

Decided February 4, 1915.

NORTHERN PACIFIC ADJUSTMENT—COAL DEPOSITS.

The Northern Pacific Railway Company in waiving its claim to lands within the limits of its grant with a view to adjustment of the conflicting claims thereto under the provisions of the act of July 1, 1898, must relinquish its entire right and claim thereto; and there is no provision of law under which it is authorized to relinquish its claim to the surface of such lands merely and to retain and receive patent for the underlying coal deposits.

JONES, *First Assistant Secretary:*

May 31, 1902, Byron C. Jacobs made desert-land entry No. 1063, at Miles City, Montana, for 160 acres of unsurveyed land described as the SE. $\frac{1}{4}$, Sec. 3, T. 8 N., R. 29 E., M. M., now within the Billings land district. Final proof showing reclamation and compliance with the desert-land law was made April 28, 1906. The township was withdrawn from filing or entry under the coal land laws October 10, 1906. It was classified as coal and included in Montana coal land withdrawal No. 1, by Executive order of July 9, 1910, and restored to entry and sale by Executive order of December 1, 1911. January 19, 1910, the entryman filed his election to take the limited patent provided for by the act of March 3, 1909 (35 Stat., 844).

The land having been surveyed, the plat of survey was filed in the local land office February 20, 1912. By such plat of survey it would appear that the land claimed by Jacobs is lots 23 and 24, and the N. $\frac{1}{2}$ SE. $\frac{1}{4}$ of said section 3. Upon February 20, 1912, the Northern Pacific Railway Company, claiming the land as part of the grant to the Northern Pacific Railway Company, under the act of July 2, 1864 (13 Stat., 365), listed the tract for patent, and lots 23 and 24 were patented to it June 10, 1913. July 1, 1913, Jacobs filed his application to adjust to lots 23 and 24, and the N. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 3, made final payment for the land, final certificate No. 0505, issuing the same day.

April 21, 1914, the Commissioner requested the Northern Pacific Railway Company to relinquish its claim and reconvey the land in

controversy, under the following provisions of the act of July 1, 1898 (30 Stat., 597, 620) :

That whenever any qualified settler shall in good faith make settlement in pursuance of existing law upon any odd-numbered sections of unsurveyed public lands within the said railroad grant to which the right of such railroad grantee or its successor in interest has attached, then upon proof thereof satisfactory to the Secretary of the Interior, and a due relinquishment of the prior railroad right, other lands may be selected in lieu thereof by such railroad grantee or its successor in interest, as hereinbefore provided, and patents shall issue therefor.

May 16, 1914, the railway company replied, declining to so waive its rights or reconvey, but stating, after pointing out that coal lands passed to it under its grant, that, while it would be willing to relinquish its rights as to the surface, it desired to retain the underlying coal deposits. It stated, however, that under existing law it could perceive no way by which such underlying coal deposits could be conveyed to the United States, and it desired to be informed by the Commissioner whether, if it should conclude to relinquish in favor of Jacobs the surface rights, the United States would or could convey to it the underlying coal deposits. The Commissioner of the General Land Office by decision of October 9, 1914, held that there was no warrant of law for the course of action proposed by the railway company, and held the desert-land entry of Jacobs for cancellation. Jacobs has appealed to the Department.

The above cited provision of the act of July 1, 1898, is not mandatory upon the company as to settlements made subsequent to January 1, 1898, but an adjustment under its provisions is optional with the Northern Pacific Railway Company (*No. Pac. Ry. Co. v. Violette*, 36 L. D., 182). Further, the provision relates to qualified settlers who had in good faith made settlement upon odd numbered sections of unsurveyed lands within the railroad grant. In the case of the Northern Pacific Railway Company *v. Tubbs* (30 L. D., 250), it was held that possession and occupancy of a tract with an intention to subsequently enter it under the timber-culture law did not constitute such a claim as is subject to adjustment under the act of July 1, 1898. It is doubtful whether the occupation and reclamation of the tract by Jacobs under entry by virtue of the desert-land law constitute such a settlement as is contemplated in the above quoted provision of the act of July 1, 1898. It would seem that the provision relates to settlements under the homestead or preemption laws of the United States requiring residence.

It is also clear that the plan, as suggested by the railway company, can not be adopted. The act of March 3, 1909, *supra*, provides:

That any person who has in good faith located, selected, or entered under the nonmineral land laws of the United States any lands which subsequently are

classified, claimed, or reported as being valuable for coal, may, if he shall so elect, and upon making satisfactory proof of compliance with the laws under which such lands are claimed, receive a patent therefor, which shall contain a reservation to the United States of all coal in said lands, and the right to prospect for, mine, and remove the same. The coal deposits in such lands shall be subject to disposal by the United States in accordance with the provisions of the coal-land laws in force at the time of such disposal, but no person shall enter upon said lands to prospect for, or mine and remove coal therefrom, without previous consent of the owner under such patent, except upon such conditions as to security for and payment of all damages to such owner caused thereby as may be determined by a court of competent jurisdiction: *Provided*, That the owner under such patent shall have the right to mine coal for use on the land for domestic purposes prior to the disposal by the United States of the coal deposit.

It is clear, therefore, that under the act of March 3, 1909, a reservation of the coal deposits is to be made to the United States; that such coal deposits shall be subject to disposal under the coal-land laws of the United States, under the conditions mentioned in the act, and the owner of the surface is also given the right to mine coal for use on the land for domestic purposes, prior to the disposal by the United States of the underlying coal deposit. The above act, therefore, contains no authority for the patenting of merely the coal deposit to the Northern Pacific Railway Company, and can not be operative in any event unless the railway company had waived its entire rights to the tract.

It being doubtful whether the claim of Jacobs is such a one as to afford the basis of adjustment under the act of July 1, 1898, the railway company having declined to waive its entire rights, the adjustment being optional upon its part, and there being no law under which merely the coal deposits could be patented to the railway company, it follows that the action of the Commissioner was correct.

The Commissioner's decision is accordingly affirmed.

**PARAGRAPH 38 OF GENERAL RECLAMATION CIRCULAR
AMENDED.**

CIRCULAR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., February 10, 1915.

The SECRETARY OF THE INTERIOR.

(Through the Director of the Reclamation Service.)

SIR: In numerous assignments of reclamation homestead entries, under the provisions of the act of June 23, 1910 (36 Stat., 592), presented to this office for acceptance, the corroboration of the affidavits of the assignees, showing their qualifications to take the assign-

ments, have been omitted. Such corroboration is required by paragraph 38 of the General Reclamation Circular approved September 6, 1913 (42 L. D., 349). It is believed that the corroboration of the affidavit of the assignee in such a case is of little value for the reason that it is not often that another person can corroborate, of his own knowledge, the statements made by the assignee therein.

The requirement that such affidavits be corroborated has necessitated the suspension by this office of a large number of assignments, complete in other respects, but lacking corroboration of the assignee's affidavit. It is therefore respectfully recommended that paragraph 38 of the General Reclamation Circular, *supra*, be amended by the omission therefrom in line nine of the words "duly corroborated."

Very respectfully,

CLAY TALLMAN, *Commissioner*.

The above recommendation is concurred in, February 24, 1915:

A. P. DAVIS,

Director and Chief Engineer, Chairman.

Approved, March 6, 1915:

ANDRIEUS A. JONES,

First Assistant Secretary.

ST. PAUL, MINNEAPOLIS AND MANITOBA RY. CO.

Decided February 15, 1915.

RAILROAD LAND—COAL WITHDRAWAL—ACT OF AUGUST 5, 1892.

Where lands selected by the St. Paul, Minneapolis and Manitoba Railway Company in lieu of lands relinquished by it under the provisions of the act of August 5, 1892, had been prior to selection withdrawn from entry and have since been classified as coal, the selection may nevertheless be approved and passed to patent under the act of June 22, 1910, upon waiver by the company of all right to the coal deposits.

JONES, *First Assistant Secretary:*

The St. Paul, Minneapolis and Manitoba Railway Company appealed from decision of February 27, 1914, rejecting its selection under the act of August 5, 1892 (27 Stat., 390), list No. 11, for SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 28, T. 15 N., R. 12 E., M. M., Lewistown, Montana, on the ground that the land selected had been withdrawn from all entry November 17, 1906, prior to filing of the selection October 7, 1907, and has since been classified as coal land at \$30 per acre.

By act of August 5, 1892 (27 Stat., 390), in consideration of the railroad relinquishing lands to which it had a right, for protection of purchasers from the United States, the road was permitted to select

an equal area "of nonmineral public lands, so classified as nonmineral at the time of actual Government survey." It does not appear that this land was classified as mineral at the time of its survey.

The Commissioner based his decision on that in Northern Pacific Ry. Co. (39 L. D., 314). This authority was inappropriate to the present case. It applies to selections under a different grant and a different statutory classification or definition of lands that may be selected.

This question has become immaterial as by act of June 22, 1910 (36 Stat., 583), it was provided, among other things:

That those who have initiated non-mineral entries, selections, or locations in good faith, prior to the passage of this act, on lands withdrawn or classified as coal lands may perfect the same under the provisions of the laws under which said entries were made, but shall receive the limited patent provided for in this act.

The railway company has waived right to the coal deposits under this act and is content to take a surface patent reserving the coal to the United States. It is, therefore, entitled to a patent under the act of June 22, 1910, *supra*.

The decision is reversed and, if no other objection appear, the selection will be approved for surface patent.

INSTRUCTIONS.

February 16, 1915.

ALASKA COAL WITHDRAWAL—ACT OF OCTOBER 20, 1914.

The act of October 20, 1914, providing for the leasing of coal lands in Alaska, leaves existing and pending coal claims in Alaska in exactly the same status they occupied prior to said enactment, and does not revoke the presidential withdrawal in so far as it relates to such claims.

JONES, *First Assistant Secretary*:

December 21, 1914, you [Commissioner of the General Land Office] submitted to the Department a request for instructions with respect to the disposition of pending coal claims in Alaska, and particularly as to the status of the Presidential withdrawal as affecting such claims, asking whether the said withdrawal was revoked by the act of October 20, 1914 (Public, No. 216), and if not, whether it would not be advisable to have issued a general order modifying the coal-land withdrawal in so far as it applies to land covered by pending coal claims found to be valid.

The act of October 20, 1914, *supra*, section 15, expressly provides that the act shall—

not affect any proceedings now pending in the Department of the Interior, and any such proceeding may be carried to a final determination in said Department, notwithstanding the passage hereof.

Section 3 provides that the said pending claims upon which final proof shall have been submitted shall be adjudicated within one year from the passage of the act.

It is clear from the act in question, which opinion is supported by the proceedings had before the Public Lands Committee and in Congress during the pendency of said measure, that it was the intent of Congress in the act of October 20, 1914, to leave existing and pending coal claims for lands in Alaska in exactly the same status they occupied prior to said enactment. I therefore do not think that the Presidential withdrawal, in so far as it relates to such claims, was revoked or vacated by the act, nor do I think it advisable to submit any general order of restoration to the President at this time. Each case should be taken up and considered upon its merits, and appropriate action taken or recommendation made with respect thereto.

H. G. COLTON.

Instructions, February 16, 1915.

RECLAMATION—WATER-RIGHT ASSIGNMENT—RESIDENCE.

The residence requirements provided for in section 5 of the reclamation act of June 17, 1902, apply to all persons acquiring by assignment water-right contracts with the United States, unless prior to such assignment the final water-right certificate contemplated by section 1 of the act of August 9, 1912, has been issued, in which event the land may be freely alienated, subject to the lien of the United States.

JONES, *First Assistant Secretary:*

I am in receipt of your [W. R. King, chief counsel of Reclamation Service] letter of January 26, 1915, submitting the following question: "Does the residence requirement provided in section 5 of the Reclamation Act apply to persons acquiring by assignment, water-right contracts with the United States?"

It appears that one H. G. Colton, a resident of Portland, Oregon, has purchased a tract of land under the Umatilla project, Oregon, from Bertha A. Randolph, who had made water-right application therefor, which application has been approved. Colton desires to have the water-right contract transferred to him, but neither his vendor nor himself can make the affidavits as to residence upon the land or being an occupant thereof, as required by paragraph 96 of the circular of February 6, 1913, as amended to September 6, 1913 (42 L. D., 349, 387).

Section 5 of the act of June 17, 1902 (32 Stat., 388), provides:

No right to the use of water for lands in private ownership shall be sold for a tract exceeding one hundred and sixty acres to any one landowner, and no such

sale shall be made to any landowner unless he be an actual *bona fide* resident on such land, or occupant thereof residing in the neighborhood of said land, and no such right shall permanently attach until all payments therefor are made.

The limit of residence of a private landowner in the neighborhood has been fixed at a maximum of 50 miles (Par. 65, Circular of February 6, 1913, *supra*), and Mr. Colton resides more than 50 miles from the Umatilla project.

In support of the position that the assignee is not subject to the above-cited restriction as to residence, you cite the following language from the departmental instructions of April 2, 1914 [43 L. D., 456], which related to the question as stated by you, "as to whether in case of a homestead entry within a reclamation project, and made subject to the provisions of the Reclamation Act of June 17, 1902 (32 Stat., 388), an assignee, under the act of June 23, 1910 (36 Stat., 592), is required to reside upon the land or in the neighborhood thereof in order to perfect a water-right, as in the case of lands in private ownership"—

no greater or additional obligations should be imposed upon the assignee than are imposed upon the original entryman, and . . . *such assignee should not be required to repeat or duplicate, with respect to lands secured by assignment, the conditions already satisfied by the original entryman.* It has been contended that assignees under this act must possess all of the qualifications of a homestead entryman, but this contention was disapproved by this Department, it being held that the law contains no warrant for imposing such a limitation.

This language relates solely to the case of an assignee of a homestead entryman who had already complied with the requirements of residence as fixed by the homestead laws in irrigation projects. The instructions of April 2, 1914, further stated:

The owner of private land within a reclamation project occupies a somewhat different status from the homestead entryman, in that he is not specifically required to reside upon the land and perform improvement and cultivation, his land is not subject to division into farm units, nor is his entry subject to cancellation for noncompliance with law as in the case of the entryman. Whether this be the reason or not, it is apparent that Congress imposed different conditions upon the owners of private lands than upon homestead entrymen, and the residence required of the private landowner has no particular bearing upon the construction of the law with respect to the homestead entryman.

From a technical standpoint, the language used in section 5 of the act of June 17, 1902, *supra*, is susceptible of the construction that the sale of a water-right is made upon approval of the application of one holding lands in private ownership subject to defeasance upon failure to pay the required charges. The language is also susceptible of the construction that no sale is effectuated until final payment of such charges, since it provides that no rights should permanently attach until all payments have been made. In construing an act of

Congress, however, the primary object is to carry into effect the intention of the legislative branch. Congress no doubt desired that absentee ownership as to private lands within irrigation projects should be avoided, and the same rule of policy would operate in the case of an assignee of lands held in private ownership, as well as that of an original applicant for a water right.

The record fails to disclose, but informal inquiry at your office would seem to indicate, that Bertha A. Randolph has not secured the final water-right certificate provided for in section 1 of the act of August 9, 1912 (37 Stat., 265), and paragraph 60 of the regulations of September 6, 1913, *supra*, such certificates being issued to private landowners upon proof of the reclamation of one-half of the irrigable area. Such certificate reserves to the United States a lien for all unpaid charges. I am inclined to the view that after the issuance of the final water-right certificate contemplated by section 1, of the act of August 9, 1912, *supra*, the land may be freely alienated, subject to the lien of the United States, and if the fact be that the original owner of the land, Bertha A. Randolph, has complied with paragraph 60 of the regulations of September 6, 1913, *supra*, the issuance of a final water-right certificate may relieve the difficulties you set forth in your letter.

I am of the opinion, therefore, that the residence requirements provided for in section 5 of the Reclamation Act apply to all persons acquiring by assignment water-right contracts with the United States, unless prior to such assignment the final water-right certificate contemplated by section 1 of the act of August 9, 1912, *supra*, has been issued. Paragraph 96 of the circular of February 6, 1913, *supra*, regarding the affidavit as to the residence of the assignee within the prescribed limits, is in harmony with this view.

INSTRUCTIONS.

February 16, 1915.

CLASSIFICATION OF COAL LANDS—LEGAL SUBDIVISIONS.

The special provisions of section 2331 of the Revised Statutes and other special acts authorizing the entry and disposition of lands in smaller areas than the forty-acre unit or lot fixed by the general laws, are not applicable to coal lands; and the land department is without authority to classify and segregate coal areas of public lands in less than legal subdivisions.

PREVIOUS INSTRUCTIONS VACATED.

Instructions of November 15, 1912, 41 L. D., 396, vacated, and amendment added to paragraph 11 of the regulations of April 10, 1909, 37 L. D., 653, by instructions of November 15, 1912, 41 L. D., 399, canceled.

JONES, *First Assistant Secretary:*

November 15, 1912 (41 L. D., 399), the Department, following instructions of the same date (41 L. D., 396), amended paragraph

11 of the regulations of April 10, 1909 (37 L. D., 653), relating to the classification and valuation of coal lands, by adding the following:

Where for good reason it is advisable, classification of coal lands may be made by two and one-half or ten-acre tracts, or multiples thereof, described as minor subdivisions of quarter-quarter-sections or rectangular lotted tracts.

October 6, 1914, and January 5, 1915, you [Commissioner of the General Land Office] submitted memoranda and other papers, stating that in your opinion the classification of lands in less than legal subdivisions is indefensible, either from a legal standpoint or from the standpoint of good administration. The instructions of November 15, 1912, *supra*, proceeded on the assumption that the classification and segregation of such small areas is authorized by section 2331, Revised Statutes, and that coal lands being mineral lands are susceptible of segregation under its provisions.

While coal lands are held by the Department and the courts to be mineral lands, it is nevertheless true that Congress has provided a special method for the disposition of public lands containing deposits of coal, and it is clear therefrom that it provides for the disposition of such deposits only in accordance with the legal subdivisions of the public-land surveys. The special provisions of section 2331, Revised Statutes, and of certain other special acts authorizing the entry and disposition of lands in smaller areas than the 40-acre unit or lot fixed by the general laws, are not applicable to coal lands. From the standpoint of administration, as you suggest, the practice is confusing and objectionable. Furthermore, as Congress has now provided for the separate disposition of the land and of the coal deposits therein, acts of March 3, 1909 (35 Stat., 844), and June 22, 1910 (36 Stat., 583), the matter of classification in smaller areas than the ordinary legal subdivision is less important. In other words, under said acts the agricultural entryman or patentee takes the land exclusive of the coal deposits, and the latter deposits are held subject to disposition separate and apart from the land.

In the actual work of classification and valuation, if the coal within a given legal subdivision is so limited in quantity and value as to not warrant the classification of the subdivision as coal land, it is not believed that the land in question should be classified as coal. If, on the other hand, it contains a coal deposit of substantial value, its classification as coal land will not prevent the disposition of the land itself under the agricultural laws, subject to the coal reservation. Accordingly, and after full consideration of the matter involved, the said instructions of November 15, 1912, are hereby revoked and vacated and the amendment added to paragraph 11 of classification and valuation instructions canceled.

ELIZABETH DAVIS.

Decided February 16, 1915.

NATIONAL FOREST LANDS—HOMESTEAD ENTRY—ACT OF JUNE 11, 1906.

The act of June 11, 1906, specifically declares that upon the listing of lands thereunder by the Secretary of Agriculture the Secretary of the Interior shall declare such lands open to settlement and entry, but that they shall not be subject to settlement and entry until the expiration of sixty days from the filing of the list in the local office; and these requirements are mandatory and jurisdictional and can not be dispensed with by the land department.

JONES, *First Assistant Secretary*:

The Department has considered the petition filed by the Solicitor for the Department of Agriculture, asking this Department to exercise its supervisory power in the matter of the homestead entry made by Elizabeth Davis, June 15, 1909, for certain lands, namely, the E. $\frac{1}{2}$ NW. $\frac{1}{4}$, NE. $\frac{1}{4}$ SW. $\frac{1}{4}$, and NW. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 28, T. 47 N., R. 3 E., lying within the Coeur d'Alene National Forest, created by proclamation of November 6, 1906; settlement on said lands prior to said forest reservation being alleged by Davis.

Commutation proof was submitted on said entry November 28, 1910, which was suspended pending adverse proceedings directed June 24, 1910, on charges that the entrywoman had not established and maintained residence upon or cultivated said land and made entry for speculation. The local officers and the Commissioner concurred in finding default in the matter of residence prior to and existing at the date of said forest reservation, in which finding the Department on appeal likewise concurred, but found further that there had been *bona fide* compliance with law on the entry for fourteen months next preceding the submission of proof, and in view of the equities existing and of the fact that the Department of Agriculture on August 4, 1913, had reported that said lands were chiefly valuable for agriculture, and not needed for public purposes, except for a certain right of way, and that same would be listed accordingly under the act of June 11, 1906 (34 Stat., 233), the Department, September 24, 1913, held that the existing withdrawal might be disregarded in an equitable consideration of the case, and remanded the case accordingly with direction that the claim be permitted to pass to final entry and patent if payment had been made.

It is urged in this petition that this Department is without power to so pass this entry to final entry and patent without compliance with the express provisions of said act of June 11, 1906, that, after lands lying within a national forest have in the discretion of the Secretary of Agriculture, as provided by said act, been listed by him with the Secretary of the Interior, with the request that such lands be

opened to entry in accordance with the provisions of the homestead laws and of said act:

Upon the filing of any such list or description the Secretary of the Interior shall declare the said lands open to homestead settlement and entry in tracts not exceeding one hundred and sixty acres in area and not exceeding one mile in length, at the expiration of sixty days from the filing of the list in the land office of the district within which the lands are located, during which period the said list or description shall be prominently posted in the land office and advertised for a period of not less than four weeks in one newspaper of general circulation published in the county in which the lands are situated.

The Department upon careful reconsideration of this case is constrained to admit the contention made in this petition. Under the specific terms of said act such lands can only become subject to settlement and entry at the expiration of sixty days from the filing of the list in local office. The listing by the Secretary of Agriculture, and filing of such list with the Secretary of the Interior, with the request for the opening of such lands to entry, and the order by the Secretary of the Interior declaring said lands open to settlement and entry are mandatory and jurisdictional statutory requirements with which this Department can not dispense.

The decision of September 24, 1913, is, therefore, recalled and vacated and this entry will be canceled.

The petition is sustained.

EAGLE RIVER MINING CO.

Decided February 16, 1915.

RIGHT OF WAY—TERMINAL GROUNDS—NATIONAL FOREST—ALASKA.

Where lands were claimed and substantially improved as a terminal for a constructed tramway prior to their withdrawal for inclusion in the Tongass National Forest, such valid rights were thereby acquired under the act of May 14, 1898, as excepted the lands claimed as terminal grounds from the operation and effect of said withdrawal, provided there is no undue delay in assertion of the claim before the land department.

JONES, First Assistant Secretary:

The Eagle River Mining Company has appealed from decision of December 1, 1913, in the above entitled case, rejecting the application filed by said company, under section 6 of the act of May 14, 1898 (30 Stat., 409), for the purchase of 14.43 acres as terminal grounds at the southern terminus on Lynn canal, Alaska, of a tramway, right of way for which was concurrently applied for, from that point to a mine stated to be operated by said company about 6½ miles distant; said application for terminal grounds being rejected on the ground that said lands are embraced within a national forest.

The national forest referred to is the Tongass National Forest, as created by proclamation of February 16, 1909 (35 Stat., 2226), which provides that the withdrawal "shall not be so construed as to deprive any person of any valid right . . . acquired under any act of Congress relating to the Territory of Alaska."

This application was filed February 14, 1911. It appears therefrom that said company is a corporation organized under the laws of the State of Georgia for mining purposes and that said tramway was commenced on or about August 1, 1904, and completed on or about December 31, 1905; and it is stated in this appeal that said company had expended prior to said proclamation more than \$20,000 in the construction of said tramway and more than \$9,000 in improvements placed upon the lands applied for as terminal grounds. Said tramway and terminal grounds are used only to market the output of said company's mine and no toll or charges are made for carriage of persons or freight.

Section 6 of said act of May 14, 1898, authorized the Secretary of the Interior to issue a permit to any responsible person, company or corporation for a right of way over the public domain in Alaska and grounds for station and other necessary purposes; to construct wagon roads and wire-rope, aerial, or other tramways, and "to sell to the owner or owners of any such wagon road or tramway upon the completion thereof not to exceed twenty acres of public land at each terminus at one dollar and twenty-five cents per acre . . . provided that such lands may be located concurrently with the line of such road or tramway."

The record does not show that any permit was issued by the Secretary of the Interior in this case. The application as to a right of way for a tramway was referred to the Department of Agriculture, concurrently with the decision appealed from, in view of the provisions of the act of February 1, 1905 (33 Stat., 628), transferring to the Secretary of that Department the execution of certain of the laws affecting public lands within forest reserves. The Secretary of the Department of Agriculture reports that no permit has yet been issued for such right of way, the matter having been held up pending action by this Department upon the application for terminal grounds, but that the Department of Agriculture was making no objection to the use by the company of a tramway and that there is no objection to granting such permit.

The decision appealed from was based upon the Department's decision in the case of the A. B. W. Mining Company (34 L. D., 19), holding that the Alexander Archipelago Forest Reserve created by proclamation of August 20, 1902 (32 Stat., 2025), was a bar to an application to purchase terminal grounds under said act of May 14,

1898, notwithstanding the tramway in connection with such grounds had been constructed prior to said reserve. The decision, however, in that case, makes no mention of, and apparently overlooked, the saving provision contained therein, the same as in proclamation creating the Tongass National Forest, as to valid rights acquired under any act of Congress relating to the Territory of Alaska. The Department is of the opinion that if this company completed the construction of its tramway and made the improvements upon the lands claimed as terminal grounds substantially as stated prior to the withdrawal for said Tongass National Forest, said company acquired thereby such valid right under said act of May 14, 1898, as excepted said lands claimed as terminal grounds from the operation and effect of said withdrawal. If, as said act provides, the Secretary of the Interior was authorized to sell such lands upon the completion of the tramway, there was a correlative right in said company to make such purchase, which was saved by the express terms of said withdrawal, unless there was undue delay by the company in the assertion of its claim before the land department. It appears that this tramway was completed December 31, 1906; that survey of said tramway and terminal grounds was commenced May 19, and completed May 25, 1909; and that said application was filed February 14, 1911. Some delay, therefore, in the presentation of its claim appears, which should be explained.

Said company is entitled to an adjudication of its rights, under said act of May 14, 1898, and of the matter of such delay in the assertion of its claim, notwithstanding said forest withdrawal. And if it had a valid claim irrespective of said withdrawal, and asserted same without unnecessary delay, said withdrawal did not attach and no reason would appear why its application for terminal grounds should not be allowed, subject to such conditions and limitations as may be found to be necessary and proper upon final adjudication.

The case is therefore remanded for consideration and action in accordance herewith.

J. PAUL HOLDEN.

Instructions, February 18, 1915.

WITHDRAWAL OF LANDS FOR CITY OF SEATTLE—ACT OF FEBRUARY 28, 1911.

Lands withdrawn by section 1 of the act of February 28, 1911, for the benefit of the City of Seattle, and not within the Cedar River basin, are not restored to their former status by section 2 of that act until the survey has been completed and approved by the Secretary of the Interior.

NATIONAL FOREST LANDS—OCCUPANCY UNDER SPECIAL USE PERMIT—SETTLEMENT.

No claim is initiated to land under the act of June 11, 1906, until the Secretary of Agriculture has listed the land for entry, such list has been filed in

the local land office, publication thereof made, and application to enter filed by the applicant for the listing; and while an entryman under that act may be given credit for residence during his occupancy of the land under a special use permit prior to making entry, he does not by such occupancy acquire a settlement claim to the land within the meaning of the proviso to section 1 of the act of February 28, 1911, excepting settlement claims from the withdrawal declared by that act.

JONES, *First Assistant Secretary*:

I am in receipt of your [Commissioner of General Land Office] letter of February 5, 1915 (462866 "K" REM), relative to list 6-1106, transmitted October 20, 1913, by the Department of Agriculture, for the restoration to entry, under the act of June 11, 1906 (34 Stat., 233), of the SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$, SW. $\frac{1}{4}$ SW. $\frac{1}{4}$ NE. $\frac{1}{4}$, E. $\frac{1}{2}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$, and W. $\frac{1}{2}$ NW. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 4, T. 22 N., R. 11 E., W.M. within the Snoqualmie National Forest, Washington.

June 23, 1909, a special-use permit was granted by the Forest Service to J. Paul Holden for the above-described land, and since that time Holden has occupied it, having made valuable improvements, including an hotel, valued at \$1,000, a bunkhouse, at \$400, and four cottages, valued at \$400 each. He has also expended approximately \$500 in drainage. July 19, 1909, Holden applied to have the lands listed for entry under the act of June 11, 1906, *supra*.

The lands are within the withdrawal made by the act of February 28, 1911 (36 Stat., 959), for the benefit of the city of Seattle, in the matter of the protection of the city's source of water supply. This act provides in part—

That the public lands in township twenty-one north, ranges nine, ten and eleven east, and township twenty-one north, ranges eight, nine, ten and eleven east, . . . are hereby withdrawn from all location, settlement, and entry under the public land laws: *Provided*, That this withdrawal shall in no way operate to interfere with the right of any settler or other claimant under the public land laws to complete a claim to any portion of such lands heretofore lawfully initiated.

Section 2 provides for a survey of the drainage basin of the Cedar River within the area withdrawn, and further, that—

upon the completion of such survey and its approval by the Secretary of the Interior the lands withdrawn by section one of this act not within the drainage basin of Cedar River shall be restored to their present status.

It appears that the survey has been made in the field and the notes thereof have been filed with the Surveyor-General, showing that the land here involved is not within the drainage basin. It is stated that the plat thereof has not yet been completed by the Surveyor-General, and will not be completed for approximately six months.

Under section 2 of the act of February 28, 1911, it is clear that the lands are not restored to their former status until the survey has been completed, and approved by the Secretary of the Interior. The survey has not yet been completed, and it has not yet been approved, and the lands are, therefore, still within the withdrawal directed by section 1 of the act. It is your position, however, that the occupancy by Holden, under the special-use permit, issued by the Forest Service, together with his application for listing, filed July 19, 1909, constitute a claim lawfully initiated prior to the approval of the act of February 28, 1911, which is protected by the proviso to its first section. You accordingly recommend that the land be restored to entry, under the act of June 11, 1906, *supra*.

The act of June 11, 1906, authorizes the Secretary of Agriculture, in his discretion, upon application, or otherwise, to examine and ascertain the location and extent of lands within a forest reserve which are chiefly valuable for agriculture, and which, in his opinion, may be occupied for agricultural purposes. He may list such lands with the Secretary of the Interior, with the request that they be opened to entry under the provisions of the homestead laws. The act provides that upon the filing of such list the Secretary of the Interior shall declare the lands open to homestead settlement and entry, at the expiration of 60 days from filing of the list in the local land office. The first proviso of section 1 of the act of June 11, 1906, reads:

Provided, That any settler actually occupying and in good faith claiming such lands for agricultural purposes prior to January 1st, 1906, and who shall not have abandoned the same, and the person, if qualified to make a homestead entry, upon whose application the land proposed to be entered was examined and listed, shall, each in the order named, have a preference right of settlement and entry.

This act, therefore, makes it discretionary with the Secretary of Agriculture whether the lands shall be listed for entry or not. The sole right given the applicants for such listing is that of a preference right of settlement and entry, if qualified to make homestead entry.

In Robert G. McDougall (43 L. D., 186), the Department held that one who had applied to have lands within a national forest listed for opening, under the act of June 11, 1906, and was thereafter granted a special-use permit to occupy the land, was entitled in submitting proof upon his entry, made in pursuance of such listing, to credit for residence since the date of the special-use permit. The Department said, at page 187:

Technically, this land was not public land and was not subject to general settlement claim at the time this entryman made settlement thereon, but he was not a trespasser, as he had filed his application for listing with the Forest Service for opening under the said act of June 11, 1906, and had been given a

special-use permit by that service. He was, therefore, in legal occupation of the land after the date of the permit, with the understanding that if the tract be found appropriate for opening under said act, he would have a preference right of entry as provided by that act. *He thus had a restricted, or qualified settlement claim.*

Under the act of June 11, 1906, it is clear that no claim to the land is initiated until the Secretary of Agriculture has listed the land for entry, such list has been filed in the local land office, publication thereof made, and the application to enter filed by the applicant for the listing. Prior to the order of the Secretary of the Interior restoring it to entry, the land is still probably a part of the national forest, and is certainly not subject to claim or entry under the homestead laws. While under the decision in the case of Robert G. McDougall this Department will credit an entryman of the above character with residence during his occupancy of the land under a special-use permit, the expression contained in the decision—"he thus had a restricted, or qualified, settlement claim"—is too broad, and was not necessary to the decision in that case.

Under the facts in this case, therefore, as affected by the acts of June 11, 1906, and February 28, 1911, I am of the opinion that Holden did not have a claim under the public land laws to any portion of the land withdrawn for the benefit of the city of Seattle, lawfully initiated prior to February 28, 1911. He was, therefore, not protected as against the withdrawal, and as the withdrawal is still in effect the land can not, as yet be restored to entry. I, accordingly, can not concur in your recommendation, but in view of the facts, you are directed to instruct the Surveyor-General to complete the plat of the drainage basin as quickly as the other business of his office may permit.

—

PARAGRAPH 13 OF DESERT LAND CIRCULAR AMENDED.

INSTRUCTIONS.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, February 25, 1915.

CHIEFS OF FIELD DIVISIONS,
AND REGISTERS AND RECEIVERS,
United States Land Offices.

SIRS: Your particular attention is called to paragraphs 12 and 13 of the desert land circular approved September 30, 1910 [39 L. D., 253], as amended March 23, 1914 [43 L. D., 203], in regard to the allowance of desert land entries, special reference being made to the showing required of applicants as to the sufficiency of the alleged water supply.

For the purpose of preventing the allowance of desert entries for lands incapable of reclamation, said paragraph 13 is amended and enlarged to read as follows:

13. At the time of filing the declaration with the register and receiver, the applicant must also file plans describing in detail the following: Source of water supply; character of the irrigation works constructed, in course of construction, or proposed to be constructed, *i. e.*, reservoirs for storage, canals, flumes, or other method by which water is to be conserved and conveyed to the land; if by direct diversion, the character and volume of the flow of the streams or springs, whether perennially flowing or intermittent. If the works have not been constructed, it must be shown whether they are to be built by an irrigation district, a corporation, or an association, and a general description of the proposed plan must be furnished. It must be shown in connection with any proposed plan whether, and by whom, surveys and investigations have been made, which demonstrate the existence of a sufficient water supply and the feasibility of the proposed works to convey water to the land. If the applicant, or others in association with him, propose to construct irrigation works, a sworn statement must accompany the declaration, containing a general description of the proposed works, an estimate of the cost, and such other data as will enable the register and receiver and the Department to determine the sufficiency of the water supply, and the feasibility of the proposed works to convey water to the lands to be irrigated. If the irrigation is proposed by means of artesian wells, or by pumping from nonartesian underground sources of water supply, evidence must be submitted as to the existence of such water supply upon or near the land involved, including a statement as to other wells theretofore sunk and affording a water supply to adjoining or near-by lands. With respect to the land itself, a specific showing must be submitted as to its approximate altitude, character of the soil, and to what points upon the tract the ditches or laterals are to be extended; and that the land is of such contour that it can be irrigated from the proposed system. The map required to be filed by section 4 of the act of March 3, 1891 (26 Stat., 1095), must be sufficiently definite and accurate (preferably, but not necessarily, prepared by a licensed engineer) to show the plan for conducting water to the land to be irrigated. The register and receiver will carefully examine the evidence submitted in such declarations, and either reject defective declarations or require additional evidence to be filed. At the time of filing his declaration, plans, and the statements submitted therewith, the applicant must pay the receiver the sum of 25 cents per acre for the lands therein described, the declaration to be given its proper serial number, at that time, in accordance with paragraph 4, Circular No. 105. The receiver will issue a receipt for the money, and after proper notations have been made on your records, the application will be transmitted to the proper Chief of Field Division for report as to the sufficiency of the alleged water supply, and the feasibility of the proposed plans. The register and receiver will report to the Chief of Field Division any facts in their knowledge with respect to the land, the water supply, or the proposed plan of irrigation, including the financial responsibility and general ability of the irrigation districts, corporations, or associations which propose to construct works for the reclamation of such land. In all cases the register and receiver will certify as to the status of the lands, as shown by their records, and when forwarding an application for report they will attach all papers filed by the applicant. No application will be forwarded to the Chief of Field Division until all evidence required under the said paragraphs has been furnished by the applicant.

When an application is received by the Chief of Field Division he will have same considered by a field examiner who will make a written report thereon recommending the allowance or rejection of the application. If such report is favorable, and the Chief of Field Division is of the opinion that the entry should be allowed he will return the application to the register and receiver with the report, and recommendation to that effect, whereupon the register and receiver will pass upon it in regular order in the light of the report which is to be attached to the application and become a part of the record, and, in the absence of any objection, will sign the certificate at the end of the declaration under date of its allowance.

If, however, the Chief of Field Division is of the opinion that the entry should not be allowed, he will have a full report prepared on the application and transmit the entire record to this office for consideration and action, advising the register and receiver thereof.

In the event that an applicant alleges a company, an association, or an irrigation district as the proposed source of water supply, upon which report has not been submitted, the Chief of Field Division will cause an investigation to be made of such project, and have a report submitted thereon to this office in accordance with the instructions heretofore issued, making a definite recommendation as to the allowance of original entries under the project, and will transmit the application involved with the report.

If the project alleged as the source of water supply has been reported upon, but no action on such report has been taken by this office, the Chief of Field Division will transmit the application to this office with appropriate recommendation. In the event the applicant alleges a project which has been passed upon by this office, the Chief of Field Division will consider same in accordance with the conclusions reached, and, in the event that favorable action is warranted, will return the papers to the register and receiver with proper report and recommendation. In case adverse action is necessary the Chief of Field Division will transmit the application to this office with proper recommendation.

Should this office, after careful consideration of the examiner's report and the showing made by the applicant, deny the right to make entry, the applicant will be allowed the right to apply for a hearing or to appeal, as he may desire.

If an application is not returned by the Chief of Field Division in time to be considered and allowed by the register and receiver and transmitted with the returns for the month during which filed, the register and receiver will note "To C. F. D. (giving date)" in the remarks column of the "General Schedule of Serial Numbers," and will forward with their returns for that month a separate report for each application so held by the Chief of Field Division, giving name of land district, serial number, name of applicant, land involved, and date of transmittal to the Chief of Field Division, observing paragraph 64 of Circular No. 105.

Registers and receivers will furnish copies hereof to all officers in their land districts before whom desert land declarations may be made, advising them that all the foregoing regulations will be strictly enforced.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved, February 25, 1915:

ANDRIEUS A. JONES,

First Assistant Secretary.

ETHEL E. HUSTON.

Decided February 26, 1915.

KIOWA, COMANCHE, APACHE AND WICHITA LANDS—SEC. 17, ACT JUNE 30, 1913.

By section 17 of the act of June 30, 1913, the unused, unallotted and unreserved lands in the former Kiowa, Comanche, Apache and Wichita reservation were declared subject to sale, in the discretion of the Secretary of the Interior, with a view to providing funds for the Kiowa Agency hospital, and from and after that date none of said lands were subject to homestead entry or any form of disposition other than as authorized by that act.

JONES, *First Assistant Secretary*:

Ethel E. Huston has filed an informal motion for rehearing in the matter of her application 08821, to make homestead entry of the N. $\frac{1}{2}$ SW. $\frac{1}{4}$ and SW. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 14, T. 5 N., R. 13 W., I. M., Guthrie land district, Oklahoma, wherein the Department, by decision of January 12, 1915, affirmed the Commissioner's decision of July 11, 1914, rejecting the application because the tracts described were not at the time of the presentation of the application subject to entry under the homestead law.

The area in question is within the limits of the former Kiowa, Comanche and Apache Indian Reservation, and was formerly included in the homestead entry of one Wallace J. Hallock, which, by the Commissioner's decision of January 30, 1914, was canceled, as a result of a contest prosecuted against it by Miss Huston, who, in the supposed exercise of a preference right, on March 7, 1914, filed her application to make homestead entry thereof.

By section 17 of the act of June 30, 1913 (38 Stat., 92), the Secretary of the Interior was, in his discretion, authorized to sell, upon such terms and under such rules and regulations as he might prescribe, the unused, unallotted and unreserved lands "in the Kiowa, Comanche, Apache and Wichita tribes of Indians in Oklahoma," and to deposit the proceeds from such sales, less \$1.25 per acre, to the credit of the Indians, to be known as the Kiowa Agency Hospital Fund, and to be used only for the maintenance of the hospital. The Secretary was, by the act, further authorized, in his discretion, to grant to settlers a preference right to purchase, for 90 days from and after notice, at the appraised price, exclusive of improvements, such of said lands as were occupied by such settlers in good faith on January 1, 1913. This act clearly contemplates that all of the unused, unallotted and unreserved lands within the limits of the reservation named should be sold, with a view to providing hospital funds for the benefit of the Indians, and should thereafter be subject to no form of disposition other than that therein authorized or prescribed.

The particular tract here in question became on January 30, 1914, the date of the cancellation of Hallock's entry therefor, "unused"

land of said reservation, and occupied that status at the date of filing of the present application. It was not, therefore, for the reason above stated, then subject to entry under the homestead laws, and could be disposed of only in the manner authorized by the act.

The decision complained is accordingly adhered to and the motion denied.

MATILDA MILEY.

Decided February 27, 1915.

SOLDIERS' DECLARATORY STATEMENT—DEATH OF DECLARANT—HEIRS.

A declaratory statement filed by a soldier or sailor under section 2309 of the Revised Statutes, or by the widow or minor orphan children of a deceased soldier or sailor, can be carried to entry only by the beneficiary named in the statute; and upon the death of the declarant the right to make entry under the declaratory statement does not pass to his heirs or devisee.

CONTRARY DEPARTMENTAL DECISION OVERRULED.

Philip Mulnix, 33 L. D., 331, overruled.

JONES, *First Assistant Secretary*:

Matilda Miley, as heir and devisee of Mary Helbling, widow of Michael J. Helbling, a soldier of the civil war entitled to the benefits of section 2304 of the Revised Statutes, has filed a motion for rehearing of the Department's decision of October 30, 1914, in the above-entitled case, which affirmed the decision of the General Land Office requiring her to show cause why her entry, allowed November 1, 1910, for the S. $\frac{1}{2}$ NW. $\frac{1}{4}$, and lots 3, 4 and SW. $\frac{1}{4}$, Sec. 1, T. 23 N., R. 9 E., M. M., Great Falls, Montana, land district, should not be canceled, upon the ground that—

The widow not having made an entry prior to her death, and the heirs not having made an entry prior to August 14, 1910, when the declaratory statement expired by operation of law, the claimant had no right to make entry by virtue of said declaratory statement.

The entry, which was made under the enlarged homestead act on November 1, 1910, aforesaid, was not allowed until May 27, 1911. Final proof was submitted November 7, 1913, and final certificate issued December 12, 1913. The General Land Office rejected the proof submitted, and cited the entrywoman to show cause why her entry should not be canceled, as aforesaid. From this decision she appealed, and, on consideration of such appeal, the Department affirmed the action of the General Land Office. A motion for rehearing of the Department's decision has now been filed.

The soldier, Philip Helbling, died without having exercised his soldiers' homestead right. Mary Helbling, his widow, filed soldiers' declaratory statement for the land on February 14, 1910, and died June 17, 1910 (about two months before the expiration of the six months' period allowed for entry following the filing of a soldiers' declaratory statement), without having made entry thereof. Upon the theory that the right of entry was thereupon, under the law, cast upon her, although she was no longer a minor, Mrs. Matilda Miley, the daughter of Philip and Mary Helbling, and devisee of the latter, filed application to make entry of the land, as above stated, a little more than eight months after the filing of the declaratory statement by the soldier's widow. Mrs. Miley states in an affidavit in support of her appeal to the Department, that—

at and before the time of filing her said entry and at several times since filing she had occasion to ask information from the local land officers as to whether she had the right to make or hold the entry as the heir and devisee of Mary Helbling; that she was invariably told by said officials that she was authorized to do so; that assuming that the advice so received was dependable she was led to believe that she had a right to make the entry and that it could be made within any reasonable time; that the cause of delay in filing the entry was due to the misinformation received from the said Government officers, resulting in her misunderstanding of her rights under the law, and that a Special Agent of the Department examined the final proof papers and the records in the case and advised the local officers to allow the proof.

It appears from the final proof statement, submitted November 7, 1913, that the entire tract is fenced and eighty acres under cultivation, and that the value of the improvements is \$800. It is elsewhere stated that since final certificate was granted, the entryman has spent nearly \$2,000 additional on the land, largely in well digging.

The present land department regulations (see Circular of October 11, 1910, 39 L. D., 291, 293) provide:

If a soldier or sailor makes an entry, or files a declaratory statement, and dies before perfecting the same, the right to perfect the claim, including the right to obtain credit for the soldier's military service, passes to the persons named in Sec. 2291, Revised Statutes, that is, to his widow, or if there be no widow, to his heirs or devisees.

These regulations are based upon the Department's decision in the case of Heirs of Philip Mulnix (33 L. D., 331), wherein it is held (syllabus):

By the filing of a soldiers' declaratory statement a homestead claim is initiated, which upon the death of the soldier prior to completion of entry, not leaving a widow, is cast upon his heirs, who may do any and all things necessary to its completion under the provisions of section 2291, Revised Statutes, in the same manner and upon the same basis as the heirs of an ordinary homesteader who dies before the consummation of his claim.

As already set out, under the rule announced in the *Mulnix* case, *supra*, and in the regulations issued thereunder, this claimant was permitted to make an entry, based upon the declaratory statement of her deceased ancestor, to expend time and money in the development and improvement of the land, and to submit final proof thereupon, register's final certificate issuing in due course. Under these circumstances, and in the light of the departmental rulings then in force, it would be highly inequitable to cancel the entry so permitted to be made and perfected. Recognizing and protecting the equities which have so arisen, the motion for rehearing is allowed, and entry sustained, and the case remanded to the General Land Office for presentation to the Board of Equitable Adjudication.

Upon careful consideration of the applicable law, I am of the opinion that a declaratory statement filed by a soldier or sailor, under section 2309 of the Revised Statutes, or by the widow or minor orphan children of such a soldier or sailor, can be carried to entry only by the beneficiary named in the statute, and that the right to make entry under such a declaratory statement does not pass to his heirs or devisees. This conclusion is supported by the language of the law and is in harmony with the legal effect to which a mere declaration of intention is entitled. The decision in the case of the Heirs of Philip *Mulnix*, *supra*, is therefore hereby overruled, and the rule therein laid down and in the regulations issued thereunder October 11, 1910, will not be followed in case of entries made hereafter.

NORTHERN PACIFIC RY. CO. ET. AL.

Decided February 27, 1915.

NORTHERN PACIFIC ADJUSTMENT—ACT OF JULY 1, 1898—APPROXIMATION.

The rule of approximation is applicable to selections by the Northern Pacific Railway Company under the act of July 1, 1898.

JONES, First Assistant Secretary:

The application for the selection involved in this case describes three tracts: the E. $\frac{1}{2}$ NW. $\frac{1}{4}$, 80 acres, NE. $\frac{1}{4}$ SW. $\frac{1}{4}$, 40 acres, and the SE. $\frac{1}{4}$ SW. $\frac{1}{4}$, 40 acres, all in the same section and aggregating 160 acres, and selected in lieu thereof three other tracts, in different sections, containing 57.43, 53.70 acres and 48.86 acres, respectively, or a total of 159.99 acres. The decision of the General Land Office which was formally affirmed by the decision complained of in this motion for rehearing treated each of the selected tracts as a different and distinct selection, of which two have been approved, and in disposing

of the other selection required the company, under the rule of approximation, to either eliminate one subdivision of the E. $\frac{1}{2}$ NW. $\frac{1}{4}$, that being the first tract mentioned in the list, or "to supply additional base," because the first tract enumerated as base land contained but 57.43 acres, or 22.57 acres less than the 80 acres embraced in said E. $\frac{1}{2}$ NW. $\frac{1}{4}$, notwithstanding the fact that the other tracts offered as base lands exceeded the other selected tracts by 22.56 acres.

It is contended in the motion for rehearing: (1) That inasmuch as the selected tracts form one body of land, which the company had contracted to sell, it should have been treated as a single selection and should not have been separated into three tracts and considered as three separate selections; and (2) that the rule of approximation should not be applied in this case.

There does not appear to be any reason why the rule of approximation can not be applied in adjudicating a selection of the kind here involved. While this rule, for which there is no statutory authority, was originally invoked in homestead entries only, by Executive action, as an administrative expediency, there appears to be no good reason why it can not be used to meet emergencies in any class of entries or selections. Henry P. Sayles (2 L. D., 88); Ida B. Sprague (41 L. D., 386); Instructions, February 10, 1902 (31 L. D., 225).

In its decision of March 10, 1913, unreported, this Department in adjudicating the Northern Pacific Railway Company's Washington List 206, applied the rule of approximation in a kindred case, and there is, therefore, no reason why it could not be applied in the present case. The contention that this list should have been treated as containing but a single selection, and not three separate selections, is at variance with the original intention of the company as indicated by the language used in the list filed by it.

This list says that the company "hereby selects the lands hereinafter specified in lieu of the respective tracts of land so relinquished and hereinafter specified item for item as the particular basis for the several tracts hereby selected."

From the use of this language, followed by a specification of three tracts as selected lands and three other tracts as base lands, it cannot be concluded that the list contains but one selection.

For the reasons indicated, as well as for the further reason that the motion for rehearing does not present any controlling question which was not carefully considered in the decision complained of the motion is hereby denied.

BRAUCHT ET AL. v. NORTHERN PACIFIC RY. CO. ET AL.*Decided March 24, 1914.***CONTESTANT—PREFERENCE RIGHT—SELECTION BY RAILROAD COMPANY.**

The act of May 14, 1880, awarding a preference right of entry to successful contestants, contemplates that contestant may exercise such right by any form of appropriation which he may use in acquiring title to the land; and where a contestant procures the Northern Pacific Ry. Co. to make for his benefit, within the preference right period, a selection of the land under the act of July 1, 1898, such selection is a proper exercise of the preference right.

CONTRARY DEPARTMENTAL DECISIONS OVERRULED.

Beery v. Northern Pacific Ry. Co. et al., 41 L. D., 121, and *Martin v. Patrick*, 41 L. D., 284, overruled, and *Linhart v. Santa Fe Pacific R. R. Co.*, 36 L. D., 41, restored to authority.

JONES, First Assistant Secretary:

February 13, 1904, Richard H. Steely made desert land entry No. 449, for lots 5, 6, 7 and 8, and W. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 2, T. 10 N., R. 28 E., against which, on March 19, 1907, Clara A. Simpson, nee Gillette, filed affidavit of contest and procured the cancellation thereof. April 20, 1904, the lands were withdrawn under the act of June 17, 1902 (32 Stat., 388), but were subsequently by direction of the Secretary of the Interior restored to settlement on October 5, and to entry on November 4, 1909. Simpson was unable to exercise her preference right to the land at the time of the cancellation of Steely's entry, because the land was then embraced in a withdrawal for reclamation purposes, but under the circular of June 6, 1905 (33 L. D., 607), and the case of *Wright v. Francis et al.* (36 L. D., 499), preference right was suspended and subject to be exercised within thirty days after the withdrawal was revoked.

On November 4, 1909, the day set for entry of the lands, the Northern Pacific Railway Company filed List No. 265, under the act of July 1, 1898 (30 Stat., 597, 620), said selection being filed for and on behalf of Clara A. Simpson, nee Gillette, in the exercise of her preference right as successful contestant of the desert land entry of Steely. On the same day homestead applications were filed embracing portions of the above described land, by various other parties. These applications have all been eliminated except those of Braucht and Lamson. Braucht was awarded lots 5, 6 and 7, and Lamson was awarded lot 8 and the W. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 2, said township and range, by the Commissioner's decision of October 30, 1912, and the Northern Pacific Railway Company's selection was rejected. From said decision the Northern Pacific Railway Company, in behalf of Clara A. Simpson, has appealed to the Department.

The only question before the Department for consideration is whether or not the railway company may select under the act of

July 1, 1898, *supra*, the lands in question for and on behalf of Simpson, in the exercise of her preference right.

The act of May 14, 1880 (21 Stat., 140), provides:

In all cases where any person has contested, paid the land office fees and procured the cancellation of any former homestead or timber culture entry, he shall be notified by the register of the land office of the district in which said land is situated of such cancellation, and shall be allowed thirty days from date of such notice to enter said land.

There is nothing in this act limiting the form of entry which may be made by such contestant. The rights given under this act are in the nature of a reward to the informer, and the preference right given is in consideration of claimant's having informed the Government of the failure of any person claiming public lands to comply with the law, and by assuming the burden of the costs of contest secures the cancellation of the entry. It has been held that the lands may be taken with a soldiers' additional right, if subject thereto. Robeson T. White (30 L. D., 61); Wright *v.* Francis (36 L. D., 499). If the land is subject to timber and stone entry, preference right may be exercised in that way. Harris *v.* Chapman's Heirs (36 L. D., 272). If the land is subject to lieu selection under the act of June 4, 1897 (30 Stat., 36), the successful contestant may take title to the land in that way. Linhart *v.* Santa Fe Pacific R. R. Co. *et al.* (36 L. D., 41). The latter case was overruled by the Department in the case of Martin *v.* Patrick (41 L. D., 284).

In the case of Linhart *v.* Santa Fe Pacific R. R. Co., *supra*, with reference to the question of the right of the railway company to select the lands for the benefit of another, the Department said:

The purpose was to require that the transaction of exchange shall be between the United States and the owner of the land and that the title to the selected land shall in every case rest in the owner of the relinquished land, so that no complications may arise by reason of floating rights acquired by assignment in advance of selection. But it does not follow that the owner of the relinquished land might not by deed of assignment convey to another the rights secured by the act of June 4, 1897, and growing out of his relinquishment, so as to vest in such assignee the equitable title to the land that the owner of the relinquished land may secure from the government.

The right secured by the act is a property right which the company may convey and Hagen by his purchase could secure, but the exchange of lands can only be made by or in the name of the company as the owner of the relinquished land. It therefore follows that the selection by the company was for the sole use and benefit of Hagen, and was to all intents and purposes an exercise by him of his preference right of entry.

It is believed that the word "entry" as used in the act of May 14, 1880, should not be restricted in its terms to such appropriation of the land as the individual himself might make, but embraces any form of appropriation which the entryman may use in acquiring title to the land, and where the selection is made by the railway company

and specifies that the selection is made for and on behalf of the contestant, no good reason appears for disallowing an application of the character here involved.

Upon mature consideration, the Department is of opinion that the cases of *Beery v. Northern Pacific Railway Company* (41 L. D., 121) and *Martin v. Patrick* (41 L. D., 284), are unsound in principle and tend to defeat the right which was intended to be conferred by the act of May 14, 1880, *supra*, and these cases will no longer be followed, and are hereby overruled.

The decision in the case of *Linhart v. Santa Fe Pacific R. R. Co.*, *supra*, correctly disposed of the question now involved, and said decision is therefore restored to authority. The decision herein appealed from is reversed, and no other objection appearing, Simpson's selection in the exercise of her preference right will be approved and passed to patent.

BRAUCHT ET AL. v. NORTHERN PACIFIC RY. CO. ET AL.

Motion for rehearing of departmental decision of March 24, 1914, 43 L. D., 536, denied by First Assistant Secretary Jones April 19, 1915.

SVAN HOGLUND.¹

Decided September 23, 1914.

HOMESTEAD ENTRY—FOREST RESERVATION—DEFAULT.

Where a homestead entryman was in default at the time of reservation of the lands for forest purposes, he can not thereafter cure the default in the face of the reservation.

COMMUTATION OF HOMESTEAD ENTRY WITHIN A FOREST RESERVATION.

Commutation of a homestead entry included within a forest reservation can not be allowed unless it be shown that at the date of the reservation the homestead law was being complied with by the entryman.

KLAMATH FOREST RESERVATION—EXCEPTING CLAUSE.

By the excepting clause in the proclamation of May 6, 1905, creating the Klamath forest reserve, it was intended to except from the reservation those legal entries upon which the entrymen were at that time complying with the law and continued to comply with the law after the reservation was made.

FORMER DEPARTMENTAL DECISION HEREIN VACATED.

Svan Hoglund, 42 L. D., 405, vacated.

LANE, *Secretary*:

I have given extended consideration to the questions of fact and of law involved herein, and these are my conclusions:

1. That Hoglund was not complying with the provisions of the homestead law when the forest reservation was created. He did not

¹ See page 540.

in good faith intend to make this his home. He lived upon the land for a brief time in the spring and fall of each year until the reservation was created, and then absented himself from the land continuously for nearly a year, when he returned to live there continuously for 14 months, after which he put in commutation proof, which was allowed. At no time did he cultivate more than one-half of an acre.

2. Commutation proof can not be allowed as to lands within a national forest where the law as to homestead entries was not being complied with when the reservation was created, because the Government has the right to the land as a reservation if it is found that the law was not being complied with when the reservation was created. The reservation of the lands by the Government is effective as against those who have not complied with the conditions of the homestead law. Commutation as to forest lands can not cure defects inherent in the claim at the time reservation was made. It is the Government's policy to withdraw all lands which at the time of withdrawal are properly subject to attack for failure to comply with the law. Therefore, no new rights are acquired after the date of reservation. Commutation is only a waiver of certain conditions named by the Government and the substitution of others. Where the land is withdrawn by the Government prior to the beginning of the commutation period, proof must be made that at the date of withdrawal the homestead law was being complied with by the entryman. This is necessarily so, because the right to commute can only be conceded if the Government's right to the land as a part of the reservation did not attach.

The proclamation by the President creating this reservation contains the following excepting clause:

Excepting from the force and effect of this proclamation all lands which may have been, prior to the date hereof, embraced in any legal entry or covered by any lawful filing duly of record in the proper United States Land Office, or upon which any valid settlement has been made pursuant to law, and the statutory period within which to make entry or filing of record has not expired: Provided, that this exception shall not continue to apply to any particular tract of land unless the entryman, settler or claimant continues to comply with the law under which the entry, filing or settlement was made.

Was it intended by this proclamation that an entryman, who was not in good faith complying with the homestead law when the reservation was created, might have the right by complying with the law thereafter to gain a homestead within the reservation? It seems to me that this can only be answered in the negative.

By this provision the President intended to except from the reservation those legal entries which at the time of the reservation were complying with the law and which continued to comply with the law after the reservation was made. To accept the construction that

this clause means that an entryman who had not been complying with the law might after the reservation was created by such compliance gain his right to a patent renders valueless the words "continues to comply with the law," which necessarily means that the entryman up to the time of reservation has complied with the law.

SVAN HOGLUND.

DEPARTMENT OF THE INTERIOR,
Washington, September 24, 1914.

PETITION FOR THE EXERCISE OF SUPERVISORY AUTHORITY.

Pursuant to memorandum opinion of the Secretary, dated September 23, 1914 [43 L. D., 538], the petition for the exercise of supervisory authority filed by the Solicitor for the Department of Agriculture, in the above entitled case, is hereby allowed, departmental decision of August 29, 1913 [42 L. D., 405], hereby vacated, and the homestead entry involved will be canceled.

A. A. JONES,
First Assistant Secretary.

SVAN HOGLUND.

Decided April 20, 1915.

HOMESTEAD ENTRY WITHIN FOREST RESERVATION.

Petition for exercise of the supervisory authority of the Secretary to vacate and recall departmental decisions of September 23 and 24, 1914, 43 L. D., 538, 540, denied.

LANE, *Secretary:*

July 26, 1902, Svan Høglund made homestead entry 01401, in the Eureka, California, land district for the NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ and fractional SE. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 34, the N. $\frac{1}{2}$ SW. $\frac{1}{4}$ and fractional SW. $\frac{1}{4}$ NW. $\frac{1}{4}$, Sec. 35, T. 19 N., R. 4 E., H. M. The land was temporarily withdrawn for proposed forest reservation January 23, 1904, and included in the Klamath National Forest by proclamation of the President dated May 6, 1905 (34 Stat., 3001). Final proof was submitted by the entryman August 1, 1907, and final certificate and receipt issued August 6, 1907.

November 12, 1908, a deputy forest supervisor filed report containing information which, when transmitted to the Commissioner of the General Land Office May 29, 1909, resulted in the ordering of

a hearing by the Commissioner April 19, 1910, upon the charge that entryman did not establish and maintain residence upon the land.

Hearing was had and decisions rendered by the register and receiver and the Commissioner, sustaining the entry.

May 13, 1913 [not reported], the Department, upon appeal filed by the Solicitor for the Department of Agriculture, reversed the decisions below and held the entry for cancellation on the ground—that the defendant has not complied with the law as to residence and cultivation of the land; that his alleged residence upon the tract, prior to the date of his entry and until May, 1906, was in the nature of occasional visits, and that the withdrawal for forestry purposes under the terms of the proclamation has attached.

A motion for rehearing of the latter decision was denied July 15, 1913 [not reported]. Petition for the exercise of supervisory authority was filed on behalf of the entryman, and on August 29, 1913 [42 L. D., 405], the Department vacated the prior decisions and directed that entryman be allowed to submit commutation proof upon his entry. Thereupon, the entryman took the necessary action and paid the amounts required, and commutation cash certificate issued October 10, 1913.

A motion for reconsideration of the case was filed by the Solicitor for the Department of Agriculture. Upon consideration thereof the Department, September 24, 1914 [43 L. D., 540], reversed its decision of August 29, 1913, and directed the cancellation of the entry. A further petition for the exercise of supervisory authority, to the end that the entry may be sustained and patented, was filed on behalf of the entryman October 4, 1914.

The facts in the case, as found from the entryman's final proof and from the evidence given at the hearing, are substantially as follows: Claimant settled upon the tract during September, 1902, and remained two or three weeks. He was then absent until January, 1903, when he returned and remained until the following July. In July, 1903, he secured employment at a lumber mill 40 or 50 miles distant from the land and continued to work at that place until the date of hearing, May 31, 1911. He states that he was on the land in November, 1903; April or May, 1904; November, 1904; April or May, 1905; and November, 1905, for from two weeks to a month or more on each occasion. He lived upon the land continuously from May, 1906, to August, 1907.

The land in controversy contains about 4,000,000 feet of timber, chiefly Douglass fir, with cedar and pine. No real or substantial cultivation appears to have been performed upon the claim, the area cleared being estimated at less than 2 acres, upon which some vegetables were grown, either by the entryman or by persons employed by him, the area so cultivated being estimated at from half an acre to

1.33 acres. The other improvements upon the land at date of hearing consisted of a 3-room house, apparently unfurnished, a barn, and about 65 rods of picket fence.

The proclamation of the President creating the national forest contains the following clause:

Excepting from the force and effect of this proclamation all lands which may have been, prior to the date hereof, embraced in any legal entry or covered by any lawful filing duly of record in the proper United States land office, or upon which any valid settlement has been made pursuant to law, and the statutory period within which to make entry or filing of record has not expired: *Provided*, That this exception shall not continue to apply to any particular tract of land unless the entryman, settler, or claimant continues to comply with the law under which the entry, filing, or settlement was made.

Departmental decision of September 23, 1914 [43 L. D., 538], which directed the cancellation of Høglund's entry, cited this proclamation, and after describing the nature and extent of Høglund's alleged residence, held:

Commutation proof can not be allowed as to lands within a national forest where the law as to homestead entries was not being complied with when the reservation was created, because the Government has the right to the land as a reservation, if it is found that the law was not being complied with when the reservation was created. The reservation of the lands by the Government is effective as against those who have not complied with the conditions of the homestead law. Commutation as to forest lands can not cure defects inherent in the claim at the time the reservation was made. It is the Government's policy to withdraw all lands which at the time of withdrawal are properly subject to attack for failure to comply with the law. Therefore no new rights are acquired after the date of reservation. Commutation is only a waiver of certain conditions named by the Government and the substitution of others. Where the land is withdrawn by the Government prior to the beginning of the commutation period, proof must be made that at the date of withdrawal the homestead law was being complied with by the entryman. This is necessarily so because the right to commute can only be conceded if the Government's right to the land as a part of the reservation did not attach.

The petition now before the Department contends that the evidence shows good faith and compliance with the law by the entryman, and (1) that claimant is entitled to a patent for the land under the proviso to section 7 of the act of March 3, 1891 (26 Stat., 1095), for the reason that more than two years elapsed after the issuance of receiver's receipt on the final entry, dated August 6, 1907, before the ordering of the hearing on the forest officer's report; (2) that because of the existence of claimant's uncanceled homestead entry the withdrawal for forestry purposes never attached to the land; and (3) that claimant's entry being a valid appropriation of the land prior to the order of withdrawal, the right to commute was secured, which was not affected by the inclusion of the lands within a national forest.

The case of Jacob A. Harris (42 L. D., 611) is cited in support of the contention that the entry is confirmed.

Upon a careful consideration of the record in the case, the Department must conclude, as already found in its decisions of May 13 and July 15, 1913, that at the date of the proclamation of the President, May 6, 1905, creating the Klamath National Forest, Høglund was not and had not been complying with the requirements of the homestead law. Prior to that time and until May, 1906, his connection with the land was maintained through temporary visits of from two weeks to a month in extent, at very infrequent intervals, the small amount of cultivation in the garden during this period having been carried on during entryman's absence by his neighbors. In other words, up to May, 1906, entryman's claim to the land was in the form of mere visits at such intervals as to preclude the idea that he was making the land his home and as to support the contention that they were visits merely for the purpose of holding the land and preventing contest thereagainst.

The proclamation already quoted undertook to protect from the operation of the withdrawal lands included in a legal entry or embraced in a valid settlement, but expressly provided that this protection should not—

continue to apply to any particular tract of land unless the entryman, settler, or claimant continues to comply with the law under which the entry, filing, or selection was made.

It is clear from the evidence, as already stated, that Mr. Høglund was not complying with the provisions of the homestead law at and prior to May 6, 1905, and that he therefore could not continue to comply with such law. His compliance with the letter of the homestead statute began a year later, May, 1906, and as stated, continued until August, 1907. It was then too late, however, to cure the default existing at the date of the withdrawal of the land for a public use, and under the law and the terms of the proclamation the reservation had attached.

The action of the Department, August 29, 1913, in granting Høglund's petition and permitting commutation was an attempt to extend to him equitable consideration and overlooked the fact that under the proclamation of May 6, 1905, withdrawal had, under the facts, barred such action. This equitable consideration, while designed to extend liberal treatment to Høglund, did not and could not annul or modify the legal effect of the withdrawal for the national forest, and the commutation proof submitted and the certificate issued under said order, October 10, 1915, did not validate or confirm the claim as against the attachment of the reservation for public use.

As previously stated, the entry was ordered canceled by departmental decision of May 13, 1913, on appeal, by decision on rehearing

of July 15, 1913, and upon petition for the exercise of supervisory authority by decision of September 24, 1914; and the act of March 3, 1891, *supra*, section 7, was not invoked by the entryman, but is for the first time plead in the petition now before me. Said statute is not operative in this case, because the withdrawal for public use as a national forest attached to the land May 6, 1905, at a time when entryman was not complying with the law, prior to the issuance of receiver's receipt and certificate upon the final proof offered August 1, 1907, and, as stated, final action ordering the cancellation of the entry has heretofore been entered by the Department.

The reinstatement of the proof, certificate, and receipt is barred by the President's proclamation of May 6, 1905, *supra*, and by the provisions of administrative rule of March 4, 1914 (43 L. D., 165). The allowance of the commutation proof, as already explained, was an attempt at equitable consideration and not a recognition of legal right in the entryman, and can not be construed or held to validate the entry and proof in the face of the withdrawal for public purposes at a time when the entryman had not been and was not complying with the provisions of the homestead law.

The petition is accordingly denied, first, because claimant's entry and his acts thereunder were not a valid appropriation of the land at and prior to the proclamation withdrawing same; second, because under the express terms of said proclamation the land was, on May 6, 1905, withdrawn for national forest purposes, and entryman could not, by subsequent attempts designed to comply with the requirements of the homestead law, revive his claim in the face of the withdrawal, and third, because the entry is not confirmed by the proviso to section 7 of the act of March 3, 1891, *supra*. The homestead entry will be canceled as directed in departmental decision of September 23, 1914.

HENRY FRED DANGBERG.¹

Decided December 16, 1914.

SOLDIERS ADDITIONAL—MINOR CHILDREN—ENTRY OF WIDOW.

No right of additional entry under sections 2306 and 2307 of the Revised Statutes inures to the minor children of a soldier who never made a homestead entry and whose widow had remarried prior to and was the wife of another at the date of the adoption of the Revised Statutes, notwithstanding the fact that such widow, during her widowhood and prior to the adoption of the Revised Statutes, may have made a homestead entry for less than 160 acres of land.

JONES, *First Assistant Secretary*:

Henry Fred Dangberg has appealed from the decision of the Commissioner of the General Land Office, dated August 13, 1914, hold-

¹ This decision in effect overrules the holding in the second paragraph on page 476 of the decision in John D. Ingram (37 L. D., 475-6).

ing for rejection his application as the assignee of the heirs of Delilah Tuttle, under sections 2306 and 2307, Revised Statutes, for the SW. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 25, T. 9 N., R. 21 E., M. D. M., Sacramento, California, land district.

It appears from the record that the alleged right of the heirs of Delilah Tuttle is based upon the military service of Benjamin Bratton and a homestead entry for 40 acres of land, made on June 4, 1868, by Delilah Tuttle while the widow of said Bratton. She was married to Asa S. Tuttle in 1869 and remained his wife until his death in 1877. The soldier, Bratton, left two minor children, who attained their majority in 1880 and 1882, respectively. Their assignment of the alleged right was made after they had attained their legal majority.

This case has been fully argued before the Department, orally and in briefs. After mature consideration, the Department is convinced that no right of additional entry inured to Mrs. Tuttle under the facts of this case (see case of Ernest B. Gates, 41 L. D., 383), and that it would be an unwarranted perversion of the letter and spirit of the statute to hold that a right of additional entry inured to the minor heirs of a soldier who never made a homestead entry and whose widow had remarried prior to, and was the wife of another, at the date of the adoption of the Revised Statutes, notwithstanding the fact that such widow, during her widowhood and prior to the adoption of the Revised Statutes, may have made a homestead entry for less than 160 acres of land.

Were the question presented for the first time, whether a right of additional entry under sections 2306 and 2307, Revised Statutes, may be accorded upon the basis of an original entry made by the widow of a soldier, who remained a widow until after the adoption of the Revised Statutes, as affirmatively determined in the case of Sierra Lumber Company (31 L. D., 349), and since followed, this Department would hesitate to so hold, but, for obvious reasons of administration, having due regard to the rights of parties, said to have been acquired under such ruling, it will not now be disturbed. However, that ruling will not be extended to a case like the one here under consideration.

The decision appealed from is accordingly affirmed.

CENTRAL PACIFIC RY. CO.

Decided December 26, 1914.

RAILROAD GRANT—EXCEPTION OF MINERAL LAND.

To constitute land mineral within the meaning of the excepting clause to the grant to the Central Pacific Railway Company it is not necessary that it be shown as a present fact to contain mineral in paying quantities, but if

evidence of mineral is found thereon sufficient, in the opinion of prudent and qualified persons, to warrant further exploration and expenditure, with reasonable prospect of success, the land is mineral within the meaning of the act and not subject to selection thereunder.

BURDEN ON COMPANY TO ESTABLISH CHARACTER OF LAND.

When the character of land selected by the railway company is put in issue, the burden is on the company to show by clear and convincing evidence that the land is of a character subject to the grant.

JONES, First Assistant Secretary:

Upon hearing had, the register and receiver, Carson City, Nevada, after finding part of the lands involved to be nonmineral in character, held that the evidence conclusively establishes the mineral character of the SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ and SW. $\frac{1}{4}$, Sec. 9, the N. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 15, N. $\frac{1}{2}$ NE. $\frac{1}{4}$, SW. $\frac{1}{4}$ NE. $\frac{1}{4}$, and the SE. $\frac{1}{4}$, Sec. 17, T. 31 N., R. 51 E., M. D. M.

Upon appeal, the Commissioner of the General Land Office modified said decision, holding the SW. $\frac{1}{4}$ NW. $\frac{1}{4}$, SE. $\frac{1}{4}$ SW. $\frac{1}{4}$, and NW. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 9, to be nonmineral in character, affirming the conclusion of the register and receiver as to the other tracts.

The railway company has appealed from the Commissioner's decision, contending that with the exception of land embraced in certain mining locations in the subdivisions described the lands found to be mineral are in fact nonmineral in character. The contention of the railway company and the Commissioner's decision, in so far as it relates to the three 40-acre subdivisions in section 9, found by the register and receiver to be mineral and by the Commissioner to be nonmineral, appear to be based upon the theory that to warrant the denial of the company's selection the presence of mineral in paying quantities upon the land must be proven. This theory is not in accordance with the law or with the rulings of this Department. In the case of *Castle v. Womble* (19 L. D., 455), cited approvingly by the Supreme Court in *Chrisman v. Miller* (197 U. S., 322), the Department held:

Where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine, the requirements of the statute have been met. To hold otherwise would tend to make of little avail, if not entirely nugatory, that provision of the law whereby "all valuable mineral deposits in lands belonging to the United States . . . are . . . declared to be free and open to exploration and purchase." For, if as soon as minerals are shown to exist, and at any time during exploration, before the returns become remunerative, the lands are to be subject to other disposition, few would be found willing to risk time and capital in the attempt to bring to light and make available the mineral wealth.

The grant to the Central Pacific Railway Company expressly excepts mineral lands, and unless it be clearly shown that lands for which patent is sought by the company are nonmineral in character,

this Department is not warranted in approving the company's selection or in issuing patent thereon.

With respect to the NW. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 9, upon which are located two open cuts and a tunnel, the Government witnesses testified to finding slight indication of minerals, while the witnesses for the railway company found no indications. On the SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ is located a part of the River View location, and upon this subdivision, as well as upon the NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ and SW. $\frac{1}{4}$ SW. $\frac{1}{4}$, the Government witnesses testified to finding copper ore, zinc, and lead in the tunnel upon the Humboldt claim, survey 3164. The Commissioner stated that on the SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ no workings are shown by the plat, and that one of the owners of the River View claim testified that although they had found mineral on the claim he would not swear that they had a vein. The railway company's witnesses found no mineral upon the SE. $\frac{1}{4}$ SW. $\frac{1}{4}$. Upon the SW. $\frac{1}{4}$ NW. $\frac{1}{4}$, Sec. 9, is located the Palisade Tunnel and some open cuts, in which the Government agents testified to seeing iron dikes, and one of the miners testified to seeing veins. There are no mining locations at present upon this subdivision, and the railway company's witnesses found no mineral. It is upon this testimony that the Commissioner found that the mineral character of the NW. $\frac{1}{4}$ SW. $\frac{1}{4}$, the SE. $\frac{1}{4}$ SW. $\frac{1}{4}$, and the NW. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 9, had not been established.

From contentions made in the appeal and brief it is apparent, as already stated, that the railway company is under the impression that it is incumbent upon the Government to show that the lands do not, as a present fact, expose mineral in paying quantities. As already indicated, this is not, in the opinion of the Department, in accordance with the law or the rulings of this Department, and if any evidence of mineral is found upon the land, and the showing is sufficient, in the opinion of prudent and qualified persons, to warrant further exploration and expenditure, with reasonable prospect of success, the land can not be classified as nonmineral, and is not subject to the grant to the railway company.

To establish the right to a patent, it is incumbent upon the railway company, when the character of the land is called into issue, to furnish clear and convincing evidence that the lands are of the character subject to the grant. In my opinion, no such showing has been made in this case, but, on the contrary, the indications, as disclosed in the testimony, are that the three subdivisions described, as well as those found to be mineral by the Commissioner's decision, are not of the character subject to selection. Accordingly, the Commissioner's decision is modified, and selection list 42 held for cancellation to the extent of the SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ and SW. $\frac{1}{4}$, Sec. 9, the N. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 15, the N. $\frac{1}{2}$ NE. $\frac{1}{4}$, SW. $\frac{1}{4}$ NE. $\frac{1}{4}$, and SE. $\frac{1}{4}$, Sec. 17, T. 31 N., R. 51 E., M. D. M.

CENTRAL PACIFIC RY. CO.

Motion for rehearing of departmental decision of December 26, 1914, 43 L. D., 545, denied by Assistant Secretary Sweeney April 27, 1915.

UNION PHOSPHATE COMPANY.

Decided January 29, 1915.

MILL SITE—REJECTION OF APPLICATION FOR LODE CLAIM.

Section 2337, Revised Statutes, contemplates that a mill site used and occupied only for mining purposes in connection with a lode mining claim or group of claims shall be patented simultaneously with the lode claim or claims to which it is appurtenant, unless the lode claim or claims shall have been previously patented; and the rejection in its entirety of an application for patent to a lode claim or group of claims carries with it an included application for patent to a mill site used only in connection with such claim or claims.

JONES, *First Assistant Secretary:*

This is an appeal by the Union Phosphate Company from so much of the Commissioner's decision of October 6, 1913, as holds for rejection its mineral application 012751, to the extent of the North Lake mill site claim, survey 2632-B, situate in lot 3, Sec. 12, T. 15 S., R. 44 E., Blackfoot land district, Idaho.

The mill site claim was applied for in connection with the Bingham, Original, Broken Hill and Mohawk lode mining claims, survey 2632-A, and the Commissioner's action with respect to the mill site claim is based on the grounds (1) that it did not appear from the record then before him that there was or had been at the date of the application any use or occupancy of the ground for mining or milling purposes; and (2) that subsequently to the date of the mill site location, the filing of the application for patent, the submission of proof thereon, and payment for the land, the mill site area was included in an executive order of withdrawal for power site purposes.

The appeal is accompanied by an affidavit of the attorney in fact for the appellant company, wherein he avers that the mill site claim is now and was at the date of the application used and occupied as a dumping place for material taken from the tunnel (whose portal is on the mill site) projected for the purpose of developing certain lode mining claims, including those embraced in the present application. It is urged in the appeal that the use of the ground for dumping purposes is such a mining use and occupancy as is contemplated by section 2337, Revised Statutes, and that this, together with the fact that the claim had been applied and paid for at the date of the withdrawal, operated to except the area from the withdrawal.

A consideration of the questions thus presented is unnecessary to a determination of this case for the present application must, in any event, on the record as it now stands, be rejected, for reasons other than those assigned by the Commissioner.

The lode locations, above mentioned, and with which and in the same application the mill site is sought to be patented, were made December 9, 1907, on account of deposits of rock phosphate contained therein. They lie end to end from north to south in the order in which they are named, along the line of outcrop of the phosphate deposit and form the northerly four of a group of fifteen claims, all located along a continuous outcrop of the same bed, extending for a distance of over four miles. The improvements, aside from two small excavations, of a total value of \$25, situated on the Original location, whose value is sought to be applied to these four claims in satisfaction of the statutory expenditures, consist of an undivided one-fourteenth interest in the cost of a tunnel, denominated by the United States mineral surveyor as improvement No. 3, whose total cost is given as \$3,230, and other workings described in the United States mineral surveyor's return of improvements, as follows:

Two tunnels with crosscuts therefrom. The mouth of the East tunnel bears from Cor. No. 2, Mohawk lode S. 7° 08' W. 15670.1 ft., and runs N. 8° E. 120 ft. to point "E," Thence N. 8° E. 18 ft., Thence N. 46° 30' W. 51.4 ft., to point "A"; Thence N. 0° 30' E. 89 ft., Thence N. 38° 30' E. 41.8 ft.; Thence N. 10° 30' E., 113 ft., thence N. 44° 30' E. 44 ft. to face, 4 x 6 ft. in rock. From point "E," a crosscut runs N. 82° W. 15 ft., 4 x 6 ft. in rock. From point "A," a crosscut runs N. 71° W. 45.8 ft. to point "B" in the West tunnel, thence N. 64° 30' W. 10 ft. to face, 4 x 6 ft. in rock. From point "B," the West tunnel runs N. 31° E. 32.5 ft. to face, 4 x 6 ft. in rock. From point "B" the West tunnel runs S. 31° W. 3.6 ft., thence S. 1° W. 21.6 ft. to point "C," thence S. 1° W. 4.4 ft., to point "D"; thence S. 1° W. 80.6 ft. to point "F," 4 x 6 ft., in rock. From point "C," a crosscut runs N. 54° 30' W. 24 ft. to face, 4 x 6 ft. in rock. From point "D," a crosscut runs N. 78° 30' E. 39.5 ft. 4 x 6 ft. in rock. From point "F," the West tunnel runs S. 1° W. 95 ft. to mouth, 5 x 6½ ft. in rock. This last described portion of the West tunnel has been applied as expenditure of five hundred dollars for Sur. No. 2371, Nashville Lode.

Value of the East tunnel and cross cuts therefrom, and the unapplied portion of the West tunnel and crosscuts therefrom..... \$7540

The tunnels described as Improvement No. 4 which are now in the vein, will, when projected in the same general course along the vein, cut it at depth in all of the lode locations embraced in Sur. No. 2601, Campbird etc. lodes and in all of the lode locations embraced in this survey, and thereby develop them economically and advantageously.

The tunnel which is described above as Improvement No. 3 is intended to cut the vein of the several lode locations enumerated above at a greater depth than will the tunnels described as Improvement No. 4. It is now under course of construction to that end, and when the vein has been cut, drifts may be run northerly and southerly thus making it possible to bring the ore from great depth to the surface most economically.

The width of these excavations, which is only four feet, and the numerous courses in which they are projected do not suggest to the Department any intention on the part of the claimants to utilize the same as a working tunnel for the ultimate development of any of the claims here in question, the southerly line of the southernmost one of which—the Mohawk—being situated nearly three miles to the north of the portals of said tunnels. The work would seem, on the other hand, to have been performed, primarily if not exclusively, with a view to prospecting and exploring the deposit exposed on the particular claim within whose limits the improvements are situated. It is true that this work, like a drill hole, might give rise to information that would be of aid in the development of another claim or claims adjacent to the one upon which such work was performed, but it is believed that said improvement No. 4 is too remote from any portion of the ground embraced in the present applications to be of any value, from a prospecting or exploration standpoint, to that ground.

The Department is clearly of opinion, therefore, that the cost of said improvement No. 4 is not available as a credit toward meeting the statutory expenditures as to any of the four claims embraced in this application and that it must be eliminated from consideration in the determination of the case.

Respecting improvement No. 3, it is sufficient to say that conceding but without holding that it may be accepted as tending to the development of these claims, an undivided one-fourteenth interest in the value thereof, which is sought to be accredited to each of the claims, together with the value of such individual improvements as have been placed thereon, falls far short of satisfying the requirements of the statute. For this reason and aside from any other objections, the application, as to the lode claims, must be rejected.

The mill site claim, included in the application, has no mill or reduction works thereon, but is utilized as a dumping place for material taken from the tunnel (improvement No. 3) whose portal is situated on the claim.

The law relating to the patenting of mill sites, section 2337, Revised Statutes, reads as follows:

Where nonmineral land not contiguous to the vein or lode is used or occupied by the proprietor of such vein or lode for mining or milling purposes, such nonadjacent surface ground may be embraced and included in an application for a patent for such vein or lode, and the same may be patented therewith, subject to the same preliminary requirements as to survey and notice as are applicable to veins or lodes; The owner of a quartz mill or reduction works, not owning a mine in connection therewith, may also receive a patent for his mill site, as provided in this section.

The law thus divides patentable mill sites into two classes: (1) Such as are used and occupied by the proprietor of the vein or lode

for mining or milling purposes; (2) such as have thereon quartz mills or reduction works the ownership of which is disconnected with the ownership of the vein or lode. The second class may be of course patented independently of the lode mining claim. As to the first class, however, the law clearly contemplates that such a mill site shall be patented, if at all, only simultaneously with the lode claim or claims to which it is appurtenant unless (see Eclipse Mill Site, 22 L. D., 496) the lode claim should have been previously patented. From this it follows that the rejection in its entirety of the application for patent to a lode claim or group of lode claims would carry with it also an included application for patent to a mill site asserted to have been used and occupied only for mining purposes in connection with the lode claim or claims to which such mill site is appurtenant.

The application for patent to the lode claims here in question, having failed for the reasons above stated, the included application for the mill-site claim must also be rejected.

The judgment of the Commissioner is accordingly affirmed.

UNION PHOSPHATE COMPANY.

Motion for rehearing of departmental decision of January 29, 1915, 43 L. D., 548, denied by Assistant Secretary Sweeney April 23, 1915.

GEORGE F. WUNSCH.

Decided February 6, 1915.

WITHDRAWAL OF RIGHT OF WAY FOR TRANSMISSION LINES—CONTIGUITY.

An executive order withdrawing a strip of land under the act of June 25, 1910, for right of way for electrical transmission lines, does not render the tracts lying on opposite sides of the withdrawn strip noncontiguous, and an entry embracing tracts on both sides of such strip may be allowed, but the entry papers and patent should contain an excepting clause excluding the area embraced in the withdrawal.

JONES, *First Assistant Secretary*:

George F. Wunsch appealed from decision of April 24, 1914, rejecting his homestead application for N. $\frac{1}{2}$ NE. $\frac{1}{4}$, N. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 28, T. 11 N., R. 2 W., M. M., for noncontiguity of the land.

April 22, 1913, executive order was made withdrawing a strip 180 feet wide through the NW. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 28, as right of way for a transmission line of the Great Falls Power Company. November 21, 1913, Wunsch applied for homestead entry, which the local office

and the Commissioner rejected because the land applied for was rendered noncontiguous by the power site reserve above mentioned. The appeal contends that the tracts are not rendered noncontiguous by the withdrawal. The order read:

It is hereby ordered that the following described lands be and the same are hereby withdrawn from settlement, location, sale or entry and reserved for the purposes of electrical transmission lines.

It then describes a line which bisects the NW. $\frac{1}{4}$ NE. $\frac{1}{4}$, near its west boundary in a nearly north and south course.

These lands were withdrawn by the President of the United States pursuant to and under the authority imposed by the act of Congress approved June 25, 1910 (36 Stat., 847), and can not, therefore, be permitted to be included in the homestead entry. However, considering the purpose and effect of said withdrawal and the expressed willingness of the applicant to make entry and take patent exclusive of the strip reserved by Executive order, the Department believes that the proper solution of the difficulty rests in the allowance of the entry and the issuance of patent thereon, exclusive of the 180-foot strip reserved and withdrawn for the transmission line.

The decision of the Commissioner of the General Land Office is accordingly reversed, and the case remanded, with direction that the entry be allowed, in the absence of other objection, the following exception to be placed in the entry papers and in the patent, should one be issued:

Excepting and excluding from these presents all that tract of land described and included in power-site reserve No. 349, created by Executive order of April 22, 1913, under the act of Congress approved June 25, 1910 (36 Stat., 847).

MABEL SLETTEN.

Decided February 6, 1915.

HOMESTEAD ENTRY ALONG INTERNATIONAL BOUNDARY LINE.

In view of the executive proclamation of May 3, 1912, reserving all public lands lying within sixty feet of the international boundary line between the United States and the Dominion of Canada, an entry of lands along the boundary can only be allowed subject to the reservation, and an application to enter any of such lands should specifically except and exclude therefrom a strip sixty feet in width lying along the boundary line.

JONES, *First Assistant Secretary:*

Mabel Sletten appealed from decision of September 29, 1914, holding that her homestead entry for lots 3 and 4, Sec. 3; lots 1, 2, and 3, Sec. 4, T. 37 N., R. 49 E., M. M., Glasgow, Montana, is subject to the international boundary right of way reservation by executive proclamation of May 3, 1912.

Sletten's entry was not made until May 15, 1914, after the international boundary right of way 60 feet wide was reserved by the President's proclamation of earlier date. The entry was erroneously allowed, without reservation of the right of way. The Commissioner permitted Sletten to ask amendment of her entry by insertion in the homestead application of the provisions that it was—

Subject to the reservation of a strip sixty feet wide along the boundary line between the Dominion of Canada and the United States, consenting to the adjustment of the entry to conform to any supplemental plat segregating said sixty-foot strip, which may hereafter be filed.

The Commissioner was correct in holding that Sletten is not entitled to include in her homestead entry the 60-foot strip along the international boundary line between the United States and Canada, withdrawn by proclamations of the President dated June 15, 1908 [35 Stat., 2189], and May 3, 1912 [37 Stat., 1741], for public purposes.

The Department is not satisfied, however, that the provision which the Commissioner proposes to insert in the homestead application fully meets the situation or is warranted by the terms of the proclamation and the law. The proclamation of May 3, 1912, *supra*, makes an absolute reservation of all public lands lying within 60 feet of the boundary line between the United States and the Dominion of Canada. Sletten's claim having been initiated subsequent to this withdrawal, her entry and the patent, if one be issued thereon, can not be allowed to include any of said land. Consequently, Sletten's entry should be amended as follows:

Excepting and excluding from this entry all that tract and parcel of land lying and being within 60 feet from the boundary line between the United States and the Dominion of Canada, being land withdrawn and reserved for public purposes by proclamation of the President dated May 3, 1912.

Should this decision become final, you will amend the entry papers accordingly, and insert in the patent thereon, if one be issued, a similar excepting clause.

ADA B. MILLICAN.

Decided February 9, 1915.

TIMBER AND STONE ENTRY—CHIEF VALUE OF LAND.

Lands subject to entry under the timber and stone act must not only be unfit for cultivation but must be chiefly valuable for timber, which value is judicable by smallest legal subdivisions; and where a smallest legal subdivision embraced in a timber and stone entry contains but little timber, and is chiefly valuable because it is the site of and controls access to a spring, such legal subdivision should be eliminated from the entry.

PRICE OF LAND BY SMALLEST LEGAL SUBDIVISIONS.

Each legal subdivision embraced in a timber and stone entry must be sold for at least \$2.50 per acre; and it is not sufficient that the price paid for all the legal subdivisions in the entry, taken in its entirety, averages \$2.50 per acre.

JONES, *First Assistant Secretary*:

This is an appeal by the Solicitor for the Department of Agriculture from the decision of the Commissioner of the General Land Office, dated October 22, 1914, affirming the recommendation of the register and receiver, and holding intact timber and stone cash entry No. 02397, made January 25, 1911, at Lakeview, Oregon, by Ada B. Millican, for the SW. $\frac{1}{4}$, Sec. 31, T. 21 S., R. 16 E., W. M., embracing 148.17 acres.

The appraisal of the land made in accordance with the regulations of November 30, 1908 (37 L. D., 289), disclosed that there were upon the NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ 14,000 feet of yellow pine of a value of 75¢ per thousand, the land itself being returned as poor grazing land of a value of \$50, the total value of the subdivision being given as \$60.50. The SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ was appraised as containing 3,000 feet of yellow pine, worth 75¢ per thousand, the land itself being poor grazing land of the value of \$50, the total value of the subdivision being given as \$52.25. The appraiser reported that there was located upon the E. $\frac{1}{2}$ SW. $\frac{1}{4}$ a certain spring, which is the only spring in that immediate vicinity and constitutes the chief value of the above mentioned 40 acres. He accordingly recommended that the application be approved as to lots 3 and 4, constituting the W. $\frac{1}{2}$ of the SW. $\frac{1}{4}$, and whose value was returned as \$305.23 and \$229.99, respectively, and be rejected as to the E. $\frac{1}{2}$ SW. $\frac{1}{4}$. The entry was accordingly held for cancellation by the Commissioner July 25, 1911, but, upon appeal, the Department, May 3, 1912, directed that a hearing be held in order to ascertain the true character of the legal subdivisions in controversy.

The record discloses that there is located upon the NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ approximately 50,000 feet of yellow pine and some lodge pole pine, which is of no present value. This 40-acre subdivision contains a spring known as Sand Spring, which is the only available source of water for a radius of 15 miles. The record would seem clearly to indicate that the chief value of this 40-acre subdivision is for the spring that it contains and that it has very little value as a timber claim.

Under the timber and stone law of June 3, 1878 (20 Stat., 89), the land must not only be unfit for cultivation but valuable chiefly for timber. In the present case the timber upon the particular 40-acre tract containing the spring is of small value. In fact, but a fraction of the forty has any timber on it whatever. Timber and

stone entries are judicable by smallest legal subdivisions (Albert R. Pfau, Jr., 39 L. D., 359); and the facts that this quarter-quarter contains but little timber, and that its chief value is because it is the site of and controls access to a spring, may well be taken into consideration in determining the good faith of the applicant. See Stanislaus Electric Power Company (41 L. D., 655), which involved a tract applied for under the building-stone placer mining law, which also required the land to be chiefly valuable for building stone. It was there said, at page 659:

The good faith of the applicant and the use to which he has devoted or may intend to devote the land is a proper element for consideration as incidental to, and throwing light upon, the real value and character of the land sought.

The entry, therefore, must be canceled as to the NE. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 31.

Another question is raised by the appeal. The SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ was sold at the price of \$52.25, whereas, it is contended, the legal price under the statute would be the minimum of \$2.50 per acre, or \$100. The entire tract was appraised at a value of \$647.97, which is more than \$2.50 per acre, taking it in its entirety. However, the appellant contends that under the law, regulations, and decisions of the Department, each legal subdivision must be sold for at least the minimum statutory price.

The act of June 3, 1878, authorizes the sale of timber and stone lands—

in quantities not exceeding one hundred and sixty acres . . . at the minimum price of two dollars and fifty cents per acre.

Section 2 requires a written statement designating by legal subdivisions the particular tract of land desired to be purchased. The regulations of November 30, 1908, *supra*, provide—

Any lands subject to sale . . . may . . . be appraised by smallest legal subdivisions, at their reasonable value but at not less than \$2.50 per acre.

Section 15 provides that the total appraisement of both land and timber must not be less than \$2.50 per acre. It also requires that the appraisement must be made by smallest legal subdivisions.

It is clear that an applicant under the timber and stone law for a 40-acre tract will be required to pay at least the minimum price of \$2.50 per acre. Timber and stone entries are judicable by the smallest legal subdivisions. See Albert R. Pfau, Jr., *supra*, in which the following language was used at page 360:

It was the undoubted intent of the law that only lands of the character specified should be salable or sold thereunder, that the same should be judicable and salable by legal subdivisions, and that the Commissioner of the General Land Office should regulate such adjudications and sales accordingly.

I am of the opinion, therefore, that in sales under the timber and stone act each legal subdivision must be sold for at least \$2.50 per acre, as required by the statute, notwithstanding the fact that the value of other legal subdivisions embraced in the same entry may be of sufficient value as a whole to bring up the entire average of the entry to \$2.50 per acre. In the present case the SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ was sold for \$52.25, instead of \$100, the necessary amount at \$2.50 per acre. The entryman will, therefore, be required to pay the additional amount of \$47.75, or the entry will likewise be canceled as to said SE. $\frac{1}{4}$ SW. $\frac{1}{4}$.

The Commissioner's decision is modified to the above extent, and the matter remanded for further proceedings in harmony herewith.

E. A. CRANDALL.

Letter of February 13, 1915.

RIGHT OF WAY—TITLE AFTER ABANDONMENT.

Entry and patent of a legal subdivision crossed by the 400-foot right of way granted to the Northern Pacific Railway Company by the act of July 2, 1864, carries no interest or title to the right-of-way strip; and upon subsequent abandonment of the right of way the title thereto reverts to the United States and does not pass to the owners of the subdivisions through which the right of way runs.

JONES, First Assistant Secretary:

I have your [E. A. Crandall, Hope, Idaho] letter of June 29, 1914, making inquiry as to the state of the legal title to a strip of ground constituting a portion of Sec. 6, T. 56 N., R. 2 E., in Idaho, being the same ground formerly occupied by the Northern Pacific Railroad Company as a right of way, but which you allege to be now abandoned and no longer used by said company for that purpose.

I am informed by the Commissioner of the General Land Office that the records of that office disclose the fact to be that on January 27, 1899, one Elisha A. Crandall made homestead entry of the E. $\frac{1}{2}$ SW. $\frac{1}{4}$ and lots 6 and 7, Sec. 6, T. 56 N. R. 2 E., for which patent certificate issued on January 24, 1902, and that a patent was granted to the entryman on October 16, 1903. It also appears that the route of the Northern Pacific Railroad traverses a portion of the lands so described, that portion of the line of said road having been definitely located on December 12, 1882. The exact date of construction is not indicated by said records, but it is presumed that the road was completed prior to the date on which the above-mentioned homestead entry was initiated.

As you appear to be aware, there was granted to the Northern Pacific Railroad Company by an act of Congress approved July 2,

1864 (13 Stat., 367), a right of way over public lands four hundred feet in width along and upon such line or course as the company might definitely choose and determine upon as the location of its railway line. Your inquiry presents a question of law which does not appear to have heretofore received the close attention of the Department. The act of Congress making the grant to the Northern Pacific Railroad Company above cited has been construed by the Supreme Court as having had effect to invest that company with the legal title to and estate in the lands occupied by it as and for a right of way, such estate being characterized as a limited fee determinable by the act of the company in abandoning the property and ceasing to use it for the purposes for which the grant was made. This view of the grant was announced in *Northern Pacific Railroad Company v. Townsend* (190 U. S., 267), where the Court said:

Following decisions of this court construing grants of rights of way similar in tenor to the grant now being considered, *New Mexico v. United States Trust Co.*, 172 U. S., 171, 181; *St. Joseph & Denver City R. R. Co. v. Baldwin*, 103 U. S., 426, it must be held that the fee passed by the grant made in section 2 of the act of July 2, 1864. But, although there was a present grant, it was yet subject to conditions expressly stated in the act, and also (to quote the language of the *Baldwin* case) "to those necessarily implied, such as that the road shall be . . . used for the purposes designed." Manifestly, the land forming the right of way was not granted with the intent that it might be absolutely disposed of at the volition of the company. On the contrary, the grant was explicitly stated to be for a designated purpose, one which negated the existence of the power to voluntarily alienate the right of way or any portion thereof. The substantial consideration inducing the grant was the perpetual use of the land for the legitimate purposes of the railroad, just as though the land had been conveyed in terms to have and to hold the same so long as it was used for the railroad right of way. In effect the grant was of a limited fee, made on an implied condition of reverter in the event that the company ceased to use or retain the land for the purpose for which it was granted.

And in another place in the same opinion, speaking of the effect of a patent subsequently granted to a homestead entryman to convey title to lands occupied by the railroad company, it was said:

At the outset, we premise that, as the grant of the right of way, the filing of the map of definite location, and the construction of the railroad within the quarter section in question preceded the filing of the homestead entries on such section, the lands forming the right of way were taken out of the category of public lands subject to preemption and sale, and the land department was, therefore, without authority to convey rights therein. It follows that the homesteaders acquired no interest in the land within the right of way because of the fact that the grant to them was of the full legal subdivisions.

From this it would seem necessary to conclude that the patent granted to you on October 16, 1903, did not convey to you any interest or estate in the lands granted to and possessed by the railway company prior to the date on which your homestead entry was initiated.

The only question remaining and demanding consideration is that one which concerns the effect of a subsequent determination of the estate possessed by the railroad company as a consequence of abandonment by it of its right of way; that is whether the title becomes vested in one who, under circumstances such as are disclosed in your case, has received a patent from the United States for the legal subdivision embracing the right of way, or whether it returns to and is held by the United States.

It is a well settled principle of the law of real estate that the grant of a fee leaves nothing in the grantor which he can convey to another person. The grant or conveyance of what is known in the law as a base qualified or limited fee leaves the grantor possessed of nothing more than a "possibility of reverter," which the law does not recognize as an estate and which can not be the subject of a conveyance. (Washburn on Real Property, Sec. 1512.) If the estate granted were one resting on a condition subsequent, the result would be the same, for a right of re-entry for a breach of condition would not be assignable. (Washburn on Real Property, Sec. 954.) That these legal principles must be operative in respect of the grant made to the Northern Pacific Railroad Company is made more or less manifest by the ruling of the Supreme Court in the opinion from which the above quotations have been made, and where it was said that the Land Department was incompetent to create an interest in or confer a right upon any person in the land granted to the railroad company, and that a patent issued to a homestead entryman or claimant did not invest him with any title to such lands.

In this state of the law, it seems difficult, if not impossible, to escape the conclusion that, upon abandonment by the railway company of the right of way granted to it across the lands described in the patent which afterwards issued to you, the legal title to the lands of such right of way reverted to and became the property of the United States and must so remain until some provision of statute has been made by Congress for its disposition.

In this connection, I have not overlooked the importance of a possible suggestion or contention that a title acquired by the United States subsequent to its conveyance to another would inure to the benefit of its grantee. But the doctrine of law in respect of an after-acquired title rests upon an estoppel raised by affirmations or recitals of title and estate or covenants of warranty contained in an instrument of conveyance. (Bigelow on Estoppel, Secs. 670, *et seq.*) The United States does not, by a patent for lands supposed to be public in character, warrant title, expressly or impliedly, and consequently no estoppel of the character above referred to can be predicated on a patent conveying lands which, at the time of such conveyance, were not the property of the United States, and which the

Land Department had no authority of law to sell and convey. (*Rice v. Minnesota & Northwestern Railroad Co.*, 1 Black, 358; *Pine River Logging Company v. United States*, 186 U. S., 279.)

Referring to what you say concerning the possession taken by another person of the land of the abandoned right of way, it may be said that, as was expressly ruled by the Supreme Court in the decision which we have been considering, a railroad company cannot voluntarily alienate its right of way, or any portion thereof; from which it follows that any conveyance by the railway company of the lands so formerly occupied and used by it, which may have been attempted, was and is wholly invalid and ineffective to invest the company's vendee with any interest in the land so attempted to be conveyed, unless validated by the act of April 28, 1904 (33 Stat., 538), providing—

That all conveyances heretofore made by the Northern Pacific Railroad Company or by the Northern Pacific Railway Company, of lands forming a part of the right of way of the Northern Pacific Railroad, granted by the Government by any act of Congress, are hereby legalized, validated, and confirmed: *Provided*, That no such conveyance shall have effect to diminish said right of way to a less width than one hundred feet on each side of the center of the main track of the railroad as now established and maintained.

It is my judgment, after mature consideration, that the matter presented in your letter is not capable of solution, save at the hands of Congress. Under existing law, as defined by the Supreme Court, this Department has no jurisdiction over lands within such an abandoned railroad right of way.

BLANCHE WESTBROOK.

Decided February 15, 1915.

THREE-YEAR HOMESTEAD—ACTUAL RESIDENCE—CONSTRUCTIVE RESIDENCE.

Proof submitted under the three-year homestead law must show actual residence upon the land entered for at least seven months each year for three years, and the land department is without power to extend the privilege of constructive residence for absences during the seven months periods.

RESIDENCE—TEMPORARY ABSENCES—VISITS TO CLAIM.

The requirement that the entryman shall actually reside upon his claim for seven months each year does not, however, preclude short absences for the purpose of going to market or other brief absences such as are ordinarily necessary and incident to the conduct of a farm.

LEAVE OF ABSENCE—UNAVOIDABLE CASUALTIES.

In case of unavoidable casualties, rendering absences necessary during the seven months periods, leaves of absence may be applied for and granted under the general provisions of the act of March 2, 1889.

JONES, *First Assistant Secretary*:

January 25, 1911, Blanche Westbrook made homestead entry 05090, for the NW. $\frac{1}{4}$, Sec. 24, T. 24 S., R. 10 W., N. M. P. M., Las Cruces, New Mexico, land district. July 29, 1914, she submitted

proof upon said entry under the provisions of section 2291, Revised Statutes, as amended by the act of June 6, 1912 (37 Stat., 123).

It appears from the record that the entrywoman is a stenographer and that during the time covered by her said proof she was employed in the town of Deming, about 7 miles distant from the homestead; that it was impracticable for her to go to and from her homestead to her work daily, but that she did return to the land every Saturday and remained until Monday; also that during the years 1912, 1913, and 1914 she was absent from the homestead under the leave of absence provisions of the act of Congress cited, from December 1, 1912, to May 1, 1913, and from December 1, 1913, to May 1, 1914. The land has been improved by the construction of a one-room frame dwelling house, barn, well, fences upon 20 acres, and 20 acres placed under cultivation, the total value of improvements being approximately \$600.

As already stated, the claimant in submitting proof on July 29, 1914, sought to take advantage of the provisions of the act of June 6, 1912, *supra*, commonly known as the three-year homestead law, rather than to complete the entry under the provisions of the law in force at date of her original entry, commonly known as the five-year homestead law. The law in force at date of the said original entry, section 2291, Revised Statutes, prescribes no exact amount of residence, cultivation, or improvement as a condition for the making of final proof and issuance of patent, requiring claimants at the expiration of five years from date of entry or within two years thereafter to prove by two credible witnesses—

that he, she, or they have resided upon or cultivated the same for the term of five years immediately succeeding the time of filing the affidavit.

Under the rulings in force at time of the original entry in this case homestead claimants were required to take the land in good faith as a home and to perform such residence, cultivation, and improvement during the five years preceding proof as would evidence a *bona fide* compliance with the law.

The so-called three-year homestead law, or section 2291, Revised Statutes, as amended by the act of June 6, 1912, *supra*, however, imposes different conditions and limitations upon homestead entrymen who seek to take advantage of its provisions. The maximum period of residence is therein reduced to three years from date of entry, and entrymen are required to prove at time of submission of final proof that they have "actually resided upon and cultivated the same for the term of three years," the law providing, however, that—

upon filing in the local land office notice of the beginning of such absence the entryman shall be entitled to a continuous leave of absence from the land for

a period not exceeding five months in each year after establishing residence, and upon the termination of such absence the entryman shall file a notice of such termination in the local land office, but in case of commutation the fourteen months' actual residence, as now required by law, must be shown.

The law further requires the cultivation of a specific area upon the entry during each year. It will be noted that in dealing with the question of residence the statute permits a leave of absence from the land for not exceeding five months each year, and that as to the remaining portion of the year, or seven months, the entryman is required to show that he has "actually resided upon and cultivated the same."

In reporting upon the measure, when pending before the House of Representatives, the Committee on Public Lands stated:

The object of this bill is to amend the homestead laws in two important particulars: First, it reduces the period of residence required on the homestead from five to three years; second, it permits the entryman and his family to be absent from the homestead five months during each calendar year of the residence period.

Similar language was used in the report made by the Senate Committee on Public Lands.

In reporting upon the measure at a time when it was proposed to require eight months' residence during the year, and to allow a four months' leave of absence, the Secretary of the Interior stated:

If residence is to be reduced to eight months during each year this should be "actual" residence and not constructive residence. If commutation is to be permitted the fourteen months' residence should be continuous as well as actual.

It is apparent from the language of the law as enacted and from the reports mentioned that Congress intended to liberalize the requirements of the homestead law in the matter of the total amount of residence required, namely, to reduce the period of residence required from five to three years and to permit of an absence of not exceeding five months during any one year, without loss to the entryman of such period of absence in computing the total amount of residence required; but, on the other hand, to impose, in view of the more liberal provisions cited, more stringent requirements as to the remaining period of residence and as to the matter of cultivation. To this end they required the entryman to construct a habitable house upon the land and to actually reside thereupon for seven months each year for three years in the case of ordinary proof, or to actually reside thereupon for fourteen months in the case of commutation proof.

This statutory requirement of actual residence upon the land entered for at least seven months a year for three years precludes the Department from extending in such cases the privilege of construc-

tive residence during absences in the seven months' periods, when actual residence is required by the statute. True, this statute does not prevent a homestead entryman from leaving his land for the purpose of going to market or for such short absences as would be necessary in the case of an ordinary farmer residing upon a tract of land, but it does not permit of the maintenance of actual residence in town for six days of the week and a visit to the claim on Saturdays or Sundays, or both. The Department is without discretion in this matter and must conform to the express requirements of the statute. As already pointed out, the law specifically permits of absence for five months during the year, and should unavoidable casualties render absence necessary during the remaining portion of the year, this is met and covered by the provisions of the act of March 2, 1889 (25 Stat., 854), which is as follows:

SEC. 3. That whenever it shall be made to appear to the register and receiver of any public-land office, under such regulations as the Secretary of the Interior may prescribe, that any settler upon the public domain under existing law is unable, by reason of a total or partial destruction or failure of crops, sickness, or other unavoidable casualty, to secure a support for himself, herself, or those dependent upon him or her upon the lands settled upon, then such register and receiver may grant to such a settler a leave of absence from the claim upon which he or she has filed for a period not exceeding one year at any one time, and such settler so granted leave of absence shall forfeit no rights by reason of such absence: *Provided*, That the time of such actual absence shall not be deducted from the actual residence required by law.

It will thus appear that Congress has endeavored to provide for all such contingencies, but that in the absence of such conditions as will permit of a leave of absence under the provisions of the act of March 2, 1889, *supra*, it is incumbent upon this Department to exact in the case of entries made or proofs submitted under the so-called three-year homestead law seven months' actual residence per year for three years, or continuous actual residence for fourteen months in commutation, on final proof, as the case may be.

Applying the provisions of this statute to the case at bar it will be seen that Miss Westbrook had the benefit of the five months' leave of absence per year permitted by law, and that during the remaining seven months she did not maintain her actual residence upon the land entered. The Department is therefore without authority to accept the final proof submitted or to issue patent thereon. The Commissioner's decision is therefore affirmed. The entry will remain intact, subject to submission of further proof, which may in this case, the entry having been made prior to June 6, 1912, be submitted under the laws, rules and regulations in force at time of the original entry, upon or after the expiration of five years from date of such entry, or of the submission of commutation proof, on proof that she

has actually resided upon and cultivated the land continuously for fourteen months, or of three-year proof upon submission of evidence that she has cultivated the land and resided thereupon for seven months per year for three years.

HUTCHISON v. NORTHERN PACIFIC RY. CO.

Decided February 26, 1915.

NORTHERN PACIFIC ADJUSTMENT—ACT OF JULY 1, 1898.

The Northern Pacific Railway Company by acceptance of the act of July 1, 1898, bound itself to relinquish its claim to lands coming within the purview of its provisions, and can not by sale of the land after such acceptance defeat the right of a settler to have his claim adjusted under that act; and where land has been so sold by the company, and it declines to relinquish on that ground, suit should be instituted to compel relinquishment with a view to protection of the rights of the settler.

JONES, *First Assistant Secretary*:

Columbus L. Hutchison appealed from decision of September 11, 1914, denying his election, under the act of July 1, 1898 (30 Stat., 597, 620), to retain the N. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 31, T. 5 N., R. 3 E., W. M., Vancouver, Washington, on the ground that the land department has no longer any jurisdiction in the matter.

The facts out of which this matter arose are that December 5, 1891, Hutchison applied for homestead entry for S. $\frac{1}{2}$ NE. $\frac{1}{4}$, N. $\frac{1}{2}$ SE. $\frac{1}{4}$, of this section, which the local office rejected, and that action the General Land Office affirmed July 25, 1894. November 19, 1894, unreported, the Department reversed that action. May 5, 1896, the case was closed in favor of Hutchison who, May 20, 1896, made homestead entry for S. $\frac{1}{2}$ NE. $\frac{1}{4}$. December 12, 1902, he made final proof on that entry and final certificate issued to him August 2, 1905. December 30, 1905, that tract was patented to him.

May 27, 1895, the N. $\frac{1}{2}$ SE. $\frac{1}{4}$ was patented to the railway company. November 6, 1907, Hutchison elected to retain the land, which was included in the list prepared for relinquishment of lands claimed by settlers under the act of July 1, 1898, *supra*. September 28, 1908, the list was approved by the Secretary of the Interior and, October 3, 1908, demand was made by the land department on the railway company to relinquish the land under the said act of July 1, 1898. This demand was not responded to by the railway company and was insisted upon in letters of the Commissioner of the General Land Office, dated March 31, 1909, December 7, 1910, and July 7, 1914. August 11, 1914, attorneys for the railway company made response to the demand, showing that the NE. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 31, was sold by the company to Hutchison in October, 1891, and was deeded to him

October 19, 1901. As to the NW. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 31, the company made return that it sold the land to the Weyerhaeuser Timber Company, at \$6 per acre, which sale was modified November 16, 1904, to be a sale at the rate of \$6 for each 16,667 feet of merchantable timber standing thereon.

The appeal insists that, under decision in *Humbird v. Avery* (195 U. S., 480), claimant is entitled to release of the land from the railway company and its grantees and to be permitted to make entry.

This contention is well founded. It was held in *Humbird v. Avery, supra*, that:

The railroad company evinced its approval of this action of the legislative department by a prompt acceptance of the act, in its entirety. By such unqualified acceptance the railroad company agreed that, so far as it had any claim to the lands in dispute, whatever the act of Congress required to be done might be done. . . .

If any rights had become vested in the Northern Pacific Railroad Company which could not, against or without its consent, be affected by an enactment like that of 1898, then the objection to legislation, on the ground that it interfered with vested rights, was waived by the acceptance of the act by its successor in interest; for it was entirely competent for the latter company, if it succeeded to all the rights of the railroad grantee, to agree to such a settlement as that devised by Congress. The rights acquired by the definite location of the road, and any selection of lands based thereon, became, upon the acceptance of the act, and so far as that company was concerned, subject to such settlement as the Land Department might legally make under that act. It could not by any sale or contract, made after the acceptance of the act, interfere with the full execution of its provisions.

The acceptance of the act, therefore, obligated the company to comply with the requirements of the land department as to the relinquishment of land claimed as this was. That assent of the company formed a contract which the United States may require it to perform specifically. Its sale subsequently to Weyerhaeuser was in violation of that agreement between the railroad company and the United States and the United States may, by action, compel the company specifically to perform on its part.

The land department has repeatedly adjudged that the railroad company should relinquish the land for the benefit of Hutchison, has made demand, and insisted upon it. The subsequent grantee, Weyerhaeuser, if in fact he is one, took his claim of title, so to speak, *pendente lite* while the land department was proceeding with administration of the act.

The agreement or contract between the United States and the railroad company, by its acceptance of the act of July 1, 1898, *supra*, can not be regarded as giving the railroad company the option to observe or disregard it as it sees fit, while the United States, on its part, is bound in any event.

The decision is therefore reversed.

**EXCHANGE OF LANDS WITHIN INDIAN RESERVATIONS FOR
PUBLIC LANDS—ACT OF APRIL 21, 1904.**

REGULATIONS.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., February 27, 1915.

Registers and Receivers, United States Land Offices.

GENTLEMEN: The act of April 21, 1904 (33 Stat., 211), making appropriations for the current and contingent expenses of the Indian Office and for fulfilling treaty stipulations with the various Indian tribes for the fiscal year ending June 30, 1905, provides, inter alia—

That any private land over which an Indian reservation has been extended by Executive order may be exchanged, at the discretion of the Secretary of the Interior and at the expense of the owner thereof and under such rules and regulations as may be prescribed by the Secretary of the Interior, for vacant non-mineral, nontimbered, surveyed public lands of equal area and value and situate in the same State or Territory.

Preliminary to making relinquishments and selection of other lands under the provisions of the foregoing act, the owner of any private land over which an Indian reservation has been extended by Executive order must file with the Commissioner of the General Land Office an application addressed to the Secretary of the Interior requesting that he be permitted to surrender the lands by him owned and to select other lands in lieu thereof, pursuant to the provisions of the act of April 21, 1904 (33 Stat., 211), conformable to the rules and regulations adopted by the Secretary of the Interior and subject to the exercise of the Secretary's discretion. The land proposed to be surrendered must be accurately described by legal subdivisions if surveyed, or in the event that it is unsurveyed by such designation as will readily enable the Commissioner of the General Land Office to identify it. There may accompany such applications a brief, or argument, setting forth such reasons as the petitioner may see proper to offer why the application to accept such land as a basis of selection under the aforesaid act should be entertained by the Secretary of the Interior. This petition, with report thereon, will be submitted by the Commissioner of the General Land Office to the Commissioner of Indian Affairs for report as to whether the lands are needed for the use of the Indians, and for such other recommendations as the Commissioner of Indian Affairs may deem proper, and thereafter the applications, with all papers, and recommendation of the Commissioner of Indian Affairs and of the General Land Office will be submitted to the department for consideration and action. If the Secretary is of opinion, after considering the application, that it is inadvisable for the Government

to acquire the title to the land described therein, under the provisions of the aforesaid act, he will deny the application.

If, however, the Secretary decides to entertain the proposition, subject to the further exercise of his discretion, he will so order, and thereafter selections may be made by the petitioner, or applicant, under the rules, regulations, restrictions, limitations, and conditions herein following:

PRIVATE LANDS SUBJECT TO EXCHANGE.

1. Private lands subject to exchange under the provisions of this act include all lands within the limits of an Indian reservation established by Executive order to which the right to a patent or its equivalent has been earned by full compliance with the laws of the United States governing the disposal of said lands.

RELINQUISHMENT OR RECONVEYANCE.

2. Relinquishment or reconveyance made in pursuance of this act must be executed and acknowledged in the same manner as conveyance of real property is required to be executed and acknowledged by the laws of the State in which the land is situated. Where the relinquishment or reconveyance is made by an individual it must show whether the person relinquishing is married or single; and if married, the wife or husband of such person, as the case may be, must join in the execution of the relinquishment or reconveyance in such manner as to effectually bar any right or estate of dower, curtesy, or homestead, or any other claim whatsoever to the land relinquished, or it must be fully shown that under the laws of the State in which the relinquished land is situated such wife or husband has no interest whatever, present or prospective, which makes her or his joinder in the relinquishment or reconveyance necessary. Where the relinquishment or reconveyance is by a corporation it should be recited in the instrument of transfer that it was executed pursuant to an order or by the direction of the board of directors or other governing body, a copy of which order or direction should accompany such instrument of transfer, which must follow in the matter of its execution strictly the laws of the State in which the land is situated relating to corporate conveyances, and should bear the impress of the corporate seal.

ABSTRACTS OF TITLE.

3. Each relinquishment or reconveyance must be accompanied by a duly authenticated abstract of title showing that at the time the relinquishment or reconveyance was executed the title was in the

party making the same, and that the land was free from conflicting record claims, tax liability, judgment or mortgage liens, pending suits, or other encumbrances.

AUTHENTICATION OF ABSTRACT.

4. The certificate of authentication of the abstract must be signed by the recorder of deeds under his official seal and must show that the title memoranda is a full, true, and complete abstract of all matters of record or on file in his office, including all conveyances, mortgages or other incumbrances, judgments against the various grantors, mechanics, or other liens, lis pendens, and all other instruments which are required by law to be filed with the recording officer, affecting in any manner whatsoever the title to the described land. The custodian of the tax records must certify that all taxes levied or assessed against the land or that could operate as a lien thereon have been fully paid and that there are no unredeemed tax sales and no tax deeds outstanding, as shown by the records of his office. The absence of judgment liens or pending suits against the various grantors which might affect the title of the land relinquished or reconveyed, must be shown by the official certificates of the clerks of all courts of record whose judgments under the laws of the United States, or the State in which the land is situated, would be a lien on the land reconveyed or relinquished, without being transcribed other than on the court records.

LANDS SUBJECT TO SELECTION.

5. Selections under the provisions of this act are restricted to surveyed nonmineral, nontimbered, vacant unreserved public lands situated in the same State as, and equal in area and value to, the lands relinquished.

SELECTIONS.

6. Selections must be made by the owner of the land relinquished or in his name by a duly authorized agent or attorney-in-fact; and when made by an agent or attorney-in-fact proof of authority must be furnished.

APPLICATIONS TO SELECT.

7. Applications to select hereunder must be filed in the proper local land office and must specifically describe the land desired to be surrendered and that sought to be selected. If more than minimum is selected, as provided for in paragraph 14, corresponding base for each tract must be shown. The county and State, as well as the Indian reservation, and the land district wherein situated must be

given of the land relinquished. It must, in each instance, be shown that the applicant is the owner of the land relinquished and that he desires to surrender the same to the Government and select in lieu thereof public lands under the provisions of the act of April 21, 1904 (33 Stat., 211); that the land surrendered and that selected therein described are of equal area and value; that the land selected is non-mineral, nontimbered, vacant, and unoccupied public land; that the applicant will, without cost to the Government, place the deed of relinquishment of record and extend the abstract of title to the date of the recordation thereof upon being notified so to do by the land department; and that upon the request of the Secretary of the Interior he will deposit with him a reasonable amount of money to enable the Secretary to investigate and determine the legality of the selection.

8. The application must be accompanied by a deed of relinquishment or reconveyance to the land tendered as the basis of exchange, duly executed, and a properly authenticated abstract of title to the land, by the required commissions, and proof that the relinquished land and that selected are equal in area and value; that the selected land is nonmineral, nontimbered, vacant, and unoccupied adversely to the selector therein; that the land relinquished and offered in exchange is not the basis of another selection, and satisfactory evidence that the Secretary has, subject to the further exercise of his discretion, entertained the selector's preliminary application to reconvey the basis land and select other lands in lieu thereof.

9. The affidavit or affidavits to support a selection under this act must be made by the selector or by some credible person possessed of the requisite personal knowledge in the premises, and may be executed before any officer qualified to administer oaths, and must be corroborated by at least one person who has no personal interest in the exchange and who is familiar with the character and condition and value of the land selected and the value of the land relinquished. This affidavit or affidavits, duly corroborated, must show that the land selected is nonmineral and nontimbered in character; that it contains no salt springs or deposit of salt in any form sufficient to render it chiefly valuable therefor; that it is not in any manner occupied adversely to the selector; and that the *lands selected and the lands relinquished are equal in area and value*, and are situated in the same State.

10. Forms of application for selection under this act and accompanying affidavits as to relinquished and selected land, as set out hereinafter in these instructions, or their equivalents, should be used. All proofs and papers necessary to complete a selection must be filed at one and the same time, except as herein otherwise specially provided.

PUBLICATIONS.

11. In all cases you will require the applicant, within 20 days from the filing of his application, to begin publication of notice thereof at his own expense in a newspaper to be designated by the register as of general circulation in the vicinity of the land and published nearest thereto. Such publication must cover a period of 30 days, during which time a similar notice of the application must be posted in the local land office and upon each and every noncontiguous tract included in the application.

12. The notice should describe the land applied for and give the date of application, and state that the purpose thereof is to allow all persons claiming the land under the mining or other laws, desiring to show it to be mineral in character or adversely occupied, an opportunity to file objection to such application with the local officers of the land district in which the land is situated and to establish their interest herein or the mineral character thereof.

13. Proof of publication shall consist of an affidavit of the publisher, or of the foreman or other proper employee, of the newspaper in which the notice was published, with a copy of the published notice attached. Proof of posting upon the land, and that such notice remained posted during the entire period required, shall be made by the applicant or some credible person having personal knowledge of the fact. The register shall certify to posting in his office. The first and last dates of such publication and posting shall, in all cases, be given.

14. Owners of lands over which an Indian reservation has been extended by Executive order will not be permitted to make selection, or selections, which isolate intervening tracts of less than 160 acres, nor to make selection for noncontiguous tracts of less than 160 acres unless all the adjoining lands have been disposed of or are not subject to selection. Any attempt on the part of the owner of land within a reservation to avoid this rule by making surrender to the Government by separate deeds or by a sale of part of the land to another person after the approval of these regulations will defeat the proposed transfer.

15. Fees must be paid by the applicant at the time of filing his application in the local land office at the rate of \$1 each to the register and receiver for each 160 acres or fraction thereof included in his application.

16. Selections made under this act will not be passed to patent until after four months following the filing of the application in the local office. This is to enable any person claiming an adverse right to the selected land to have full opportunity to regularly assert said right.

17. The land relinquished and the land selected must be, as nearly as practicable, equal in area, but the rules of approximation obtaining in other classes of entries will be observed.

18. Applications to select under the provisions of this act will not defeat the right of the Secretary of the Interior or of the President of the United States to withdraw or reserve the land for such proposed public purposes or uses as they may deem proper prior to the approval of the selection by the Secretary of the Interior, and the Secretary, acting within the exercise of his discretion, may reject any and all applications at any time prior to final approval of the same for any reason appearing to him good and sufficient, notwithstanding the application may have been received and certified by the local office and recommended for approval by the Commissioner of the General Land Office.

PRACTICE.

19. Notices of additional or further requirements, rejections, or other adverse actions of registers and receivers, the commissioner, or the Secretary will be given, and the rights of appeal, review, or rehearing recognized in the manner now prescribed by the rules of practice, except as herein otherwise provided.

20. If application to contest or a protest or other objection shall at any time be filed against the selection or the application to select, you will forward the same to this office for its consideration and disposition.

21. Applications to enter filed subsequent to and in conflict with applications to select under this act will be rejected, except where such subsequent application to enter is supported by allegations of prior right, in which event you will transmit the conflicting application to enter to this office, with appropriate recommendation.

22. Applications presented to your office under the provisions of the foregoing act, not in substantial compliance with the requirements herein made, or not accompanied by the prescribed proofs, or if the land offered as a basis of exchange is not situated within the boundaries of an Indian reservation created by Executive order, will be rejected by you. All applications sufficient in form, accompanied by the required proofs, will be accepted for transmission as hereinbefore provided, and you will note on your records against the land: "Application of ———, act April 21, 1904, pending." The register will certify the condition of your records on the applications, and you will transmit the papers to this office promptly after the filing of the proofs of publication in your office.

23. The commissioner will, upon the receipt of an application to select under the provisions of this act in the General Land Office, cause field examination to be made of both the selected and base land without expense to the Government, after which, if, in his judgment, the rules and regulations have been complied with, he will transmit

the records to the Secretary with his report and recommendation. If, however, the commissioner finds that the selection is defective or that the rules and regulations have not been complied with, he will reject the selection or require further proofs.

24. If upon examination of an application to select under this act the Secretary decides that it should be allowed, the applicant will be required to have his relinquishment recorded in the manner prescribed by the State where the land is situated, and to have the abstract of title extended down to and including the date the deed of relinquishment or conveyance was recorded.

25. If the Secretary be of opinion that further evidence as to value and character of the land involved is necessary, he may institute such an inquiry as he may deem advisable, and may require the applicant to deposit a sum of money to defray the expense of the investigation. In any case where deposit shall be required to defray the expense of an investigation it will be made with the Secretary of the Interior, to be held and disbursed by him or under his directions.

26. If the Secretary approve the proposed exchange the Commissioner of the General Land Office will, as soon as practicable, after the receipt of the advice of such approval, make suitable notations on the records of his office and notify the local office wherein the selected land is subject to disposal thereof. The commissioner in his letter to the local officer will require that the applicant be notified of the approval of his application, and informed that he will be allowed 30 days in which to place the deed of reconveyance or relinquishment of record and to extend the abstract of title down to and including the date of the recordation of such deed, and that he be further advised that in default of action within the time specified the application will be finally rejected without further notice.

27. Approval by the Secretary of the Interior will be subject to and conditioned upon the bona fide compliance on the part of the applicant with all the regulations and requirements herein or which may, by direction of the Secretary of the Interior, be hereafter promulgated.

THE SECRETARY'S DISCRETION.

28. The Secretary of the Interior may, in the exercise of the discretion in him vested by law, withhold his approval from any application made under the provisions of this act, although the applicant may have complied with the rules and regulations herein prescribed. Owners of land situated within the boundaries of Indian reserves, created by Executive order, are hereby specifically informed that if, in the opinion of the Secretary, the approval of any application, made

under the provisions of this act, would be inimical to the public interests, such application will be rejected.

Very respectfully,

CLAY TALLMAN,
Commissioner.

Approved February 27, 1915:

ANDRIEUS A. JONES,
First Assistant Secretary.

(If more than the minimum is selected, as provided for in paragraph 14, the first paragraph in blank form 4-088 should be so amended as to show the selected and base land designated in accordance with paragraph 7.)

4-088.

SELECTION IN LIEU OF LAND IN ——— INDIAN RESERVATION.

(Act April 21, 1904.)

To the REGISTER AND RECEIVER, UNITED STATES LAND OFFICE,

GENTLEMEN: I am the owner of the ——— Meridian, containing ——— acres; said land is situated in the county of ———, State of ———, within the boundaries of the ——— Indian reservation, and is located within the ——— land district; I desire to relinquish and reconvey said lands to the United States and in lieu thereof to select the ——— land district, State of ———, containing ——— acres, under the provisions of the act of April 21, 1904 (33 Stat., 211).

In compliance with the regulations under said act I have made and executed a deed of reconveyance to the United States of the tract first above described, situated within the said ——— Indian reservation, and in relation thereto have caused a proper abstract of title to be made and authenticated, both of which are herewith submitted, and I do hereby bind myself and promise to have said deed placed of record and the abstract of title duly extended to the date of the recordation of such deed, without cost to the United States, upon receipt of notice from the land department that I am required so to do. I further agree that I will deposit with the Secretary of the Interior, upon demand, a reasonable sum of money to be by him expended in investigating the bona fides of this application.

There are also submitted certificates from the proper officers showing that the land relinquished, or surrendered, is free from incumbrance of any kind; also an affidavit, duly corroborated, showing the land selected to be nontimbered and nonmineral in character, and unoccupied, and that the lands surrendered and the lands selected herein described are equal in area and value. I therefore ask that, subject to the approval of the Secretary of the Interior, a United States patent issue to me for the tract or tracts herein selected.

LAND OFFICE AT ———, ———,
—————, 19—.

I, ———, register of the land office, do hereby certify that the land above selected, in lieu of the land herein relinquished to the United States, is free from conflict, and that there is no adverse filing, entry, or claim thereto.

—————,
Register.

Selection approved by the Secretary ———, 19—.

Approved by the commissioner ———, 19—.

Approved for patent ———, 19—.

4-089.

AFFIDAVIT FOR SELECTIONS.

(Under the act of Apr. 21, 1904, 33 Stat., 211.)

INDIAN RESERVATIONS.

(To be made by the selector, or other credible person cognizant of the facts, before an officer authorized to administer oaths. Before being sworn, affiant should be advised of the penalties of a false oath.)

DEPARTMENT OF THE INTERIOR,
UNITED STATES LAND OFFICE,

_____, _____, _____, 19____.

_____, being duly sworn according to law, deposes and says that he is a citizen of the United States, and that his post-office address is _____; that he is well acquainted with the character, condition, and value of the following-described land, and with each and every legal subdivision thereof, having personally examined the same, to wit: _____; that his personal knowledge of said land enables him to testify understandingly with respect thereto; that there is not, within the limits of said land, any known vein or lode of quartz or other rock in place bearing gold, silver, cinnibar, lead, tin, or copper; that there is not, within the limits of said land, any known deposit of coal, or any known placer deposit, oil, or other valuable mineral; that said land contains no salt springs, or known deposits of salt in any form, sufficient to render it chiefly valuable therefor; that no portion of said land is claimed for mining purposes under the local customs or rules of miners, or otherwise; that said land is essentially nonmineral in character, has upon it no mining or other improvements, and is not in any manner occupied adversely to the selector; and that the selection thereof is not made for the purpose of obtaining title to mineral land.

Affiant further says that he is well acquainted with the value of the herein-after-described land, having frequently passed over the same, and that from personal observation and knowledge he states that the lands hereinbefore and hereinafter described are of equal value; _____

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known (or has been satisfactorily identified before me by _____), and I verily believe him to be a credible person and the person he represents himself to be; and that this affidavit was subscribed and sworn to before me at my office in _____, on this _____ day of _____, 19____.

TABLE OF UNREPORTED CASES DECIDED DURING THE PERIOD
COVERED BY THIS VOLUME.

- Aanrud, Erik J.—Homestead—November 18, 1914—Remanded.
- Abbott, Ashel E.—Homestead—September 17, 1914—Affirmed.
- Abbott, Clyde A.—Homestead—December 12, 1914—Vacated.
- Abbott, John W.—Homestead—February 21, 1914—Reversed.
- Abbott v. Romero—Homestead—December 16, 1914—Reversed.
- Adams, Charles O.—Desert Land—October 12, 1914—Reversed.
- Adams, George W.—Homestead—July 29, 1914—Remanded.
- Adams, J. W., assignee of Williams—Soldiers' Additional—March 27, 1914—Remanded.
- Adams, Jewett A., assignee of Smith *et al.*—Soldiers' Additional—April 20, 1914—Remanded.
- Adams, Jewett W., assignee of Stevens—Homestead—April 18, 1914—Remanded.
- Adams, John Q.—Desert Land—November 27, 1914—Reversed.
- Adams, William B.—Homestead—August 31, 1914—Reversed.
- Adams v. Barlow—Homestead—October 20, 1914—Motion Denied.
- Adams v. Davis and Munro—Homestead—October 3, 1914—Affirmed.
- Adams v. Hanley—Homestead—July 22, 1914—Reversed.
- Adams v. Hanley—Homestead—September 30, 1914—Motion Denied.
- Adams v. Maxwell—Homestead—September 14, 1914—Affirmed.
- Adkinson and Lozar—Coal—February 4, 1915—Affirmed.
- Adkison, James H.—Homestead—June 23, 1914—Remanded.
- Agney, Russell W.—Desert Land—November 30, 1914—Affirmed.
- Akers and Chaboya v. Southern Pacific R. R. Co.—Selection—February 28, 1914—Affirmed.
- Akes, Iva J.—Homestead—October 26, 1914—Remanded.
- Akin, Harlan D.—Homestead—December 5, 1914—Reversed.
- Akin, John C.—Homestead—June 29, 1914—Affirmed.
- Akins, Leslie E.—Homestead—November 18, 1914—Remanded.
- Alaska Commercial Co.—Survey—July 24, 1914—Reversed.
- Alaska Copper Co. *et al.*—Mineral—January 2, 1914—Reversed.
- Alborty, William J.—Homestead—November 7, 1914—Modified.
- Alden, John L.—Homestead—January 2, 1914—Affirmed.
- Aldrich, Willis W.—Desert Land—October 6, 1914—Reversed.
- Alexander, Butler, Dick Lumber Co., trans.—Timber and Stone—October 14, 1914—Affirmed.
- Alexander, Harry D.—Desert Land—May 1, 1914—Affirmed.
- Alexander, Leslie W.—Desert Land—June 16, 1914—Remanded.
- Alexander, Sam, *et al.*, Dick Lumber Co., trans.—Timber and Stone—October 14, 1914—Affirmed.
- Alexander, William A.—Desert Land—May 1, 1914—Affirmed.
- Alexander, William B.—Survey—August 26, 1914—Dismissed.
- Aley, Charles R.—Desert Land—February 4, 1915—Reversed.
- Allan, Annie W., assignee of Miles Shepherd—Desert Land—January 2, 1914—Affirmed.
- Allary, Michael—Indian Selection—February 21, 1914—Modified.
- Allen, Annie W.—Desert Land—July 27, 1914—Reversed.
- Allen, Charles—Homestead—March 7, 1914—Reversed.
- Allen, Jennie L.—Homestead—February 20, 1914—Reversed.
- Allen, Jerome A.—Desert Land—October 31, 1914—Affirmed.

- Allen, John W.—Homestead—August 21, 1914—Remanded.
- Allen, Louise P.—Timber and Stone—October 27, 1914—Affirmed.
- Allen, Robert P.—Homestead—December 5, 1914—Affirmed.
- Allen v. Cayo—Homestead—October 19, 1914—Affirmed.
- Allen v. Ryan—Homestead—November 30, 1914—Reversed.
- Allison, Amanda—Homestead—September 26, 1914—Affirmed.
- Allison, Inga M. E.—Homestead—February 25, 1915—Reversed.
- Allison, Joe W.—Homestead—August 19, 1914—Remanded.
- Almas, Georginia A.—Desert Land—March 12, 1914—Reversed.
- Alperin, Samuel—Homestead—August 31, 1914—Affirmed.
- American Gem Mining Syndicate—Mineral—February 27, 1915—Modified.
- Ames, Florence U.—Desert Land—August 31, 1914—Affirmed.
- Amley, Soloman—Homestead—October 12, 1914—Vacated and Remanded.
- Anaya v. State of New Mexico—Homestead—August 31, 1914—Affirmed.
- Anders v. Prada—Homestead—October 26, 1914—Affirmed.
- Anderson, Alfred E.—Homestead—June 30, 1914—Reversed.
- Anderson, Alfred E.—Homestead—September 19, 1914—Motion denied.
- Anderson, Andrew A.—Timber and Stone—January 29, 1915—Affirmed.
- Anderson, Emil—Homestead—September 5, 1914—Reversed.
- Anderson, Fred, D. R. Whitaker, trans.—Homestead—March 19, 1914—Affirmed.
- Anderson, George M.—Homestead—May 29, 1914—Reversed.
- Anderson, Gust A., Dick Lumber Co., trans.—Timber and Stone—October 14, 1914—Affirmed.
- Anderson, Harry L., assignee of Smith—Soldiers' Additional—October 5, 1914—Affirmed.
- Anderson, J. S., Old Fort Canal—Right of Way—January 29, 1915—Affirmed.
- Anderson, Jens—Timber and Stone—January 29, 1915—Affirmed.
- Anderson, Jens, H. P. Hullett, trans.—Homestead—March 19, 1914—Affirmed.
- Anderson, John—Homestead—June 30, 1914—Reversed.
- Anderson, Louis F.—Repayment—October 13, 1914—Affirmed.
- Anderson, Lulu C.—Homestead—March 14, 1914—Reversed.
- Anderson, Maja L.—Homestead—September 8, 1914—Remanded.
- Anderson, Mary M.—Homestead—February 15, 1915—Modified.
- Anderson, Oscar A.—Homestead—July 16, 1914—Remanded.
- Anderson, Robert H.—Homestead—December 29, 1914—Affirmed.
- Anderson, Ruby & Brown v. Wright—Homestead—March 11, 1914—Motion denied.
- Anderson, William N.—Desert land—July 29, 1914—Affirmed.
- Anderson v. Adams—Homestead—August 31, 1914—Affirmed.
- Anderson v. Dayley—Homestead—November 19, 1914—Affirmed.
- Anderson v. Johnson—Homestead—October 30, 1914—Affirmed.
- Anderson v. Johnson—Homestead—January 25, 1915—Motion Denied.
- Anderson v. Johnson—Homestead—January 29, 1915—Motion Denied.
- Anderson v. Moore—Homestead—June 30, 1914—Affirmed.
- Anderson v. Northern Pacific Ry. Co.—Homestead—June 23, 1914—Affirmed.
- Anderson v. Northern Pacific Ry. Co.—Timber and Stone—December 3, 1914—Modified.
- Anderson v. Northern Pacific Ry. Co.—Timber and Stone—February 18, 1915—Recalled and Vacated.
- Andres, Francisco, Navajo Lumber and Supply Co., trans.—Homestead—September 21, 1914—Affirmed.
- Andrews, Oliver S., The Northwest Timber Co., trans.—Timber and Stone—December 16, 1914—Petition Denied.

- Andrews, Sophia, Dick Lumber Co., trans.—Timber and Stone—October 14, 1914—Affirmed.
- Anfinson v. Francis—Homestead—October 26, 1914—Modified.
- Ankunding v. Ottinger—Homestead—October 23, 1914—Affirmed.
- Annin, Robert A.—Homestead—August 28, 1914—Affirmed.
- Ansley, William F.—Homestead—May 28, 1914—Reversed.
- Anthony, Anderson W.—Desert Land—June 23, 1914—Motion Denied.
- Antonio, Magnin P.—Homestead—October 6, 1914—Affirmed.
- Ap, John Henri—Homestead—March 28, 1914—Modified.
- Appas, Harry H.—Homestead—October 12, 1914—Affirmed.
- Appleman, Ata B.—Homestead—January 2, 1914—Reversed.
- Arbury, Pearl E.—Coal—December 16, 1914—Affirmed.
- Archibald, Hugh—Homestead—January 31, 1914—Motion Denied.
- Arganbright v. Hafner—Homestead—July 13, 1914—Affirmed.
- Arizona Copper Co.—Mineral—January 29, 1915—Affirmed.
- Armstrong *et al.*—Coal—December 16, 1914—Affirmed.
- Armstrong, Sallie B.—Desert Land—April 22, 1914—Affirmed.
- Arnold, Eugene C.—Homestead—August 13, 1914—Remanded.
- Arnold v. Kucken—Homestead—July 2, 1914—Affirmed.
- Arnold v. Smith—Homestead—December 30, 1914—Affirmed.
- Arnold v. Smith—Desert Land—February 26, 1915—Modified.
- Arnold v. Wells—Homestead—October 31, 1914—Affirmed.
- Aron, Harry D.—Desert Land—August 28, 1914—Affirmed.
- Asbell, Carl H.—Homestead—March 21, 1914—Affirmed.
- Ashley, James F.—Homestead—January 19, 1915—Affirmed.
- Ashley v. Bonney—Homestead—March 24, 1914—Modified.
- Ashley v. Bonney—Homestead—June 13, 1914—Motion Denied.
- Askine v. Rishel—Homestead—December 16, 1914—Affirmed.
- Assinniboine Irrigation Co.—Desert Land—January 7, 1914—Suspended.
- Asuja, Andrew A.—Timber and Stone—January 29, 1915—Affirmed.
- Atcheson, Burgess Eddie—Homestead—August 12, 1914—Reversed.
- Ates, John—Survey—November 7, 1914—Affirmed.
- Atwood v. Hilliker—Homestead—October 12, 1914—Affirmed.
- Atwood v. Mills and Tokle—Desert Land—March 14, 1914—Affirmed.
- Auld, Hazel I.—Homestead—February 18, 1915—Affirmed.
- Ault, Bertha—Timber and Stone—February 12, 1914—Modified.
- Ault, Bertha—Timber and Stone—May 29, 1914—Modified.
- Ault, Franklin S.—Lieu Selection—July 24, 1914—Motion Denied.
- Ault, Franklin S.—Selection—August 13, 1914—Motion Denied.
- Ault, Franklin S.—Homestead—November 14, 1914—Reversed.
- Auman v. Burgess—Homestead—October 12, 1914—Affirmed.
- Auman v. Burgess—Homestead—December 26, 1914—Motion Denied.
- Aument, Eugene—Desert Land—September 26, 1914—Remanded.
- Aurand, Thomas—Homestead—January 29, 1915—Affirmed.
- Austin and Barnett—Homestead—September 26, 1914—Affirmed.
- Austin, John M.—Homestead—April 27, 1914—Affirmed.
- Austin, John M.—Homestead—July 24, 1914—Motion Sustained.
- Austin, Lewis—Timber and Stone—August 28, 1914—Affirmed.
- Austin v. Badt, assignee of Slaten—Soldiers' Additional—July 24, 1914—Reversed and Remanded.
- Austin v. Badt, assignee of Slaten—Soldiers' Additional—October 20, 1914—Motion Denied.
- Auten v. Holmer—Homestead—August 22, 1914—Affirmed.

- Authier, Oscar J.—Homestead—September 26, 1914—Remanded.
- Aveline, Greg—Homestead—October 14, 1914—Remanded.
- Avery *v.* Luxum—Desert Land—February 26, 1915—Affirmed.
- Ayers, Alfred L., The Northwest Timber Co., trans.—Timber and Stone—December 16, 1914—Petition Denied.
- Ayers, William, The Northwest Timber Co., trans.—Timber and Stone—December 16, 1914—Petition Denied.
- Azure *v.* Flatness—Desert Land—July 30, 1914—Affirmed.
- Baatz, Nicholas—Coal—December 5, 1914—Dismissed.
- Babbitt, Charles J., assignee of Hale—Soldiers' Additional—September 8, 1914—Affirmed.
- Babin, Levgar—Homestead—February 10, 1914—Reversed.
- Babin, Paulin—Homestead—July 9, 1914—Affirmed.
- Bachion, Luigi—Desert Land—July 29, 1914—Affirmed.
- Back *v.* Owsley—Homestead—July 30, 1914—Affirmed.
- Badley, Burt L.—Homestead—October 14, 1914—Modified.
- Baier, Frederick A.—Homestead—October 7, 1914—Affirmed.
- Bailey, George H., assignee of Griswold—Soldiers' Additional—August 21, 1914—Affirmed.
- Bailey *v.* Bezanson—Homestead—August 12, 1914—Affirmed.
- Bailey *v.* Kuehl—Homestead—November 24, 1914—Reversed.
- Bailey *v.* Kuehl—Homestead—January 29, 1915—Motion Denied.
- Bailey *v.* Southern Pacific R. R. Co.—Homestead—August 31, 1914—Affirmed.
- Bailey *v.* Southern Pacific R. R. Co.—Desert Land—August 31, 1914—Affirmed.
- Baker, Allen E.—Homestead—August 28, 1914—Affirmed.
- Baker, Benjamin F., assignee of Aaron—Soldiers' Additional—August 31, 1914—Affirmed.
- Baker, Benjamin F.—Repayment—September 17, 1914—Affirmed.
- Baker, James A.—Homestead—February 27, 1915—Remanded.
- Baker *v.* Barbour—Homestead—September 26, 1914—Reversed.
- Baker *v.* Heirs of Flournoy—Desert Land—July 16, 1914—Affirmed.
- Baker *v.* Heirs of Flournoy—Desert Land—October 16, 1914—Motion Denied.
- Baker *v.* Northern Pacific Ry. Co.—Homestead—December 26, 1914—Motion Denied.
- Baker *v.* State of New Mexico—Homestead—August 31, 1914—Affirmed.
- Bakke, Clarence L.—Homestead—December 23, 1914—Reversed.
- Baland, Frank D.—Homestead—March 7, 1914—Reversed.
- Baldwin, Raymond E.—Homestead—September 26, 1914—Affirmed.
- Ball, Shelby, assignee of Fletcher—Soldiers' Additional—September 19, 1914—Affirmed.
- Ball, Shelby, assignee of Fletcher—Soldiers' Additional—December 16, 1914—Motion Denied.
- Ballard, Ernest E.—Homestead—November 7, 1914—Modified.
- Ballard, Ernest E.—Homestead—January 12, 1915—Motion Denied.
- Ballard, John—Homestead—March 12, 1914—Reversed.
- Ballard, Wm. H., Graham Lumber Co., trans.—Timber and Stone—February 27, 1915—Affirmed.
- Ballinger, Edwin E.—Desert Land—September 26, 1914—Affirmed.
- Ballou and Treffry *v.* Flood—Homestead—March 21, 1914—Affirmed.
- Bancroft *v.* Kaiser—Homestead—April 20, 1914—Motion Sustained.
- Bankofier, Alice D.—Desert Land—November 24, 1914—Affirmed.
- Barber, Charles T.—Desert Land—November 18, 1914—Affirmed.
- Barber, Sarah H. Y.—Homestead—March 24, 1914—Petition Allowed.
- Barber *v.* Cannon—Desert Land—September 17, 1914—Affirmed.
- Barbour, F. E.—Coal—December 16, 1914—Affirmed.

- Barbrich, Frank—Homestead—January 2, 1914—Reversed.
- Bard, Isaac N.—Repayment—November 14, 1914—Reversed.
- Bard, William C.—Homestead—October 30, 1914—Affirmed.
- Barker v. Daniels—Desert Land—October 31, 1914—Affirmed.
- Barkelew v. Olson—Desert Land—August 21, 1914—Remanded.
- Barkelew v. Olson—Desert Land—January 12, 1915—Affirmed.
- Barlina, Margaret—Homestead—June 30, 1914—Reversed.
- Barnard, John J.—Homestead—March 12, 1914—Affirmed.
- Barnard, William L.—Homestead—March 12, 1914—Affirmed.
- Barnard, William J.—Homestead—March 12, 1914—Affirmed.
- Barnes, Edmond G.—Homestead—August 28, 1914—Affirmed.
- Barnes, Edmond G.—Homestead—October 31, 1914—Motion Modified.
- Barnes, Nellie G.—Homestead—June 23, 1914—Vacated.
- Barnes, Rebecca—Homestead—September 26, 1914—Remanded.
- Barnes, William J.—Homestead—August 31, 1914—Affirmed.
- Barnes v. Northern Pacific Railway Co.—Homestead—March 18, 1914—Petition Remanded.
- Barnett, Katie, *et al.*—Repayment—December 23, 1914—Reversed.
- Barnett, Ira L.—Homestead—October 27, 1914—Remanded.
- Barney, James R.—Homestead—September 26, 1914—Remanded.
- Barnhart, Joe W.—Homestead—May 15, 1914—Remanded.
- Barrett v. Northern Pacific Ry. Co.—Homestead—June 6, 1914—Affirmed.
- Barrett v. Starkweather—Homestead—February 19, 1914—Affirmed.
- Barrett v. Starkweather—Homestead—May 29, 1914—Petition Denied.
- Barrie, Mabel J.—Repayment—June 30, 1914—Reversed.
- Barron, B. F.—Repayment—August 26, 1914—Affirmed.
- Barron, Millard F.—Homestead—July 29, 1914—Affirmed.
- Barron, Millard F.—Homestead—October 7, 1914—Motion Sustained.
- Barroun v. Dempsey—Homestead—October 12, 1914—Affirmed.
- Barrus v. Poulton—Homestead—July 21, 1914—Affirmed.
- Barstow v. Knabe—Homestead—May 29, 1914—Affirmed.
- Bartholomew v. Northern Pacific Ry. Co.—Selection—June 13, 1914—Affirmed.
- Bartholomew v. Northern Pacific Ry. Co.—Homestead—September 26, 1914—Petition Denied.
- Barton v. Oregon and California R. R. Co.—Selection—May 7, 1914—Affirmed.
- Barton v. Oregon & California R. R. Co.—Homestead—January 29, 1915—Motion Denied.
- Bartow, Louisa E.—Homestead—February 14, 1914—Remanded.
- Bassett v. Bauer's Heirs—Homestead—December 16, 1914—Affirmed.
- Bassett, Charles J.—Desert Land—November 18, 1914—Remanded.
- Bateman, Roy—Homestead—March 10, 1914—Affirmed.
- Bauer v. Northern Pacific Ry. Co.—Homestead—September 5, 1914—Affirmed.
- Bauman, Walter—Homestead—January 29, 1915—Affirmed.
- Bauman v. Northern Pacific Ry. Co.—Timber and Stone—May 27, 1914—Affirmed.
- Bauman v. Northern Pacific Ry. Co.—Selection—September 17, 1914—Motion Denied.
- Bawden *et al.* v. Brown *et al.*—Mineral—July 25, 1914—Affirmed.
- Bawden *et al.* v. Brown *et al.*—Mineral—September 26, 1914—Motion Denied.
- Baxter, Nellie M.—Homestead—April 29, 1914—Affirmed.
- Bay City Oil Co. *et al.*—Mineral—April 24, 1914—Affirmed.
- Bayless, Gilbert C.—Homestead—September 9, 1914—Affirmed.

- Bayless, Gilbert C.—Homestead—October 30, 1914—Motion Denied.
- Bayliss *v.* McConihe—Homestead—August 25, 1914—Petition Denied.
- Bayliss *v.* McConihe—Desert Land—December 26, 1914—Petition Denied.
- Beal *v.* Peabody—Homestead—April 30, 1914—Affirmed.
- Beastall, Ernest B.—Desert Land—January 2, 1914—Reversed.
- Beaudette, Louis—Homestead—October 12, 1914—Vacated.
- Beaudoin *v.* Northern Pacific Ry. Co.—Timber and Stone—May 27, 1914—Affirmed.
- Bechtol *v.* Hodson—Homestead—July 30, 1914—Affirmed.
- Beck, Charles H.—Reduction of Area—November 24, 1914—Modified.
- Beck, Elmer—Desert Land—September 25, 1914—Affirmed.
- Becker, Jerry—Desert Land—February 15, 1915—Affirmed.
- Becker *v.* Wood—Desert Land—February 12, 1914—Remanded.
- Becker *v.* Wood—Desert Land—April 20, 1914—Petition Denied.
- Beckett, Amy P.—Water-Right Application—April 24, 1914—Remanded.
- Beckley, Eita M.—Desert Land—November 18, 1914—Affirmed.
- Beebe, James B.—Homestead—February 15, 1915—Affirmed.
- Behrmann, Andrew J.—Homestead—September 8, 1914—Affirmed.
- Behrmann, Andrew J.—Homestead—December 5, 1914—Motion Denied.
- Bell, Edward—Desert Land—September 14, 1914—Affirmed.
- Bell, Hugh H.—Homestead—February 27, 1915—Instructions.
- Bell, Samuel M.—Desert Land—August 28, 1914—Affirmed.
- Bell *v.* Northern Pacific Ry. Co.—Homestead—June 20, 1914—Affirmed.
- Bell *v.* O'Brien—Homestead—June 13, 1914—Affirmed.
- Bell *v.* O'Brien—Homestead—August 19, 1914—Motion Denied.
- Bell *v.* O'Brien—Homestead—October 20, 1914—Petition Denied.
- Bellivou *v.* Rock Creek Cattle Co.—Mineral—September 8, 1914—Affirmed.
- Beman, Nancy J.—Soldiers' Additional—February 26, 1915—Instructions.
- Bemis, Lizzie W.—Desert Land—October 19, 1914—Affirmed.
- Benbrooks, William T.—Desert Land—July 2, 1914—Affirmed.
- Bench, Joseph L.—Homestead—October 30, 1914—Affirmed.
- Bender, Frank A.—Homestead—September 26, 1914—Remanded.
- Benedict, Albert G.—Repayment—April 27, 1914—Reversed.
- Benedict *v.* Northern Pacific Ry. Co.—Selection—June 13, 1914—Affirmed.
- Benedict *v.* Northern Pacific Ry. Co.—Homestead—September 26, 1914—Petition Denied.
- Bengtson, Gustaf A.—Repayment—June 13, 1914—Reversed.
- Benner *v.* Bell—Homestead—February 20, 1914—Affirmed.
- Bennett, Alvin L.—Homestead—December 30, 1914—Affirmed.
- Bennett, Clarence W.—Homestead—October 20, 1914—Affirmed.
- Bennett, Jennie M. J., *et al.*—Homestead—July 29, 1914—Reversed.
- Bennett, Palmer J.—Homestead—December 30, 1914—Affirmed.
- Benson, Samuel—Homestead—February 28, 1914—Reversed.
- Bentz, Fred—Homestead—August 18, 1914—Affirmed.
- Berck *v.* Marsh—Homestead—February 20, 1914—Affirmed.
- Berger, Wilhelmina—Homestead—February 16, 1915—Reversed.
- Bergfeldt, Alfred—Repayment—October 31, 1914—Affirmed.
- Berghorst, John, Dick Lumber Co., trans.—Timber and Stone—October 14, 1914—Affirmed.
- Bergquist, Julia A., assignee of Lawrence—Soldiers' Additional—May 29, 1914—Vacated.
- Bergquist *v.* Southern Pacific R. R. Co.—Desert Land—August 31, 1914—Affirmed.

- Bering Sea Commercial Co.—Trade—February 18, 1915—Instructions.
- Bernard, Larrance V.—Desert Land—August 7, 1914—Reversed.
- Berrett v. Watson—Homestead—January 19, 1915—Affirmed.
- Besaw, Thomas J.—Homestead—September 26, 1914—Remanded.
- Bessette v. Sutherland—Homestead—August 26, 1914—Affirmed.
- Bethurum, Elizabeth—Desert Land—January 9, 1914—Affirmed.
- Bibb, William S.—Homestead—December 29, 1914—Reversed.
- Bickett, Arthur J.—Homestead—April 22, 1914—Affirmed.
- Bickett, Arthur J.—Desert Land—May 6, 1914—Affirmed.
- Bickett, Joseph A.—Desert Land—April 22, 1914—Affirmed.
- Bickett, William J., assignee of D. D. Walker and Leroy Warren—Soldiers' Additional—March 18, 1914—Remanded.
- Big Bend Transit Co.—Right of Way—April 27, 1914—Instructions.
- Bigelow, De Forest—Homestead—November 19, 1914—Remanded.
- Bigelow v. Central Pacific Ry. Co.—Selection—January 29, 1915—Affirmed.
- Bigelow v. Mayhew—Homestead—April 22, 1914—Reversed.
- Billett, Hans A., H. P. Hullett, trans.—Homestead—March 19, 1914—Affirmed.
- Billings, Robert—Repayment—August 28, 1914—Affirmed.
- Billingsley, Benjamin F.—Desert Land—January 16, 1914—Remanded.
- Billups, William E.—Homestead—October 27, 1914—Remanded.
- Bimetallic Gold and Copper Mining Co.—Mineral—September 19, 1914—Petition denied.
- Bird, E. Marion—Repayment—May 29, 1914—Reversed.
- Bird v. Hawke—Homestead—January 8, 1915—Affirmed.
- Birkner v. Martin—Homestead—March 21, 1914—Affirmed.
- Birmingham Water, Light and Power Co.—Power Permit—December 5, 1914—Affirmed.
- Bishop, Harry A.—Coal—December 16, 1914—Affirmed.
- Bishop, Lon E.—Homestead—March 21, 1914—Reversed.
- Bissegger, J. Lyle—Homestead—October 17, 1914—Remanded.
- Bissett, William W.—Homestead—September 17, 1914—Modified.
- Bisson, Ernestine R.—Indian Allotment—October 12, 1914—Affirmed.
- Bisson, William, for George—Indian Allotment—July 28, 1914—Affirmed.
- Bjorklund v. Olson—Homestead—November 19, 1914—Affirmed.
- Black v. New Orleans Pacific R. R. Co.—Homestead—August 31, 1914—Affirmed.
- Blackburn v. Osburn—Homestead—November 19, 1914—Reversed.
- Blackstead, Hans M., assignee of Auten—Soldiers' Additional—March 18, 1914—Remanded.
- Blackwood, Stella E.—Desert Land—October 19, 1914—Affirmed.
- Blair v. Northern Pacific Ry. Co.—Selection—August 3, 1914—Affirmed.
- Blair, Ira V.—Desert Land—January 29, 1915—Affirmed.
- Blair v. Northern Pacific Ry. Co.—Homestead—September 26, 1914—Motion Denied.
- Blake v. Overman—Homestead—February 28, 1914—Affirmed.
- Blake v. Peavey *et al.*—Homestead—February 26, 1915—Vacated.
- Blakeley, Harry B.—Desert Land—December 29, 1914—Affirmed.
- Blakemore, Francis E., assignee of Rice—Desert Land—November 27, 1914—Reversed.
- Blanchard, Reuben A.—Homestead—March 18, 1914—Remanded.
- Blanding and Rich v. Northern Pacific Ry. Co.—Cash Entry—January 26, 1914—Motion Denied.
- Blanks, John F.—Desert Land—September 25, 1914—Affirmed.
- Blasingame and Simpson v. Schlegelmilch—Mineral—November 24, 1914—Remanded.
- Blauvelt, Bert, *et al.*—Homestead—June 30, 1914—Petition Denied.

- Blaylock *v.* George—Homestead—August 14, 1914—Affirmed.
- Blechschildt, Jessie H.—Timber and Stone—January 28, 1915—Affirmed.
- Blessin *v.* Corner—Homestead—October 23, 1914—Affirmed.
- Blinger *v.* Davis—Homestead—August 15, 1914—Affirmed.
- Bloom *v.* Reilly—Homestead—August 25, 1914—Petition Denied.
- Bloom *v.* Reilly—Desert Land—December 26, 1914—Petition Denied.
- Boag, David W.—Homestead—February 5, 1914—Remanded.
- Boarman, Frank—Coal—December 16, 1914—Affirmed.
- Boddy, Roy E.—Homestead—March 11, 1914—Reversed.
- Bodkin, Patrick H., assignee of Dunn—Soldiers' Additional—October 31, 1914—Dismissed.
- Bodle *v.* McGuire—Timber and Stone—February 10, 1914—Reversed.
- Bogert *v.* Southern Pacific R. R. Co.—Desert Land—February 28, 1914—Affirmed.
- Boggess, Charles H.—Homestead—March 21, 1914—Reversed.
- Bohan, Margaret—Homestead—December 3, 1914—Affirmed.
- Böhling *v.* Friesen—Homestead—April 13, 1914—Affirmed.
- Böhling *v.* Friesen—Homestead—October 12, 1914—Petition Denied.
- Boisseau, Jessie W.—Homestead—November 7, 1914—Reversed.
- Boldt, Lena—Desert Land—September 14, 1914—Affirmed.
- Boldt, Lena—Desert Land—January 29, 1915—Motion Denied.
- Boley, Henry C.—Homestead—September 26, 1914—Reversed.
- Bolger, Thomas M., assignee of Whitman—Soldiers' Additional—September 26, 1914—Reversed.
- Bollinger, Andrew, Heirs of—Homestead—April 27, 1914—Remanded.
- Bollinger, Andre, Heirs of—Homestead—August 18, 1914—Instructions.
- Bollinger *v.* Farthing—Desert Land—September 14, 1914—Affirmed.
- Bolton, Henry T.—Homestead—December 23, 1914—Reversed.
- Boltz, Benjamin—Homestead—January 27, 1915—Reversed.
- Boman, Nancy J., assignee of Camp—Soldiers' Additional—November 18, 1914—Affirmed.
- Bonanza Consolidated Mining Co.—Mineral—February 16, 1915—Motion Allowed.
- Bonanza Consolidated Mining Co.—Mineral—February 16, 1915—Motion Denied.
- Bonanza Consolidated Mining Co.—Mineral—October 6, 1914—Affirmed.
- Bonar *v.* Hamilton—Desert Land—July 30, 1914—Motion Denied.
- Bond, John W.—Homestead—October 12, 1914—Affirmed.
- Bonnevie, Nils C.—Homestead—January 9, 1914—Modified.
- Bonnett *v.* Casey—Homestead—February 26, 1915—Affirmed.
- Boots, Elma C.—Homestead—January 2, 1914—Vacated.
- Borbe, August G.—Homestead—February 17, 1914—Modified.
- Borbe, August G.—Homestead—April 20, 1914—Motion Remanded.
- Borowski *v.* Northern Pacific Ry. Co.—Homestead—August 28, 1914—Affirmed.
- Botsford *v.* Linton—Homestead—July 13, 1914—Affirmed.
- Botsford *v.* Linton—Homestead—September 19, 1914—Motion Denied.
- Bottjer, John W.—Homestead—October 29, 1914—Affirmed.
- Boucher, Ernest I.—Homestead—September 17, 1914—Affirmed.
- Boughner *v.* Magenheimer, Smith and Wilson—Right of Way—February 18, 1914—Motion Denied.
- Bousquet, Frank—Homestead—May 29, 1914—Affirmed.
- Bousquet, Frank—Homestead—December 16, 1914—Affirmed.
- Boust *et al.* *v.* Jameson *et al.*—Mineral—July 30, 1914—Modified.
- Bowden, Charles L.—Homestead—September 26, 1914—Remanded.
- Bowen, Benjamin H.—Desert Land—September 21, 1914—Affirmed.

- Bowen *v.* Hickey—Homestead—August 25, 1914—Affirmed.
- Bowen *v.* Hickey—Homestead—September 17, 1914—Petition Denied.
- Bower, G. Calvin—Reservoir—February 16, 1915—Reversed.
- Bower *v.* Scanlan—Homestead—August 26, 1914—Affirmed.
- Bowles, George, H. P. Hulett, trans.—Homestead—March 19, 1914—Affirmed.
- Bowman, John T.—Homestead—November 7, 1914—Modified.
- Bowman *v.* Crawford—Homestead—August 26, 1914—Affirmed.
- Boyd, Ed. E.—Homestead—August 7, 1914—Affirmed.
- Boyd *v.* Boyd—Homestead—March 24, 1914—Affirmed.
- Boyd *v.* Boyd—Homestead—June 18, 1914—Motion Denied.
- Boyd *v.* Severe—Homestead—August 14, 1914—Affirmed.
- Boyd *v.* State of New Mexico—Homestead—August 31, 1914—Affirmed.
- Boyer, Frank, assignee of Mattie Moore—Homestead—March 18, 1914—Remanded.
- Boyer, James A.—Desert Land—November 30, 1914—Affirmed.
- Boykin *v.* Purdee—Homestead—May 29, 1914—Affirmed.
- Boykin *v.* Purdee—Homestead—August 14, 1914—Motion Denied.
- Boyle, Elizabeth—Homestead—March 28, 1914—Vacated.
- Boyle *v.* Ives—Desert Land—February 16, 1915—Reversed.
- Boyle *v.* Smith—Desert Land—February 16, 1915—Reversed.
- Boynton *v.* Guptill—Homestead—March 12, 1914—Affirmed.
- Brachmann, Frederick E.—Desert Land—September 21, 1914—Affirmed.
- Bradbury *v.* Banks—Desert Land—August 31, 1914—Reversed.
- Braden, Samuel C.—Homestead—August 28, 1914—Affirmed.
- Bradford, Percy C.—Homestead—February 6, 1914—Reversed.
- Bradley, Isabel L.—Homestead—August 21, 1914—Modified.
- Bradley, John—Homestead—December 31, 1914—Affirmed.
- Bradley, William N.—Homestead—August 31, 1914—Affirmed.
- Bradshaw *v.* Hoyt—Homestead—April 10, 1914—Affirmed.
- Bradshaw *v.* Hoyt—Homestead—June 27, 1914—Motion Denied.
- Bradt, Horace—Desert Land—February 4, 1915—Affirmed.
- Brady and Pascoe *v.* Smith—Homestead—September 17, 1914—Affirmed.
- Brady, John F.—Homestead—March 12, 1914—Affirmed.
- Brady, John F.—Homestead—June 29, 1914—Motion Denied.
- Bramlett, Nathan N.—Homestead—December 29, 1914—Affirmed.
- Branderhorst *v.* Drake—Homestead—August 25, 1914—Affirmed.
- Brandt *v.* Cox, *nee* Laughran—Homestead—February 26, 1915—Affirmed.
- Brankel, Frank J.—Homestead—March 7, 1914—Affirmed.
- Branson *v.* Vance—Homestead—February 12, 1914—Affirmed.
- Brant, Elizabeth—Homestead—June 13, 1914—Reversed.
- Brasted, Lars G.—Homestead—September 17, 1914—Affirmed.
- Bray and Rask—Homestead—January 19, 1915—Affirmed.
- Braymer, Stella—Repayment—October 31, 1914—Reversed.
- Brayton, Henrietta E.—Homestead—February 9, 1915—Affirmed.
- Breedlove, Grover C.—Desert Land—February 4, 1915—Affirmed.
- Breen *v.* Butler—Homestead—August 31, 1914—Remanded.
- Brees *v.* Holden—Homestead—April 20, 1914—Petition Denied.
- Brenizer, Jasper N.—Desert Land—March 11, 1914—Vacated.
- Brenizer, Jasper N.—Desert Land—November 18, 1914—Remanded.
- Brenizer, Mattie M.—Desert Land—March 11, 1914—Vacated.
- Brenizer, Mattie M.—Desert Land—November 18, 1914—Remanded.

- Brenn, Charles F.—Timber and Stone—January 2, 1914—Affirmed.
- Brennan *v.* Fondren—Homestead—September 14, 1914—Affirmed.
- Brett, George A.—Homestead—March 18, 1914—Petition Denied.
- Brettenacher *v.* Northern Pacific Ry. Co.—Homestead—June 6, 1914—Affirmed.
- Bretz, Mary—Desert Land—January 29, 1915—Affirmed.
- Bretz, John, Jr.—Desert Land—February 4, 1915—Affirmed.
- Brewer *v.* Becwar—Desert Land—June 12, 1914—Affirmed.
- Brewster, Anna R.—Repayment—February 6, 1915—Affirmed.
- Brice *v.* Sailor—Homestead—August 3, 1914—Affirmed.
- Brickett, Lucy J.—Homestead—April 10, 1914—Affirmed.
- Bridges *v.* Northern Pacific Ry. Co.—Homestead—June 6, 1914—Affirmed.
- Bridgwater, George W.—Homestead—July 17, 1914—Remanded.
- Brier, Daniel F.—Homestead—December 16, 1914—Affirmed.
- Briggs, Lauretta E.—Timber and Stone—October 7, 1914—Modified and Remanded.
- Brigman, Lula—Homestead—April 22, 1914—Reversed.
- Brinker, Jacob Marion—Homestead—November 7, 1914—Modified.
- Brinkerhoff, William E.—Homestead—February 26, 1915—Affirmed.
- Brinkmeyer, Henry—Coal—June 30, 1914—Motion Denied.
- Brnak *v.* Bowles—Desert Land—February 26, 1915—Affirmed.
- Broadhead, Ruth R.—Homestead—August 28, 1914—Affirmed.
- Broch, Jens C.—Homestead—January 2, 1914—Reversed.
- Brockway, Ethel—Desert Land—April 22, 1914—Affirmed.
- Brockway, James C.—Desert Land—April 22, 1914—Affirmed.
- Bromley *v.* Northern Pacific Ry. Co. and Ainsworth—Homestead—August 18, 1914—Affirmed.
- Brookman, Murray E.—Homestead—August 26, 1914—Affirmed.
- Brooks, Benjamin F.—Timber and Stone—January 29, 1915—Affirmed.
- Brooks, Emma—Timber and Stone—January 29, 1915—Affirmed.
- Brooks, Gladys M.—Desert Land—February 21, 1914—Affirmed.
- Brooks, Lewis—Homestead—February 19, 1914—Reversed.
- Brooks, Lulu—Desert Land—March 12, 1914—Reversed.
- Brooks *v.* Gosslin—Timber and Stone—February 25, 1915—Affirmed.
- Brooks *v.* Murphy—Homestead—February 16, 1915—Affirmed.
- Brose—Otto H.—Homestead—January 29, 1915—Affirmed.
- Brotherston, Peter, Heirs of—Homestead—January 2, 1914—Reversed.
- Brovo, George J.—Desert Land—November 30, 1914—Affirmed.
- Brovo, George J.—Desert Land—February 9, 1915—Motion Denied.
- Brow and Crofut—Homestead—November 21, 1914—Remanded.
- Brow *v.* Crofut—Homestead—March 12, 1914—Affirmed.
- Brown, Arthur E., F. G. S. Hesse, trans.—Homestead—November 18, 1914—Affirmed.
- Brown, Barney T.—Homestead—March 12, 1914—Reversed.
- Brown, Charles A.—Homestead—November 4, 1914—Affirmed.
- Brown, Clara B.—Indian Allotment—November 30, 1914—Affirmed.
- Brown, Edward, The Northwest Timber Co., trans.—Timber and Stone—December 16, 1914—Petition Denied.
- Brown, F. M., assignee of George W. Stine—Soldiers' Additional—February 17, 1914—Remanded.
- Brown, George P.—Homestead—October 31, 1914—Remanded.
- Brown, Grace—Homestead—February 9, 1915—Reversed.
- Brown, H. Congdon, assignee of Fulton—Soldiers' Additional—July 7, 1914—Affirmed.
- Brown, H. Leslie—Homestead—September 30, 1914—Affirmed.
- Brown, Harry—Homestead—September 14, 1914—Affirmed.

- Brown, Henry W.—Homestead—April 22, 1914—Reversed.
- Brown, Margaret E.—Homestead—May 15, 1914—Remanded.
- Brown, J. K.—Coal—December 16, 1914—Dismissed.
- Brown, James—Coal Entry—February 7, 1914—Affirmed.
- Brown, John T.—Homestead—April 10, 1914—Affirmed.
- Brown, Leila C.—Cash Entry—September 14, 1914—Modified.
- Brown, Mahlon—Homestead—December 30, 1914—Affirmed.
- Brown, Mary—Homestead—December 5, 1914—Remanded.
- Brown, Mary A.—Homestead—September 30, 1914—Affirmed.
- Brown, Murray M.—Homestead—October 31, 1914—Affirmed.
- Brown, Robert H., assignee of Madden—Soldiers' Additional—October 7, 1914—Modified.
- Brown, Robert S.—Mineral Entry—February 12, 1914—Affirmed.
- Brown, Stena V.—Homestead—February 16, 1915—Affirmed.
- Brown, Susan K., now Kern—Homestead—January 29, 1915—Modified.
- Brown, Washington T.—Homestead—March 25, 1914—Remanded.
- Brown, William—Allotment—March 12, 1914—Affirmed.
- Brown, William P.—Homestead—November 18, 1914—Dismissed.
- Brown v. Almasie—Homestead—August 14, 1914—Affirmed.
- Brown v. Frederickson—Homestead—October 5, 1914—Affirmed.
- Brown v. Frederickson—Homestead—December 29, 1914—Motion Dismissed.
- Brown v. Garvin—Homestead—October 27, 1914—Affirmed.
- Brown v. Hinkle—Homestead—October 31, 1914—Affirmed.
- Brown v. Holloway—Homestead—July 30, 1914—Reversed.
- Brown v. Holloway—Homestead—October 16, 1914—Motion Denied.
- Brown v. Hulsizer—Homestead—March 12, 1914—Affirmed.
- Brown v. Hunt and Slingluff—Homestead—March 11, 1914—Affirmed.
- Brown v. Warner—Homestead—March 12, 1914—Affirmed.
- Brownfield, Francis F., assignee of Clark—Soldiers' Additional—March 27, 1914—Remanded.
- Browning, Ira, R.—Desert Land—February 19, 1914—Remanded.
- Broyles, Lorenzo L.—Homestead—February 16, 1915—Petition Denied.
- Bruce v. Violet—Desert Land—January 26, 1915—Affirmed.
- Bruckman, Frederick—Homestead—May 26, 1914—Affirmed.
- Erumley v. Bulman—Homestead—September 26, 1914—Affirmed.
- Brumley v. Bulman—Homestead—December 30, 1914—Motion Denied.
- Brundage, Melia—Desert Land—March 12, 1914—Affirmed.
- Brush, Nellie S.—Homestead—April 1, 1904—Reversed.
- Bryan, William—Homestead—February 28, 1914—Motion Denied.
- Bryans, Edward—Soldiers' Additional—April 20, 1914—Affirmed.
- Bryant, George W.—Homestead—August 28, 1914—Affirmed.
- Bryant, John T., assignee of Miller *et al.*—Soldiers' Additional—October 31, 1914—Affirmed.
- Bryant v. Hammer—Homestead—February 4, 1915—Reversed.
- Bryant v. Sasser—Homestead—August 28, 1914—Affirmed.
- Buck, Alexander—Homestead—June 13, 1914—Affirmed.
- Buckley, John—Homestead—July 9, 1914—Remanded.
- Buehner, Henry—Homestead—April 28, 1914—Remanded.
- Buehrle v. Southern Pacific R. R. Co.—Desert Land—August 31, 1914—Affirmed.
- Buffalo Boy Lode Claims—Mineral—May 9, 1914—Petition Denied.
- Bull, Chandler E.—Homestead—October 27, 1914—Remanded.
- Bullington v. Belden—Homestead—August 12, 1914—Reversed.

- Bullington *v.* Belden—Homestead—October 17, 1914—Motion Denied.
- Bunker Hill Mining & Smelting Co.—Mineral—November 4, 1914—Affirmed.
- Bunnell *v.* Armann—Desert Land—November 21, 1914—Affirmed.
- Bunnell *v.* Armann—Homestead—February 27, 1915—Motion Denied.
- Bundy, Clarence W.—Homestead—December 30, 1914—Affirmed.
- Burch Consolidated Coal Co.—Coal Land—May 28, 1914—Modified.
- Burch Consolidated Coal Co.—Coal Land—November 7, 1914—Affirmed.
- Burch, William P.—Timber and Stone—January 29, 1915—Affirmed.
- Burger, Victor R.—Desert Land—June 23, 1914—Affirmed.
- Burgess *v.* Stabio—Homestead—November 18, 1914—Affirmed.
- Burgon *v.* Pigeon—Isolated Tract—May 6, 1914—Motion Denied.
- Burgoyne *v.* Huston—Homestead—December 16, 1914—Affirmed.
- Burhlund, John A.—Homestead—July 9, 1914—Affirmed.
- Burke, Edward L.—Desert Land—November 30, 1914—Affirmed.
- Burke, John G.—Homestead—October 27, 1914—Modified.
- Burke, John H.—Soldiers' Additional—June 2, 1914—Remanded.
- Burke *v.* Lemhi Irrigation and Orchard Co., Ltd.—Mineral—September 19, 1914—Remanded.
- Burlingame *v.* Wiitala—Homestead—October 20, 1914—Affirmed.
- Burnham, Allie A.—Homestead—November 18, 1914—Modified.
- Burns, Hazel—Homestead—April 29, 1914—Vacated.
- Burns *v.* Raberge—Homestead—February 26, 1915—Hearing Ordered.
- Burton, Lily S.—Homestead—August 31, 1914—Affirmed.
- Burzynsky, Joseph L.—Homestead—October 12, 1914—Affirmed.
- Busche, Otho C.—Homestead—July 29, 1914—Remanded.
- Bush, Clarence N.—Homestead—April 29, 1914—Affirmed.
- Bush, Elizabeth B.—Desert Land—October 31, 1914—Affirmed.
- Bush, John N.—Homestead—January 7, 1914—Motion Allowed.
- Bush *v.* Washington—Selection—February 28, 1914—Motion Denied.
- Butchart *v.* Northern Pacific Ry. Co.—Timber and Stone—September 5, 1914—Affirmed.
- Butler, James—Homestead—March 25, 1914—Reversed.
- Butler, John T.—Homestead—November 21, 1914—Reversed.
- Butlers *v.* Ulmer—Desert Land—September 5, 1914—Affirmed.
- Butts, Milton—Homestead—April 22, 1914—Affirmed.
- Butts, Milton—Homestead—December 3, 1914—Petition Denied.
- Byars, William R.—Desert Land—October 30, 1914—Affirmed.
- Byrne *v.* Wales—Desert Land—February 9, 1915—Affirmed.
- Byron, Frank M.—Desert Land—January 19, 1915—Affirmed.
- Caats, George E.—Mineral—August 31, 1914—Affirmed.
- Cadarette, Ara A.—Desert Land—January 26, 1915—Affirmed.
- Cadawallader, Alfred—Repayment—November 4, 1914—Affirmed.
- Caddell, John W.—Homestead—October 14, 1914—Affirmed.
- Cade *v.* Burmeister—Homestead—August 25, 1914—Petition Denied.
- Cade *v.* Burmeister—Desert Land—December 26, 1914—Petition Denied.
- Cain and Stonebraker & Zea Cattle Co., Bacon, trans.—Homestead—February 28, 1914—Motion Denied.
- Cain, Isabel—Homestead—April 22, 1914—Affirmed.
- Caldwell, Edward L.—Homestead—October 27, 1914—Affirmed.
- Caldwell *v.* Wells—Homestead—June 24, 1914—Affirmed.
- Caldwell *v.* Wells—Homestead—September 26, 1914—Motion Denied.
- California & Oregon Land Co.—Selection—June 13, 1914—Remanded.

- California Copper Belt Ry. & P. Co., trans.—Selection—January 29, 1915—Modified.
- California Power & Irrig. Co.—Selection—February 16, 1915—Remanded.
- California, State of—Selection—February 6, 1914—Affirmed.
- California, State of—Selection—February 13, 1914—Affirmed.
- California, State of—Selection—February 28, 1914—Affirmed.
- California, State of—Selection—March 25, 1914—Affirmed.
- California, State of, *et al.*—Selection—April 18, 1914—Affirmed.
- California, State of—Swamp Land—September 14, 1914—Modified.
- California, State of—Selection—December 26, 1914—Modified.
- California, State of—Selection—December 30, 1914—Affirmed.
- California, State of—Selection—January 8, 1915—Remanded.
- California, State of—Selection—January 27, 1915—Reversed.
- California, State of—Selection—January 29, 1915—Affirmed.
- California, State of—Selection—February 4, 1915—Modified.
- California, State of, C. J. Abrams, trans. — Selection — December 12, 1914—Affirmed.
- California, State of, John Ashurst, trans. — Selection — December 26, 1914—Affirmed.
- California, State of, W. E. Beck, trans. — Selection — January 27, 1915—Affirmed.
- California, State of, P. H. Benton, trans. — Selection — January 26, 1915—Modified.
- California, State of, H. H. Carpenter, trans. — Selection — February 26, 1915—Affirmed.
- California, State of, John Dumford, trans. — Selection — January 27, 1915—Affirmed.
- California, State of, Great Western Power Co., trans.—Selection—February 16, 1915—Remanded.
- California, State of, Honey Lake Valley Co.—Selection—February 9, 1915—Affirmed.
- California, State of, Kern County Land Co., trans.—Selection—January 25, 1914—Reversed.
- California, State of, J. B. Konreid, trans. — Selection — January 27, 1915—Affirmed.
- California, State of, S. Maggini, trans. — Selection — February 25, 1915—Affirmed.
- California, State of, McCloud Lumber Co., Intervener — Selection — February 6, 1914—Affirmed.
- California, State of, McCloud Lumber Co.—Selection—October 30, 1914—Motion Denied.
- California, State of, McCloud River Club, Intervener—Selection—February 21, 1914—Affirmed.
- California, State of, Miller and Lux, trans. — Selection — January 8, 1915—Affirmed.
- California, State of, Miller & Lux, Inc.—Selection—February 16, 1915—Affirmed.
- California, State of, H. L. Pierson, Atty-in-fact—Selection—January 29, 1915—Affirmed.
- California, State of, Red River Lumber Co., trans.—Selection—February 25, 1915—Affirmed.
- California, State of, Sierra Lumber Co., trans.—Selection—August 14, 1914—Affirmed.
- California, State of, Sierra Lumber Co., trans.—Selection—October 6, 1914—Remanded.
- California, State of, L. A. Smallman, trans.—Selection—January 29, 1915—Affirmed.
- California, State of, C. A. Smith Lumber Co., trans.—Selection—April 27, 1914—Motion Denied.
- California, State of, C. A. Smith Lumber Co., trans.—Selection—December 26, 1914—Affirmed.
- California, State of, Levi Smith, trans.—Selection—January 29, 1915—Affirmed.
- California, State of, C. L. Walker, trans.—Selection—January 29, 1915—Affirmed.

- California, State of, Weed Lumber Co., trans.—Selection—March 14, 1914—Affirmed.
- California, State of, Weed Lumber Co., trans.—Selection—March 30, 1914—Motion Denied.
- California, State of, Weed Lumber Co., trans.—Selection—June 18, 1914—Motion Denied.
- California, State of, W. F. Whittier, trans.—Selection—February 16, 1915—Remanded.
- California, State of, *v.* Mascovich—Selection—February 16, 1915—Affirmed.
- Calkins, George C., H. P. Hulett, trans.—March 19, 1914—Affirmed.
- Callahan, Henry A.—Homestead—August 31, 1914—Affirmed.
- Callanan, James L.—Repayment—September 26, 1914—Affirmed.
- Calwell *v.* Hendrickson—Homestead—October 12, 1914—Affirmed.
- Caminetti, Leopold D.—Homestead—January 2, 1914—Affirmed.
- Caminetti, Leopold D.—Homestead—March 14, 1914—Motion Denied.
- Campau, Catherine M.—Timber and Stone—December 30, 1914—Affirmed.
- Campau, Catherine M.—Timber and Stone—February 27, 1915—Motion Denied.
- Campbell, E. C.—Coal—December 16, 1914—Affirmed.
- Campbell, Linnie S.—Repayment—November 18, 1914—Affirmed.
- Campbell, Mary G.—Homestead—March 12, 1914—Affirmed.
- Campbell, Omer F.—Repayment—November 18, 1914—Affirmed.
- Campbell, Richard, *et al.*—Homestead—July 31, 1914—Remanded.
- Campini, Charles—Homestead—February 26, 1915—Motion Denied.
- Canfil, Arthur—Homestead—August 14, 1914—Reversed.
- Canon *v.* Southern Pacific Ry. Co.—Desert Land—January 29, 1915—Affirmed.
- Cantleberry, Andrew L.—Homestead—May 12, 1914—Affirmed.
- Cantleberry, Andrew L.—Homestead—December 16, 1914—Affirmed.
- Canton Placer Mining Co.—Mineral—October 31, 1914—Affirmed.
- Canty, John W.—Timber and Stone—September 26, 1914—Affirmed.
- Caparn, William H.—Desert Land—February 9, 1915—Affirmed.
- Caple, Merle, formerly Stanton—Homestead—June 13, 1914—Petition Sustained.
- Cardine, Joseph L.—Survey—March 31, 1914—Remanded.
- Carey *v.* Ewalt—Desert Land—November 21, 1914—Affirmed.
- Carhouse, Signa—Homestead—June 2, 1914—Remanded.
- Carl, Harlan A.—Timber and Stone—December 16, 1914—Affirmed.
- Carley, Mary C.—Homestead—August 26, 1914—Remanded.
- Carlson, Anna—Homestead—July 30, 1914—Reversed.
- Carlson, Conrad M.—Homestead—February 16, 1915—Reversed.
- Carlson, Erik A.—Mineral—January 29, 1915—Affirmed.
- Carlson, Ernest G.—Homestead—April 13, 1914—Affirmed.
- Carlson, Ernst G.—Homestead—March 12, 1914—Affirmed.
- Carlson, Gottfred J.—Homestead—April 13, 1914—Affirmed.
- Carlson, Gottfred J.—Homestead—July 21, 1914—Affirmed.
- Carlson, Gust—Homestead—March 12, 1914—Affirmed.
- Carlson, Gust—Homestead—August 22, 1914—Affirmed.
- Carlson, Johan H. (2 cases)—Homestead—March 12, 1914—Affirmed.
- Carlson, John R.—Homestead—March 12, 1914—Affirmed.
- Carlson *v.* Northern Pacific Ry Co.—Homestead—November 7, 1914—Affirmed.
- Carlson *v.* Northern Pacific Ry. Co.—Homestead—December 26, 1914—Motion Denied.
- Carpenter, Elizabeth—Homestead—August 13, 1914—Reversed.
- Carpenter *v.* Benjamin—Homestead—March 31, 1914—Affirmed.
- Carper, George W.—Homestead—December 30, 1914—Remanded.

- Carr, E. M.—Coal—December 16, 1914—Affirmed.
- Carr *v.* Caeser—Homestead—August 25, 1914—Petition Denied.
- Carr *v.* Caeser—Desert Land—December 26, 1914—Petition Denied.
- Carriere, Louis—Homestead—May 6, 1914—Remanded.
- Carrigan *v.* Northern Pacific Ry. Co.—Homestead—August 26, 1914—Affirmed.
- Carroll *v.* Bookout—Homestead—May 29, 1914—Affirmed.
- Carter, Alta E., *et al.*—Coal—January 20, 1914—Modified.
- Carter, Jesse E.—Homestead—April 22, 1914—Affirmed.
- Carter, Jesse E.—Desert Land—September 25, 1914—Affirmed.
- Carter, Luther A.—Homestead—September 17, 1914—Affirmed.
- Cary *v.* Key—Homestead—February 28, 1914—Affirmed.
- Casaus, Catarino M.—Homestead—September 17, 1914—Reversed.
- Casaus, Pelagio—Homestead—February 26, 1915—Affirmed.
- Case, Bessie L.—Homestead—January 12, 1915—Vacated.
- Case, Chauncie L.—Homestead—October 31, 1914—Vacated and Remanded.
- Case, Martina E.—Desert Land—February 4, 1915—Affirmed.
- Casebolt, Louis E.—Homestead—November 18, 1914—Affirmed.
- Casey, E. L.—Homestead—September 5, 1914—Affirmed.
- Casper, assignee of Souders—Soldiers' Additional—February 28, 1914—Affirmed.
- Cass, Ernest E.—Homestead—February 21, 1914—Reversed.
- Cass Lake Hot Springs Reservoir & Canal Co. *v.* Phippen—Right of way—August 22, 1914—Affirmed.
- Casten, Earl—Homestead—May 6, 1914—Affirmed.
- Caster, Phillip—Homestead—July 28, 1914—Reversed.
- Castles *v.* Long—Homestead—September 5, 1914—Affirmed.
- Castren and Conner *v.* Jokimaki—Homestead—February 13, 1914—Motion Denied.
- Castren *v.* Connor—Homestead—June 30, 1914—Petition Denied.
- Cate *v.* Northern Pacific Ry. Co.—Homestead—November 14, 1914—Motion Denied.
- Cates, Peter F.—Homestead—August 26, 1914—Affirmed.
- Cathcart, Loftus L.—Homestead—December 3, 1914—Affirmed.
- Cathcart, Loftus L.—Homestead—January 29, 1915—Motion Denied.
- Causin *v.* Fuller—Homestead—September 5, 1914—Affirmed.
- Cavanaugh *v.* Northern Pacific Ry. Co.—Homestead—August 28, 1914—Affirmed.
- Caylor, David C.—Homestead—September 17, 1914—Petition Granted.
- Caylor, David C.—Homestead—December 29, 1914—Remanded.
- Cayo, Elise—Homestead—September 26, 1914—Affirmed.
- Cearley, Newton F.—Homestead—August 12, 1914—Affirmed.
- Cearley, Newton F.—Homestead—November 7, 1914—Motion Denied.
- Cedar Creek Placer Mining Co. *v.* Edwards *et al.*—Homestead—June 9, 1914—Motion Remanded.
- Cederblad, Charles—Homestead—March 14, 1914—Vacated and Remanded.
- Central Pacific Ry. Co.—Clear List 223—July 9, 1914—Modified.
- Central Pacific Ry. Co.—Railroad List—August 25, 1914—Affirmed.
- Central Pacific Ry. Co.—Mineral—August 31, 1914—Affirmed.
- Central Pacific Ry. Co.—Selection—September 5, 1914—Modified.
- Central Pacific Ry. Co.—Railroad List—December 30, 1914—Modified.
- Central Pacific Ry. Co.—Railroad List—December 30, 1914—Vacated.
- Central Pacific Ry. Co.—Mineral—December 31, 1914—Affirmed.
- Central Pacific Ry. Co.—Selection—January 19, 1915—Affirmed.

- Central Pacific Ry. Co.—Selection—February 16, 1915—Motion Denied.
- Central Pacific Ry. Co.—Selection—February 27, 1915—Motion Denied.
- Central Pacific Ry. Co. *v.* Fowler—Mineral—December 5, 1914—Affirmed.
- Cerutti, Pietro—Homestead—October 6, 1914—Affirmed.
- Cerutti, Pietro—Homestead—December 11, 1914—Motion Denied.
- Chabot *v.* Wyoming—Selection—August 21, 1914—Affirmed.
- Chacon, Pedro J.—Repayment—March 18, 1914—Affirmed.
- Chacon, Pedro J.—Repayment—May 15, 1914—Remanded.
- Chain, Charles H.—Desert Land—February 4, 1915—Affirmed.
- Chalupnik, Emma C.—Desert Land—September 14, 1914—Petition Denied.
- Chamberlin *v.* Jensen—Homestead—August 14, 1914—Affirmed.
- Chamberlin *v.* Jensen—Homestead—November 18, 1914—Motion Denied.
- Chambers, Clarence—Repayment—October 20, 1914—Affirmed.
- Chandler *v.* Musgrave—Desert Land—May 29, 1914—Petition Denied.
- Channell *v.* Shatzke—Homestead—October 24, 1914—Affirmed.
- Chapman, Frank B.—Homestead—May 29, 1914—Modified.
- Chapman, Glen—Homestead—April 10, 1914—Affirmed.
- Chapman, Joseph, Elizabeth Roberts, trans.—Homestead—March 19, 1914—Affirmed.
- Chapman, Leonora M.—Homestead—June 18, 1914—Petition Denied.
- Chapman *v.* Kimball—Homestead—December 24, 1914—Reversed.
- Chapman *v.* Kimbal—Public Sale—December 24, 1914—Reversed.
- Chapman *v.* Kimball—Public Sale—February 9, 1915—Reversed.
- Charles, Fred H., assignee of Toland—Desert Land—November 27, 1914—Reversed.
- Charlton *v.* Holmes, now Little—Homestead—July 30, 1914—Affirmed.
- Chase, Charles R.—Homestead—February 21, 1914—Affirmed.
- Chase *v.* Moore—Homestead—August 19, 1914—Affirmed.
- Chatten, Alonzo D.—Homestead—May 6, 1914—Affirmed.
- Cheatham, Anthony—Homestead—November 18, 1914—Affirmed.
- Cheeseman, Dwight H.—Homestead—June 29, 1914—Affirmed.
- Cheeseman, Dwight H.—Homestead—September 26, 1914—Motion Denied.
- Cheff, Oville—Homestead—October 29, 1914—Affirmed.
- Chevalley *v.* Cronin—Homestead—February 27, 1915—Affirmed.
- Chillson, Mary Isabell—Homestead—August 7, 1914—Affirmed.
- Christensen, Andrew H., assignee of Bates—Soldiers' Additional—March 27, 1914—Remanded.
- Christensen, Anton—Homestead—February 28, 1914—Reversed.
- Christensen, Christian O.—Homestead—September 26, 1914—Remanded.
- Christensen, Julia, *et al.*—Desert Land—February 16, 1915—Affirmed.
- Christensen, Mabel E.—Desert Land—September 17, 1914—Affirmed.
- Christensen, Mabel E.—Desert Land—October 31, 1914—Motion Denied.
- Christensen, William W.—Homestead—August 12, 1914—Affirmed.
- Christensen *v.* Hendrickson—Homestead—January 17, 1914—Motion Denied.
- Christensen *v.* Northern Pacific Ry. Co.—Homestead—September 26, 1914—Affirmed.
- Christenson *v.* Whistler—Homestead—August 14, 1914—Affirmed.
- Christian, Hannah H., assignee of Trumbull—Soldiers' Additional—March 18, 1914—Affirmed.
- Christopher E. Olsen—Homestead—September 8, 1914—Affirmed.
- Cladney, Mary A.—Homestead—March 21, 1914—Reversed.
- Clapp *v.* Ralls—Homestead—December 29, 1914—Affirmed.
- Clark, Albert, McGuire and Hannan, trans.—Homestead—March 12, 1914—Remanded.

- Clark, Albert, McGuire *et al.*, trans.—Homestead—June 16, 1914—Motion Denied.
- Clark, Claude N.—Desert Land—October 31, 1914—Affirmed.
- Clark, Darwin J.—Desert Land—July 30, 1914—Affirmed.
- Clark, Frank E.—Homestead—March 12, 1914—Vacated and Remanded.
- Clark, Helen W.—Timber and Stone—February 9, 1915—Affirmed.
- Clark, John L.—Homestead—January 12, 1915—Petition Granted.
- Clark, Wareham G., assignee of Dunlap—Soldiers' Additional—August 18, 1914—Dismissed.
- Clark, William F.—Homestead—July 9, 1914—Vacated and Remanded.
- Clark, William S.—Coal—May 27, 1914—Affirmed.
- Clark *v.* Sides—Homestead—August 28, 1914—Affirmed.
- Clark *v.* Van Horn—Desert Land—September 26, 1914—Affirmed.
- Clarke, Dave—Homestead—December 30, 1914—Affirmed.
- Clasbey, Mamie—Mineral—March 14, 1914—Motion Denied.
- Clasbey, Mamie—Mineral—September 14, 1914—Motion Granted.
- Clay, Charles M.—Desert Land—January 12, 1914—Affirmed.
- Clay, Charles M.—Desert Land—March 18, 1914—Motion Denied.
- Clayton, A. J.—Homestead—October 6, 1914—Affirmed.
- Cleary, Richard E., Heirs of—Homestead—June 30, 1914—Affirmed.
- Cleary *v.* Chapman—Homestead—September 26, 1914—Hearing Ordered.
- Cleaver, Joseph B.—Homestead—September 14, 1914—Affirmed.
- Clemens, Edward F.—Homestead—August 31, 1914—Affirmed.
- Clemens, Edward F.—Homestead—October 20, 1914—Motion Denied.
- Clemens *v.* Northern Pacific Ry. Co.—Selection—June 13, 1914—Affirmed.
- Clemens *v.* Northern Pacific Ry. Co.—Homestead—September 26, 1914—Petition Denied.
- Clemons, J. H., assignee of Beaver—Soldiers' Additional—November 18, 1914—Affirmed.
- Cleveland, Richard—Homestead—January 2, 1914—Reversed.
- Cleveland, Richard—Homestead—May 1, 1914—Motion Denied.
- Cleveland, Richard—Homestead—November 18, 1914—Petition Denied.
- Cline, Mary J.—Desert Land—February 28, 1914—Affirmed.
- Clodfelter *v.* Philpot—Homestead—August 13, 1914—Petition Denied.
- Close, Virginia F.—Homestead—January 29, 1914—Affirmed.
- Clouse, Charles B.—Desert Land—February 4, 1915—Affirmed.
- Coachella Land & Water Co.—Survey—April 18, 1914—Motion Allowed.
- Coats, James A.—Homestead—October 30, 1914—Reversed.
- Cobb, Edward L.—Survey—December 16, 1914—Vacated.
- Cockle, Sidonie L.—Homestead—November 30, 1914—Affirmed.
- Coe, Mai Rogers—Desert Land—January 12, 1915—Vacated.
- Coffin, Florence A.—Military Bounty Land—May 1, 1914—Affirmed.
- Coffin, Herbert W., assignee of Rollow—Soldiers' Additional—March 27, 1914—Remanded.
- Coffin, Mary E., assignee of Prall—Soldiers' Additional—May 29, 1914—Remanded.
- Coffin *v.* Northern Pacific Ry. Co.—Lieu Selection—May 27, 1914—Affirmed.
- Coggins *v.* Chandler—Homestead—July 7, 1914—Remanded.
- Coggsball, Charles E.—Desert Land—March 11, 1914—Vacated.
- Coggsball, Charles E.—Desert Land—November 18, 1914—Remanded.
- Coggsball, Kathryn—Desert Land—March 11, 1914—Vacated.
- Coggsball, Kathryn—Desert Land—November 18, 1914—Remanded.
- Colburn, John W.—Homestead—September 26, 1914—Affirmed.

- Cole *v.* Gibbs—Homestead—June 18, 1914—Affirmed.
- Cole *v.* Meddock—Homestead—June 12, 1914—Affirmed.
- Cole *v.* Sadler—Homestead—August 14, 1914—Remanded.
- Coleman, Allen J.—Homestead—April 10, 1914—Affirmed.
- Coleman, Con—Homestead—June 2, 1914—Affirmed.
- Coleman, Eulan G.—Homestead—April 29, 1914—Affirmed.
- Coleman, Joe—Homestead—February 16, 1915—Vacated.
- Coleman *v.* Wegen—Homestead—October 13, 1914—Affirmed.
- Coleman *v.* Wegen—Homestead—January 29, 1915—Motion Denied.
- Coley *v.* Randle—Desert Land—January 12, 1915—Affirmed.
- Collinge, Belle—Desert Land—April 22, 1914—Affirmed.
- Collinge, Della—Homestead—May 7, 1914—Affirmed.
- Collinge, Frederick J.—Desert Land—March 7, 1914—Remanded.
- Collinge *v.* Southern Pacific Ry. Co.—Desert Land—February 23, 1915—Affirmed.
- Collins, Joseph R.—Homestead—July 13, 1914—Vacated.
- Collins, P. M., J. L. Sprinkle, trans.—Lieu Selection—February 16, 1915—Reversed.
- Collins, Ted E.—Desert Land—May 6, 1914—Remanded.
- Collins, Ted E.—Soldiers' Additional—April 22, 1914—Affirmed.
- Collins, Ted E., assignee of Fayant—Soldiers' Additional—December 16, 1914—Affirmed.
- Collins, Ted E., assignee of Felton—Soldiers' Additional—January 25, 1915—Affirmed.
- Collins, Ted E., assignee of Myers—Soldiers' Additional—August 12, 1915—Affirmed.
- Collins, Ted E., assignee of Myers—Soldiers' Additional—October 20, 1914—Motion Denied.
- Collins *v.* Converse—Homestead—January 26, 1914—Affirmed.
- Collins *v.* Northern Pacific Ry. Co.—Homestead—June 23, 1914—Affirmed.
- Collins *v.* Schwarz—Desert Land—June 13, 1914—Reversed.
- Collins *v.* Schwarz—Homestead—September 26, 1914—Motion Denied.
- Collinsworth, Chester A.—Homestead—April 13, 1914—Remanded.
- Colvin & Welch *v.* Arnold—Desert Land—January 27, 1915—Affirmed.
- Colvin, Byrtie E.—Desert Land—February 26, 1915—Affirmed.
- Colvin, William H.—Homestead—September 14, 1914—Remanded.
- Colyer, Amanda—Repayment—November 18, 1914—Affirmed.
- Colyer, James B.—Repayment—October 31, 1914—Affirmed.
- Colyer, Sarah E., now Whitlow—Repayment—October 31, 1914—Affirmed.
- Compton, Elijah D.—Homestead—May 12, 1914—Affirmed.
- Conant, Parks D.—Homestead—October 24, 1914—Affirmed.
- Congdon, Fred—Homestead—August 15, 1914—Affirmed.
- Conine *v.* Beesley—Homestead—November 18, 1914—Affirmed.
- Conklin, Thomas—Homestead—September 18, 1914—Reversed.
- Conkling, Marvin V., assignee of minor children of Logan—Soldiers' Additional—September 26, 1914—Reversed.
- Conley *v.* Houston *et al.*—Selection—January 20, 1914—Motion Denied.
- Connelly and Butler—Homestead—November 24, 1914—Remanded.
- Connole *v.* Thompson—Homestead—October 17, 1914—Affirmed.
- Connolly *v.* Carroll—Soldiers' Additional—December 5, 1914—Affirmed.
- Connolly *v.* Northern Pacific Ry. Co.—Homestead—June 20, 1914—Affirmed.
- Connolly *v.* Northern Pacific Ry. Co.—Selection—October 30, 1914—Motion Denied.
- Conover & Welch *v.* Havens—Desert Land—January 2, 1915—Modified.

- Conover *v.* Paige—Homestead—August 27, 1914—Affirmed.
- Conover *v.* Paige—Desert Land—October 31, 1914—Motion Denied.
- Conover *v.* Paige—Desert Land—January 14, 1915—Petition Denied.
- Conway, Anna—Desert Land—January 19, 1915—Affirmed.
- Conway, James—Desert Land—January 19, 1915—Affirmed.
- Conway, Joseph H. — Timber and Stone—February 18, 1915—Affirmed.
- Conway, Joseph H. — Timber and Stone—April 10, 1914—Petition Granted.
- Conway, William—Repayment—August 21, 1914—Affirmed.
- Cook, Earnest W.—Homestead—October 1, 1914—Remanded.
- Cook, Elbert E.—Homestead—August 28, 1914—Affirmed.
- Cook, Ellie B.—Timber and Stone—January 27, 1915—Affirmed.
- Cook, Floyed—Desert Land—July 2, 1914—Reversed.
- Cook, Gertrude M.—Homestead—August 25, 1914—Affirmed.
- Cook, Harry D.—Selection—December 3, 1914—Affirmed.
- Cook, Herbert W.—Desert Land—November 21, 1914—Affirmed.
- Cook, Jesse W.—Repayment—October 31, 1914—Reversed.
- Cook, Tike—Homestead—August 28, 1914—Affirmed.
- Cooke, James F.—Timber and Stone—December 29, 1914—Affirmed.
- Cooke *v.* Northern Pacific Ry. Co.—Timber and Stone—January 29, 1915—Affirmed.
- Cooley *v.* Badt—Soldiers' Additional—July 24, 1914—Reversed and Remanded.
- Cooley *v.* Badt—Soldiers' Additional—October 24, 1914—Motion Denied.
- Cooley *v.* Dersham—Desert Land—February 25, 1915—Affirmed.
- Cooley *v.* Hollingsworth—Desert Land—January 29, 1915—Affirmed.
- Cooley *v.* Sweeten—Homestead—September 26, 1914—Affirmed.
- Coonrad *v.* Lantry—Homestead—June 18, 1914—Affirmed.
- Cooper *v.* Hanson—Homestead—August 26, 1914—Affirmed.
- Cooper *et al.* *v.* Kuhn—Homestead—November 27, 1914—Affirmed.
- Cooper, Leroy W.—Homestead—February 26, 1915—Affirmed.
- Coots, Fred—Homestead—November 27, 1914—Affirmed.
- Copeland, James—Homestead—December 29, 1914—Affirmed.
- Copper Gulf Mining Co.—Mineral Entry—February 12, 1914—Modified.
- Copper Gulf Mining Co.—Mineral—March 21, 1914—Modified.
- Copper King Mining & Development Co.—Mineral—August 19, 1914—Affirmed.
- Corcoran *v.* McKeon—Homestead—May 9, 1914—Affirmed.
- Cordova, Pedro, Benjamin F. Springer, trans.—Homestead—October 1, 1914—Reversed.
- Corell *v.* Northern Pacific Ry. Co.—Timber and Stone—May 27, 1914—Affirmed.
- Corell *v.* Northern Pacific Ry. Co.—Timber and Stone—January 29, 1915—Motion Denied.
- Corey, Libbie S.—Homestead—November 30, 1914—Reversed.
- Cornell Creek Coal Association—Coal—December 26, 1914—Remanded.
- Cornie, Winnifred, assignee of Oldham—Soldiers' Additional—December 16, 1914—Dismissed.
- Cornie, Winnifred, assignee of Talmadge—Soldiers' Additional—June 30, 1914—Petition Denied.
- Cornie, Winnifred, assignee of Talmadge—Soldiers' Additional—November 24, 1914—Remanded.
- Cornish, Alexander T.—Homestead—April 7, 1914—Affirmed.
- Cornwell, Chester O.—Homestead—October 13, 1914—Affirmed.
- Corson, Ralph—Homestead—May 29, 1914—Reversed.
- Cortway *v.* Johns—Desert Land—December 26, 1914—Petition Denied.
- Corwin, William H.—Homestead—February 19, 1914—Reversed.

- Cosgrove, Ella—Coal—January 12, 1915—Affirmed.
- Coster *v.* Gorman—Homestead—October 27, 1914—Affirmed.
- Couch, Hiram C.—Homestead—September 26, 1914—Affirmed.
- Couch *v.* Northern Pacific Ry. Co.—Homestead—January 29, 1915—Affirmed.
- Coulter, Rilla M.—Homestead—May 26, 1914—Affirmed.
- Counts, S. P., Graham Lumber Co., trans.—Timber and Stone—February 27, 1915—Affirmed.
- Court, John W.—Homestead—February 18, 1915—Affirmed.
- Courtway *v.* Johns—Homestead—August 23, 1914—Petition Denied.
- Covert, Frank—Homestead—February 26, 1915—Reversed.
- Covey *v.* Northern Pacific Ry. Co.—Homestead—June 2, 1914—Affirmed.
- Cowan, Dave—Homestead—July 25, 1914—Affirmed.
- Cowden Cattle Co., trans. of J. M. Daugherty—Selection—December 26, 1914—Modified.
- Cowee, John C.—Homestead—August 25, 1914—Affirmed.
- Cox *v.* Ramsey—Homestead—September 14, 1914—Affirmed.
- Cox *v.* Ramsey—Homestead—December 26, 1914—Motion Vacated.
- Craft *v.* Taylor—Homestead—May 29, 1914—Affirmed.
- Craig, Anna, Dick Lumber co., trans.—Timber and Stone—October 14, 1914—Affirmed.
- Craig, Arthur L.—Homestead—September 26, 1914—Affirmed.
- Craig, Ralph S.—Homestead—December 16, 1914—Affirmed.
- Craig *v.* Heirs of Underwood—Homestead—February 25, 1915—Affirmed.
- Crain *et al.* *v.* Blodgett, assignee of Fudge—Homestead—September 26, 1914—Affirmed.
- Cramer, Allen H.—Homestead—September 18, 1914—Remanded.
- Cramer, Daniel P.—Desert Land—November 30, 1914—Remanded.
- Cramer Live Stock Co., trans.—Selection—December 3, 1914—Affirmed.
- Crandall and Hoover *v.* Whitehorn—Homestead—January 17, 1914—Petition Denied.
- Crane, Andrew—Homestead—September 9, 1914—Modified.
- Craver, Theophilus B.—Soldiers' Additional—July 28, 1914—Affirmed.
- Crawford, George W.—Repayment—September 21, 1914—Affirmed.
- Crawford, Samuel B.—Homestead—January 31, 1914—Affirmed.
- Crawford *v.* Crawford—Homestead—March 25, 1914—Affirmed.
- Crawford *v.* Tipton—Homestead—February 15, 1915—Affirmed.
- Crayton *v.* Dixon—Homestead—November 4, 1914—Affirmed.
- Creitz, Florence M.—Homestead—May 28, 1914—Reversed.
- Crittenden, Florence E.—Homestead—August 18, 1914—Affirmed.
- Crittenden, Florence E.—Homestead—December 12, 1914—Motion Denied.
- Crittenden, Martha J.—Desert Land—December 11, 1914—Affirmed.
- Cromwell, Charley V.—Desert Land—February 21, 1914—Affirmed.
- Cronin *v.* Gill and Brokke—Desert Land—November 18, 1914—Affirmed.
- Crooks, William J., assignee—Soldiers' Additional—September 26, 1914—Petition Denied.
- Crooks, William J., assignee of Tuttle—Soldiers' Additional—July 30, 1914—Motion Denied.
- Crooks, William J., assignee of Tuttle—Soldiers' Additional—May 29, 1914—Affirmed.
- Crouch, Clinton B.—Homestead—August 28, 1914—Affirmed.
- Crow Consolidated Coal Co.—Coal Land—May 28, 1914—Modified.
- Crow Consolidated Coal Co.—Coal Land—November 7, 1914—Affirmed.
- Crowley, John F.—Homestead—August 27, 1914—Affirmed.
- Crowley *v.* Smith—Desert Land—February 16, 1915—Reversed.
- Cruise, Patrick, Heirs of—Homestead—September 14, 1914—Affirmed.

- Crummer, Mary A.—Desert Land—September 26, 1914—Affirmed.
- Crummer, Mary A.—Desert Land—December 29, 1914—Motion Denied.
- Crumpton *v.* Tullis—Homestead—August 31, 1914—Affirmed.
- Cruz, Sinfuriana—Homestead—February 21, 1914—Reversed.
- Cryer, Thomas J.—Homestead—December 30, 1914—Affirmed.
- Cryer *v.* Louisiana *et al.*—Homestead—January 19, 1915—Affirmed.
- Cullar, Harry C.—Desert Land—February 21, 1914—Affirmed.
- Cullison Elmer E.—Homestead—May 4, 1914—Remanded.
- Culpepper *v.* Ocheltree—Homestead—October 23, 1914—Affirmed.
- Cumberland Mining & Smelting Co.—Repayment—February 25, 1915—Instructions.
- Cumberland Mining & Smelting Co., assignee of McLoud—Repayment—September 14, 1914—Motion Denied.
- Cummer Lumber Co.—Cash Entry—May 15, 1914—Affirmed.
- Cummings, Burton A., assignee of Jones—Soldiers' Additional—September 26, 1914—Affirmed.
- Cummings, Burton A., assignee of Montgomery—Soldiers' Additional—September 5, 1914—Affirmed.
- Cunningham, Allen S.—Repayment—February 16, 1915—Reversed.
- Cunningham, Francis R.—Homestead—March 26, 1914—Affirmed.
- Curl, Andrew—Homestead—November 18, 1914—Affirmed.
- Curran and Kelly *v.* Wade—Homestead—March 19, 1914—Affirmed.
- Currie *v.* Northern Pacific Ry. Co.—Selection—June 13, 1914—Affirmed.
- Currie *v.* Northern Pacific Ry. Co.—Homestead—September 26, 1914—Petition Denied.
- Currier, Elvina D.—Homestead—February 18, 1914—Reversed.
- Currington, William N., assignee of Hush—Soldiers' Additional—May 29, 1914—Affirmed.
- Currington, William N., assignee of Hush—Soldiers' Additional—July 30, 1914—Motion Denied.
- Curry *v.* Siegling—Homestead—October 31, 1914—Reversed.
- Curtis, Alfred—Homestead—February 21, 1914—Reversed.
- Curtis, Guy L.—Homestead—November 18, 1914—Remanded.
- Curtis, Zachariah—Homestead—February 28, 1914—Affirmed.
- Cusker, Myre—Homestead—January 27, 1915—Affirmed.
- Cutbirth, William F.—Homestead—October 20, 1914—Affirmed.
- Daeley, Richard, assignee of Gallagher—Soldiers' Additional—January 27, 1914—Affirmed.
- Daffron, Samuel H.—Homestead—July 28, 1914—Affirmed.
- Dahlgren, John—Homestead—December 16, 1914—Affirmed.
- Dahlman *v.* Derby—Homestead—January 29, 1915—Motion Denied.
- Dailey, Harry H.—Homestead—May 27, 1914—Reversed.
- Dakota Consolidated Coal Co.—Coal Land—May 28, 1914—Modified.
- Dakota Consolidated Coal Co.—Coal Land—November 7, 1914—Affirmed.
- Dale, Harry T.—Homestead—November 24, 1914—Affirmed.
- Daley *v.* Timminy—Homestead—September 17, 1914—Affirmed.
- Dameron, Alatha May—Homestead—January 2, 1914—Reversed.
- Dann, Wilbur W.—Desert Land—February 4, 1915—Affirmed.
- Dansie, Charles N.—Repayment—November 18, 1914—Affirmed.
- Darling, Luther E.—Homestead—July 22, 1914—Affirmed.
- Darling, Luther E.—Homestead—September 26, 1914—Motion Denied.
- Darling *v.* Southwell—Homestead—December 3, 1914—Affirmed.
- Darnell, Robert E.—Homestead—February 16, 1915—Petition Denied.
- Darrow, Millard B., assignee of Shepard—Soldiers' Additional—July 28, 1914—Affirmed.
- Daugherty, J. M., Cowden Cattle Co., trans.—Selection—December 26, 1914—Modified.

- Daugherty *v.* Northern Pacific Ry. Co.—Homestead—July 29, 1914—Affirmed.
- Dauterman *v.* Reinhart—Homestead—May 29, 1914—Affirmed.
- Davenport, Donnell, assignee of Charles Seaford—Desert Land—March 12, 1914—Affirmed.
- Davenport, Donnell, assignee of Seaford—Desert Land—May 7, 1914—Motion Allowed.
- Davidson, Mamie C., now Martin—Homestead—February 10, 1914—Affirmed.
- Davies *v.* Northern Pacific Ry. Co.—Homestead—August 26, 1914—Affirmed.
- Davies *v.* Vandall—Indian Selection—December 3, 1914—Modified.
- Davis, Charles L.—Homestead—March 21, 1914—Reversed.
- Davis, Charles H.—Homestead—August 15, 1914—Reversed.
- Davis, David J.—Homestead—August 26, 1914—Modified.
- Davis, David J.—Homestead—January 8, 1915—Motion Denied.
- Davis, Ed—Homestead—December 30, 1914—Affirmed.
- Davis, Frank R.—Desert Land—April 22, 1914—Reversed.
- Davis, George P.—Homestead—November 4, 1914—Reversed.
- Davis, Harry T.—Desert Land—April 22, 1914—Reversed.
- Davis, James L., assignee of McDaniel—Soldiers' Additional—August 31, 1914—Affirmed.
- Davis, John A.—Homestead—October 31, 1914—Vacated.
- Davis, Lee *et al.*—Repayment—March 18, 1914—Remanded.
- Davis, Mary V.—Homestead—February 21, 1914—Affirmed.
- Davis, Robert L.—Homestead—April 28, 1914—Remanded.
- Davis, William H.—Homestead—May 15, 1914—Reversed.
- Davis, William M.—Homestead—October 23, 1914—Reversed.
- Davis *et al. v.* Evans—Homestead—August 26, 1914—Remanded.
- Davis *v.* Haabala—Homestead—January 26, 1914—Petition Denied.
- Davis *v.* Northern Pacific Ry. Co.—Homestead—August 31, 1914—Affirmed.
- Davis *v.* Northern Pacific Ry. Co.—Homestead—September 5, 1914—Affirmed.
- Davison, Henry Oscar—Desert Land—September 26, 1914—Affirmed.
- Davison *v.* Watson—Homestead—February 25, 1915—Affirmed.
- Dawson *v.* Wiles—Homestead—January 2, 1914—Remanded.
- Day, Elbert S.—Homestead—September 26, 1914—Reversed.
- Day, Frank—Homestead—October 20, 1914—Remanded.
- Day, Frederick D.—Timber and Stone—February 9, 1915—Affirmed.
- Day, George W.—Timber and Stone—September 26, 1914—Affirmed.
- Day, William H.—Mineral—August 26, 1914—Affirmed.
- Dayley *v.* Robinson—Desert Land—October 29, 1914—Affirmed.
- Dayton, Denver P.—Soldiers' Additional—August 25, 1914—Remanded.
- Deach, Ivan J.—Desert Land—February 4, 1915—Affirmed.
- Debenport, Horace F.—Homestead—July 31, 1914—Affirmed.
- De Bray, Louis, for Lena De Bray—Indian Allotment—October 7, 1914—Affirmed.
- De Bray, Louis, for Lida De Bray—Indian Allotment—October 7, 1914—Affirmed.
- De Bray, Louis, for Louise De Bray—Indian Allotment—October 7, 1914—Affirmed.
- De Bray, Louis, for Mary De Bray—Indian Allotment—October 7, 1914—Affirmed.
- De Bray, Louis, for William De Bray—Indian Allotment—October 7, 1914—Affirmed.
- Deering *v.* Lynch—Desert Land—September 14, 1914—Affirmed.
- Dees, Charles E.—Homestead—April 10, 1914—Affirmed.
- De Graff, Charles W.—Timber and Stone—August 28, 1914—Affirmed.

- De Graff, Charles W.—Timber and Stone—November 4, 1914—Motion Denied.
- Delaney, Nellie—Homestead—August 31, 1914—Affirmed.
- De Lashmutt *v.* Smith—Homestead—March 12, 1914—Petition Denied.
- Deleissigues, Benjamin F.—Homestead—July 2, 1914—Affirmed.
- Delinger *v.* Mallory—Homestead—May 12, 1914—Affirmed.
- Delore, Alexander, for Murrell V.—Indian Allotment—November 19, 1914—Affirmed.
- Delorime, Nancy, Patrice and Madalain—Indian Selection—March 14, 1914—Affirmed.
- Delozier, May S.—Desert Land—September 21, 1914—Affirmed.
- Demars *v.* Theis—Desert Land—March 7, 1914—Affirmed.
- Demars *v.* Theis—Desert Land—July 7, 1914—Motion Sustained.
- Demasters, Jesse—Timber and Stone—July 22, 1914—Reversed.
- Demereau *v.* State of South Dakota—Selection—February 27, 1915—Remanded.
- Dempsey, Igery K.—Homestead—September 26, 1914—Remanded.
- Dempsey, Thomas—Homestead—February 7, 1914—Petition Denied.
- Denis, Ohel, Dick Lumber Co., trans.—Timber and Stone—September 26, 1914—Affirmed.
- Denny, Mary—Homestead—September 14, 1914—Remanded.
- Densmore *v.* Plumlee—Homestead—March 12, 1914—Affirmed.
- Densmore *v.* Plumlee—Homestead—May 28, 1914—Motion Denied.
- Denson, Isa E.—Homestead—August 2, 1914—Remanded.
- Denver Power & Irrigation Co.—Right of Way—August 26, 1914—Remanded.
- Denver Power & Irrigation Co.—Right of Way—September 5, 1914—Remanded.
- Des Combes, Frank—Desert Land—June 12, 1914—Reversed.
- Des Combes, Valerie—Desert Land—June 12, 1914—Reversed.
- Development & Mines Co.—Right of way—January 26, 1914—Modified.
- Devenney, Robert E.—Homestead—August 12, 1914—Affirmed.
- Devenney, Zella M.—Homestead—August 18, 1914—Affirmed.
- Devens, Charles A.—Homestead—November 30, 1914—Affirmed.
- Devlin, Lawrence H., assignee of Atkinson—Soldiers' Additional—March 27, 1914—Remanded.
- Devoe *v.* Southern Pacific Ry. Co.—Desert Land—January 19, 1915—Affirmed.
- Dewey, Adelbert M.—Homestead—August 15, 1914—Affirmed.
- Di Salvo, Andrea, A. G. Broadhead, trans.—Homestead—September 17, 1914—Reversed.
- Diamond, Elizabeth—Homestead—September 26, 1914—Affirmed.
- Dibert, W. D.—Townsite—September 26, 1914—Affirmed.
- Dickerman *v.* Hunter—Desert Land—February 26, 1915—Affirmed.
- Dickerson *v.* Southern Pacific Ry. Co.—Desert Land—February 26, 1915—Affirmed.
- Dickey, John H.—Isolated Tract—January 27, 1915—Modified.
- Dickey, John H.—Isolated Tract—September 26, 1914—Suspended.
- Dickinson, Christopher N., assignee of Noyce Coats—Soldiers' Additional—March 18, 1914—Remanded.
- Diederichsen, Arthur B.—Desert Land—February 4, 1915—Affirmed.
- Diemer, John—Soldiers' Additional—March 31, 1914—Remanded.
- Diemer, John, assignee of Whitt—Soldiers' Additional—June 24, 1914—Remanded.
- Dietz, William E.—Homestead—August 28, 1914—Affirmed.
- Dilling, George A.—Homestead—September 26, 1914—Affirmed.
- Dionne, Viola C.—Desert Land—September 5, 1914—Affirmed.
- Disbrow *v.* Siem—Homestead—November 18, 1914—Affirmed.
- Dismuke, Drew M.—Homestead—September 5, 1914—Reversed.

- Ditch, Martin—Right of Way—February 16, 1915—Reversed.
- Dixon, John W.—Homestead—February 12, 1914—Remanded.
- Dixon, William F.—Homestead—March 24, 1914—Affirmed.
- Doan, Mary I., Dick Lumber Co., trans.—Timber and Stone—October 14, 1914—Affirmed.
- Dobbins, Joshua K.—Homestead—July 30, 1914—Reversed.
- Dodd v. Consolidated Gold & Sapphire Mining Co.—Mineral—February 28, 1914—Motion Denied.
- Dodd v. Consolidated Gold & Sapphire Mining Co.—Mineral—April 24, 1914—Petition Denied.
- Dodd v. Hall—Homestead—July 9, 1914—Affirmed.
- Dodd v. Hall—Homestead—September 26, 1914—Modified.
- Dodge, Edgar A.—Homestead—August 28, 1914—Affirmed.
- Dodson v. Conkling—Desert Land—January 28, 1914—Petition Denied.
- Dodson v. Conkling—Desert Land—March 12, 1914—Motion Denied.
- Doland v. Northern Pacific Ry. Co.—Selection—March 12, 1914—Affirmed.
- Dolson, Charles R.—Desert Land—September 25, 1914—Affirmed.
- Dolson v. Southern Pacific Ry. Co.—Desert Land—January 29, 1915—Affirmed.
- Donahue v. Hammer *et al.*—Mineral—July 29, 1914—Affirmed.
- Donahue v. Northern Pacific Ry. Co.—Homestead—August 26, 1914—Affirmed.
- Donahue v. Northern Pacific Ry. Co.—Homestead—November 24, 1914—Motion Denied.
- Donahue v. Waltari—Homestead—January 28, 1914—Petition Denied.
- Donnally, A. M.—Repayment—March 12, 1914—Affirmed.
- Donner v. Central Pacific R. R. Co.—Selection—January 17, 1914—Motion Denied.
- Doolin, May A.—Homestead—December 26, 1914—Reversed.
- Dorland, George W.—Homestead—August 31, 1914—Vacated.
- Dort, Ernest W.—Desert Land—February 4, 1915—Affirmed.
- Dotson, Peleg G.—Homestead—April 7, 1914—Remanded.
- Doty v. Jacques *et al.*—Homestead—October 31, 1914—Reversed.
- Dougherty, Wallace J.—Homestead—March 11, 1914—Reversed.
- Douglass, Nellie A.—Desert Land—February 4, 1915—Affirmed.
- Douglass, William H.—Desert—January 26, 1914—Remanded.
- Douglas v. Heirs of Degnan—Homestead—January 25, 1915—Affirmed.
- Douthitt, James W.—Homestead—February 16, 1915—Reversed.
- Dowd, Milton H., M. L. Walker, trans.—Homestead—March 19, 1914—Affirmed.
- Dowd, William—Homestead—May 12, 1914—Affirmed.
- Downey, Thomas J., Heirs of—Homestead—September 9, 1914—Reversed.
- Doyle, Horace F.—Homestead—August 19, 1914—Affirmed.
- Doyle, Horace F.—Homestead—October 13, 1914—Motion Denied.
- Doyle v. Davisson—Homestead—February 19, 1914—Affirmed.
- Drake Consolidated Coal Co.—Coal Lands—May 28, 1914—Modified.
- Drake Consolidated Coal Co.—Coal Land—November 7, 1914—Affirmed.
- Drake v. Benzley—Homestead—August 13, 1914—Dismissed.
- Drake v. Northern Pacific Ry. Co. *et al.*—Homestead—August 18, 1914—Affirmed.
- Drapeau v. Bell—Desert Land—February 16, 1915—Reversed.
- Drapeau v. Peck—Desert Land—October 27, 1914—Affirmed.
- Draver, Meda R.—Homestead—November 24, 1914—Reversed.
- Dretke, Louis—Homestead—January 9, 1914—Reversed.
- Drew, Albert W., assignee of John Garis *et al.*—Soldiers' Additional—March 21, 1914—Remanded.
- Driscoll v. Wheeler—Homestead—August 26, 1914—Reversed.

- Drury, Charles H.—Homestead—July 2, 1914—Reversed.
- Dryer, Charlotte P.—Homestead—March 18, 1914—Reversed.
- DuBeau, John—Homestead—May 29, 1914—Reversed.
- Du Bois, Alva D.—Homestead—April 20, 1914—Remanded.
- Duchow, John C.—Homestead—September 21, 1914—Affirmed.
- Duckett, William, Jr.—Homestead—September 26, 1914—Vacated and Remanded.
- Duckman, Mabel—Reduction of Area—September 5, 1914—Affirmed.
- Ducommun, William O.—Homestead—April 10, 1914—Affirmed.
- Dudley v. Southern Pacific Railroad Co.—Homestead—February 28, 1914—Affirmed.
- Duell, Floyd F., Dick Lumber Co., trans.—Timber and Stone—October 14, 1914—Affirmed.
- Duell, May, Dick Lumber Co., trans.—Timber and Stone—October 14, 1914—Affirmed.
- Duesenberry, C. H.—Right of Way—July 22, 1914—Affirmed.
- Duff, Charles H.—Homestead—August 13, 1914—Reversed.
- Dugdale, Thomas E.—Homestead—August 25, 1914—Modified.
- Dunagan, Beulah—Homestead—April 28, 1914—Remanded.
- Duncan v. Northern Pacific Ry. Co.—Homestead—August 18, 1914—Affirmed.
- Dunkin v. Patrovsky—Homestead—October 13, 1914—Reversed.
- Dunklee, Harley R.—Homestead—August 31, 1914—Affirmed.
- Dunlap, Willard E.—Desert Land—October 7, 1914—Affirmed.
- Dunn, James H., Lewis Montgomery, trans.—Homestead—June 27, 1914—Petition Denied.
- Dunn, James H., Lewis Montgomery, trans.—Homestead—October 26, 1914—Petition Denied.
- Dunn, Thomas T.—Homestead—December 26, 1914—Affirmed.
- Du Pont, William H.—Homestead—November 18, 1914—Remanded.
- Dupre v. Northern Pacific Ry. Co.—Homestead—August 31, 1914—Affirmed.
- Durango Land & Coal Co.—Coal Entry—September 14, 1914—Remanded.
- Dutton v. Kershaw—Homestead—March 21, 1914—Affirmed.
- Dworshak, Ferdinand M.—Homestead—August 21, 1914—Affirmed.
- Dwyer, Mary, Heir of—Repayment—September 14, 1914—Affirmed.
- Dykes v. Sedgwick—Desert Land—September 17, 1914—Affirmed.
- Eagleston v. Tate—Homestead—July 28, 1914—Reversed.
- Earl and Turner v. Henderson—Mineral—November 7, 1914—Affirmed.
- East Tintic Consolidated Mining Co.—Mineral Entry—February 17, 1914—Reversed.
- Eastham, Harry C.—Desert Land—February 18, 1914—Remanded.
- Eaton v. Kribs—Homestead—April 22, 1914—Affirmed.
- Ebersole v. McGee—Homestead—March 25, 1914—Affirmed.
- Eblen, Eugene—Homestead—July 7, 1914—Reversed.
- Ecke, Oscar C.—Homestead—February 25, 1915—Instructions.
- Edgley, Arthur, *et al.*—Homestead—April 22, 1914—Affirmed.
- Edgley, Arthur, *et al.*—Homestead—June 30, 1914—Motion Denied.
- Edson, Omer P.—Homestead—March 21, 1914—Reversed.
- Edwards, E. L. D., Heir of E. Miller—Homestead—February 25, 1915—Instructions.
- Edwards, Thomas, *et al.*—Timber and Stone—February 4, 1915—Affirmed.
- Edwards, James M.—Homestead—January 12, 1914—Remanded.
- Edwards v. Bodkin—Homestead—March 30, 1914—Affirmed.
- Edwards v. Bodkin—Homestead—April 20, 1914—Petition Denied.

- Edwards v. Bodkin—Homestead—May 28, 1914—Motion Denied.
- Eells, Francis C., assignee of Stuart—Desert Land—November 27, 1914—Reversed.
- Egbert v. Bladen—Desert Land—July 9, 1914—Affirmed.
- Eggerick, Mill—Homestead—January 31, 1914—Modified.
- Eisenmayer v. Southern Pacific R. R. Co.—Desert Land—December 3, 1914—Affirmed.
- Eldrodge, William L.—Homestead—October 20, 1914—Dismissed.
- Elkins, The Grand Rapids Timber Co., trans.—Homestead—February 28, 1914—Motion Sustained.
- Ellingson, Arthur—Homestead—April 20, 1914—Vacated.
- Ellingson, Oscar T.—Homestead—February 2, 1915—Affirmed.
- Elliott and Berterman—Homestead—December 26, 1914—Affirmed.
- Elliott, Jesse V.—Homestead—January 2, 1914—Reversed.
- Elliott v. Northern Pacific Ry. Co.—Homestead—June 2, 1914—Affirmed.
- Ellis, Annie S.—Timber and Stone—January 29, 1915—Affirmed.
- Ellis, Joseph T., assignee of Gear—Soldiers' Additional—October 31, 1914—Affirmed.
- Ellis v. Aleshire—Homestead—January 12, 1915—Affirmed.
- Ellis v. Howard—Homestead—January 28, 1914—Petition Denied.
- Ellis v. Southern Pacific R. R. Co.—Homestead—February 28, 1914—Affirmed.
- Ells, Agnes G.—Desert Land—February 4, 1915—Affirmed.
- Elmer, Maria—Repayment—October 30, 1914—Reversed.
- Elting, Mary A.—Homestead—September 26, 1914—Affirmed.
- Elton, A. Green—Homestead—October 31, 1914—Affirmed.
- Ely Securities Co. v. Heirs of Currie—Desert Land—June 9, 1914—Reversed.
- Embody, Anna—Desert Land—September 26, 1914—Reversed.
- Embody, Maggie E.—Desert Land—August 31, 1914—Reversed.
- Emch, Roy C.—Homestead—March 26, 1914—Petition denied.
- Emerick v. Roberts—Homestead—September 17, 1914—Affirmed.
- Emery, Edward W.—Homestead—February 18, 1915—Affirmed.
- Enderson, Endre—Homestead—August 22, 1914—Affirmed.
- Endicott, Moses—Homestead—August 28, 1914—Affirmed.
- Endicott, Roy—Homestead—January 14, 1915—Reversed.
- Endresen, Bessie R.—Timber and Stone—December 30, 1914—Affirmed.
- Endresen, Bessie R.—Timber and Stone—February 27, 1915—Motion Denied.
- Engel v. Southern Pacific R. R. Co.—Desert Land—December 3, 1914—Affirmed.
- Engen, Andrew, Field Bohart, trans.—Homestead—March 19, 1914—Affirmed.
- England v. Schlegelmilch—Mineral—November 24, 1914—Remanded.
- English, Burt, assignee of Williams—Soldiers' Additional—March 27, 1914—Remanded.
- English, George W.—Desert Land—August 28, 1914—Affirmed.
- Engstrom, Vera—Homestead—September 26, 1914—Affirmed.
- Enney, George R.—Homestead—April 22, 1914—Affirmed.
- Enos v. Wolfe—Desert Land—February 28, 1914—Affirmed.
- Enos v. Wolfe—Desert Land—May 12, 1914—Motion Denied.
- Enterprise Lumber Co. v. Ross et al.—February 6, 1914—Showing required.
- Entorf v. Taylor—Homestead—August 14, 1914—Affirmed.
- Erickson, Anna M., now Knarreborg—Homestead—January 9, 1914—Remanded.
- Erickson, Conrad A.—Homestead—January 29, 1915—Affirmed.
- Erickson, Conrad A.—Homestead—February 9, 1915—Affirmed.
- Erickson v. Hayes—Desert Land—October 20, 1914—Affirmed.

- Erickson *v.* Hayes—Desert Land—December 31, 1914—Motion Denied.
- Erickson *v.* Larson—Homestead—November 19, 1914—Affirmed.
- Erickson *v.* Lomasney—Homestead—August 25, 1914—Petition Denied.
- Erickson *v.* Lomasney, assignee of Read—Desert Land—December 26, 1914—Petition Denied.
- Erickson *v.* Prow, Jr.—Homestead—November 30, 1914—Reversed.
- Erkson, Hilda—Timber and Stone—December 16, 1914—Affirmed.
- Ernest *v.* Hesselgesser—Homestead—February 28, 1914—Affirmed.
- Erwin, Jackson C.—Homestead—October 29, 1914—Affirmed.
- Erwin, L. M.—Coal Land—June 12, 1914—Affirmed.
- Etter *v.* Cresswell—Homestead—August 22, 1914—Affirmed.
- Eudresen, Einar N.—Timber and Stone—December 16, 1914—Affirmed.
- Evans, Richard H.—Homestead—December 30, 1914—Affirmed.
- Evans *v.* Southern Pacific Ry. Co.—Homestead—February 28, 1914—Affirmed.
- Everett *v.* Brown—Homestead—August 26, 1914—Affirmed.
- Ewing, Queen Ethel—Timber and Stone—October 7, 1914—Modified.
- Fahey *v.* Huston—Homestead—February 26, 1915—Affirmed.
- Falcon, Joseph, Sr., for Mary—Indian Allotment—October 16, 1914—Affirmed.
- Falcon, Joseph, Sr., for Sarah La Duke—Indian Allotment—October 16, 1914—Affirmed.
- Farley, Clifford C., Heirs of—Homestead—January 17, 1914—Motion Denied.
- Farmer, Henry W.—Homestead—February 21, 1914—Affirmed.
- Farnen, Thomas—Homestead—August 31, 1914—Affirmed.
- Farrell, James—Homestead—March 14, 1914—Reversed.
- Farrer, Charles M.—Idaho Clear List 93—June 12, 1914—Petition Denied.
- Faust, William F., assignee of Soupene—Soldiers' Additional—September 26, 1914—Affirmed.
- Faust, William F., assignee of Sturgeon—Soldiers' Additional—November 24, 1914—Affirmed.
- featherston, Olen—Homestead—January 7, 1914—Reversed.
- fechter *v.* Parsons—Desert Land—September 8, 1914—Affirmed.
- Fechter *v.* Parsons—Right of Way—September 8, 1914—Affirmed.
- Fechter *v.* Parsons—Homestead—October 31, 1914—Motion Denied.
- Fedog *v.* Bacon—Desert Land—April 22, 1914—Affirmed.
- Fedog *v.* Bacon—Desert Land—August 14, 1914—Motion Denied.
- Feeney *v.* Tucker—Mineral—September 17, 1914—Affirmed.
- Felder, Nina—Homestead—April 22, 1914—Affirmed.
- Feldkamp *v.* Purviance—Desert Land—October 31, 1914—Affirmed.
- Felker, Louise—Homestead—September 5, 1914—Reversed.
- Fell *v.* Davis—Homestead—October 31, 1914—Affirmed.
- Felt, Joseph—Homestead—March 12, 1914—Motion Allowed.
- Felton, Wilson K.—Desert Land—February 4, 1915—Affirmed.
- Fenske, Otto—Homestead—August 28, 1914—Affirmed.
- Fenton *v.* Zahner—Desert Land—February 2, 1915—Reversed.
- Ferguson, Ruben L.—Survey—February 16, 1915—Affirmed.
- Ferguson *et al. v.* Hiett—Homestead—June 9, 1914—Petition Denied.
- Ferguson, Thomas A.—Homestead—October 17, 1914—Reversed.
- Ferman, James H.—Homestead—January 29, 1915—Affirmed.
- Ferrall, Edward L.—Desert Land—August 28, 1914—Affirmed.
- Ferraris, John—Mineral—November 18, 1914—Reversed.
- Fessenden *v.* Southern Pacific Ry. Co.—Homestead—January 29, 1915—Affirmed.
- Feucht, Robert A.—Homestead—November 18, 1914—Affirmed.

- Fickling, Mollie, *et al.*—Desert Land—December 16, 1914—Modified.
- Fiedler *v.* Wakewood—Homestead—January 7, 1914—Denied.
- Figge, Emma M.—Desert Land—October 26, 1914—Reversed.
- Figge, Emma M.—Desert Land—December 16, 1914—Remanded.
- Fimpel, Earl—Homestead—March 12, 1914—Affirmed.
- Fink, W. J. A.—Survey—May 29, 1914—Affirmed.
- Finkelstein, Benjamin L.—Desert Land—September 25, 1914—Affirmed.
- Finley, Mayce F.—Desert Land—August 28, 1914—Affirmed.
- Finney, Grant H.—Desert Land—February 4, 1915—Affirmed.
- Fischer *v.* Goist—Timber and Stone—September 14, 1914—Affirmed.
- Fish, Guy Hanson—Homestead—July 2, 1914—Reversed.
- Fishell, Dale M.—Homestead—December 26, 1914—Modified.
- Fisher and Green—Homestead—August 15, 1914—Reversed.
- Fisher and Green—Homestead—October 17, 1914—Motion Denied.
- Fisher, Ferdinand A.—Homestead—August 21, 1914—Affirmed.
- Fisher *v.* Rule, Heirs of—Homestead—February 7, 1914—Showing Required.
- Fitch, Henry—Desert Land—October 31, 1914—Affirmed.
- Fitton *v.* Van Demark, Jr.—Desert Land—October 20, 1914—Affirmed.
- Fitzgerald, Dennis—Desert Land—October 1, 1914—Affirmed.
- Fitzgerald, Dennis—Desert Land—January 12, 1915—Motion Denied.
- Fitzgerald, Edward R.—Homestead—July 28, 1914—Modified and Remanded.
- Fitzgerald, Edward R.—Homestead—November 30, 1914—Affirmed.
- Fitzsimmons, Clark L.—Homestead—February 20, 1914—Vacated.
- Fixmur, Peter—Repayment—September 14, 1914—Remanded.
- Flanagan, Bridget—Repayment—June 23, 1914—Affirmed.
- Flanagan, Edward G.—Homestead—February 25, 1915—Affirmed.
- Flath, Barney—Homestead—July 30, 1914—Affirmed.
- Fleming *v.* Dicus—Desert Land—July 25, 1914—Reversed.
- Fleming *v.* Zemke—Homestead—September 30, 1914—Affirmed.
- Fleming *v.* Zemke—Homestead—December 29, 1914—Motion Denied.
- Flemister, Alonzo L.—Homestead—January 29, 1915—Affirmed.
- Flick, Madeline M.—Timber and Stone—May 7, 1914—Affirmed.
- Flick, Madeline M.—Timber and Stone—June 27, 1914—Motion Denied.
- Flickinger, Henry A.—Homestead—June 30, 1914—Affirmed.
- Fliniaux, Henry J. C.—Homestead—February 19, 1914—Reversed.
- Flint, Paul R.—Homestead—September 26, 1914—Remanded.
- Florance, J. Esdaile—Soldiers' Additional—July 23, 1914—Modified.
- Floren, John—Homestead—August 28, 1914—Affirmed.
- Florida, State of—Selection—August 12, 1914—Affirmed.
- Florida, State of—Swamp Land—January 8, 1915—Modified.
- Flower, Amy M.—Water-Right Application—April 24, 1914—Remanded.
- Floyd, Elmore—Coal—August 14, 1914—Affirmed.
- Floyd, Elmore—Timber and Stone—September 26, 1914—Motion Denied.
- Fluto, Oscar A.—Homestead—June 18, 1914—Affirmed.
- Flynn, Francis N.—Selection—October 31, 1914—Modified.
- Foley, William J.—Homestead—November 30, 1914—Reversed.
- Follett, Julia S.—Desert Land—June 18, 1914—Reversed.
- Foltz, Kate—Desert Land—August 26, 1914—Affirmed.
- Foncanon, Ida Smith—Desert Land—November 18, 1914—Affirmed.
- Foncanon, James Franklin—Desert Land—November 18, 1914—Affirmed.

- Foote, Elizabeth E.—Coal Land—December 3, 1914—Affirmed.
 Foote, Oscar—Coal Land—December 3, 1914—Affirmed.
 Ford, Claude C.—Homestead—August 28, 1914—Affirmed.
 Ford, Daisy—Homestead—April 30, 1914—Reversed.
 Ford, N. M.—Coal—December 16, 1914—Affirmed.
 Ford v. Trudgian—Homestead—February 26, 1915—Affirmed.
 Ford v. Wakefield—Homestead—March 26, 1914—Petition Denied.
 Ford v. Wakefield—Homestead—June 12, 1914—Motion Denied.
 Forsyth, Arthur R.—Soldiers' Additional—May 27, 1914—Affirmed.
 Forsyth, Arthur R.—Soldiers' Additional—August 13, 1914—Motion Denied.
 Fortson, Virgil E.—Desert Land—April 10, 1914—Reversed.
 Foskett, L. D.—Repayment—June 18, 1914—Affirmed.
 Foster, Edith R.—Homestead—November 14, 1914—Modified.
 Foster, George D.—Desert Land—March 18, 1914—Reversed.
 Foster, Isaac C.—Homestead—October 7, 1914—Affirmed.
 Foster v. Menz—Homestead—October 19, 1914—Affirmed.
 Foster v. Menz—Homestead—December 29, 1914—Motion Denied.
 Foster v. Watrous—Homestead—August 25, 1914—Petition Denied.
 Foster v. Watrous—Desert Land—December 26, 1914—Petition Remanded.
 Foster v. Wilson, assignee of Baylis—Desert Land—August 25, 1914—Petition Denied.
 Fourt, Edgar L.—Soldiers' Additional—December 16, 1914—Affirmed.
 Fowler *et al.* v. Johnson—Homestead—July 13, 1914—Affirmed.
 Fox, Margaret M.—Homestead—July 14, 1914—Affirmed.
 Fox v. Petrun—Homestead—March 12, 1914—Affirmed.
 Frame, Jennie R.—Homestead—September 14, 1914—Affirmed.
 Francis, Mary J.—Desert Land—January 31, 1914—Reversed.
 Francis, Mary J.—Desert Land—May 28, 1914—Motion Denied.
 Francis v. Clark—Desert Land—March 19, 1914—Certiorari Denied.
 Frank, Martha M.—Repayment—October 30, 1914—Affirmed.
 Frank v. Neher—Homestead—March 12, 1914—Affirmed.
 Franklin v. Southern Pacific R. R. Co.—Desert Land—December 26, 1914—Affirmed.
 Fraser v. Chaves—Homestead—February 27, 1915—Affirmed.
 Fraser v. Southern Pacific R. R. Co.—Homestead—December 16, 1914—Affirmed.
 Fraunhofer v. Rearden—Mineral—November 18, 1914—Affirmed.
 Frazier, Alice M., now McNary—Homestead—August 14, 1914—Affirmed.
 Frazier, James B.—Desert Land—October 6, 1914—Affirmed.
 Frazier, Katherine R.—Desert Land—October 17, 1914—Affirmed.
 Frazier, Robert T.—Desert Land—October 16, 1914—Affirmed.
 Frederich, Richard H., M. L. Walker, trans.—Homestead—March 19, 1914—Affirmed.
 Fredrikson John—Homestead—February 14, 1914—Remanded.
 Freeman, Bradford B.—Homestead—March 25, 1914—Reversed.
 French, Henry A.—Timber and Stone—September 26, 1914—Affirmed.
 French v. Johnson—Homestead—October 17, 1914—Affirmed.
 Frevert, William L.—Desert Land—October 31, 1914—Affirmed.
 Fricke, William—Homestead—August 31, 1914—Modified and Remanded.
 Fried, Harvey C.—Homestead—March 11, 1914—Reversed.
 Fried, Laura A.—Homestead—October 19, 1914—Affirmed.
 Friedek, Theresa, W. E. Moses, trans.—Homestead—March 19, 1914—Affirmed.
 Frizelle, Uri E.—Desert Land—January 31, 1914—Remanded.

- Frohmader, Bert F.—Homestead—October 20, 1914—Reversed.
- Frolich, Fred—Homestead—June 18, 1914—Affirmed.
- Frolich, Fred—Homestead—February 16, 1915—Motion Denied.
- From, Theron J.—Homestead—March 27, 1914—Petition Denied.
- Frontier Investment Co. v. Smith—Homestead—August 13, 1914—Affirmed.
- Frye, Alonzo H.—Repayment—October 30, 1914—Affirmed.
- Frye, Leslie E.—Homestead—August 31, 1914—Reversed.
- Frymire v. New Mexico—Homestead—August 31, 1914—Affirmed.
- Fuller, Charles W., The Northwest Timber Co., trans.—Timber and Stone—December 16, 1914—Petition Denied.
- Fuller, Emma C., The Northwest Timber Co., trans.—Timber and Stone—December 16, 1914—Petition Denied.
- Fuller, Morace—Homestead—February 16, 1915—Petition Denied.
- Fuller v. Thompson—Homestead—February 21, 1914—Reversed.
- Fulton v. Northern Pacific Ry. Co.—Homestead—March 19, 1914—Affirmed.
- Furrey, Solomon O.—Desert Land—February 27, 1914—Dismissed.
- Furseth, Ole B.—Timber and Stone—December 12, 1914—Affirmed.
- Furtsch, George C.—Desert Land—February 4, 1915—Affirmed.
- Gaasch, Frank—Homestead—December 12, 1914—Affirmed.
- Gagnon, Georgia, now Grimm, *et al.*—Timber and Stone—March 25, 1914—Reversed.
- Gagnon, J. B.—Selection—January 29, 1915—Affirmed.
- Gagnon, John D., *et al.*—Timber and Stone—March 25, 1914—Reversed.
- Gagnon v. Burke—Desert Land—October 29, 1914—Affirmed.
- Gallagher, Harry M.—Homestead—February 18, 1915—Modified.
- Gallegos, Ferriolo—Homestead—July 2, 1914—Vacated.
- Gallup v. Northern Pacific Ry. Co.—Homestead—February 25, 1915—Motion Remanded.
- Gamble v. Northern Pacific Ry. Co.—Timber and Stone—May 27, 1914—Affirmed.
- Gamble v. Northern Pacific Ry. Co.—Selection—May 27, 1914—Motion Denied.
- Gamble v. Northern Pacific Ry. Co.—Soldiers' Additional—August 31, 1914—Affirmed.
- Gammill, Charlotte M.—Homestead—March 9, 1914—Reversed.
- Gammill, Reefy C.—Homestead—March 9, 1914—Reversed.
- Gangeness v. Marstradoir—Homestead—November 14, 1914—Affirmed.
- Gantz, Jacob S.—Mineral—April 18, 1914—Modified.
- Garber, Robert M.—Homestead—February 21, 1914—Reversed.
- Garcelon, Frank—Desert Land—November 27, 1914—Reversed.
- Garcia, Teodore—Homestead—July 13, 1914—Vacated.
- Garcia, Thomas F.—Homestead—May 9, 1914—Reversed.
- Garcia v. Caughlin—Homestead—November 30, 1914—Reversed.
- Garcia v. Santa Fe Pacific R. R. Co.—Homestead—March 7, 1914—Remanded.
- Gard, Mary E. J.—Repayment—October 30, 1914—Affirmed.
- Garden, Lucy, Hoo Hoo Lumber Co., trans.—Homestead—January 2, 1914—Reversed.
- Garden, Lucy, Hoo Hoo Lumber Co., trans.—Homestead—April 18, 1914—Motion Denied.
- Gardipee v. Dineen—Homestead—November 14, 1914—Reversed.
- Gardipee v. Dineen—Homestead—February 15, 1915—Motion Denied.
- Gardner, Allison D. F.—Desert Land—October 31, 1914—Affirmed.
- Gardner, Belle H.—Timber and Stone—December 16, 1914—Affirmed.
- Gardner, Ira N.—Timber and Stone—December 16, 1914—Affirmed.
- Garfield, Lena M., Heirs of—Homestead—April 30, 1914—Vacated.

- Garino *v.* Barrett—Desert Land—October 7, 1914—Affirmed.
- Garlow *v.* Lytle—Homestead—August 12, 1914—Affirmed.
- Garmany, James F.—Homestead—July 22, 1914—Reversed.
- Garner, Naomi, The Northwest Timber Co., trans.—Timber and Stone—December 16, 1914—Petition Denied.
- Garner *v.* Hanby—Desert Land—October 12, 1914—Affirmed.
- Garnett *v.* Hickey—Mineral—August 12, 1914—Affirmed.
- Garrett, Albert J.—Homestead—September 18, 1914—Remanded.
- Garrigus, Lewis C.—Homestead—September 21, 1914—Affirmed.
- Garvik, Tosten G.—Homestead—January 2, 1914—Vacated.
- Gashaw, Jack—Homestead—November 7, 1914—Affirmed.
- Gassiot *v.* New Orleans Pacific Ry. Co.—Homestead—March 9, 1914—Dismissed.
- Gastine, William—Homestead—June 30, 1914—Affirmed.
- Gaston, William—Homestead—February 21, 1914—Reversed.
- Gaston *et al.* *v.* Peavey *et al.*—Lieu Selection—May 6, 1914—Petition Granted.
- Gaston *et al.* *v.* Peavey *et al.*—Homestead—February 26, 1915—Vacated.
- Gates and Rawls—Military Bounty Land Warrant—June 30, 1914—Affirmed.
- Gates, Clayton G.—Homestead—March 19, 1914—Reversed.
- Gates, Raymond M.—Homestead—December 3, 1914—Reversed.
- Gates *v.* Northern Pacific Ry. Co.—Homestead—June 29, 1914—Affirmed.
- Gavica *v.* Pefhtel—Homestead—October 26, 1914—Affirmed.
- Gay, Charles, *et al.*—Water Rights—August 25, 1914—Affirmed.
- Gay, Charles C., *et al.*—Homestead—October 13, 1914—Motion Denied.
- Gaylord C. Percy—Homestead—September 17, 1914—Vacated.
- Gebauer, Mabel—Desert Land—September 30, 1914—Affirmed.
- Geise, Walter J.—Homestead—September 26, 1914—Reversed.
- Gemberling, Edwin L., Alfonso Jackson, trans.—Homestead—November 19, 1914—Affirmed.
- Gentner, George P.—Homestead—March 25, 1914—Remanded.
- George, John T., *et al.*—Survey—September 5, 1914—Petition Denied.
- George, Lee A.—Desert Land—September 21, 1914—Affirmed.
- German, Joe—Desert Land—September 14, 1914—Reversed.
- Geros *v.* Egan—Homestead—September 14, 1914—Affirmed.
- Gerry *v.* Miller—Desert Land—January 29, 1914—Affirmed.
- Gestal, Peter M.—Homestead—January 26, 1914—Reversed.
- Gibbs, Nettie C.—Homestead—April 29, 1914—Affirmed.
- Gibbs *v.* Custine—Homestead—August 21, 1914—Affirmed.
- Gibbs *v.* Hamilton—Homestead—January 14, 1915—Affirmed.
- Gibbs *v.* Thomas—Homestead—June 23, 1914—Affirmed.
- Gibbs *v.* Thomas—Homestead—October 6, 1914—Motion Dismissed.
- Gibson, Andrew—Desert Land—April 28, 1914—Affirmed.
- Gibson, Andrew—Desert Land—September 21, 1914—Affirmed.
- Gibson, Andrew—Homestead—October 17, 1914—Affirmed.
- Gibson, William N.—Homestead—March 9, 1914—Affirmed.
- Giesem, Frederick W.—Homestead—August 27, 1914—Affirmed.
- Gifford *v.* Hankey—Desert Land—February 26, 1915—Modified.
- Gigrich *v.* Davis—Homestead—May 29, 1914—Affirmed.
- Gilbert, William H.—Repayment—October 30, 1914—Affirmed.
- Gilbert *v.* King—Homestead—January 28, 1914—Petition Granted.
- Gilbert *v.* King—Survey—November 14, 1914—Petition Denied.
- Gilbert *v.* King—Homestead—January 25, 1915—Petition Denied.
- Gilbertson, Arthur—Homestead—May 29, 1914—Reversed.

- Gilbreath, Carlisle G.—Homestead—June 23, 1914—Affirmed.
- Giles, Daniel W.—Homestead—August 28, 1914—Affirmed.
- Giles, Samuel C.—Homestead—February 5, 1914—Remanded.
- Gilfeather *v.* Northern Pacific Ry. Co.—Homestead—June 20, 1914—Affirmed.
- Gill, George P.—Homestead—October 17, 1914—Modified and Remanded.
- Gill, John—Homestead—February 12, 1914—Affirmed.
- Gillaspy, Irving—Homestead—April 28, 1914—Reversed.
- Gillespie, Gertrude—Homestead—October 20, 1914—Affirmed.
- Gillett, Leroy E.—Homestead—April 22, 1914—Affirmed.
- Gillett, Mary C.—Desert Land—April 22, 1914—Affirmed.
- Gillett, Nellie—Desert Land—July 29, 1914—Remanded.
- Gillett, Ola E.—Desert Land—April 22, 1914—Affirmed.
- Gillett *v.* Smarker—Homestead—December 5, 1914—Affirmed.
- Gilliam, Emma S.—Homestead—March 19, 1914—Affirmed.
- Gilliam, Emma S.—Homestead—June 2, 1914—Motion Allowed.
- Gillingham, Aubrey H.—Homestead—June 2, 1914—Remanded.
- Gillman *v.* Monaghan—Homestead—September 5, 1914—Affirmed.
- Gilmore, Charles L.—Soldiers' Additional—March 31, 1914—Remanded.
- Girdner, Alya E.—Homestead—February 20, 1914—Affirmed.
- Gist, Artemas R.—Homestead—September 8, 1914—Reversed.
- Givan, John C.—Repayment—December 3, 1914—Affirmed.
- Givens, Joseph H.—Homestead—May 29, 1914—Reversed.
- Glenn, Mary E.—Homestead—November 7, 1914—Modified.
- Glick *v.* Wiberg—Homestead—August 28, 1914—Affirmed.
- Globe Copper Mining Co.—Mineral—January 29, 1915—Reversed.
- Glud, Paul C., assignee of Young *et al.*—Soldiers' Additional—April 27, 1914—Remanded.
- Gochnauer, Charles N.—Homestead—April 10, 1914—Vacated.
- Goddard, Margaret B.—Homestead—October 17, 1914—Remanded.
- Goemmer, Gustavus A.—Homestead—February 21, 1914—Reversed.
- Goemmer, Gustavus A.—Homestead—May 12, 1914—Motion Denied.
- Goen, Ethel E.—Homestead—January 2, 1914—Affirmed.
- Goer, Abraham L.—Homestead—February 12, 1914—Affirmed.
- Goff, Charles D.—Desert Land—April 10, 1914—Affirmed.
- Gold, James M.—Homestead—December 30, 1914—Affirmed.
- Golden *v.* Esty—Homestead—May 15, 1914—Remanded.
- Goldensmith *et al. v.* Snow Storm Mining Co.—Mineral—September 14, 1914—Affirmed.
- Gonzales, Teofila M.—Homestead—April 7, 1914—Remanded.
- Goodfellow, Clara I.—Desert Land—November 19, 1914—Affirmed.
- Gooding, Charles O.—Homestead—July 22, 1914—Affirmed.
- Goodloe, Peyton V.—Homestead—November 4, 1914—Affirmed.
- Goodman, Jennie—Homestead—July 2, 1914—Reversed.
- Goodwin, Thomas B., Jr.—Homestead—July 14, 1914—Reversed.
- Goodwine, Ebenezer H.—Homestead—August 14, 1914—Affirmed.
- Gore, Cyrus D., Mark B. Gill, trans.—Homestead—May 9, 1914—Affirmed.
- Gorrie *v.* Northern Pacific Ry. Co.—Homestead—June 29, 1914—Affirmed.
- Gorsuch, Anna B.—Desert Land—October 27, 1914—Affirmed.
- Gorsuch, William T.—Desert Land—January 2, 1915—Affirmed.
- Goss *v.* Haney *et al.*—Homestead—June 23, 1914—Petition Denied.
- Gosselin, Joseph, H. P. Hulett, trans.—Homestead—March 19, 1914—Affirmed.

- Gothberg, Martin J., assignee of Clarke—Soldiers' Additional—July 24, 1914—Reversed.
- Gott, Daniel E.—Homestead—September 26, 1914—Remanded.
- Gotzinger, Otto—Soldiers' Additional—August 14, 1914—Affirmed.
- Gotzinger, Otto—Soldiers' Additional—October 17, 1914—Modified.
- Gould v. Brown—Homestead—December 5, 1914—Affirmed.
- Gourneau, Emil A.—Indian Selection—March 14, 1914—Affirmed.
- Grable, Howard D.—Desert Land—October 29, 1914—Affirmed.
- Grabow v. Leeman—Homestead—June 18, 1914—Petition Denied.
- Grace, William A., H. W. Stephenson assignee—Coal—June 13, 1914—Affirmed.
- Grady, Emory L., assignee of McWilliams—Soldiers' Additional—July 30, 1914—Affirmed.
- Grady v. Parker—Desert Land—October 19, 1914—Affirmed.
- Graetz, Oscar C., Robert Christian, trans.—Desert Land—April 30, 1914—Reversed.
- Graham and Graham—Desert Land—October 1, 1914—Affirmed.
- Graham, George W.—Timber and Stone—February 27, 1915—Affirmed.
- Graham, Harry E.—Desert Land—February 4, 1915—Affirmed.
- Graham, Thomas A.—Homestead—April 30, 1914—Affirmed.
- Graham, William J.—Homestead—August 28, 1914—Affirmed.
- Grainger v. Mahan—Homestead—January 12, 1915—Affirmed.
- Grampp v. Buck—Homestead—November 18, 1914—Remanded.
- Grams v. Northern Pacific Ry. Co.—Homestead—December 12, 1914—Affirmed.
- Grandstaff v. Banks—Homestead—January 29, 1915—Affirmed.
- Granfors v. Northern Pacific Ry. Co.—Homestead—June 6, 1914—Affirmed.
- Granger, Martha A.—Homestead—February 28, 1914—Modified.
- Grant, Ernest W.—Homestead—April 29, 1914—Petition Denied.
- Grant, Henry—Repayment—September 26, 1914—Affirmed.
- Grant, William B.—Desert Land—July 9, 1914—Motion Denied.
- Gratak v. Haglin—Homestead—May 4, 1914—Reversed.
- Grate *et al.* v. Rehhal—Homestead—February 6, 1914—Motion Denied.
- Gray, George C.—Desert Land—February 4, 1915—Affirmed.
- Gray, Harriet B.—Desert Land—October 26, 1914—Affirmed.
- Gray, Harriet B.—Desert Land—December 31, 1914—Motion Denied.
- Gray v. Forman—Desert Land—May 12, 1914—Affirmed.
- Graylish, Martin J.—Desert Land—September 26, 1914—Affirmed.
- Graylish, Martin J.—Desert Land—December 29, 1914—Motion Denied.
- Greaser, William—Desert Land—July 30, 1914—Affirmed.
- Great Bend Annex Mines Co.—Mineral—August 12, 1914—Dismissed.
- Great Western Gold and Copper Mining Co.—Mineral—March 25, 1914—Reversed.
- Green, Elizabeth—Homestead—August 21, 1914—Affirmed.
- Green, Herbert—Homestead—September 26, 1914—Remanded.
- Green, Ludwig—D. R. Whitaker, trans.—Homestead—March 19, 1914—Affirmed.
- Green, Merritt A.—Soldiers' Additional—January 19, 1915—Affirmed.
- Green, Samuel L.—Homestead—May 29, 1914—Affirmed.
- Green, Thomas H.—Homestead—January 19, 1915—Affirmed.
- Green, W. Roy—Homestead—January 2, 1915—Remanded.
- Greenleaf v. Alvis—Homestead—October 31, 1914—Affirmed.
- Greenlee, Mrs. David E.—Homestead—December 29, 1914—Affirmed.
- Gregerson v. Young—Homestead—August 12, 1914—Affirmed.
- Gregg v. Zimmer—Desert Land—February 28, 1914—Affirmed.

- Grendt, Fred, D. R. Whitaker, trans.—Homestead—March 19, 1914—Affirmed.
- Grice, Glen O.—Homestead—February 14, 1914—Petition Denied.
- Grier, Marguerite—Homestead—May 29, 1914—Affirmed.
- Griffen, Walter—Homestead—May 29, 1914—Remanded.
- Griffin, Eugene W.—Desert Land—February 15, 1915—Affirmed.
- Griffin, Rufus M.—Homestead—August 21, 1914—Affirmed.
- Griffith, Charles H.—Desert Land—September 18, 1914—Affirmed.
- Griffith, Orin B.—Homestead—April 13, 1914—Reversed.
- Griffith, Pauline L.—Desert Land—August 28, 1914—Affirmed.
- Griggs, Charles—Repayment—November 4, 1914—Affirmed.
- Groh v. Judson—Homestead—April 10, 1914—Affirmed.
- Groh v. Judson—Homestead—August 6, 1914—Petition Denied.
- Grohs v. Northern Pacific Ry. Co.—Homestead—June 23, 1914—Affirmed.
- Grone v. Anderson—Homestead—September 9, 1914—Affirmed.
- Grone v. Anderson—Homestead—December 26, 1914—Motion Denied.
- Gropowski v. Schires—Homestead—May 1, 1914—Petition Denied.
- Groover, Harvey L.—Homestead—July 30, 1914—Motion Remanded.
- Groves, John La Rue—Homestead—July 13, 1914—Petition Granted.
- Grubb, Virgil F.—Homestead—October 30, 1914—Affirmed.
- Grubb, Virgil F.—Homestead—December 31, 1914—Motion Denied.
- Grubb v. Kitts—Desert Land—August 18, 1914—Affirmed.
- Grubb v. Kitts—Desert Land—November 30, 1914—Motion Denied.
- Grube, Hugo—Homestead—June 12, 1914—Remanded.
- Grube v. Knutson—Homestead—July 28, 1914—Affirmed.
- Grube v. Knutson—Homestead—September 26, 1914—Motion Denied.
- Grundbrecher, Henry—Desert Land—January 28, 1915—Affirmed.
- Grus, William, Jr.—Mineral—August 28, 1914—Affirmed.
- Guggenheim, Leon—Selection—December 3, 1914—Affirmed.
- Gulden, George M.—Homestead—February 16, 1915—Petition Denied.
- Gunter, John B.—Homestead—August 13, 1914—Reversed.
- Guse v. Lenahan—Homestead—March 9, 1914—Affirmed.
- Gustafson, Hilma—Homestead—May 9, 1914—Affirmed.
- Gustafson v. Taylor—Homestead—February 16, 1915—Reversed.
- Guthrie, Wayne J.—Desert Land—April 22, 1914—Affirmed.
- Guttormson, Stina T.—Homestead—March 25, 1914—Remanded.
- Guydoc, Herman—Isolated Tract—March 12, 1914—Reversed.
- Guynes, Elmer—Desert Land—September 25, 1914—Affirmed.
- Guynes, Nannie—Desert Land—September 25, 1914—Affirmed.
- Gwin v. Simon—Homestead—March 12, 1914—Affirmed.
- Gwin v. Simon—Homestead—June 2, 1914—Motion Denied.
- Haas v. New Mexico—Homestead—August 31, 1914—Affirmed.
- Habberstad v. Howard, Heirs of—Homestead—March 25, 1914—Affirmed.
- Hacker v. York—Homestead—November 27, 1914—Affirmed.
- Hacking, Joseph P.—Selection—December 3, 1914—Affirmed.
- Hacking, Mary E.—Selection—December 3, 1914—Affirmed.
- Hackney, William P.—Desert Land—October 29, 1914—Affirmed.
- Hadley, Bert O.—Homestead—October 31, 1914—Modified.
- Hadley, Charles H.—Homestead—March 18, 1914—Reversed.
- Hadsall v. Southern Pacific Ry. Co.—Homestead—January 29, 1915—Affirmed.
- Hafsos, Oscar K.—Repayment—November 18, 1914—Affirmed.
- Hagan v. Buck—Homestead—August 31, 1914—Affirmed.

- Hagan *v.* Robinson—Homestead—September 30, 1914—Affirmed.
- Hagelberg, Alfred—Homestead—September 18, 1914—Affirmed.
- Hagelie, Helmer—Homestead—June 9, 1914—Dismissed.
- Hagen, Johannes A., *et al.*—Survey—September 8, 1914—Affirmed.
- Hagen, Nils—Homestead—February 28, 1914—Vacated.
- Hagen *v.* Carlson—Homestead—October 12, 1914—Affirmed.
- Hagerman, Henry E.—Desert Land—December 29, 1914—Affirmed.
- Hagg *v.* Moore—Homestead—October 27, 1914—Affirmed.
- Haglund *v.* Northern Pacific Ry. Co.—Timber and Stone—May 27, 1914—Affirmed.
- Haigh *v.* Nolan—Desert Land—October 20, 1914—Affirmed.
- Haight, Lewis R.—Homestead—December 30, 1914—Reversed.
- Haines, William R.—Timber and Stone—February 25, 1915—Affirmed.
- Hakala, Jacob—Homestead—January 29, 1915—Affirmed.
- Haker, Edward E.—Homestead—February 25, 1915—Affirmed.
- Halcumb, Jonas—Homestead—July 13, 1914—Petition Denied.
- Halcumb, Jonas—Homestead—September 26, 1914—Motion Denied.
- Hale, Benjamin F.—Homestead—October 12, 1914—Reversed.
- Hale, Myrtle E.—Desert Land—July 30, 1914—Reversed.
- Hall, Andrea D.—Desert Land—June 29, 1914—Affirmed.
- Hall, Arthur W.—Timber and Stone—September 26, 1914—Affirmed.
- Hall, Eugene A., assignee of Glover—Soldiers' Additional—September 26, 1914—Reversed.
- Hall, Eugene A., assignee of Nance—Soldiers' Additional—May 29, 1914—Remanded.
- Hall, Eugene A., assignee of Nance—Soldiers' Additional—October 23, 1914—Affirmed.
- Hall, John E.—Homestead—January 29, 1915—Reversed.
- Hall, Mabel, Heirs of—Homestead—March 14, 1914—Modified.
- Hall, Maggie E.—Desert Land—September 25, 1914—Affirmed.
- Hall, Maria E.—Homestead—September 14, 1914—Reversed.
- Hall, Minnie E.—Desert Land—October 7, 1914—Affirmed.
- Hall, Myra H.—Desert Land—January 19, 1915—Affirmed.
- Hall, Virginia A.—Homestead—May 29, 1914—Affirmed.
- Hall, Wilson D.—Desert Land—February 4, 1915—Affirmed.
- Hall *v.* Bjorn—Homestead—May 29, 1914—Affirmed.
- Hall *v.* Hart—Desert Land—December 3, 1914—Reversed.
- Haller, William E.—Homestead—April 22, 1914—Remanded.
- Halverson, Gilbert—Homestead—November 14, 1914—Affirmed.
- Haman, John—Timber and Stone—December 29, 1914—Affirmed.
- Hamilton and Boyce—Homestead—February 28, 1914—Affirmed.
- Hamilton, Cora N.—Coal—May 27, 1914—Affirmed.
- Hamilton, Cora N.—Coal—September 19, 1914—Petition Denied.
- Hamilton, Cora L., now Hubbell—Homestead—September 18, 1914—Reversed.
- Hamilton, Mabel M., now Ball—Homestead—March 31, 1914—Affirmed.
- Hamilton, Rachel J., for Arthur L.—Indian Allotment—December 16, 1914—Affirmed.
- Hamilton, Rachel J., for George R.—Indian Allotment—December 16, 1914—Affirmed.
- Hamilton, Rachel J., for Gertrude A.—Indian Allotment—December 16, 1914—Affirmed.
- Hamilton, Rachel J., for Jay L.—Indian Allotment—December 16, 1914—Affirmed.
- Hamilton *v.* Quaw—Homestead—February 16, 1915—Affirmed.
- Hamlin, George W.—Timber and Stone—January 29, 1915—Affirmed.

- Hammerly *v.* Bradshaw—Homestead—September 30, 1914—Affirmed.
- Hammersley, Ada—Homestead—December 26, 1914—Vacated.
- Hammond, A. B., selector, C. A. Smith Lumber Co., trans.—Lieu Selection—February 6, 1914—Motion Denied.
- Hammond, A. B., C. A. Smith Fir Co. trans.—Lieu Selection—July 30, 1914—Petition Denied.
- Hammond, Arthur E., assignee of Brown—Soldiers' Additional—October 29, 1914—Reversed.
- Hammond, Charles S.—Desert Land—March 28, 1914—Affirmed.
- Hammond, Marian C.—Desert Land—October 5, 1914—Affirmed.
- Hammond, Reuben E.—Homestead—June 12, 1914—Reversed.
- Hanchett, John O., assignee of Kottke—Soldiers' Additional—March 12, 1914—Affirmed.
- Haney, Albert A.—Homestead—February 27, 1915—Reversed.
- Hangaard *v.* Austin—Homestead—July 30, 1914—Affirmed.
- Hangard, Hannah, Otis G. Miller, trans.—Homestead—March 19, 1914—Affirmed.
- Hangartner, Wilhelm G.—Repayment—May 29, 1914—Affirmed.
- Hanley *v.* Northern Pacific Ry. Co.—Homestead—September 5, 1914—Affirmed.
- Hanley *v.* Northern Pacific Ry. Co.—Selection—February 16, 1915—Motion Denied.
- Hannah & Devils Den Consolidated Oil Co.—Homestead—January 28, 1914—Petition Denied.
- Hanns *v.* Northern Pacific Ry. Co.—Homestead—August 31, 1914—Affirmed.
- Hannum, Olin—Homestead—January 12, 1915—Affirmed.
- Hansen, Martinus K.—Homestead—May 29, 1914—Affirmed.
- Hansen *v.* Mann *et al.*—Homestead—May 29, 1914—Petition Denied.
- Hanson, Christian—Homestead—October 12, 1914—Affirmed.
- Hanson *v.* Northern Pacific Ry. Co.—Homestead—June 20, 1914—Affirmed.
- Hanson *et al.* *v.* Northern Pacific Ry. Co.—Homestead—August 3, 1914—Petition Denied.
- Hanson *et al.* *v.* Northern Pacific Ry. Co.—Homestead—September 26, 1914—Motion Denied.
- Hanson *v.* Northern Pacific Ry. Co.—Homestead—October 29, 1914—Motion Denied.
- Hanson *v.* Ryan—Homestead—April 22, 1914—Affirmed.
- Hantsch *v.* Johnson—Homestead—January 20, 1914—Affirmed.
- Hantsch *v.* Johnson—Homestead—March 27, 1914—Motion Denied.
- Hanus, Frederick H.—Desert Land—December 16, 1914—Affirmed.
- Harbin, Edward E.—Homestead—February 18, 1914—Modified.
- Harbison *v.* Copenhaver—Desert Land—January 16, 1914—Remanded.
- Harden, Isabel E.—Desert Land—October 31, 1914—Remanded.
- Harding, Nathan C.—Homestead—February 28, 1914—Reversed.
- Harding, Reinhardt T.—Repayment—December 31, 1914—Affirmed.
- Harding, Roswell B.—Homestead—April 30, 1914—Affirmed.
- Hardy, Ed. O.—Homestead—May 29, 1914—Reversed.
- Hardy *v.* Evans *et al.*—Homestead—January 12, 1915—Affirmed.
- Hargrave, Alfred C.—Soldiers' Additional—April 10, 1914—Affirmed.
- Hargrave, William—Homestead—July 2, 1914—Affirmed.
- Harismendy, Blanche, now Lower—Homestead—January 8, 1915—Motion Denied.
- Harju *v.* Northern Pacific Ry. Co.—Homestead—August 26, 1914—Affirmed.
- Harlan, Charles H.—Homestead—January 31, 1914—Affirmed.
- Harlan, Charles J.—Homestead—February 19, 1914—Vacated.
- Harley, Eleanor M., assignee of Elizabeth S. Brown—Desert Land—March 19, 1914—Reversed.

- Harman, Karl—Homestead—March 9, 1914—Affirmed.
- Harmon, John F.—Homestead—May 1, 1914—Reversed.
- Harrais, Martin—Coal—December 16, 1914—Affirmed.
- Harrigan v. McKeever—Homestead—December 26, 1914—Reversed.
- Harrington v. Storm—Homestead—December 30, 1914—Dismissed.
- Harris, Ada J.—Homestead—January 9, 1914—Affirmed.
- Harris, Alma—Homestead—January 19, 1915—Affirmed.
- Harris, Annie G.—Desert Land—February 16, 1915—Reversed.
- Harris, Daniel—Homestead—September 19, 1914—Affirmed.
- Harris, Fred S., assignee of Priscilla Henry—Soldiers' Additional—March 27, 1914—Remanded.
- Harris, Jacob A.—Homestead—March 10, 1914—Motion Denied.
- Harris, Jacob A.—Homestead—April 22, 1914—Petition Denied.
- Harris, Joseph A.—Homestead—October 14, 1914—Affirmed.
- Harris, Lillie E., now Diemer—Homestead—February 28, 1914—Affirmed.
- Harris, Lillie E., now Diemer—Homestead—May 20, 1914—Motion Denied.
- Harris, Weymouth W.—Homestead—June 29, 1914—Affirmed.
- Harris, Weymouth W.—Homestead—September 19, 1914—Affirmed.
- Harris, Winnie D.—Homestead—September 19, 1914—Affirmed.
- Harris v. Northern Pacific Ry. Co.—Homestead—June 23, 1914—Affirmed.
- Harris v. Sullivan—Homestead—August 15, 1914—Affirmed.
- Harrison, Annie Wallingford—Soldiers' Additional—August 6, 1914—Reversed.
- Harrison, John H.—Desert Land—April 30, 1914—Affirmed.
- Harrison v. Knutson—Homestead—August 26, 1914—Affirmed.
- Harrop, Roy M.—Homestead—April 20, 1914—Petition Granted.
- Harrop, Roy M.—Homestead—May 6, 1914—Petition Modified.
- Harrop, Roy M.—Homestead—June 27, 1914—Motion Denied.
- Hart v. Cox—Desert Land—January 29, 1914—Petition Denied.
- Harter, Charles E.—Homestead—October 14, 1914—Vacated.
- Harter, Daisy M.—Homestead—May 29, 1914—Affirmed.
- Hartley, Leonard—Homestead—September 26, 1914—Affirmed.
- Hartsell, Kate W.—Homestead—February 18, 1914—Reversed.
- Hartshorn, Elgin C.—Desert Land—July 7, 1914—Reversed.
- Hartt, D. N., assignee of Felton—Soldiers' Additional—January 25, 1915—Affirmed.
- Hartt, Dudley N.—Soldiers' Additional—April 22, 1914—Affirmed.
- Harvey v. Johnson—Homestead—May 27, 1914—Affirmed.
- Harvey v. Johnson—Homestead—August 6, 1914—Motion Denied.
- Harwood, George W.—Homestead—June 13, 1914—Reversed.
- Hassold, Fred A.—Homestead—July 25, 1914—Reversed.
- Hastie, Hattie—Homestead—February 21, 1914—Reversed.
- Hatch Bros. Co. v. Black—Homestead—August 12, 1914—Affirmed.
- Hatcher, Charles P.—Desert Land—February 9, 1915—Affirmed.
- Haugeland v. Fairchild—Homestead—February 25, 1915—Affirmed.
- Haugen, Polly—Homestead—February 20, 1914—Affirmed.
- Haurula v. Northern Pacific Ry. Co.—Homestead—May 27, 1914—Affirmed.
- Hauver, Eva E.—Desert Land—September 25, 1914—Affirmed.
- Hauver, Eva E.—Desert Land—January 12, 1915—Motion Denied.
- Hauver, George P.—Desert Land—September 21, 1914—Affirmed.
- Havener, William P.—Homestead—July 27, 1914—Remanded.
- Havens, Hedge A.—Desert Land—July 24, 1914—Petition allowed.
- Havens, Maggie L.—Desert Land—March 14, 1914—Reversed.

- Haver, Frederick W.—Desert Land—December 30, 1914—Affirmed.
- Haver, Jessie R.—Desert Land—October 7, 1914—Affirmed.
- Havlik, James—Homestead—April 22, 1914—Affirmed.
- Hawkins, John H.—Repayment—October 31, 1914—Affirmed.
- Hay, C. R., *et al.*—Mineral—May 29, 1914—Remanded.
- Hayes, James J.—Desert Land—March 21, 1914—Affirmed.
- Hayes, James T.—Desert Land—March 21, 1914—Affirmed.
- Hayes, Peter W.—Homestead—June 18, 1914—Reversed.
- Hayes, Peter W.—Homestead—September 19, 1914—Motion Denied.
- Haynes, Edwin A., *et al.*—Homestead—May 12, 1914—Petition Denied.
- Haynes, Edwin A., George L. Neff, trans.—Homestead—July 30, 1914—Petition Denied.
- Haynes, Guy—Desert Land—September 21, 1914—Affirmed.
- Hays, Sam—Homestead—September 26, 1914—Affirmed.
- Hazlewood, Joseph L.—Homestead—August 31, 1914—Affirmed.
- Hazen *v.* Kissell—Homestead—October 6, 1914—Affirmed.
- Healey, Emily V.—Homestead—November 18, 1914—Affirmed.
- Healy, Josephine—Timber and Stone—October 30, 1914—Affirmed.
- Healy, Maria C.—Homestead—February 20, 1914—Affirmed.
- Heberlein, Frederick F. A.—Homestead—August 21, 1914—Remanded.
- Hector *v.* Northern Pacific Ry. Co.—Timber and Stone—May 27, 1914—Affirmed.
- Hector *v.* Northern Pacific Ry. Co.—Timber and Stone—October 29, 1914—Affirmed.
- Heddens, Bertha L.—Homestead—February 28, 1914—Reversed.
- Hedgpath, Delmer O.—Homestead—February 26, 1915—Affirmed.
- Hedrick, Joseph G., assignee of Caldwell—Soldiers' Additional—August 12, 1914—Affirmed.
- Hedstrom *v.* Albers—Homestead—August 14, 1914—Affirmed.
- Hegna *v.* Hayes—Homestead—September 14, 1914—Affirmed.
- Heid, C. C.—Coal—December 16, 1914—Affirmed.
- Heid, Kate—Homestead—September 14, 1914—Reversed.
- Heineman, Alfred—Repayment—November 18, 1914—Affirmed.
- Heineman, Lena—Homestead—March 12, 1914—Reversed.
- Heinrich, John—Homestead—September 26, 1914—Remanded.
- Heisel, Elmer A.—Homestead—February 5, 1914—Motion Denied.
- Heisel, Mae Pearl—Homestead—August 12, 1914—Reversed.
- Heisman, William—Homestead—October 27, 1914—Affirmed.
- Hellstrom *v.* Northern Pacific Ry. Co.—Homestead—August 26, 1914—Affirmed.
- Helms, Robert J.—Homestead—January 19, 1915—Affirmed.
- Helos *v.* Nelson—Homestead—August 18, 1914—Affirmed.
- Heminger, Davis A.—Desert Land—March 14, 1914—Affirmed.
- Hemphill, Carl M.—Repayment—October 31, 1914—Affirmed.
- Henderson, Annie—Homestead—September 26, 1914—Affirmed.
- Henderson, Edward P.—Homestead—February 28, 1914—Remanded.
- Henderson, Harry W.—Homestead—April 28, 1914—Reversed.
- Henderson *v.* Allen—Desert Land—January 19, 1915—Affirmed.
- Henderson *v.* Garcia—Homestead—November 19, 1914—Affirmed.
- Henderson *v.* Garcia—Homestead—February 25, 1915—Motion Denied.
- Hendricks *v.* Kribs—Lieu Selection—February 10, 1914—Petition Denied.
- Hendrickson, Hans P.—Homestead—January 28, 1915—Affirmed.
- Henley, Maud S.—Desert Land—August 28, 1914—Affirmed.
- Henricksen, Eva—Desert Land—February 10, 1914—Motion Denied.
- Henry, Fred T.—Desert Land—February 21, 1914—Motion Denied.

- Henry, Michael—Soldiers' Additional—January 16, 1914—Remanded.
- Henson, William R., assignee of Housewright—Soldiers' Additional—November 18, 1914—Affirmed.
- Henttonen *v.* Stevens—Homestead—August 13, 1914—Affirmed.
- Herkner, Richard A.—Desert Land—February 4, 1915—Affirmed.
- Herland, Robert H.—Homestead—April 22, 1914—Affirmed.
- Hermann *v.* Northern Pacific Ry. Co.—Selection—August 3, 1914—Affirmed.
- Hermann *v.* Northern Pacific Ry. Co.—Homestead—September 26, 1914—Motion Denied.
- Hern, John E.—Homestead—May 26, 1914—Affirmed.
- Herrick, Hobart—Desert Land—September 26, 1914—Affirmed.
- Hershberger *v.* Kanegieser—Homestead—February 16, 1915—Reversed.
- Hershman *v.* Heirs of Crist—Desert Land—November 27, 1914—Affirmed.
- Hertzler *v.* Northern Pacific Ry. Co.—Homestead—August 31, 1914—Reversed.
- Herzner, Joseph—Desert Land—September 26, 1914—Affirmed.
- Heslop, Charlotte M.—Desert Land—August 21, 1914—Remanded.
- Hewitt *v.* Northern Pacific Ry. Co.—Selection—October 19, 1914—Affirmed.
- Hewitt *v.* Northern Pacific Ry. Co.—Selection—December 29, 1914—Motion Denied.
- Hexum, Bertha—Repayment—December 5, 1914—Affirmed.
- Heydlauff *v.* Murphy—Homestead—February 4, 1915—Affirmed.
- Heyrock, John—Homestead—February 15, 1915—Instructions.
- Hickey *v.* Sheridan—Homestead—August 28, 1914—Affirmed.
- Hicks, Edward C.—Homestead—February 15, 1915—Reversed.
- Hicks, Elbert—Homestead—September 26, 1914—Remanded.
- Hicks, George E.—Homestead—October 14, 1914—Vacated.
- Hicks, James W.—Repayment—September 26, 1914—Reversed.
- Hicks, Nelson E.—Repayment—February 26, 1915—Petition Denied.
- Hidden, Georgia A.—Homestead—October 31, 1914—Affirmed.
- Higby, Charles P.—Homestead—February 19, 1914—Reversed.
- Higby *v.* Benson—Homestead—August 26, 1914—Affirmed.
- Higgins, Edward T.—Homestead—August 25, 1914—Affirmed.
- Higgins, Marian L., Heirs of—Homestead—September 26, 1914—Affirmed.
- Highland Consolidated Coal Co.—Coal Land—May 28, 1914—Modified.
- Highland Consolidated Coal Co.—Coal Land—November 7, 1914—Affirmed.
- Hightchew, James A.—Homestead—September 26, 1914—Vacated.
- Higley, Charles H.—Homestead—August 12, 1914—Affirmed.
- Hilborn *et al.* *v.* Dewey—Homestead—February 26, 1915—Affirmed.
- Hileman, Margaret A.—Homestead—January 9, 1914—Affirmed.
- Hileman, Margaret A.—Homestead—May 12, 1914—Motion Allowed.
- Hilger, David, assignee of Brewster—Soldiers' Additional—March 27, 1914—Remanded.
- Hilger, David, assignee of Hinton—Soldiers' Additional—February 19, 1914—Closed.
- Hilger, David, assignee of Parker—Homestead—May 29, 1914—Affirmed.
- Hilger, David, assignee of Ritchie—Soldiers' Additional—July 30, 1914—Motion Denied.
- Hill, Addie K.—Desert Land—September 26, 1914—Affirmed.
- Hill, Edwin B.—Timber and Stone—May 1, 1914—Affirmed.
- Hill, Eliza A.—Homestead—February 16, 1915—Reversed.
- Hill, Ellen, now Spidle—Homestead—March 9, 1914—Reversed.
- Hill, Henry—Desert Land—September 26, 1914—Affirmed.
- Hill, James L.—Homestead—October 3, 1914—Reversed.
- Hill, Madison G.—Desert Land—March 12, 1914—Affirmed.

- Hill, Mary L.—Timber and Stone—May 1, 1914—Affirmed.
- Hill, Roland G., assignee of Shepherd—Soldiers' Additional—October 26, 1914—Affirmed.
- Hill, Roland G.—Soldiers' Additional—October 29, 1914—Affirmed.
- Hill, Roland G.—Soldiers' Additional—October 30, 1914—Reversed.
- Hill, Thomas P., assignee of Sanford—Soldiers' Additional—November 18, 1914—Affirmed.
- Hill v. Booth—Desert Land—March 12, 1914—Affirmed.
- Hill v. Booth—Desert Land—June 13, 1914—Motion Denied.
- Hiller, Sam.—Homestead—May 29, 1914—Remanded.
- Hills, Martha A.—Homestead—February 28, 1914—Reversed.
- Hillstrom, Jake—Homestead—August 28, 1914—Affirmed.
- Hilt v. Gregoire—Homestead—September 26, 1914—Reversed.
- Hilt v. Gregoire—Homestead—December 16, 1914—Motion Denied.
- Hilton, Jennie—Townsite—December 16, 1914—Affirmed.
- Hinkle v. Wherley—Homestead—December 3, 1914—Affirmed.
- Hinkley v. Martens—Desert Land—October 20, 1914—Affirmed.
- Hines, Jane I.—Homestead—February 12, 1914—Reversed.
- Hinton, Charles H., Southwestern Townsite Co., trans.—Homestead—January 2, 1914—Affirmed.
- Hintzen v. Lohr—Homestead—August 6, 1914—Affirmed.
- Hirsch v. Ruppel—Desert Land—August 31, 1914—Petition Denied.
- Hitchcock, Lytton B.—Homestead—October 31, 1914—Reversed.
- Hitz, Herman, Jr.—Homestead—December 16, 1914—Affirmed.
- Hoban, Thomas F., *et al.*—Soldiers' Additional—November 30, 1914—Modified.
- Hobart v. McConnell—Homestead—October 29, 1914—Affirmed.
- Hockema, Sjverd J.—Homestead—January 2, 1914—Reversed.
- Hocum v. Forbes—Homestead—January 28, 1914—Petition Denied.
- Hodges, Bernard S.—Reduction of Area—October 30, 1914—Affirmed.
- Hoelker, John J.—Desert Land—November 24, 1914—Affirmed.
- Hoff, Gust—Homestead—January 19, 1915—Affirmed.
- Hoff, William—Desert Land—January 29, 1915—Affirmed.
- Hoffman, Albert—Homestead—July 9, 1914—Remanded.
- Hoffman, George—Homestead—March 21, 1914—Reversed.
- Hoffman, James F.—Homestead—September 8, 1914—Modified.
- Hoffman, Lena A.—Homestead—August 22, 1914—Modified.
- Hoffman, Walter E.—Homestead—July 22, 1914—Modified.
- Hogan v. Lyman—Desert Land—February 21, 1914—Affirmed.
- Hogan v. Moore—Homestead—August 26, 1914—Affirmed.
- Hohenberger v. Selby—Homestead—September 14, 1914—Affirmed.
- Hoisington v. Shay—Homestead—January 28, 1915—Affirmed.
- Holcomb, D. Graham—Homestead—August 12, 1914—Dismissed.
- Holden v. Brees—Homestead—November 18, 1914—Affirmed.
- Holder, Matthew A.—Homestead—October 12, 1914—Affirmed.
- Holgate, George H.—Timber and Stone—December 3, 1914—Reversed.
- Holladay, Joseph A.—Homestead—March 21, 1914—Affirmed.
- Holland, Reuben T.—Homestead—March 11, 1914—Reversed.
- Hollinshead, William C.—Homestead—April 30, 1914—Affirmed.
- Hollis, Horace—Homestead—October 30, 1914—Affirmed.
- Holloway v. Wood—Homestead—October 31, 1914—Petition Denied.
- Holm v. Northern Pacific Ry. Co.—Timber and Stone—May 27, 1914—Affirmed.
- Holstein, Bertha E.—Preemption—February 15, 1915—Remanded.

- Holt, James M.—Desert Land—February 9, 1915—Affirmed.
- Holt, John—Homestead—February 16, 1914—Remanded.
- Holt, John W.—Desert Land—February 4, 1915—Affirmed.
- Holt, Lizzie—Desert Land—February 4, 1915—Affirmed.
- Holtzner, George—Desert Land—October 7, 1914—Reversed.
- Holverson v. Brassfield—Homestead—January 28, 1914—Motion Denied.
- Holverson v. Brassfield—Homestead—November 14, 1914—Motion Denied.
- Homan, Fletcher—Timber and Stone—January 29, 1915—Affirmed.
- Honnen v. Southern Pacific R. R. Co.—Desert Land—December 3, 1914—Affirmed.
- Honnen v. Southern Pacific Ry. Co.—Desert Land—February 15, 1915—Affirmed.
- Hoph, Cecil, *et al.*—Homestead—September 25, 1914—Motion Denied.
- Hopkin, Henry—Homestead—August 31, 1914—Affirmed.
- Hopkins, Louis J., assignee of Ward—Soldiers' Additional—April 27, 1914—Motion Allowed.
- Hopkins, Louis J., assignee of Ward—Soldiers' Additional—August 26, 1914—Affirmed.
- Hopkinson, Edward W.—Homestead—September 26, 1914—Affirmed.
- Hopp, Katie E.—Desert Land—February 17, 1914—Reversed.
- Hopp, Katie E.—Desert Land—July 2, 1914—Motion Denied.
- Hoover, James L.—Homestead—October 27, 1914—Affirmed.
- Horkan, George—Repayment—October 30, 1914—Affirmed.
- Horkan, Margaret—Desert Land—January 28, 1915—Affirmed.
- Horn, Etta—Homestead—January 3, 1914—Remanded.
- Horner, Mildred, *nee* Vickers—Homestead—September 19, 1914—Affirmed.
- Hornsby, Mary L.—Homestead—July 2, 1914—Reversed.
- Horsh v. Northern Pacific Ry. Co.—Homestead—November 19, 1914—Affirmed.
- Hosking, Wm. C.—Desert Land—January 29, 1915—Affirmed.
- Hoskins v. Munson—Desert Land—March 12, 1914—Reversed.
- Hoskins v. Munson—Desert Land—June 27, 1914—Motion Allowed.
- Hoskinson, Alfred T.—Homestead—August 28, 1914—Affirmed.
- Hoss, Helen M.—Timber and Stone—July 2, 1914—Affirmed.
- Hoss, Susan—Timber and Stone—December 16, 1914—Affirmed.
- Hotaling, Richard N., assignee of McArthur—Soldiers' Additional—September 25, 1914—Reversed.
- Houck, Ida—Homestead—October 27, 1914—Affirmed.
- Hough, Ray M.—Homestead—August 18, 1914—Modified.
- Houle, La Rose (2 cases)—Indian Selection—March 14, 1914—Affirmed.
- Howard, Charles H.—Homestead—January 25, 1915—Petition Granted.
- Howard, Ralph N.—Homestead—September 21, 1914—Affirmed.
- Howe, Chester W.—Homestead—January 14, 1915—Affirmed.
- Howe *et al.* v. Esh—Homestead—September 26, 1914—Modified.
- Howe, William H.—Soldiers' Additional—August 31, 1914—Affirmed.
- Howell, Jane H., assignee of Blewett—Desert Land—November 27, 1914—Reversed.
- Howell, Melville—Homestead—May 26, 1914—Affirmed.
- Howell v. Robinson—Desert Land—July 29, 1914—Affirmed.
- Howendobler, Glenwood H.—Homestead—September 26, 1914—Reversed.
- Howington, Marcus W.—Homestead—April 30, 1914—Affirmed.
- Howland, Milton E.—Homestead—March 12, 1914—Reversed.
- Hoyt v. Kribs—Homestead—April 22, 1914—Affirmed.
- Hoyt v. Northern Pacific Ry. Co.—Military Bounty Land—December 12, 1914—Affirmed.

- Hubbard, M. and A. S.—Right of Way—September 21, 1914—Affirmed.
- Hubbard v. Northern Pacific Ry. Co.—Homestead—May 27, 1914—Affirmed.
- Hubbard v. Weigel—Homestead—October 31, 1914—Petition Denied.
- Huber, Samuel H.—Homestead—February 21, 1914—Reversed.
- Huber v. Von Herrmann—Homestead—October 12, 1914—Affirmed.
- Hudman, John F.—Homestead—August 21, 1914—Affirmed.
- Hudson v. Bell—Homestead—August 31, 1914—Affirmed.
- Hudson v. Bell—Homestead—November 7, 1914—Motion Denied.
- Hudson v. Buchanan—Homestead—March 12, 1914—Affirmed.
- Hudson v. Mooney—Homestead—February 28, 1914—Affirmed.
- Hudspeth v. Guidinger—Homestead—December 12, 1914—Affirmed.
- Hueth v. Simon St. Pierre Dionne—Homestead—March 11, 1914—Petition Denied.
- Huffman, John S.—Desert Land—November 7, 1914—Affirmed.
- Huffman, John S.—Desert Land—January 29, 1915—Motion Denied.
- Huggans, George E.—Timber and Stone—August 18, 1914—Affirmed.
- Hughes, Alvin L.—Homestead—May 29, 1914—Affirmed.
- Hughes, Emmet J.—Timber and Stone—February 10, 1914—Affirmed.
- Hughes, Robert H.—Timber and Stone—August 28, 1914—Affirmed.
- Hughes, Robert H.—Timber and Stone—November 4, 1914—Motion Denied.
- Hughes v. Northern Pacific Ry. Co.—Selection—June 13, 1914—Affirmed.
- Hughes v. Northern Pacific Ry. Co.—Homestead—September 26, 1914—Petition Denied.
- Hughes, Tom P.—Homestead—August 6, 1914—Remanded.
- Hughes, William R.—Homestead—May 7, 1914—Remanded.
- Hughett, Alvie D.—Desert Land—March 18, 1914—Reversed.
- Huitt, Edward T.—Homestead—September 26, 1914—Remanded.
- Hulet, Charles E.—Homestead—January 28, 1915—Affirmed.
- Hull, Marguerite E.—Homestead—February 14, 1914—Petition Denied.
- Hull, Tracy D.—Homestead—May 26, 1914—Affirmed.
- Hull v. Mudd, assignee of Oakley—Desert Land—December 16, 1914—Reversed.
- Hulsy, William H.—Homestead—August 22, 1914—Modified.
- Humphreys, Arthur E., The Northwest Timber Co., trans.—Timber and Stone—December 16, 1914—Petition Denied.
- Humphreys, Cecil T., The Northwest Timber Co., trans.—Timber and Stone—December 16, 1914—Petition Denied.
- Humphreys, Harvey, The Northwest Timber Co., trans.—Timber and Stone—December 16, 1914—Petition Denied.
- Humphreys, Mary W.—Homestead—November 24, 1914—Reversed.
- Humphreys, Sarah E.—Desert Land—March 21, 1914—Reversed.
- Humphreys, Thomas J., The Northwest Timber Co., trans.—Timber and Stone—December 16, 1914—Petition Denied.
- Hunt, Frank H.—Homestead—February 16, 1915—Affirmed.
- Hunt, George L.—Homestead—September 26, 1914—Affirmed.
- Hunt, Sim J.—Mineral—November 7, 1914—Modified.
- Hunter, Daniel M.—Desert Land—September 17, 1914—Reversed.
- Hunter, Frank V., assignee of Magill—Soldiers' Additional—September 26, 1914—Affirmed.
- Hunter, Walter C.—Coal—December 16, 1914—Affirmed.
- Hunter v. Heirs of C. E. Odem—Homestead—March 28, 1914—Affirmed.
- Hunter v. Noakes—Soldiers' Additional—January 28, 1915—Motion Denied.
- Huston, Ethel E.—Homestead—January 12, 1915—Affirmed.

- Huston, Frank L.—Survey—August 19, 1914—Affirmed.
- Huston, Frank L.—Selection—August 31, 1914—Affirmed.
- Huston, Frank L.—Selection—November 18, 1914—Affirmed.
- Huston, F. L., F. L. Anderson, trans.—Selection—February 6, 1915—Affirmed.
- Huston, Frank L., D. D. Tenney, trans.—Selection—November 30, 1914—Affirmed.
- Huston, James M.—Mineral—January 19, 1915—Modified.
- Hutchins, Israel A.—Homestead—April 29, 1914—Reversed.
- Hutchins v. Marshall—Homestead—January 12, 1914—Remanded.
- Hutchinson, Robert—Homestead—August 25, 1914—Affirmed.
- Hyde, Elizabeth—Homestead—January 2, 1914—Reversed.
- Hyde v. Northern Pacific Ry. Co.—Homestead—June 20, 1914—Affirmed.
- Hyde v. Northern Pacific Ry. Co.—Selection—October 29, 1914—Motion Denied.
- Hyndman, Mark B.—Repayment—November 18, 1914—Affirmed.
- Hynes, William C.—Homestead—April 18, 1914—Reversed.
- Iasigi, Theodore A.—Desert Land—November 18, 1914—Affirmed.
- Idaho v. Colwell—Selection—January 27, 1915—Affirmed.
- Idaho v. Northern Pacific Ry. Co.—Selection—October 30, 1914—Affirmed.
- Idaho *et al.* v. Northern Pacific Ry. Co.—Selection—January 19, 1915—Affirmed.
- Idaho v. O'Donnell—Selection—January 19, 1915—Affirmed.
- Ide, Truman H.—Homestead—November 4, 1914—Affirmed.
- Ide, Truman H.—Homestead—January 12, 1915—Motion Denied.
- Iller, Rose A., formerly Studer—Homestead—February 28, 1914—Reversed.
- Imperial Palms Cemetery Assn. v. Ida Wessel *et al.*—Desert Land—October 30, 1914—Reversed.
- Inghram, David B.—Homestead—February 16, 1915—Reversed.
- Ingle v. Johnson—Desert Land—November 14, 1914—Reversed.
- Inglesberg v. Northern Pacific Ry. Co.—Desert Land—February 16, 1915—Reversed.
- Ingraham, Philip A.—Homestead—May 12, 1914—Affirmed.
- Ingraham v. Raker—Homestead—February 20, 1914—Affirmed.
- Ingraham v. Raker—Homestead—April 30, 1914—Motion Denied.
- Ingram, D. R.—Survey—June 30, 1914—Remanded.
- Ingram, D. R.—Survey—August 7, 1914—Affirmed.
- Ingram, Jesse W.—Homestead—November 14, 1914—Affirmed.
- Ingram, Jesse W.—Homestead—February 16, 1915—Motion Denied.
- Ingram, Stuart H.—Desert Land—February 28, 1914—Affirmed.
- International Portland Cement Co. (Ltd.) v. Cheer—Mineral—December 12, 1914—Affirmed.
- Ireland v. Hill—Homestead—February 25, 1915—Affirmed.
- Irvin, Thomas H.—Homestead—October 31, 1914—Affirmed.
- Irvine, Ben D.—Desert Land—February 26, 1915—Affirmed.
- Irwin, Frank R.—Homestead—March 7, 1914—Reversed.
- Irwin, George L.—Timber and Stone—December 30, 1914—Affirmed.
- Irwin, George L.—Timber and Stone—February 27, 1915—Motion Denied.
- Island Mining Co.—Mineral—February 26, 1915—Affirmed.
- Iverson v. Fleming—Desert Land—August 13, 1914—Affirmed.
- Ives v. Gaston and McCabe—Desert Land—February 16, 1915—Reversed.
- Jaakola v. Northern Pacific Ry. Co.—Homestead—August 26, 1914—Affirmed.
- Jablouski, Edward—Repayment—October 12, 1914—Affirmed.
- Jabs, Amelia—Repayment—October 30, 1914—Affirmed.

- Jacob, Antoine—Reservoir—January 2, 1914—Motion Allowed.
- Jacobsen, Henry—Homestead—August 13, 1914—Affirmed.
- Jacobsen, Sena—Homestead—August 15, 1914—Reversed.
- Jacobson, Lillie—Desert Land—January 7, 1914—Reversed.
- Jacobson v. Beall—Homestead—October 29, 1914—Affirmed.
- Jacobson v. Johnson—Homestead—August 25, 1914—Affirmed.
- Jacobson v. McDonell—Homestead—September 19, 1914—Affirmed.
- Jacobson v. Northern Pacific Ry. Co.—Homestead—May 27, 1914—Affirmed.
- Jackley, J. J.—Survey—July 9, 1914—Affirmed.
- Jackline, Silas W.—Homestead—July 30, 1914—Vacated.
- Jackson, Commodore S.—Homestead—March 18, 1914—Petition Granted.
- Jackson, Commodore S.—Homestead—August 31, 1914—Certiorari Affirmed.
- Jackson Oil Co. v. Southern Pacific Railway Co.—Selection—February 16, 1913—Instructions.
- Jackson, Thomas S.—Desert Land—January 28, 1915—Affirmed.
- Jackson, William H.—Desert Land—January 28, 1915—Affirmed.
- Jackson v. Thurston—Homestead—January 19, 1915—Affirmed.
- Jahn, Henry C.—Homestead—February 16, 1915—Affirmed.
- Jaimison, John M.—Homestead—July 2, 1914—Affirmed.
- James, Ethel L.—Homestead—December 29, 1914—Reversed.
- James, John D.—Homestead—August 31, 1914—Affirmed.
- James, Nettie H.—Desert Land—October 29, 1914—Affirmed.
- James, Palmer F.—Homestead—October 31, 1914—Affirmed.
- James, Solomon—Homestead—February 20, 1914—Reversed.
- James, Willard C., assignee of Hahn—Soldiers' Additional—March 18, 1914—Remanded.
- Jameson, George W.—Homestead—February 7, 1914—Reversed.
- Jameson, George W.—Homestead—January 19, 1915—Vacated.
- Jamieson, George W.—Repayment—November 24, 1914—Affirmed.
- Jamieson, James M., American Gem Mining Syndicate, trans.—Mineral—May 28, 1914—Modified.
- Jamsa, Minda E.—Homestead—September 8, 1914—Remanded.
- January, Frank P.—Homestead—January 9, 1914—Affirmed.
- Jasper, Cf. S.—Homestead—November 19, 1914—Remanded.
- Jefferson, Frank A.—Homestead—April 10, 1914—Affirmed.
- Jeffries, Ira—Homestead—January 31, 1914—Vacated.
- Jeffrey, Gracie L.—Homestead—December 26, 1914—Reversed.
- Jeffrey, Robert W.—Homestead—March 12, 1914—Affirmed.
- Jenft, John—Repayment—October 31, 1914—Affirmed.
- Jenkins, Edmund D.—Homestead—January 7, 1914—Motion Allowed.
- Jenkins, Frank—Homestead—February 16, 1915—Petition Denied.
- Jenkins, Oliver P. M.—Homestead—January 31, 1914—Modified.
- Jenkinson, Walter R.—Timber and Stone—December 30, 1914—Affirmed.
- Jenkinson, Walter R.—Timber and Stone—February 27, 1915—Motion Denied.
- Jennison, Milfred H.—Timber and Stone—January 2, 1914—Reversed.
- Jensen, Hans P.—Homestead—March 12, 1914—Modified.
- Jensen, Hans P.—Homestead—May 1, 1914—Remanded.
- Jensen, Marie L.—Timber and Stone—December 16, 1914—Affirmed.
- Jensen, Martin L., assignee of Watson—Soldiers' Additional—May 6, 1914—Vacated.
- Jensen, Theodore—Timber and Stone—January 29, 1915—Affirmed.
- Jensen v. Gill—Soldiers' Additional—August 22, 1914—Affirmed.
- Jepsen v. Fleck—Homestead—September 30, 1914—Affirmed.
- Jerome, Flavia—Indian Allotment—January 29, 1915—Affirmed.

- Jerome, Frederick—Indian Allotment—December 29, 1914—Affirmed.
- Jerome, Frederick, for Adelaide—Indian Allotment—December 29, 1914—Affirmed.
- Jerome, Frederick, for Clara—Indian Allotment—December 29, 1914—Affirmed.
- Jerome, Frederick, for Mary—Indian Allotment—December 29, 1914—Affirmed.
- Jerome, Margaret—Indian Allotment—January 29, 1915—Affirmed.
- Jevnager, August—Homestead—September 30, 1914—Reversed.
- Jlek v. Stackhouse—Homestead—August 26, 1914—Affirmed.
- Jameson v. Minnehan—Desert Land—January 19, 1915—Affirmed.
- Johns v. Potter—Homestead—November 30, 1914—Reversed.
- Johnson, B. W.—Coal—December 16, 1914—Affirmed.
- Johnson, Charles A.—Desert Land—May 27, 1914—Affirmed.
- Johnson, Charles E.—Soldiers' Additional—October 31, 1914—Reversed.
- Johnson, Charles F.—Desert Land—November 7, 1914—Affirmed.
- Johnson, Charles W.—Homestead—January 17, 1914—Remanded.
- Johnson, Charles W.—Homestead—September 26, 1914—Remanded.
- Johnson, Edward H.—Desert Land—September 25, 1914—Affirmed.
- Johnson, Emma—Homestead—January 7, 1914—Affirmed.
- Johnson *et al.* v. Strunk—Homestead—January 7, 1914—Affirmed.
- Johnson *et al.* v. Strunk—Homestead—March 11, 1914—Motion Denied.
- Johnson, George W.—Desert Land—June 29, 1914—Affirmed.
- Johnson, Hannah—Homestead—October 31, 1914—Affirmed.
- Johnson, Hans C.—Repayment—November 27, 1914—Affirmed.
- Johnson, Harly J.—Homestead—January 23, 1915—Certiorari Denied.
- Johnson, Jenny June—Homestead—February 17, 1914—Vacated.
- Johnson, Louis H.—Homestead—March 12, 1914—Affirmed.
- Johnson, Louis H.—Homestead—May 7, 1914—Motion Denied.
- Johnson, Maggie—Desert Land—October 20, 1914—Affirmed.
- Johnson, Olai G.—Homestead—August 26, 1914—Affirmed.
- Johnson, Olga S.—Desert Land—September 25, 1914—Affirmed.
- Johnson, Peter G., assignee of Ordway—Soldiers' Additional—December 30, 1914—Affirmed.
- Johnson, Swan J.—Desert Land—September 26, 1914—Affirmed.
- Johnson, Thomas A.—Repayment—September 17, 1914—Reversed.
- Johnson v. Brugh—Homestead—August 19, 1914—Affirmed.
- Johnson v. Brugh—Homestead—October 31, 1914—Motion Denied.
- Johnson v. Crile—Homestead—August 15, 1914—Affirmed.
- Johnson v. Erickson—Homestead—April 30, 1914—Affirmed.
- Johnson v. Erickson—Homestead—October 31, 1914—Affirmed.
- Johnson v. Erickson—Homestead—January 28, 1915—Motion Denied.
- Johnson v. Kibble—Homestead—September 26, 1914—Reversed.
- Johnson v. Kibble—Homestead—December 26, 1914—Motion Denied.
- Johnson v. Liquin—Desert Land—October 3, 1914—Affirmed.
- Johnson v. Nielson—Homestead—February 28, 1914—Affirmed.
- Johnson v. Northern Pacific Ry. Co.—Homestead—June 6, 1914—Affirmed.
- Johnson v. Northern Pacific Ry. Co.—Homestead—June 20, 1914—Affirmed.
- Johnson v. Northern Pacific Ry. Co.—Homestead—June 29, 1914—Affirmed.
- Johnson v. Northern Pacific Ry. Co.—Homestead—August 26, 1914—Affirmed.
- Johnson v. Northern Pacific Ry. Co.—Selection—December 16, 1914—Affirmed.
- Johnson v. O'Neill—Homestead—August 26, 1914—Affirmed.
- Johnson v. O'Neill—Homestead—October 20, 1914—Motion Denied.

- Johnson *v.* Smith—Homestead—March 24, 1914—Reversed.
- Johnson *v.* Smith—Homestead—January 28, 1915—Reversed.
- Johnson *v.* Southern Pacific R. R. Co.—Desert Land.—December 3, 1914—Affirmed.
- Johnson *v.* Stracker—Homestead—November 24, 1914—Affirmed.
- Johnstead *v.* Northern Pacific Ry. Co.—Homestead—December 3, 1914—Affirmed.
- Johnston, James L., assignee of Hatcher — Soldiers' Additional — May 28, 1914—Vacated.
- Johnston *v.* Hoettchen—Desert Land—August 19, 1914—Affirmed.
- Joiner, Richard—Homestead—November 18, 1914—Affirmed.
- Jones, Edward—Soldiers' Additional—April 22, 1914—Affirmed.
- Jones, Edward, assignee of Baker—Soldiers' Additional—December 5, 1914—Affirmed.
- Jones, Edward, assignee of Hinton—Soldiers' Additional—February 19, 1914—Closed.
- Jones, Fannie A., *nee* Hooper—Desert Land—February 19, 1914—Affirmed.
- Jones, Harris G.—Homestead—August 7, 1914—Affirmed.
- Jones, James T.—Desert Land—September 19, 1914—Affirmed.
- Jones, John R.—Water Right—February 28, 1914—Motion Denied.
- Jones, Jonathan—Homestead—May 29, 1914—Reversed.
- Jones, Mary P.—Homestead—December 3, 1914—Affirmed.
- Jones, Rufus R.—Homestead—August 31, 1914—Modified.
- Jones, Sidney M.—Homestead—January 29, 1915—Affirmed.
- Jones, Thomas W. — Homestead — March 25, 1914—Affirmed.
- Jones, W. A. Fleming, assignee of Akin—Soldiers' Additional—June 12, 1914—Affirmed.
- Jones, W. A. Fleming, assignee of Patterson—Soldiers' Additional—July 27, 1914—Affirmed.
- Jones, W. A. Fleming, assignee of Russell—Soldiers' Additional—May 12, 1914—Affirmed.
- Jones *v.* Champion—Homestead—August 25, 1914—Affirmed.
- Jones *v.* Clark—Homestead—December 26, 1914—Petition Denied.
- Jones *v.* Hyde & Co.—Homestead—February 26, 1915—Affirmed.
- Jones *v.* Mackey—Homestead—October 17, 1914—Affirmed.
- Jones *v.* Painter—Desert Land—May 29, 1914—Petition Denied.
- Jones *v.* Woods—Timber and Stone—February 26, 1915—Reversed.
- Jopling, Morgan W. — Porterfield Scrip—January 16, 1914—Affirmed.
- Jordan *v.* Coon—Desert Land—January 28, 1915—Affirmed.
- Jordan *et al.* *v.* Murray—Timber and Stone—January 7, 1914—Affirmed.
- Jorgenson, Marie—Repayment—March 25, 1914—Affirmed.
- Josovich *v.* Hastred—Homestead—February 4, 1915—Remanded.
- Joyce, Robert—Homestead—January 17, 1914—Motion Denied.
- Juanita Oil Co.—Mineral—September 18, 1914—Affirmed.
- Judy, Adam H.—Homestead—July 13, 1914—Affirmed.
- Juhl, Chris—Homestead—February 16, 1915—Affirmed.
- Juneau *v.* Northern Pacific Ry. Co.—Homestead—May 27, 1914—Affirmed.
- Jungquist *v.* Fuchs—Homestead—April 8, 1914—Remanded.
- Jurgenson, Andrew—Repayment—January 7, 1914—Reversed.
- Jury, Charles L.—Homestead—August 25, 1914—Affirmed.
- Juski, Peter, Robert Grieve, trans.—Homestead—March 19, 1914—Affirmed.
- Justice, George — Homestead — March 21, 1914—Affirmed.
- Kabler, Ben — Homestead — July 30, 1914—Affirmed.
- Kaiser, Frank O.—Desert Land—December 16, 1914—Affirmed.
- Kallevig *v.* Proctor—Homestead—October 23, 1914—Affirmed.

- Kamm, Carl F.—Desert Land—February 20, 1914—Remanded.
- Kamp *v.* Turner—Homestead—October 26, 1914—Affirmed.
- Kanaga, A. R., M. D. Jenks *et al.*—Mineral—December 26, 1914—Affirmed.
- Kane *v.* Boerman—Homestead—August 14, 1914—Affirmed.
- Kane *v.* Boerman—Homestead—October 17, 1914—Motion Denied.
- Kangas *v.* Northern Pacific Ry. Co.—Homestead—May 27, 1914—Affirmed.
- Kardinal *v.* Northern Pacific Ry. Co.—Homestead—June 2, 1914—Affirmed.
- Karr *v.* Sorenson—Homestead—February 25, 1915—Affirmed.
- Karshner, Hubert L.—Homestead—March 18, 1914—Petition Denied.
- Karstena, Amanda K.—Desert Land—February 4, 1915—Affirmed.
- Kaschube, John C.—Homestead—October 12, 1914—Affirmed.
- Kassel, Olga B., formerly Wolfe—Homestead—February 28, 1914—Affirmed.
- Katalla Co., assignee of Speakman—Soldiers' Additional—February 12, 1914—Reversed.
- Katalla Co., assignee of Wilson—Soldiers' Additional—June 23, 1914—Remanded.
- Kay, James M.—Homestead—December 16, 1914—Affirmed.
- Keane, James V.—Homestead—February 10, 1914—Remanded.
- Kearney *v.* Gillespie—Homestead—September 30, 1914—Affirmed.
- Kearney *v.* Gillespie—Mineral—January 19, 1915—Motion Denied.
- Kearns, George E.—Mineral—May 9, 1914—Modified.
- Keel, Jesse R.—Desert Land—May 1, 1914—Reversed.
- Keener *v.* Kehoe—Desert Land—January 19, 1915—Affirmed.
- Kegle, Fred A.—Homestead—February 21, 1914—Reversed.
- Keller *v.* Vaughn—Homestead—May 29, 1914—Affirmed.
- Keller *v.* Vaughn—Homestead—November 24, 1914—Motion Remanded.
- Kelley, Charles—Homestead—February 4, 1915—Affirmed.
- Kelley, George—Homestead—August 13, 1914—Reversed.
- Kelley, Martin—Homestead—December 26, 1914—Dismissed.
- Kellison *v.* Pridham—Desert Land—August 18, 1914—Affirmed.
- Kellogg, Henry H.—Soldiers' Additional—October 20, 1914—Affirmed.
- Kelly, Floyd J.—Desert Land—November 30, 1914—Affirmed.
- Kelly, Payson M.—Homestead—March 12, 1914—Affirmed.
- Kelly, Samuel—Soldiers' Additional—December 16, 1914—Reversed.
- Kelly *v.* Monahan—Homestead—February 25, 1915—Affirmed.
- Kemnes, William, Samuel D. Simpson, trans.—Homestead—March 19, 1914—Affirmed.
- Kemp, Oscar W.—Homestead—February 2, 1914—Reversed.
- Kemp *v.* Stripling—Homestead—October 31, 1914—Affirmed.
- Kendall, Eugene L.—Desert Land—September 25, 1914—Affirmed.
- Kendall, Eugene L.—Desert Land—December 29, 1914—Motion Denied.
- Kendall *v.* Bovee—Homestead—August 31, 1914—Affirmed.
- Kendall *v.* Bunnell—Desert Land—January 28, 1914—Petition Denied.
- Kennedy *v.* Southern Pacific R. R. Co.—Homestead—December 30, 1914—Affirmed.
- Kenney, Charles D.—Desert Land—September 21, 1914—Affirmed.
- Kenning, Henry W.—Desert Land—February 26, 1915—Affirmed.
- Kenny, Kathryn—Homestead—September 26, 1914—Affirmed.
- Kenyon, William D.—Desert Land—November 18, 1914—Reversed.
- Kerbs, Gottfried—Homestead—March 27, 1914—Vacated.
- Kern, Charles W.—Desert Land—December 26, 1914—Motion Denied.
- Kern, Charles W.—Desert Land—September 26, 1914—Affirmed.
- Kern *v.* Drieseel—Mineral Entry—February 19, 1914—Affirmed.

- Kerr, David H.—Homestead—May 1, 1914—Motion Denied.
- Ketcham, Burke—Timber and Stone—January 29, 1915—Affirmed.
- Ketcham, Willis E.—Timber and Stone—December 16, 1914—Affirmed.
- Ketcham *v.* Freeburn—Homestead—August 21, 1914—Affirmed.
- Keuhne, Andrew—Homestead—June 2, 1914—Affirmed.
- Kief, Frank—Desert Land—February 16, 1915—Remanded.
- Kieper, Anna—Desert Land—July 30, 1914—Affirmed.
- Kiest, Margaret L.—Desert Land—February 4, 1915—Affirmed.
- Kile, Walter G.—Homestead—November 18, 1914—Affirmed.
- Kilkenny, Orin C.—Coal—October 17, 1914—Affirmed.
- Killingstad, Andrew — Repayment — December 3, 1914—Affirmed.
- Kimberling, Minnie — Homestead — April 29, 1914—Reversed.
- Kimmel, Herman A. — Homestead — September 26, 1914—Affirmed.
- Kimmel, Roy H.—Homestead—September 26, 1914—Affirmed.
- King, Andrew J.—Homestead—August 19, 1914—Affirmed.
- King, Andrew J.—Homestead—October 12, 1914—Motion Sustained.
- King, Edna O.—Homestead—May 29, 1914—Reversed.
- King, John—Desert Land—June 30, 1914—Reversed.
- King, Martha, *et al.*—Desert Land—October 26, 1914—Affirmed.
- King *v.* Northern Pacific Ry. Co.—Homestead—August 31, 1914—Affirmed.
- King *v.* Whitlam—Homestead—March 21, 1914—Affirmed.
- Kingsley *v.* Northern Pacific Ry. Co.—Homestead—May 27, 1914—Affirmed.
- Kinnaman *v.* Young—Homestead—October 5, 1914—Affirmed.
- Kinney, Josie L.—Homestead—July 9, 1914—Affirmed.
- Kinney, Peleg G.—Homestead—August 28, 1914—Affirmed.
- Kinney, Peleg G.—Homestead—December 16, 1914—Motion Denied.
- Kinsey, Delbert R.—Homestead—August 25, 1914—Affirmed.
- Kinsley, Caroline M.—Timber and Stone—August 28, 1914—Affirmed.
- Kinsley, Caroline M.—Timber and Stone—November 4, 1914—Motion Denied.
- Kinyon *v.* Northern Pacific Ry. Co.—Homestead—November 19, 1914—Affirmed.
- Kinzie, Fred S.—Homestead—May 29, 1914—Affirmed.
- Kirby, Sarah A.—Desert Land—January 19, 1915—Affirmed.
- Kirk, Elijah—Homestead—April 8, 1914—Remanded.
- Kirk, John P., The Northwest Timber Co., trans.—Timber and Stone—December 16, 1914—Petition Denied.
- Kirkpatrick, Albert F.—Timber and Stone—October 26, 1914—Modified.
- Kirkpatrick, Edward O. — Desert Land—February 25, 1915—Affirmed.
- Kirkwood, Mary C.—Timber and Stone—February 20, 1914—Affirmed.
- Kirkwood, Mary C.—Timber and Stone—May 29, 1914—Motion Allowed.
- Kirwan, Gerald M.—Desert Land—September 17, 1914—Affirmed.
- Kisling, William J.—Homestead—July 29, 1914—Affirmed.
- Kissinger, Fred F.—Homestead—November 18, 1914—Affirmed.
- Kissinger, Fred F.—Homestead—January 28, 1915—Motion Denied.
- Kissling, Peter—Homestead—June 12, 1914—Vacated.
- Kitchens, Isaac S.—Homestead—November 21, 1914—Affirmed.
- Kizer, William F.—Desert Land—September 25, 1914—Affirmed.
- Klarer, C. Fred.—Desert Land—March 18, 1914—Remanded.
- Kleiman *v.* Banks—Homestead—February 28, 1914—Affirmed.
- Klein, Birmingham — Timber and Stone—February 21, 1914—Affirmed.
- Klein, George—Timber and Stone—February 21, 1914—Affirmed.

- Klein, Henry—Timber and Stone—February 21, 1914—Affirmed.
- Klein, Mary, now Smith—Homestead—October 20, 1914—Affirmed.
- Kleinschmidt, Henry S.—Soldiers' Additional—May 4, 1914—Affirmed.
- Kleinschmidt, Henry S.—Soldiers' Additional—December 16, 1914—Motion Denied.
- Klickitat White Pine Co.—Survey—October 30, 1914—Affirmed.
- Klingman, Bert R.—Homestead—February 19, 1914—Reversed.
- Klinker v. Northern Pacific Ry. Co.—Homestead—April 29, 1914—Petition Denied.
- Knapp and Deegan—Cash Entry—February 21, 1914—Reversed.
- Knapp, Charles E.—Homestead—February 26, 1915—Affirmed.
- Knapp v. Allen—Homestead—February 6, 1915—Affirmed.
- Knapp v. Walter—Homestead—February 25, 1915—Affirmed.
- Knickerbocker, Frank L.—Homestead—September 26, 1914—Vacated.
- Knight, Enoch W.—Homestead—June 2, 1914—Reversed.
- Knodel, Justina—Homestead—September 14, 1914—Affirmed.
- Knorzer v. Mays—Desert Land—July 30, 1914—Affirmed.
- Knudson v. Amon—Soldiers' Additional—January 29, 1915—Affirmed.
- Knutson, Oscar—Homestead—June 13, 1914—Reversed.
- Koba v. Wald—Homestead—July 16, 1914—Affirmed.
- Koch, George F.—Homestead—January 2, 1914—Reversed.
- Koch, Gustav A., assignee—Soldiers' Additional—February 16, 1915—Reversed.
- Koch v. Baum—Homestead—March 31, 1914—Affirmed.
- Koeninger, Robert—Mineral—August 31, 1914—Affirmed.
- Koke, Charles E.—Homestead—December 16, 1914—Affirmed.
- Koons v. Goodwin—Homestead—November 7, 1914—Affirmed.
- Kortsan, Frank A.—Homestead—October 26, 1914—Affirmed.
- Koshirak, Frank—Homestead—October 20, 1914—Affirmed.
- Kosydar v. Faude—Homestead—November 18, 1914—Affirmed.
- Kosydar v. Faude—Homestead—January 29, 1915—Motion Denied.
- Kouba v. Thomas—Homestead—January 19, 1915—Affirmed.
- Kraft, Henry—Homestead—August 22, 1914—Affirmed.
- Kraft v. Caldwell—Homestead—May 7, 1914—Affirmed.
- Kraft v. Caldwell—Homestead—July 28, 1914—Motion Denied.
- Kramer v. Hunter—Homestead—September 14, 1914—Affirmed.
- Kramer v. Hunter—Homestead—January 26, 1915—Motion Denied.
- Kreidler, John H.—Homestead—October 12, 1914—Reversed.
- Kribs, F. A., C. A. Smith Timber Co., trans.—Selection—March 11, 1914—Affirmed.
- Kribs, Frederick A.—Selection—May 25, 1914—Dismissed.
- Kronholm v. Northern Pacific Ry. Co.—Homestead—August 14, 1914—Affirmed.
- Kropp, August, assignee of Duggan and Lamb—Soldiers' Additional—August 26, 1914—Affirmed.
- Kruse v. Hyde & Co.—Homestead—February 26, 1915—Affirmed.
- Kuepfer, Gottfried, H. P. Hulett, trans.—March 19, 1914—Affirmed.
- Kuepper, Joseph—Homestead—September 26, 1914—Vacated.
- Kuhn v. Harris—Homestead—January 12, 1914—Remanded.
- Kuns, Lester—Homestead—April 10, 1914—Affirmed.
- Kuns, Lloyd S.—Homestead—April 10, 1914—Affirmed.
- Kuns, Olive O.—Homestead—April 22, 1914—Affirmed.
- Kuñs, William A.—Desert Land—April 22, 1914—Affirmed.
- Kuzinski v. Eaton—Homestead—August 25, 1914—Affirmed.

- Laag, Henry J.—Homestead—March 24, 1914—Reversed.
- Labadie, Josie S.—Homestead—April 7, 1914—Remanded.
- La Chat, Harvey W.—Homestead—February 19, 1914—Reversed.
- La Chat, Zelda B.—Desert Land—May 1, 1914—Reversed.
- La Crosse, Edward—Homestead—October 17, 1914—Reversed.
- La Due *v.* Northern Pacific Ry. Co.—Homestead—June 6, 1914—Affirmed.
- Lahares *v.* Northern Pacific Ry. Co.—Homestead—August 26, 1914—Affirmed.
- Lahr *v.* Wyatt—Homestead—April 22, 1914—Affirmed.
- Lahti *v.* Northern Pacific Ry. Co.—Homestead—August 26, 1914—Affirmed.
- Laine *v.* Northern Pacific Ry. Co.—Homestead—August 26, 1914—Affirmed.
- Laird, George M.—Isolated Tract—February 10, 1914—Remanded.
- Lake, Fred W., grantee under State of California—Selection—December 16, 1914—Affirmed.
- Laker, Benjamin H.—Homestead—March 30, 1914—Remanded.
- Lamar *v.* Cawfield—Homestead—November 24, 1914—Reversed.
- Lamb, Arlendo M. C.—Homestead—January 7, 1914—Remanded.
- Lamb, Arthur, Heirs of—Homestead—August 14, 1914—Affirmed.
- Lamb *v.* Osterhout—Homestead—August 19, 1914—Affirmed.
- Lamberson, Walter R.—Homestead—August 19, 1914—Modified.
- Lambert and Detwiler *v.* Thompson—Homestead—January 20, 1914—Petition Denied.
- Lambert and Detwiler *v.* Thompson—Homestead—February 21, 1914—Petition Denied.
- Lambert, John—Homestead—March 14, 1914—Reversed.
- Lambert, M. R.—Homestead—October 7, 1914—Petition sustained.
- Lambeth *v.* Johnston—Homestead—August 28, 1914—Affirmed.
- Lamont *v.* McShane—Homestead—March 28, 1914—Affirmed.
- La Motte, Clara A.—Homestead—March 10, 1914—Reversed.
- La Motte, Deed A.—Homestead—March 10, 1914—Reversed.
- Lampman, Frank—Homestead—July 9, 1914—Affirmed.
- Landers *v.* Northern Pacific Ry. Co.—Homestead—August 3, 1914—Affirmed.
- Landers *v.* Northern Pacific Ry. Co.—Homestead—September 26, 1914—Motion Denied.
- Lane, Elizabeth—Homestead—August 12, 1914—Affirmed.
- Lane, Freda A.—Repayment—November 4, 1914—Petition Denied.
- Lang, Janie L.—Timber and Stone—March 18, 1914—Reversed.
- Lange, William, Jr.—Repayment—December 31, 1914—Affirmed.
- Lange *v.* Northern Pacific Ry. Co.—Selection—August 12, 1914—Affirmed.
- Langstaff, William H.—Mineral—July 30, 1914—Modified.
- Lanigan *v.* Northern Pacific Ry. Co.—Homestead—May 27, 1914—Affirmed.
- Lanigan *v.* Northern Pacific Ry. Co.—Homestead—August 12, 1914—Motion Denied.
- Lankford, John H.—Homestead—January 7, 1914—Affirmed.
- Lapham, J. A.—Homestead—August 14, 1914—Affirmed.
- Laporte, George M.—Homestead—October 31, 1914—Affirmed.
- Lapp *v.* Northern Pacific Ry. Co.—Homestead—June 23, 1914—Affirmed.
- Laramore and Sewell *v.* Medlock—Homestead—March 12, 1914—Affirmed.
- Largis *v.* Johnson—Homestead—January 2, 1914—Affirmed.
- Larrance *v.* Bernard—Desert Land—August 7, 1914—Reversed.
- Larrance *v.* Bernard, Heirs of—Desert Land—October 17, 1914—Motion Denied.
- Larson, Carl Julius—Homestead—July 24, 1914—Modified.
- Larson, Louis—Homestead—May 6, 1914—Remanded.

- Latham, Arch, assignee of Aaron—Soldiers' Additional—August 31, 1914.
- Lattion *v.* Hatfield—Desert Land—August 26, 1914—Affirmed.
- Laughlin, Alvin T.—Homestead—January 29, 1915—Affirmed.
- Laughlin, Ebert B.—Homestead—September 26, 1914—Vacated.
- Laughlin, Melsie—Homestead—April 10, 1914—Affirmed.
- Lauters *v.* Ness—Homestead—November 18, 1914—Dismissed.
- Lautz, Adolph W., assignee of Hale—Soldiers' Additional—September 8, 1914—Affirmed.
- La Vaque *v.* Paulo—Homestead—October 31, 1914—Affirmed.
- Lave, George W.—Repayment—November 4, 1914—Petition Denied.
- Lavelle, Timothy C.—Homestead—May 28, 1914—Affirmed.
- Lavery *v.* Griffin—Desert Land—January 28, 1914—Remanded.
- La Viers, Abraham L.—Homestead—September 17, 1914—Vacated.
- Law *v.* Davis—Homestead—March 12, 1914—Affirmed.
- Law *v.* Winchell, assignee of Law—Homestead—March 19, 1914—Reversed.
- Law *v.* Winchell, assignee of Law—Desert Land—June 2, 1914—Motion Denied.
- Lawler *v.* Eva—Homestead—August 25, 1914—Petition Denied.
- Lawler *v.* Eva—Desert Land—December 26, 1914—Petition Denied.
- Lawrence, Albert E.—Homestead—February 28, 1914—Affirmed.
- Lawson, David P.—Repayment—November 18, 1914—Affirmed.
- Leaden *v.* Santa Fe Pacific Ry. Co. (4 cases)—Selection—April 30, 1914—Modified.
- Leaden *v.* Santa Fe Pacific Ry. Co. (3 cases)—Selection—April 30, 1914—Reversed.
- Leaks, John—Homestead—November 18, 1914—Affirmed.
- Lear *v.* Hennessee—Homestead—December 16, 1914—Affirmed.
- Leard, Willard H.—Homestead—November 18, 1914—Affirmed.
- Leard, Willard H.—Homestead—January 26, 1915—Motion Denied.
- Leasey, Joseph F.—Homestead—September 21, 1914—Affirmed.
- Leavitt, Samuel, *et al.*—Timber and Stone—March 25, 1914—Reversed.
- Le Cocq, Charles L.—Homestead—September 14, 1914—Reversed.
- Ledgerwood, James M.—Squatter Location—March 14, 1914—Affirmed.
- Ledgerwood, Thomas O.—Squatter Location—March 14, 1914—Affirmed.
- Ledgerwood, William W.—Squatter Location—March 14, 1914—Affirmed.
- Lée, Herman, *et al.*—Homestead—September 30, 1914—Affirmed.
- Lee, James K.—Desert Land—January 27, 1915—Remanded.
- Lee, Shelton W.—Homestead—November 24, 1914—Modified.
- Lee *v.* Northern Pacific Ry. Co.—Homestead—August 28, 1914—Affirmed.
- Lee *v.* Rider—Desert Land—August 15, 1914—Affirmed.
- Leetham *v.* Dennis—Homestead—December 5, 1914—Affirmed.
- Leezer, Mabel A., The Northwest Timber co., trans.—Timber and Stone—December 16, 1914—Petition Denied.
- Leggett, William T.—Desert Land—February 26, 1915—Affirmed.
- Lehfeldt, Emma—Desert Land—August 21, 1914—Affirmed.
- Lehfeldt, Herbert W.—Homestead—August 12, 1914—Affirmed.
- Lehman, Alexander B., assignee of Dashiell—Soldiers' Additional—July 24, 1914—Reversed.
- Leichtnam *v.* Denney—Homestead—July 30, 1914—Affirmed.
- Lemhi Irrigation and Orchard Co. Ltd. *v.* Burke—Mineral—September 19, 1914—Remanded.
- Lemke *v.* Southern Pacific Ry. Co.—Homestead—February 26, 1915—Affirmed.
- Lemmon, Lester C.—Timber and Stone—January 29, 1915—Affirmed.
- Lennox, *et al.*—Coal—January 12, 1915—Dismissed.
- Leonard, E. Almon—Homestead—February 28, 1914—Affirmed.

- Leslie, James E.—Homestead—February 27, 1915—Instructions.
- Leslie *v.* Northern Pacific Ry. Co.—Homestead—June 23, 1914—Affirmed.
- Lester, Joseph C.—Homestead—August 22, 1914—Affirmed.
- Lester, Joseph C.—Homestead—December 26, 1914—Motion denied.
- Leum *v.* Laney—Desert Land—December 16, 1914—Affirmed.
- Levang, Nels A.—Homestead—January 8, 1915—Affirmed.
- Lewellen, John T.—Homestead—August 28, 1914—Affirmed.
- Lewinson *v.* Kribs—Lieu Selection—February 10, 1914—Petition Denied.
- Lewis, Alfred—Homestead—January 2, 1914—Reversed.
- Lewis, Charles W.—Homestead—February 19, 1914—Reversed.
- Lewis, Joseph A.—Homestead—March 8, 1914—Remanded.
- Lewis, Joseph S.—Homestead—July 24, 1914—Reversed.
- Lewis, Robert J.—Homestead—February 27, 1914—Withdrawn.
- Lewis *v.* Baldrige—Homestead—September 8, 1914—Affirmed.
- Lewis *v.* O'Neill—Desert Land—February 16, 1915—Affirmed.
- Lewis *v.* Saltvik—Homestead—April 20, 1914—Petition Denied.
- Lickingteller *v.* Nelson—Homestead—May 29, 1914—Affirmed.
- Lickingteller *v.* Nelson—Homestead—September 30, 1914—Petition Denied.
- Ligday *v.* Hurdman—Homestead—June 23, 1914—Affirmed.
- Liggett *v.* Campbell—Homestead—November 24, 1914—Affirmed.
- Lightbourn, James E.—Repayment—October 31, 1914—Affirmed.
- Lightfoot, Charles C.—Coal Application—June 5, 1914—Reversed.
- Liles *v.* Oregon & California R. R. Co.—Homestead—August 14, 1914—Affirmed.
- Lincoln Mining, Milling & Tunnel Co.—Mineral—September 14, 1914—Affirmed.
- Lind, Ole—Homestead—January 29, 1915—Affirmed.
- Lindemann, Hany—Homestead—September 26, 1914—Remanded.
- Lindgren *v.* Gossman—Homestead—August 25, 1914—Affirmed.
- Lindsay and Kimball—Mineral—August 22, 1914—Affirmed.
- Lindsay, Elmer, The Northwest Timber Co., trans.—Timber and Stone—December 16, 1914—Petition Denied.
- Lindsey *et al.* *v.* Beebe—Desert Land—September 5, 1914—Affirmed.
- Lindsey *v.* Hinkle—Homestead—August 26, 1914—Affirmed.
- Lineweaver *v.* Hardin—Homestead—August 22, 1914—Affirmed.
- Linger, George W., assignee of Dryden—Soldiers' Additional—July 7, 1914—Affirmed.
- Linniman, Alphonse D., assignee of Hoover—Soldiers' Additional—July 28, 1914—Vacated.
- Linville, Eva B.—Homestead—October 19, 1914—Affirmed.
- Little, Birdie Ann—Homestead—September 19, 1914—Remanded.
- Little, Robert L.—Homestead—July 9, 1914—Reversed.
- Little *v.* McAnelly—Desert Land—November 30, 1914—Modified.
- Lloyd, Edith A.—Homestead—August 21, 1914—Affirmed.
- Lloyd, John M.—Homestead—August 25, 1914—Affirmed.
- Lloyd, William—Homestead—February 28, 1914—Motion Sustained.
- Locher, Josephine M.—Homestead—January 29, 1915—Affirmed.
- Locke, Edward M.—Repayment—September 26, 1914—Affirmed.
- Lockerd, Lula O.—Homestead—April 30, 1914—Affirmed.
- Lockport Central Sugar Refining Co. (Ltd.) *v.* Joseph E. Barker—Homestead—March 12, 1914—Affirmed.
- Loftus, Delia, *et al.*—Claim against Register and Receiver—January 31, 1914—Affirmed.
- Loftus *v.* Varner—Homestead—July 2, 1914—Affirmed.
- Lomasney *v.* Bayliss—Desert Land—August 25, 1914—Petition Denied.
- Lomasney *v.* Bayliss—Desert Land—December 26, 1914—Petition Denied.

- London, Wm. R., Graham Lumber Co., trans.—Timber and Stone—February 27, 1915—Affirmed.
- Long, Berry M., assignee of Hush—Soldiers' Additional—December 5, 1914—Affirmed.
- Long, Charles H.—Repayment—November 18, 1914—Affirmed.
- Long, Ellis C.—Homestead—August 26, 1914—Modified.
- Long v. Ford—Desert Land—October 1, 1914—Affirmed.
- Long v. Forgy—Homestead—September 21, 1914—Affirmed.
- Long v. Nimz—Homestead—November 7, 1914—Affirmed.
- Long v. Southern Pacific Ry. Co.—Desert Land—January 29, 1915—Affirmed.
- Long v. Southern Pacific Ry. Co.—Homestead—January 29, 1915—Affirmed.
- Long v. Tatum—Homestead—July 2, 1914—Affirmed.
- Longmire, William F.—Coal Land—September 5, 1914—Affirmed.
- Longshore, Grace G.—Repayment—October 30, 1914—Affirmed.
- Loomis v. Larson—Soldiers' Additional—November 21, 1914—Reversed.
- Loor, Joseph H.—Desert Land—October 17, 1914—Affirmed.
- Lord, Jane M.—Mineral—August 27, 1914—Reversed.
- Lords, Nephi D.—Homestead—February 28, 1914—Reversed.
- Lorts v. Ocjorgdes, now Jay—Homestead—October 1, 1914—Affirmed.
- Los Angeles, City of—Right of Way—January 25, 1915—Modified.
- Los Angeles, City of—Right of Way—February 6, 1915—Affirmed.
- Lott, Daisy A.—Desert Land—September 26, 1914—Affirmed.
- Lott, Daisy A.—Desert Land—December 29, 1914—Motion Denied.
- Lott, Minnie M.—Desert Land—June 29, 1914—Affirmed.
- Lott, Nannie E.—Desert Land—June 29, 1914—Affirmed.
- Louderbough, Olive—Homestead—March 19, 1914—Affirmed.
- Louderbough, William A.—Homestead—October 17, 1914—Remanded.
- Loughlin, John—Homestead—March 24, 1914—Motion Denied.
- Louisiana, State of—Selection—August 15, 1914—Affirmed.
- Lounsbury, Robert A.—Homestead—October 20, 1914—Affirmed.
- Lovelace v. New Mexico—Homestead—August 31, 1914—Affirmed.
- Lowary v. Hobbs—Homestead—June 30, 1914—Affirmed.
- Lowary v. Hobbs—Homestead—September 17, 1914—Motion Denied.
- Lowe, James K.—Homestead—July 17, 1914—Modified.
- Loy v. Mooney—Homestead—July 21, 1914—Remanded.
- Loyd v. Harden—Homestead—September 26, 1914—Affirmed.
- Loyer, William J.—Homestead—August 6, 1914—Reversed.
- Lucart, Robert W.—Homestead—April 27, 1914—Reversed.
- Lucas v. Franks—Homestead—January 28, 1914—Petition Denied.
- Luce, Edward E.—Homestead—January 27, 1915—Affirmed.
- Luchla v. Newton—Homestead—February 26, 1915—Affirmed.
- Lucier, Margaret, Dick Lumber Co., trans.—Timber and Stone—October 14, 1914—Affirmed.
- Lucier, Peter, Dick Lumber Co., trans.—Timber and Stone—October 14, 1914—Affirmed.
- Lukenbill v. Wardell—Homestead—October 1, 1914—Affirmed.
- Lukins, Charles F.—Homestead—January 14, 1915—Remanded.
- Lundgren, Matilda, D. R. Whitaker, trans.—Homestead—March 19, 1914—Affirmed.
- Lundquist, Lyn—Homestead—January 2, 1914—Affirmed.
- Lundquist, Lyn—Homestead—March 12, 1914—Motion Denied.
- Lundy, Willetts E.—Homestead—August 28, 1914—Affirmed.
- Lush, Glee W.—Homestead—February 28, 1914—Reversed.
- Lutkens, Charles—Homestead—April 22, 1914—Petition Denied.

- Luzier, Annie B.—Homestead—January 25, 1915—Remanded.
- Lyell, Bert H.—Homestead—January 31, 1914—Affirmed.
- Lyell, Bert H.—Homestead—March 26, 1914—Motion Denied.
- Lynch, Alexander H., assignee of Kempher—Soldiers' Additional—July 13, 1914—Reversed.
- Lyng, Halvor L.—Soldiers' Additional—March 24, 1914—Affirmed.
- Lyon, Lucy K.—Repayment—October 31, 1914—Affirmed.
- Lyons, Patrick—Homestead—March 18, 1914—Affirmed.
- Lyons, Patrick—Homestead—July 16, 1914—Motion Denied.
- Macdonald, R. J., assignee of Hoey—Soldiers' Additional—February 2, 1915—Vacated.
- Madden v. Madden—Homestead—August 26, 1914—Affirmed.
- Magaw, John O.—Desert Land—June 23, 1914—Affirmed.
- Maginnis, Charles H.—Repayment—April 24, 1914—Affirmed.
- Maginnis, Charles H.—Repayment—July 2, 1914—Motion Denied.
- Maginnis, Charles P., assignee of Burke—Sioux half-breed Scrip—December 23, 1914—Reversed.
- Magness, Malcolm R.—Homestead—January 9, 1914—Affirmed.
- Mahan, William S. O.—Soldiers' Additional—July 9, 1914—Affirmed.
- Mahon, Isbin S.—Homestead—January 29, 1915—Affirmed.
- Maier, Carl—Desert Land—November 30, 1914—Affirmed.
- Maier, George F., assignee of Gillette—Soldiers' Additional—August 27, 1914—Affirmed.
- Maier, George F., assignee of Gillette—Soldiers' Additional—October 12, 1914—Remanded.
- Main, Cora C., now Harrington—Homestead—September 30, 1914—Reversed.
- Main v. Bridenstine—Desert Land—January 28, 1914—Petition Denied.
- Majstrovich, Anna—Mineral—February 27, 1915—Reversed.
- Makin v. Northern Pacific Ry. Co.—Homestead—September 5, 1914—Affirmed.
- Makres v. Egan—Homestead—July 17, 1914—Affirmed.
- Maltz, Samuel—Desert Land—July 30, 1914—Petition Denied.
- Malvin, Joseph W.—Homestead—October 12, 1914—Affirmed.
- Manhattan Morning Glory Mining Co.—Mineral—October 14, 1914—Remanded.
- Manley, Kate—Homestead—September 5, 1914—Affirmed.
- Mann, Jacob G.—Homestead—June 13, 1914—Reversed.
- Manning v. Schilling—Desert Land—August 31, 1914—Affirmed.
- Mannon, Frank S.—Homestead—February 6, 1914—Reversed.
- Mannon, James M., Jr.—Homestead—February 6, 1914—Reversed.
- Manson & Manson—Repayment—October 31, 1914—Affirmed.
- Manson v. Ibach—Mineral—September 26, 1914—Remanded.
- Mansur, Charles M.—Homestead—August 31, 1914—Affirmed.
- Manuel, Josephine—Desert Land—August 25, 1914—Affirmed.
- Manville, Jennie F.—Homestead—December 29, 1914—Affirmed.
- Maratta, Charles—Homestead—September 26, 1914—Affirmed.
- Marchbanks, Thomas A.—Homestead—August 31, 1914—Reversed.
- Marden v. Thompson—Homestead—February 26, 1915—Affirmed.
- Mardis v. Green—Homestead—September 14, 1914—Affirmed.
- Mares, Onescimo—Homestead—August 18, 1914—Reversed.
- Mariette, Silas A.—Right of Way—February 21, 1914—Motion Allowed.
- Markham v. Hawkins—Homestead—December 16, 1914—Affirmed.
- Markley, Snell S.—Homestead—October 17, 1914—Affirmed.
- Marks v. Southern Pacific Ry. Co.—Homestead—January 29, 1915—Affirmed.

- Marlay, Paul H.—Desert Land—August 28, 1914—Affirmed.
- Marling, John B.—Homestead—September 17, 1914—Vacated.
- Marlow, John E.—Desert Land—June 16, 1914—Affirmed.
- Marlow, Thomas A., *et al.*—Mineral—January 27, 1915—Affirmed.
- Marquiss, Roy B.—Desert Land—October 31, 1914—Vacated.
- Marrs, James A.—Homestead—December 23, 1914—Modified.
- Marsh, Alfred J., J. S. Lyons, trans.—Timber and Stone—September 5, 1914—Affirmed.
- Marsh, Alfred J., J. S. Lyons, trans.—Timber and Stone—December 29, 1914—Motion Denied.
- Marsh *v.* Rambousek — Homestead — August 25, 1914—Affirmed.
- Marshall, Mary Ann, D. R. Whitaker, trans. — Homestead — March 19, 1914—Affirmed.
- Marshall *v.* Northern Pacific Ry. Co.—Homestead—May 27, 1914—Affirmed.
- Marshall *v.* New Mexico — Homestead—August 31, 1914—Affirmed.
- Marshall *v.* Thornton—Homestead—January 19, 1915—Affirmed.
- Marston, Roy H.—Homestead—February 21, 1914—Remanded.
- Marteney, A. S.—Homestead—January 14, 1915—Affirmed.
- Martens, Henry J., assignee of Eiden — Desert Land — October 20, 1914—Affirmed.
- Marti *v.* Jones—Homestead—February 26, 1915—Affirmed.
- Martin, Chas W.—Homestead—September 26, 1914—Vacated.
- Martin, David S.—Homestead—December 26, 1914—Reversed.
- Martin, Edgar L.—Homestead—October 19, 1914—Modified.
- Martin, Elma—Homestead — October 12, 1914—Remanded.
- Martin, George W.—Desert Land—September 14, 1914—Affirmed.
- Martin, Ida — Homestead — February 21, 1914—Reversed.
- Martin, James B.—Homestead—May 12, 1914—Affirmed.
- Martin, John J. W.—Homestead—November 30, 1914—Reversed.
- Martin, Joseph—Homestead—June 13, 1914—Affirmed.
- Martin, Joseph M.—Repayment—October 12, 1914—Affirmed.
- Martin, William — Homestead — September 21, 1914—Reversed.
- Martin *v.* Buhler—Homestead—February 28, 1914—Affirmed.
- Martinez, Bernard, Benjamin F. Springer, trans.—Homestead — September 17, 1914—Reversed.
- Martinez, D. R.—Homestead—August 15, 1914—Modified.
- Martinez, Elias—Homestead—February 17, 1915—Affirmed.
- Marx, Elizabeth—Homestead — January 31, 1914—Motion Allowed.
- Maryland Consolidated Coal Co.—Coal Land—May 28, 1914—Modified.
- Maryland Consolidated Coal Co.—Coal Land—November 7, 1914—Affirmed.
- Mason, David F.—Desert Land—April 13, 1914—Remanded.
- Mason, John H., assignee of Matlock—Soldiers' Additional—September 17, 1914—Remanded.
- Mason, Mitchell, D. R. Whitaker, trans.—Homestead—March 19, 1914—Affirmed.
- Mason *v.* Farrell—Desert Land—August 21, 1914—Affirmed.
- Massey, Sam—Homestead—November 18, 1914—Affirmed.
- Massey, W. T.—Reservoir—February 26, 1915—Affirmed.
- Mast, Clyde J.—Homestead—October 12, 1914—Affirmed.
- Mastin, Thomas J.—Reduction of Area—November 4, 1914—Modified.
- Matchinski, Fred—Desert Land—November 30, 1914—Affirmed.
- Matchinski, Gustav—Desert Land—September 26, 1914—Affirmed.
- Mather, Oscar L., assignee of Troutman—Soldiers' Additional—June 2, 1914—Remanded.
- Mather *v.* Northern Pacific Ry. Co.—Soldiers' Additional—May 27, 1914—Affirmed.
- Matheson, Robert L.—Homestead—November 7, 1914—Affirmed.

- Mathews, John William—Homestead—August 31, 1914—Affirmed.
- Mathews, Joseph—Coal Entry—July 7, 1914—Reversed.
- Mathews, Robert, John B. Kendrick, trans.—Homestead—March 19, 1914—Affirmed.
- Mathews, William J., H. P. Hulett, trans.—Homestead—March 19, 1914—Affirmed.
- Mathis *v.* Cook—Homestead—November 4, 1914—Affirmed.
- Matlock, Hiram—Homestead—April 1, 1914—Reversed.
- Matt, Katrina, *et al.*—Mineral—May 29, 1914—Reversed.
- Matthews, Miles N.—Homestead—April 1, 1914—Affirmed.
- Matthews, Orville B.—Homestead—May 29, 1914—Remanded.
- Mauk, James L.—Homestead—January 25, 1915—Affirmed.
- Mauldin *v.* Sisk—Homestead—November 30, 1914—Affirmed.
- Maurer, Otto—Soldiers' Additional—October 24, 1914—Reversed.
- Mauss, Henry—Timber and Stone—October 7, 1914—Modified.
- Maxson, Herbert B.—Survey—February 16, 1914—Petition Denied.
- Maxson, Herbert B.—Survey—January 8, 1915—Motion Denied.
- May, Ernest R., assignee of Hoyt—Soldiers' Additional—July 29, 1914—Affirmed.
- Mayberry, Amy Lee—Homestead—March 18, 1914—Remanded.
- Mayberry, John Augusta—Homestead—March 18, 1914—Remanded.
- Mayer, Richard H.—Homestead—September 26, 1914—Remanded.
- Mayes *v.* Coates—Homestead—January 28, 1914—Affirmed.
- Mayes *v.* Coates—Homestead—March 12, 1914—Motion Denied.
- Maynard, Edith L.—Homestead—May 26, 1914—Affirmed.
- Maynard, Edith L.—Homestead—September 26, 1914—Motion Denied.
- Maynard, Irving L.—Homestead—May 12, 1914—Affirmed.
- Maynard, Irving L.—Homestead—August 14, 1914—Motion Dismissed.
- McAllister, Victor C.—Homestead—August 31, 1914—Affirmed.
- McAllister *v.* Clarke—Selection—August 31, 1914—Affirmed.
- McAllister *v.* Clarke—Selection—October 29, 1914—Motion Denied.
- McAlmond, Maury H.—Desert Land—October 3, 1914—Affirmed.
- McAlmond, Maury H.—Desert Land—December 16, 1914—Motion Denied.
- McAneary, James B.—Homestead—February 14, 1914—Reversed.
- McAnnally, Burrows W.—Homestead—August 26, 1914—Affirmed.
- McArthur *v.* Johnson—Homestead—January 28, 1915—Affirmed.
- McAusland, Thomas—Homestead—August 12, 1914—Reversed.
- McBride, Clarendon C.—Homestead—July 7, 1914—Reversed.
- McCahon, Nellie J.—Homestead—March 31, 1914—Petition Granted.
- McCall, Erna—Homestead—April 22, 1914—Affirmed.
- McCall, Robert L.—Homestead—April 22, 1914—Affirmed.
- McCall, Thomas F., sr.—Homestead—August 18, 1914—Affirmed.
- McCanna, John W.—Homestead—January 2, 1914—Reversed.
- McCartney, John—Desert Land—November 27, 1914—Affirmed.
- McCarty, David H.—Homestead—December 26, 1914—Affirmed.
- McCarty, William J., H. P. Hulett, trans.—Homestead—March 19, 1914—Affirmed.
- McCarty *v.* Johnson—Homestead—May 7, 1914—Affirmed.
- McClain, Marcellus A.—Repayment—October 31, 1914—Affirmed.
- McClelland, Joy B.—Homestead—October 19, 1914—Remanded.
- McCluskey, David R.—Homestead—February 16, 1915—Reversed.
- McConagill, Anna B.—Homestead—March 31, 1914—Reversed.
- McCormick, Archie, *et al.*—Mineral—May 9, 1914—Modified.

- McCormick, John—Reclamation Project—February 19, 1914—Affirmed.
- McCormick, Lewis B.—Coal—October 29, 1914—Motion Granted.
- McCown, Henry C.—Homestead—September 26, 1914—Vacated.
- McCown, Laura W.—Desert Land—February 28, 1914—Reversed.
- McCoy, Edward W.—Homestead—May 26, 1914—Affirmed.
- McCoy, Herman M.—Homestead—April 22, 1914—Affirmed.
- McCoy, William E.—Homestead—October 31, 1914—Vacated.
- McCredie, Robert C.—Homestead—October 13, 1914—Reversed.
- McCubbin, George O.—Homestead—March 14, 1914—Affirmed.
- McCullough, Margaret—Homestead—September 26, 1914—Remanded.
- McCullough v. Heise—Desert Land—July 2, 1914—Affirmed.
- McCullough v. Heise—Desert Land—October 19, 1914—Motion Denied.
- McCully, Walter—Homestead—August 13, 1914—Affirmed.
- McCunniff, Alfred A.—Homestead—November 18, 1914—Affirmed.
- McDaniel, Charles S.—Homestead—June 12, 1914—Remanded.
- McDaniel, Eugene W.—Homestead—October 23, 1914—Reversed.
- McDermond, Cecil C.—Homestead—September 15, 1914—Modified.
- McDonald, Catherine—Desert Land—August 19, 1914—Affirmed.
- McDonald, Guy R.—Homestead—October 14, 1914—Affirmed.
- McDonald, Hayes, Dick Lumber Co., trans.—Timber and Stone—October 14, 1914—Affirmed.
- McDonald, James H.—Homestead—August 28, 1914—Affirmed.
- McDonald, John H.—Homestead—September 26, 1914—Affirmed.
- McDonald, John H.—Homestead—February 16, 1915—Motion Denied.
- McDonald, Norman A., Heirs of—Homestead—October 31, 1914—Reversed.
- McDonald v. Hunter—Desert Land—January 25, 1915—Affirmed.
- McDonald v. Northern Pacific Ry. Co.—Homestead—September 26, 1914—Petition Denied.
- McDonald v. Northern Pacific Ry. Co. *et al.*—Selection—October 30, 1914—Affirmed.
- McDonough v. Bishop—Desert Land—August 28, 1914—Affirmed.
- McDougall, John W.—Timber and Stone—August 28, 1914—Affirmed.
- McDougall, John W.—Timber and Stone—November 4, 1914—Motion Denied.
- McDowell, John E.—Homestead—April 22, 1914—Reversed.
- McElmeel v. Hanson—Homestead—November 18, 1914—Affirmed.
- McFadden, Alice E.—Desert Land—April 22, 1914—Affirmed.
- McFadden, Murdock A.—Desert Land—September 21, 1914—Affirmed.
- McFadden, Thomas—Desert Land—May 29, 1914—Affirmed.
- McFadden v. McHenry—Homestead—September 14, 1914—Modified.
- McFarland, John L.—Isolated Tract—February 25, 1915—Affirmed.
- McFarland v. Southern Pacific R. R. Co.—Desert Land—January 19, 1915—Affirmed.
- McGarry, Earnest—Homestead—April 30, 1914—Affirmed.
- McGinnis, Charles A.—Timber and Stone—July 22, 1914—Modified.
- McGinty, Mary C.—Homestead—February 28, 1914—Reversed.
- McGlothern, James E.—Homestead—October 27, 1914—Remanded.
- McGowans, James, Heir of—Homestead—September 26, 1914—Reversed.
- McGrath, Bernard—Homestead—June 27, 1914—Remanded.
- McGrath v. Sheehan—Homestead—August 14, 1914—Affirmed.
- McGregor, Helena H.—Homestead—January 29, 1915—Affirmed.
- McGrew, Irwin W.—Desert Land—October 3, 1914—Affirmed.
- McGuire, Scott—Homestead—January 2, 1914—Reversed.

- McGuire, William P.—Desert Land—May 15, 1914—Remanded.
- McInnis *v.* Northern Pacific Ry. Co.—Homestead—June 29, 1914—Affirmed.
- McIntosh *v.* Lamb—Homestead—August 15, 1914—Affirmed.
- McIntyre, Samuel, assignee of Miller—Soldiers' Additional—December 29, 1914—Affirmed.
- McKean, Margaret, Heirs of—Homestead—January 29, 1915—Affirmed.
- McKechnie *v.* Fry—Homestead—October 30, 1914—Affirmed.
- McKee, Aonia I.—Homestead—November 19, 1914—Affirmed.
- McKee, Samuel C.—Homestead—September 26, 1914—Remanded.
- McKenzie, Alexander, assignee of Godsmark—Soldiers' Additional—April 18, 1914—Petition Denied.
- McKenzie, Laura H.—Desert Land—March 12, 1914—Reversed.
- McKillip, James C.—Homestead—June 24, 1914—Reversed.
- McKim, Edward T., assignee of Lanterman—Desert Land—December 3, 1914—Petition Granted.
- McKimney, Cordelia J.—Homestead—August 27, 1914—Remanded.
- McLaren *v.* Fleischer—Homestead—October 12, 1914—Affirmed.
- McLeemore, Willie—Homestead—April 29, 1914—Affirmed.
- McLees *v.* Dowers—Desert Land—March 14, 1914—Affirmed.
- McLellan, Angus, H. P. Hulett, trans.—Homestead—March 19, 1914—Affirmed.
- McLure, Charles D.—Mineral—February 19, 1914—Affirmed.
- McManis *v.* Cheney—Desert Land—October 20, 1914—Reversed.
- McManus, Charles B.—Homestead—June 30, 1914—Petition Denied.
- McManus *v.* Smith—Homestead—February 19, 1914—Motion Denied.
- McMeans, Dewitt C.—Homestead—October 20, 1914—Affirmed.
- McMillan and Cutler—Homestead—March 19, 1914—Affirmed.
- McMillan, Lee A.—Homestead—March 19, 1914—Reversed.
- McMullen, Lewis—Homestead—August 28, 1914—Affirmed.
- McMullen *v.* Samuelson—Homestead—April 30, 1914—Affirmed.
- McNamara, Thomas C.—Homestead—February 16, 1915—Instructions.
- McNaughton *v.* Hamilton—Desert Land—December 29, 1914—Affirmed.
- McNeal, Faye A.—Navajo Lumber and Supply Co., trans.—Homestead—September 21, 1914—Affirmed.
- McNeal, John C.—Timber and Stone—October 12, 1914—Affirmed.
- McNealey, Claude—Homestead—October 3, 1914—Affirmed.
- McNeer, Arthur H.—Coal—December 16, 1914—Affirmed.
- McPhee *v.* St. Paul, Minneapolis and Manitoba Ry. Co.—Homestead—November 18, 1914—Motion Denied.
- McPherson, Charles P.—Desert Land—October 31, 1914—Remanded.
- McPherson, Clyde—Homestead—March 14, 1914—Reversed.
- McPherson, James D.—Homestead—December 5, 1914—Modified.
- McPhillamey, Jesse—Desert Land—June 18, 1914—Petition Granted.
- McRae, Josie M.—Desert Land—January 29, 1915—Affirmed.
- McReynolds, F. W., assignee of Anderson—Soldiers' Additional—February 18, 1914—Motion Remanded.
- McReynolds, F. W., assignee of Brennan—Soldiers' Additional—April 29, 1914—Petition Granted.
- McReynolds, F. W., assignee of Brennan—Soldiers' Additional—July 2, 1914—Petition Modified.
- McReynolds, F. W., assignee of Shannon—Soldiers' Additional—July 24, 1914—Affirmed.
- McSherry, Cornelius J.—Mineral—June 30, 1914—Affirmed.
- Meadows, Minerva A., The Northwest Timber Co., trans.—Timber and Stone—December 16, 1914—Petition Denied.
- Meakins *v.* Pritchard—Homestead—August 26, 1914—Affirmed.

- Meakins *v.* Pritchard—Homestead—October 26, 1914—Motion Denied.
- Means, Sam—Coal—December 16, 1914—Affirmed.
- Means, Thomas J.—Homestead—October 24, 1914—Affirmed.
- Means *v.* Elson—Homestead—January 12, 1914—Remanded.
- Medina, Adolfo, Heirs of, Plested, trans.—Homestead—August 27, 1914—Reversed.
- Medland, William—Homestead—February 5, 1914—Remanded.
- Meenaghan, William J.—Repayment—May 7, 1914—Affirmed.
- Meginnes, Cora E.—Homestead—February 26, 1915—Affirmed.
- Meginnes, Willard H.—Desert Land—June 30, 1914—Affirmed.
- Meginnes *v.* Southern Pacific Ry. Co.—Homestead—February 26, 1915—Affirmed.
- Mellott, George C.—Desert Land—February 26, 1915—Modified.
- Melvin, John, assignee of Clarke—Soldiers' Additional—July 24, 1914—Reversed.
- Mercer, Andrew D.—Homestead—February 21, 1914—Affirmed.
- Mercer, Andrew D.—Homestead—June 24, 1914—Motion Denied.
- Mercer, Andrew D.—Homestead—February 16, 1915—Petition Denied.
- Mercer, Elizabeth C.—Desert Land—September 26, 1914—Affirmed.
- Mercer, Walter—Soldiers' Additional—July 9, 1914—Affirmed.
- Mercer, Walter—Soldiers' Additional—August 13, 1914—Motion Denied.
- Mercer, Walter—Soldiers' Additional—September 26, 1914—Petition Denied.
- Merchant Livestock Co.—Selection—September 26, 1914—Modified.
- Merchant Livestock Co.—Selection—October 16, 1914—Remanded.
- Merchant Live Stock Co.—Sioux Half-breed Scrip—December 23, 1914—Reversed.
- Merrill, Frank M.—Homestead—June 13, 1914—Affirmed.
- Merrill, Melville R.—Homestead—September 26, 1914—Remanded.
- Mesecher, John J.—Homestead—March 11, 1914—Reversed.
- Metcalf, Levi A.—Homestead—June 13, 1914—Reversed.
- Metcalf, William—Repayment—February 21, 1914—Reversed.
- Meuli *v.* Black—Homestead—July 22, 1914—Affirmed.
- Meyer, Ida—Homestead—October 23, 1914—Vacated.
- Meyer *v.* Cress—Homestead—April 10, 1914—Affirmed.
- Meyer *v.* Cress—Homestead—June 30, 1914—Motion Denied.
- Meyers and Chalupnik—Desert Land—February 28, 1914—Affirmed.
- Meyers, E. P., *et al.*—Survey—July 25, 1914—Affirmed.
- Mickel, Thompson E.—Repayment—September 14, 1914—Affirmed.
- Middaugh *v.* Northern Pacific Ry. Co.—Homestead—August 26, 1914—Affirmed.
- Middleton, Leo—Homestead—April 20, 1914—Remanded.
- Miles, Rodolphus—Homestead—October 31, 1914—Affirmed.
- Miles *et al. v.* Northern Pacific Ry. Co.—Homestead—February 16, 1915—Motion Denied.
- Miles *v.* Walton—Homestead—May 7, 1914—Affirmed.
- Miles *v.* Walton—Homestead—July 21, 1914—Motion Denied.
- Miles *v.* Walton—Homestead—September 19, 1914—Petition Denied.
- Miley, Matilda—Soldiers' Additional—October 30, 1914—Affirmed.
- Miller, Charles W.—Soldiers' Additional—June 23, 1914—Affirmed.
- Miller, Elmyra C.—Homestead—April 22, 1914—Affirmed.
- Miller, Ernest L.—Homestead—July 2, 1914—Reversed.
- Miller, Leroy P.—Homestead—January 17, 1914—Reversed.
- Miller, Louie W.—Homestead—August 15, 1914—Affirmed.
- Miller, Lula P.—Homestead—April 22, 1914—Affirmed.
- Miller, Pryor E.—Homestead—August 19, 1914—Affirmed.

- Miller, Rufus W.—Homestead—February 27, 1914—Affirmed.
- Miller *v.* Bishop—Homestead—March 14, 1914—Affirmed.
- Miller *v.* Continental Mining Co.—Mineral—September 25, 1914—Modified.
- Miller *v.* Devereux—Homestead—September 5, 1914—Petition Dismissed.
- Miller *v.* Devereux—Homestead—November 14, 1914—Motion Denied.
- Miller *v.* Heirs of Wilson—Desert Land—December 26, 1914—Petition Denied.
- Miller *v.* Northern Pacific Ry. Co.—Homestead—November 7, 1914—Affirmed.
- Miller *v.* Prince—Homestead—February 13, 1914—Motion Denied.
- Miller *v.* Southern Pacific R. R. Co.—Desert Land—December 3, 1914—Affirmed.
- Miller *v.* Wilson—Homestead—August 25, 1914—Petition Denied.
- Miller *v.* Wood—Desert Land—February 12, 1914—Reversed.
- Miller *v.* Wood—Desert Land—April 29, 1914—Motion Denied.
- Millett, Fred Augustus—Homestead—March 19, 1914—Reversed.
- Millican, Ada B.—Timber and Stone—February 9, 1915—Modified.
- Millinghousen, August—Desert Land—September 26, 1914—Remanded.
- Mills, Celia—Homestead—October 29, 1914—Affirmed.
- Mills, Harvey—Desert Land—September 19, 1914—Remanded.
- Mills, John, The Northwest Timber Co., trans.—Timber and Stone—December 16, 1914—Petition Denied.
- Mills, Maud H. R.—Homestead—May 15, 1914—Petition Denied.
- Mills, Sam M.—Desert Land—September 19, 1914—Remanded.
- Mills *et al.* *v.* Atwood—Desert Land—May 29, 1914—Motion Dismissed.
- Mills *et al.* *v.* Blackwell—Homestead—June 12, 1914—Affirmed.
- Mills *v.* Davidson—Homestead—October 12, 1914—Affirmed.
- Mills *v.* Davidson—Homestead—December 29, 1914—Motion Denied.
- Miner *v.* Swafford—Homestead—March 12, 1914—Affirmed.
- Mineral Hill Consolidated Copper Mining Co.—Mineral—June 18, 1914—Affirmed.
- Minersville Hydraulic Gold Mining Co. *et al.*—Mineral—June 2, 1914—Reversed.
- Mingo Mountain Mining Co. *v.* Christensen—Homestead—January 17, 1914—Affirmed.
- Minnesota, State of, *v.* Kossow—Swamp—February 25, 1915—Affirmed.
- Mirrassoul *v.* Northern Pacific Ry. Co.—Homestead—August 31, 1914—Affirmed.
- Misenheimer, John R.—Homestead—September 5, 1914—Affirmed.
- Missik, Anna—Homestead—August 18, 1914—Reversed.
- Mitcham, Arizona A.—Coal—December 16, 1914—Affirmed.
- Mitchell, Edward P.—Homestead—January 2, 1914—Reversed.
- Mitchell, Susan—Homestead—July 22, 1914—Reversed.
- Mitchell, Wiley W.—Homestead—October 19, 1914—Affirmed.
- Mitchell *v.* Dudley—Homestead—April 29, 1914—Affirmed.
- Mitchell *v.* Frink—Homestead—December 16, 1914—Affirmed.
- Mitchell *v.* Grimes—Homestead—January 29, 1914—Motion Denied.
- Mitchell *v.* Northern Pacific Ry. Co. *et al.*—Selection—October 30, 1914—Affirmed.
- Moarle *v.* Berry—Homestead—February 15, 1915—Reversed.
- Mobley, Henry—Homestead—October 26, 1914—Affirmed.
- Mock, Delph—Homestead—October 23, 1914—Reversed.
- Model Land Co. *v.* Blanding *et al.*—Selection—October 19, 1914—Petition Allowed.
- Model Land Co. *v.* Blanding *et al.*—Swamp—January 22, 1915—Reversed.
- Modesitt, Carl L.—Mineral—February 15, 1915—Affirmed.

- Moe, Ole L., W. E. Moses, trans.—Homestead—March 19, 1914—Affirmed.
- Mogan, Mathias E.—Homestead—February 28, 1914—Reversed.
- Mohrmann, Henry W.—Homestead—August 12, 1914—Affirmed.
- Mohrmann, Peter H. T.—Homestead—July 25, 1914—Affirmed.
- Molony, Mary E.—Desert Land—February 4, 1915—Affirmed.
- Molsted v. Olson—Homestead—February 27, 1915—Remanded.
- Mong, John J.—Homestead—February 21, 1914—Affirmed.
- Mong, John J.—Coal—March 24, 1914—Closed.
- Monk, Preston—Reduction of Area—October 30, 1914—Affirmed.
- Monroe, Emile—Homestead—February 19, 1914—Reversed.
- Monson, Carl M.—Homestead—April 22, 1914—Petition Denied.
- Montague, William E.—Homestead—September 19, 1914—Reversed.
- Montaney v. Flynn—Homestead—September 14, 1914—Affirmed.
- Montford, Frank—Homestead—October 19, 1914—Affirmed.
- Montford, Frank—Homestead—January 29, 1915—Motion Denied.
- Montgomery, C. Bell—Repayment—October 31, 1914—Affirmed.
- Montgomery, C. Bell—Repayment—December 26, 1914—Motion Denied.
- Montgomery, William—Homestead—December 30, 1914—Modified.
- Montgomery v. Montgomery—Homestead—February 28, 1914—Reversed.
- Montgomery v. Northern Pacific Ry. Co.—Homestead—June 23, 1914—Affirmed.
- Montiero, Joseph L.—Desert Land—September 5, 1914—Affirmed.
- Montiero, Joseph L.—Desert Land—November 7, 1914—Motion Denied.
- Monzingo, Giles P.—Homestead—September 17, 1914—Remanded.
- Mooke v. Tolford—Homestead—November 7, 1914—Affirmed.
- Moon v. Waters—Mineral—January 8, 1915—Petition Denied.
- Mooney, Olive B.—Homestead—October 13, 1914—Reversed.
- Mooney v. Vanpool—Homestead—January 2, 1914—Affirmed.
- Mooney v. Vanpool—Homestead—June 24, 1914—Motion Denied.
- Moore, Carrie, *née* Harris—Homestead—January 25, 1915—Affirmed.
- Moore, Clay V.—Desert Land—November 30, 1914—Affirmed.
- Moore, Edmund B.—Desert Land—January 29, 1915—Affirmed.
- Moore, Fannie, *née* Kinnie—Desert Land—March 11, 1914—Reversed.
- Moore, Francis M.—Desert Land—May 1, 1914—Affirmed.
- Moore, Joseph M.—Homestead—September 14, 1914—Affirmed.
- Moore, Leon G.—Homestead—October 7, 1914—Reversed.
- Moore, Mary J., Heirs of—Homestead—April 27, 1914—Affirmed.
- Moore, Richard R.—Reduction of Area—October 27, 1914—Reversed.
- Moore, Ross—Homestead—May 29, 1914—Affirmed.
- Moore, Rowland—Homestead—January 20, 1914—Reversed.
- Moore, Thomas P.—Homestead—July 29, 1914—Reversed.
- Moore v. Bradford—Homestead—January 2, 1914—Affirmed.
- Moore v. Northern Pacific Ry. Co., Florence A. Coffin, assignee—Soldiers' Additional—January 28, 1914—Petition Denied.
- Moore v. Northern Pacific Ry. Co.—Homestead—June 2, 1914—Affirmed.
- Moore v. Northern Pacific Ry. Co.—Homestead—February 16, 1915—Petition Denied.
- Moore v. Rooney—Homestead—January 2, 1914—Affirmed.
- Moore v. Stewart—Homestead—January 16, 1914—Motion Denied.
- Moots, Bonnie C.—Homestead—August 14, 1914—Reversed.
- Moran and Egan—Homestead—February 20, 1914—Affirmed.
- Moran, Samuel, Egan, trans.—Homestead—April 20, 1914—Motion Denied.

- Moran *v.* Clafin *et al.*—Mineral—September 5, 1914—Affirmed.
- Mordasini, Antonio G.—Homestead—January 29, 1915—Affirmed.
- Moreland, Archie M.—Homestead—October 27, 1914—Remanded.
- Moreland, Earl J.—Homestead—October 27, 1914—Remanded.
- Moreland, Ray T.—Homestead—October 27, 1914—Remanded.
- Morey *v.* Pughe—Homestead—January 29, 1915—Affirmed.
- Morgan, William W.—Timber and Stone—December 29, 1914—Affirmed.
- Morkrid *v.* Jackson—Homestead—April 22, 1914—Reversed.
- Morkrid *v.* Jackson—Homestead—August 12, 1914—Motion Denied.
- Morley, William J.—Desert Land—March 9, 1914—Reversed.
- Morris, John D.—Homestead—January 2, 1914—Vacated.
- Morris, John W.—Homestead—May 26, 1914—Dismissed.
- Morris, Robert L.—Homestead—March 21, 1914—Modified.
- Morris, Robert L.—Homestead—June 24, 1914—Motion Allowed.
- Morris, William R.—Homestead—June 30, 1914—Affirmed.
- Morrison, Alexander G.—Desert Land—September 21, 1914—Affirmed.
- Morrison, Alexander G.—Desert Land—December 29, 1914—Motion Denied.
- Morrison, Alma C.—Homestead—March 7, 1914—Reversed.
- Morrison, D. A., *et al.*—Mineral—June 30, 1914—Reversed.
- Morrison, Roy L.—Homestead—October 19, 1914—Remanded.
- Morrison *v.* New Orleans Pacific Ry. Co.—Selection—September 26, 1914—Affirmed.
- Morse *v.* Beegler—Mineral—November 14, 1914—Affirmed.
- Mort, Jacob—Homestead—May 15, 1914—Reversed.
- Moses, W. E., assignee of Babcock—Soldiers' Additional—September 14, 1914—Affirmed.
- Moses, W. E., assignee of Babcock—Soldiers' Additional—December 29, 1914—Motion Denied.
- Mosher, James A.—Homestead—January 27, 1915—Affirmed.
- Mosher *v.* McCollister—Homestead—October 31, 1914—Affirmed.
- Mosher *v.* McCollister—Homestead—February 16, 1915—Motion Denied.
- Motheral, Ellen J.—Homestead—July 7, 1914—Affirmed.
- Mounson, Nels C.—Homestead—February 28, 1914—Reversed.
- Mountain Gem Mining Co.—Mineral—September 14, 1914—Reversed.
- Mountain, Noble W., Heirs of—Homestead—May 9, 1914—Affirmed.
- Mowbray, Alexander—Homestead—January 29, 1915—Affirmed.
- Mowbray, Prince A.—Homestead—January 29, 1915—Affirmed.
- Moynihan *v.* Porter—Desert Land—October 31, 1914—Affirmed.
- Moyz, Ezquiel—Homestead—January 29, 1915—Affirmed.
- Muck, Alvin A.—Homestead—October 10, 1914—Affirmed.
- Muck, Alvin A.—Homestead—January 19, 1915—Motion Denied.
- Mudgett, Charles E.—Desert Land—January 19, 1915—Affirmed.
- Mulkey, Ellis C.—Homestead—May 29, 1914—Affirmed.
- Mulkey *v.* Northern Pacific Ry. Co.—Selection—January 17, 1914—Motion Denied.
- Mullenax, David A.—Homestead—August 6, 1914—Reversed.
- Mullin *v.* Keaster—Homestead—February 28, 1914—Affirmed.
- Mullin *v.* Keaster—Homestead—March 21, 1914—Affirmed.
- Mundy *v.* Zeek *et al.*—Timber and Stone—July 9, 1914—Dismissed.
- Munoz, Jose, Heirs of—Private Land Claim—February 7, 1914—Reversed.
- Murdoch, Samuel—Homestead—February 19, 1914—Reversed.
- Murphy, Charles F.—Repayment—October 30, 1914—Affirmed.
- Murphy, Etta—Water Right Application—April 24, 1914—Modified.

- Murphy, Etta—Homestead—November 7, 1914—Motion Denied.
- Murphy, Lawrence E.—Homestead—January 31, 1914—Vacated.
- Murphy, Patrick J.—Homestead—August 21, 1914—Affirmed.
- Murphy, T. Waldo, assignee of Tower—Soldiers' Additional—August 14, 1914—Affirmed.
- Murphy *v.* Clements—Homestead—February 15, 1915—Reversed.
- Murphy *v.* Northern Pacific Ry. Co.—Homestead—June 23, 1914—Affirmed.
- Murphy *v.* Stranahan—Desert Land—December 29, 1914—Affirmed.
- Murray, Annie—Desert Land—March 12, 1914—Reversed.
- Murray, Dominick F.—Homestead—December 16, 1914—Affirmed.
- Murray, John, *et al.*—Mineral—September 26, 1914—Remanded.
- Muscupiabe Grant—Survey—December 16, 1914—Motion Denied.
- Musfelt *v.* Lingenfelter, sr.—Homestead—May 29, 1914—Affirmed.
- Myers, Daniel—Homestead—January 29, 1915—Affirmed.
- Myers, Robert H.—Homestead—May 12, 1914—Affirmed.
- Myers *v.* Northern Pacific Ry. Co.—Selection—June 13, 1914—Affirmed.
- Myers *v.* Northern Pacific Ry. Co.—Homestead—September 26, 1914—Petition Denied.
- Myhre *v.* Verheyen—Desert Land—December 12, 1914—Affirmed.
- Nabozny, Constantia, H. P. Hulett, trans.—Homestead—March 19, 1914—Affirmed.
- Naeve *v.* Smith—Homestead—June 2, 1914—Reversed.
- Nagel, Henry—Homestead—January 2, 1914—Reversed.
- Naplin *et al. v.* Borgin—Homestead—September 19, 1914—Affirmed.
- Nash *v.* Joyce—Homestead—January 25, 1915—Affirmed.
- Nault *v.* Northern Pacific Ry. Co.—Homestead—June 29, 1914—Affirmed.
- Navacek, James F.—Reclamation Project—May 1, 1914—Instructions.
- Naylor, Elmer Kirk—Desert Land—November 30, 1914—Affirmed.
- Naylor, Elmer K.—Desert Land—February 26, 1915—Petition Denied.
- Neal, Oscar F., The Northwest Timber Co., trans.—Timber and Stone—December 16, 1914—Petition Denied.
- Nealy *v.* Schmidt—Homestead—December 3, 1914—Affirmed.
- Neely, John N.—Homestead—October 12, 1914—Affirmed.
- Neff, Walter W.—Homestead—June 30, 1914—Affirmed.
- Neher, Fred C.—Homestead—April 30, 1914—Affirmed.
- Nehls *v.* Northern Pacific Ry. Co.—Homestead—August 18, 1914—Affirmed.
- Neighbors, Henry O.—Homestead—August 26, 1914—Affirmed.
- Neilsen *v.* Smith—Desert Land—February 25, 1915—Affirmed.
- Neilson, Neils—Homestead—July 9, 1914—Affirmed.
- Neiss, Frank B.—Desert Land—June 12, 1914—Reversed.
- Nelms, Calvin—Homestead—November 18, 1914—Affirmed.
- Nelson, Andrew—Desert Land—March 14, 1914—Affirmed.
- Nelson, Arthur H.—Homestead—February 21, 1914—Affirmed.
- Nelson, Charles V.—Homestead—July 9, 1914—Affirmed.
- Nelson, Charles V.—Homestead—October 6, 1914—Remanded.
- Nelson, Christian—Homestead—August 25, 1914—Affirmed.
- Nelson, Helen—Homestead—January 2, 1914—Reversed.
- Nelson, Jessie—Homestead—March 12, 1914—Reversed.
- Nelson, Johan A.—Homestead—May 29, 1914—Affirmed.
- Nelson, Michael—Desert Land—June 9, 1914—Affirmed.
- Nelson, Michael—Desert Land—August 15, 1914—Motion Denied.
- Nelson, Nels—Homestead—February 16, 1915—Affirmed.

- Nelson, Robert R.—Homestead—April 30, 1914—Reversed.
- Nelson, William A.—Homestead—April 29, 1914—Motion Allowed.
- Nelson, William J.—Homestead—March 21, 1914—Motion Denied.
- Nelson, William J.—Homestead—June 27, 1914—Petition Denied.
- Nelson v. Christian—Homestead—February 16, 1915—Affirmed.
- Nelson v. Farlin—Homestead—July 31, 1914—Affirmed.
- Nelson v. Holcomb—Desert Land—December 16, 1914—Affirmed.
- Nelson v. New Orleans Pacific Ry. Co.—Homestead—December 16, 1914—Affirmed.
- Nelson v. Northern Pacific Ry. Co.—Homestead—August 18, 1914—Affirmed.
- Nelson v. Northern Pacific Ry. Co.—Homestead—September 5, 1914—Affirmed.
- Nenneley v. Wells—Homestead—October 19, 1914—Motion Denied.
- Nesbett, James—Homestead—December 30, 1914—Affirmed.
- Neset v. Myrum—Homestead—March 19, 1914—Affirmed.
- Netherton, Jasper—Homestead—August 28, 1914—Affirmed.
- Netherton, Jasper—Homestead—October 30, 1914—Motion Denied.
- Nettelhorst, W. L., assignee of Temple—Soldiers' Additional—January 28, 1914—Reversed.
- Neumann, August H.—Desert Land—July 21, 1914—Remanded.
- Neumeister, William J.—Homestead—August 15, 1914—Reversed.
- Nevada Star Mining Co.—Mineral—May 6, 1914—Affirmed.
- New Mexico, State of—Survey—October 30, 1914—Affirmed.
- New Mexico, State of—Survey—December 26, 1914—Petition Denied.
- New Mexico, State of v. Young—Selection—July 22, 1914—Affirmed.
- Newberry, Emma V.—Homestead—April 22, 1914—Affirmed.
- Newcomer, Edward V.—Homestead—December 5, 1914—Affirmed.
- Newell, Emma—Repayment—September 26, 1914—Reversed.
- Newell, Samuel V.—Repayment—October 31, 1914—Affirmed.
- Newland, Ray, Dick Lumber Co., trans.—Timber and Stone—October 14, 1914—Affirmed.
- Newman, Ida M.—Desert Land—July 21, 1914—Demanded.
- Newman, John E.—Homestead—July 28, 1914—Vacated.
- Newman v. Northern Pacific Ry. Co.—Homestead—June 23, 1914—Affirmed.
- Newman v. Williams—Homestead—July 30, 1914—Affirmed.
- Newman v. Williams—Homestead—September 26, 1914—Motion Denied.
- Newman v. Williams—Homestead—January 14, 1915—Petition Denied.
- Newnham, Elizabeth—Homestead—January 2, 1914—Reversed.
- Newport, Chris B.—Homestead—September 19, 1914—Affirmed.
- Newsham v. Leutzinger—Homestead—August 26, 1914—Affirmed.
- Newsome, Elroy D.—Homestead—April 22, 1914—Reversed.
- Newton, George W.—Homestead—October 12, 1914—Affirmed.
- Newville v. Guderian—Homestead—March 18, 1914—Affirmed.
- Newville v. Kevlin—Homestead—March 18, 1914—Affirmed.
- Nicholls, Arthur J.—Homestead—October 14, 1914—Reversed.
- Nichols, Charles O.—Desert Land—January 29, 1915—Affirmed.
- Nichols, Dell, Navajo Lumber & Supply Co., trans.—Homestead—September 21, 1914—Affirmed.
- Nichols, Jane, Navajo Lumber & Supply Co., trans.—Homestead—September 21, 1914—Affirmed.
- Nichols, Raymond W., assignee of Yerkes—Soldiers' Additional—March 18, 1914—Remanded.
- Nichols v. Gilmore—Homestead—February 19, 1914—Affirmed.
- Nicholson, Henry, *et al.*—Mineral—August 21, 1914—Affirmed.
- Nickle v. Thomas—Homestead—September 5, 1914—Affirmed.

- Nielsen, Nels P.—Homestead—February 19, 1914—Reversed.
- Nielson, Joseph W., Sr.—Homestead—February 19, 1914—Reversed.
- Nielson, Peter E.—Desert Land—July 28, 1914—Motion Denied.
- Nilsen, Phebe—Timber and Stone—March 21, 1914—Remanded.
- Niolet *v.* Niolet—Homestead—December 3, 1914—Affirmed.
- Nischwitz *v.* Beddo *et al.*—Desert Land—January 29, 1915—Affirmed.
- Nitzlander, Rudolph—Homestead—January 29, 1915—Vacated.
- Nitzsche, Robert—Homestead—January 19, 1915—Modified.
- Nixon *v.* Eldredge—Homestead—January 9, 1914—Petition Denied.
- Noble Electric Steel Co.—Mineral—July 31, 1914—Modified.
- Noble, John L.—Mineral—November 30, 1914—Reversed.
- Noble, Julia C.—Timber and Stone—August 28, 1914—Affirmed.
- Noble, Julia C.—Timber and Stone—October 26, 1914—Motion Denied.
- Noble, Samuel, George H. Stanton, trans.—Homestead—November 27, 1914—Affirmed.
- Noblitt, John D., assignee of Fouse—Soldiers' Additional—August 26, 1914—Affirmed.
- Noftger, Clement L.—Homestead—August 31, 1914—Affirmed.
- Noleman, Julia—Desert Land—September 17, 1914—Petition Denied.
- Nollette, Isaac—Homestead—March 12, 1914—Vacated.
- Nolting, Wellington I.—Timber and Stone—December 30, 1914—Affirmed.
- Nolting, Wellington I.—Timber and Stone—February 27, 1915—Motion Denied.
- Norback *v.* Kribs *et al.*—Homestead—October 12, 1914—Affirmed.
- Nordin *v.* Northern Pacific Ry. Co.—Homestead—May 27, 1914—Affirmed.
- Nordin *v.* Northern Pacific Ry. Co.—Homestead—October 24, 1914—Motion Allowed.
- Norman, George W.—Desert Land—October 29, 1914—Affirmed.
- Norman *v.* Sigel—Homestead—August 25, 1914—Affirmed.
- Normandeau, Patrick, jr.—Homestead—May 26, 1914—Affirmed.
- Normandeau, Patrick, jr.—Homestead—June 29, 1914—Affirmed.
- Norment, James W.—Right of Way—December 30, 1914—Reversed.
- Norris, Laila—Homestead—April 30, 1914—Modified.
- North *v.* Besse—Homestead—October 5, 1914—Affirmed.
- Northern Pacific Ry. Co. *et al.*—Survey—February 6, 1914—Petition Denied.
- Northern Pacific Ry. Co.—Selection—April 22, 1914—Motion Denied.
- Northern Pacific Ry. Co.—Selection—April 30, 1914—Motion Allowed.
- Northern Pacific Ry. Co.—Selection—June 18, 1914—Dismissed.
- Northern Pacific Ry. Co. *et al.*—Survey—June 20, 1914—Petition Denied.
- Northern Pacific Ry. Co., I. P. Gardner, trans.—Selection—August 28, 1914—Affirmed.
- Northern Pacific Ry. Co.—Homestead—August 12, 1914—Affirmed.
- Northern Pacific Ry. Co.—Selection—August 31, 1914—Affirmed.
- Northern Pacific Ry. Co.—Selection—September 5, 1914—Affirmed.
- Northern Pacific Ry. Co.—Timber Trespass—November 14, 1914—Affirmed.
- Northern Pacific Ry. Co.—Selection—December 16, 1914—Affirmed.
- Northern Pacific Ry. Co.—Selection—December 5, 1914—Affirmed.
- Northern Pacific Ry. Co. (6 cases)—Selection—December 16, 1914—Affirmed.
- Northern Pacific Ry. Co. (3 cases)—Selection—December 26, 1914—Affirmed.
- Northern Pacific Ry. Co.—Selection—January 14, 1915—Affirmed.
- Northern Pacific Ry. Co.—Selection—January 29, 1915—Affirmed.
- Northern Pacific Ry. Co.—Selection—January 29, 1915—Remanded.
- Northern Pacific Ry. Co.—Selection—February 16, 1915—Affirmed.

- Northern Pacific Ry. Co. (10 cases)—
Selection—February 26, 1915—Motion Modified.
- Northern Pacific Ry. Co., M. H. Kelly, trans.—Selection—February 27, 1915—Motion Denied.
- Northern Pacific Ry. Co. v. Goss—Selection—February 28, 1914—Affirmed.
- Northern Pacific Ry. Co. v. Kenealy—Selection—July 24, 1914—Reversed.
- Northern Pacific Ry. Co. v. Mecklin—Homestead—January 29, 1915—Affirmed.
- Northern Pacific Ry. Co. v. Peter Swenson's Heirs *et al.*—Selection—January 9, 1914.
- Northern Pacific Ry. Co. v. Petrik—Homestead—May 20, 1914—Remanded.
- Northern Pacific Ry. Co. v. Pope—Homestead—August 31, 1914—Reversed.
- Northern Pacific Ry. Co. v. Schultz—Homestead—August 12, 1914—Affirmed.
- Northrup, Daniel B.—Desert Land—February 4, 1915—Affirmed.
- Northwood v. Central Pacific R. R. Co.—Selection—September 26, 1914—Affirmed.
- Nourse, Jessie E.—Homestead—March 21, 1914—Affirmed.
- Novo v. Hrabovsky—Homestead—August 14, 1914—Affirmed.
- Novotny, Joseph—Desert—January 17, 1914—Reversed.
- Nugen, David J.—Homestead—August 28, 1914—Affirmed.
- Nunemaker, William H.—Homestead—October 31, 1914—Remanded.
- Nunn, L. L., assignee Utah Power and Light Co.—Valentine Scrip—June 9, 1914—Modified.
- Nunneley v. Wells—Homestead—October 19, 1914—Motion Denied.
- Nuss, Ida B.—Desert Land—June 24, 1914—Remanded.
- Ober, John S.—Homestead—August 31, 1914—Affirmed.
- O'Brien, Dennis—Homestead—February 18, 1915—Affirmed.
- O'Brien, Katherine, jr., now Smith—Homestead—January 2, 1914—Reversed.
- O'Connell, Mary—Homestead—April 20, 1914—Remanded.
- O'Connor, Hattie M.—Homestead—January 17, 1914—Reversed.
- Oderlin, Bert C.—Homestead—January 2, 1914—Reversed.
- Odil, John H.—Homestead—March 21, 1914—Reversed.
- O'Donnell, Edmond B.—Homestead—March 12, 1914—Affirmed.
- Ogden, James C.—Homestead—January 2, 1914—Reversed.
- Ogden, William E.—Homestead—January 2, 1914—Reversed.
- Ogg, Archie C.—Homestead—August 12, 1914—Dismissed.
- Oglevee, Christine E.—Timber and Stone—January 29, 1915—Affirmed.
- Ohio Consolidated Coal Co.—Coal Land—May 28, 1914—Modified.
- Ohio Consolidated Coal Co.—Coal Land—November 7, 1914—Affirmed.
- O'Kane, Daniel J.—Homestead—January 28, 1914—Petition Denied.
- O'Keane, James J.—Selection—October 20, 1914—Affirmed.
- O'Keefe, Arthur J.—Coal Land—November 19, 1914—Affirmed.
- Oldemeyer, Herman A.—Homestead—March 12, 1914—Remanded.
- Oldland, Reuben *et al.*—Mineral—September 19, 1914—Affirmed.
- O'Leary, Arthur E.—Homestead—December 26, 1914—Remanded.
- Oleson, Ole, assignee of R. Tschudy—Soldiers' Additional—March 18, 1914—Remanded.
- Oleson, Olina, Heirs of—Homestead—September 14, 1914—Affirmed.
- Olinger, Ralph—Homestead—August 31, 1914—Reversed.
- Oliver, Harry G.—Timber and Stone—January 17, 1914—Affirmed.
- Olsen, George—Homestead—January 9, 1914—Reversed.
- Olsen, George M.—Homestead—October 27, 1914—Remanded.
- Olsen, James W.—Homestead—October 27, 1914—Remanded.

- Olsen, Norman—Homestead—December 26, 1914—Remanded.
- Olson, Andrew L.—Homestead—May 12, 1914—Modified.
- Olson, Erik—Homestead—February 27, 1915—Reversed.
- Olson, Gust—Homestead—November 18, 1914—Affirmed.
- Olson, Gustav A., D. R. Whitaker, trans.—Homestead—March 19, 1914—Affirmed.
- Olson, John, W. E. Moses, trans.—Homestead—March 19, 1914—Affirmed.
- Olson, Paul, Dick Lumber Co., trans.—Timber and Stone—October 14, 1914—Affirmed.
- Olson, Syvert—Water Right—November 24, 1914—Motion Denied.
- Olson v. Sterns—Homestead—September 5, 1914—Affirmed.
- Olson v. Wetterlind—Homestead—October 14, 1914—Affirmed.
- Oltmans, Henry—Homestead—February 28, 1914—Reversed.
- Olver, Charles E., *et al.*—Homestead—April 29, 1914—Affirmed.
- Onecimo Francisco, Navajo Lumber and Supply Co., trans.—Homestead—September 21, 1914—Affirmed.
- O'Neil, Frank L.—Timber and Stone—December 16, 1914—Affirmed.
- O'Neil, Martin—Desert Land—October 31, 1914—Affirmed.
- O'Neil, W. T., assignee of Fenn—Soldiers' Additional—January 26, 1915—Motion Denied.
- O'Neil, William T., assignee of Fenn—Soldiers' Additional—November 30, 1914—Affirmed.
- O'Neill, Jeremiah J.—Timber and Stone—January 8, 1915—Affirmed.
- O'Neill, Lafayette—Desert Land—December 3, 1914—Affirmed.
- O'Neill v. Von Wald—Homestead—October 13, 1914—Affirmed.
- Opalka v. Lamey—Homestead—July 30, 1914—Affirmed.
- Opalka v. Lamey—Homestead—December 29, 1914—Motion Denied.
- Oregon & California R. R. Co. v. Hidden Treasure Mining Co.—Mineral—June 13, 1914—Affirmed.
- O'Reilly, Daniel—Homestead—October 3, 1914—Affirmed.
- Ortiz, Antonio E.—Homestead—July 2, 1914—Modified.
- Osborn, John R.—Homestead—September 26, 1914—Affirmed.
- Osborn, Samuel N.—Homestead—January 2, 1914—Affirmed.
- Osborn v. Oregon & California R. R. Co.—Selection—August 6, 1914—Affirmed.
- Osborne, George I.—Timber and Stone—August 31, 1914—Affirmed.
- Osborne, George I.—Timber and Stone—November 4, 1914—Motion Denied.
- Osgoodby, Andrew, assignee of Free-mole—Soldiers' Additional—October 20, 1914—Affirmed.
- Osland v. Guldborg—Desert Land—October 6, 1914—Affirmed.
- Osland v. Hinnaland—Desert Land—October 6, 1914—Affirmed.
- Ostlind, Oscar J.—Homestead—August 28, 1914—Affirmed.
- Osmundson, Sam—Homestead—April 13, 1914—Affirmed.
- Osner v. Southern Pacific R. R. Co.—Desert Land—December 26, 1914—Affirmed.
- Otten, Bernhard—Homestead—May 15, 1914—Remanded.
- Otterstrom v. Wales—Homestead—September 14, 1914—Affirmed.
- Otterstrom v. Wales—Homestead—December 16, 1914—Motion Denied.
- Otto, Harry W.—Repayment—July 27, 1914—Reversed.
- Ottoson, John—Homestead—May 15, 1914—Remanded.
- Ouachita Cash Entry No. 840—Cash Entry—June 9, 1914—Reversed.
- Overholzer, Mary A.—Timber and Stone—July 28, 1914—Affirmed.
- Overman, Edwin W.—Desert Land—January 29, 1915—Affirmed.
- Owen v. Robinson—Homestead—August 14, 1914—Affirmed.
- Owens, Everett—Desert Land—September 26, 1914—Remanded.
- Owens, Everett—Desert Land—January 29, 1915—Affirmed.

- Oxborrow, Sherwood G.—Homestead—October 20, 1914—Affirmed.
- Oxford *et al.* v. Skinner—Desert Land—January 29, 1915—Petition Granted.
- Oxford *et al.* v. Cooley—Desert Land—January 29, 1915—Remanded.
- Oxford v. Cooley—Desert Land—April 22, 1914—Affirmed.
- Oxford v. Cooley—Desert Land—July 2, 1914—Motion Denied.
- Oxford v. Heirs of Washburn—Desert Land—February 26, 1915—Affirmed.
- Pace v. Dow—Homestead—December 23, 1914—Affirmed.
- Packman *et al.* v. Watkins—Mineral—November 21, 1914—Modified.
- Pack-Saddle Coal Mines Association—Coal—December 16, 1914—Affirmed.
- Packwood v. Northern Pacific Ry. Co. — Selection — November 18, 1914—Motion Remanded.
- Paddock, Elizabeth M.—Homestead—October 12, 1914—Affirmed.
- Padilla v. Santa Fe Pacific Ry. Co.—Homestead — May 15, 1914 — Remanded.
- Page, Frank—Homestead—September 19, 1914—Remanded.
- Page, Joseph C.—Survey—February 20, 1914—Affirmed.
- Palin, Elisha A.—Repayment—September 26, 1914—Reversed.
- Palmer, Benoni—Repayment—August 20, 1914—Reversed.
- Palmer Charles F.—Homestead—September 21, 1914—Affirmed.
- Palmer, E. M.—Mineral Entry—January 31, 1914—Petition Denied.
- Palmer, Milton A.—Homestead—April 7, 1914—Remanded.
- Palmer, Sarah, *et al.*—Soldiers' Additional—June 2, 1914—Affirmed.
- Palmer v. Cornell — Desert Land — March 9, 1914—Affirmed.
- Palmer v. Gautier—Homestead—December 31, 1914—Affirmed.
- Palmer v. Stabenfeldt *et al.*—Homestead—August 28, 1914—Affirmed.
- Palmquist, Augusta E., Herbert Dierks, trans. — Homestead — March 19, 1914—Affirmed.
- Papenfuse, Richard—Homestead—February 17, 1914—Reversed.
- Papineau v. Strong—Desert Land—February 20, 1914—Affirmed.
- Papke, Earl E.—Repayment—August 7, 1914—Petition Denied.
- Paradise *et al.* v. Mears—Homestead—September 5, 1914—Affirmed.
- Pardue v. New Mexico—Homestead—August 31, 1914—Affirmed.
- Paris, Le Roy—Desert Land—June 29, 1914—Affirmed.
- Parisien, Jerome—Indian Selection—June 29, 1914—Motion Denied.
- Park, Margaret M.—Desert Land—September 14, 1914—Reversed.
- Parker, Francis—Homestead—September 26, 1914—Remanded.
- Parker, Stanton A.—Desert Land—September 14, 1914—Affirmed.
- Parks v. Painter—Desert Land—May 29, 1914—Petition Denied.
- Parks v. Pitt—Homestead—May 15, 1914—Affirmed.
- Parmeter, Alva M., D. R. Whitaker, trans. — Homestead — March 19, 1914—Affirmed.
- Parrish, Archie C.—Homestead—July 28, 1914—Vacated.
- Parry, David E.—Homestead—January 27, 1915—Affirmed.
- Parsons, Isham A.—Homestead—October 5, 1914—Remanded.
- Parten v. Beck—Homestead—August 12, 1914—Affirmed.
- Partridge, Harry A.—Coal—December 16, 1914—Affirmed.
- Partridge, Theresa E.—Coal—December 16, 1914—Affirmed.
- Patrick, Pliny—Homestead—February 20, 1914—Affirmed.
- Patterson, John T.—Homestead—September 26, 1914—Remanded.
- Patterson v. Brizinski—Homestead—October 19, 1914—Affirmed.
- Patterson v. Keith—Homestead—June 23, 1914—Petition Denied.
- Patterson v. Phillips—Desert Land—August 12, 1914—Petition Granted.
- Patterson v. Phillips—Desert Land—November 24, 1914—Petition Affirmed.

- Patton, Sarah—Homestead—June 30, 1914—Affirmed.
- Patzer, August, Pliney A. Wiley, trans.—Homestead—March 19, 1914—Affirmed.
- Paulin, Harold D.—Desert Land—July 29, 1914—Affirmed.
- Paullin *v.* Boon—Homestead—February 28, 1914—Affirmed.
- Paulsen *v.* Northern Pacific Ry. Co.—Homestead—August 31, 1914—Reversed.
- Paulus, Ernest C.—Isolated Tract—January 29, 1915—Affirmed.
- Peacock, Lewis H.—Desert Land—September 26, 1914—Affirmed.
- Peacock, Lewis H.—Desert Land—December 29, 1914—Motion Denied.
- Pearce, Mary A.—Repayment—November 30, 1914—Affirmed.
- Pearson, Frank T.—Timber and Stone—December 16, 1914—Affirmed.
- Pearson *v.* Watson—Homestead—December 3, 1914—Affirmed.
- Pease, Richard H., Jr., assignee of Poorman—Repayment—January 19, 1915—Affirmed.
- Peck, Charles B.—Selection—November 4, 1914—Modified.
- Peck, Earl—Homestead—September 26, 1914—Affirmed.
- Peck, Earl—Homestead—January 19, 1915—Motion Denied.
- Peck, Walter H.—Repayment—December 16, 1914—Affirmed.
- Peck *v.* Grimaud—Homestead—March 24, 1914—Affirmed.
- Pedersen, John D.—Desert Land—October 1, 1914—Affirmed.
- Pederson and Pederson—Timber and Stone—October 5, 1914—Affirmed.
- Pederson, Christian—Homestead—December 3, 1914—Affirmed.
- Peebles, Leroy W.—Homestead—October 20, 1914—Affirmed.
- Peeler, Alfred—Homestead—September 21, 1914—Affirmed.
- Peeler *v.* Leybold—Homestead—October 20, 1914—Affirmed.
- Pemberton, Charles D.—Homestead—December 3, 1914—Affirmed.
- Pemberton, Robert L.—Homestead—December 3, 1914—Affirmed.
- Penman, George W.—Desert Land—May 1, 1914—Affirmed.
- Penman, George W.—Desert Land—July 29, 1914—Motion Denied.
- Penn Mining Co.—Mineral—January 29, 1915—Affirmed.
- Penrod, William A.—Desert Land—October 7, 1914—Modified.
- Perea, Francisco—Homestead—February 6, 1914—Remanded.
- Perrin, Jonathan A.—Desert Land—March 27, 1914—Reversed.
- Perry *v.* Hatfield *et al.*—Homestead—October 12, 1914—Affirmed.
- Perry *v.* Northern Pacific Ry. Co. *et al.*—Homestead—December 26, 1914—Affirmed.
- Perry *v.* Thornton—Desert Land—February 16, 1915—Reversed.
- Person, Alex G., Dick Lumber Co., trans.—Timber and Stone—October 14, 1914—Affirmed.
- Pete, Edward—Homestead—May 7, 1914—Reversed.
- Petersen, Nis—Cash Entry—September 17, 1914—Reversed.
- Peterson, Annie—Homestead—April 28, 1914—Petition Granted.
- Peterson, Edward, assignee of Doyle—Soldiers' Additional—April 27, 1914—Remanded.
- Petersen, Herman W., *et al.*—Desert Land—August 13, 1914—Affirmed.
- Peterson, Myrtel M.—Homestead—April 1, 1904—Affirmed.
- Peterson *et al. v.* Gosslin—Homestead—September 17, 1914—Affirmed.
- Peterson *v.* Allen—Homestead—April 27, 1914—Reversed.
- Peterson *v.* Jackson—Homestead—May 29, 1914—Remanded.
- Peterson *v.* Northern Pacific Ry. Co.—Homestead—June 23, 1914—Affirmed.
- Peterson *v.* Northern Pacific Ry. Co.—Homestead—August 26, 1914—Affirmed.
- Petrucchi *v.* King—Desert Land—April 22, 1914—Affirmed.
- Pettijohn *v.* Wright—Homestead—September 26, 1914—Affirmed.

- Pfeiffer *v.* Dickson—Desert Land—January 23, 1915—Affirmed.
- Pfrimmer, C. Homer—Homestead—August 6, 1914—Affirmed.
- Phelps *v.* Depew—Homestead—March 19, 1914—Affirmed.
- Phelps *v.* Jones—Homestead—November 27, 1914—Reversed.
- Phillips, Alfred—Homestead—September 14, 1914—Affirmed.
- Phillips, Arthur J.—Homestead—November 7, 1914—Vacated.
- Phillips, Henry D., assignee of Summer—Soldiers' Additional—September 21, 1914—Affirmed.
- Phillips, Levie L.—Homestead—May 29, 1914—Affirmed.
- Phillips *v.* Beale—Homestead—August 12, 1914—Affirmed.
- Philpot, Laura E.—Homestead—April 1, 1914—Affirmed.
- Pickens, John H.—Homestead—February 28, 1914—Reversed.
- Pickens, Samuel D., Linn & Lane Timber Co., trans.—Homestead—July 27, 1914—Motion Denied.
- Pidwell, Johanne, *et al.*—Mineral—May 9, 1914—Affirmed.
- Pierce, Ada W.—Repayment—August 22, 1914—Affirmed.
- Pierce, Gustavus A., Heirs of—Homestead—April 29, 1914—Modified.
- Pierce, Gustavus A., Heirs of—Selection—July 22, 1914—Motion Denied.
- Pierce, Gustavus A., Heirs of—Lieu Selection—February 25, 1915—Petition Denied.
- Pierce, John D., H. D. Williams Cooperation Co., trans.—Homestead—November 27, 1914—Affirmed.
- Pierce *v.* Golden Drift Mining Co.—Homestead—September 19, 1914—Affirmed.
- Pierce *v.* Hansen—Homestead—June 2, 1914—Petition Denied.
- Piester, Charles J.—Desert Land—September 26, 1914—Affirmed.
- Pike, Phebe—Homestead—February 6, 1914—Remanded.
- Pinkney *v.* Shores—Homestead—August 26, 1914—Affirmed.
- Pioneer Midway Oil Co. *v.* State of California—T. A. Wells, trans.—Selection—December 12, 1914—Affirmed.
- Pisarczik, Albert—Coal—November 7, 1914—Affirmed.
- Pittsburgh-Idaho Mining & Milling Co. *v.* Bethmann—Homestead—October 16, 1914—Affirmed.
- Place, Edwin S.—Desert Land—May 29, 1914—Vacated.
- Platt, John A.—Soldiers' Additional—June 13, 1914—Reversed.
- Plecher, Andrew—Homestead—November 14, 1914—Reversed.
- Pledger, Emmett T.—Homestead—November 24, 1914—Reversed.
- Plumb, Lawrence M.—Homestead—May 28, 1914—Reversed.
- Plumer, Andrew J., assignee of Evaline Coggrave—Soldiers' Additional—March 18, 1914—Remanded.
- Plumer, Andrew J.—Survey—September 30, 1914—Affirmed.
- Plummer *et al.* *v.* Schiffner—Desert Land—May 29, 1914—Affirmed.
- Poggi, Filippo—Desert Land—September 26, 1914—Affirmed.
- Poggi, Joseph—Desert Land—September 25, 1914—Affirmed.
- Pogue, Thomas—Homestead—September 26, 1914—Reversed.
- Pointevent & Favre Lumber Co.—Military Bounty Land—July 22, 1914—Affirmed.
- Pointevent & Favre Lumber Co.—Military Bounty Land Warrant—September 26, 1914—Motion Denied.
- Pollard, William E.—Homestead—October 31, 1914—Reversed.
- Pomeroy, Lawrence D., *et al.*—Homestead—July 25, 1914—Affirmed.
- Ponder, Frank Y.—Homestead—May 1, 1914—Reversed.
- Pool, Orin D.—Homestead—February 25, 1915—Affirmed.
- Poor *et al.* *v.* Jamsson—Homestead—September 5, 1914—Affirmed.
- Poppleton, John M.—Homestead—August 12, 1914—Affirmed.
- Poppleton *v.* Chitwood—Homestead—August 21, 1914—Affirmed.

- Porter, J. R.—Homestead—August 12, 1914—Affirmed.
- Porter, John P.—Desert Land—November 19, 1914—Affirmed.
- Porter, Luke T.—Desert Land—February 13, 1914—Motion Denied.
- Portland Railway Light and Power Co.—Easement—December 3, 1914—Affirmed.
- Posey v. Mayhall—Homestead—August 22, 1914—Reversed.
- Posey v. Mayhall—Homestead—December 29, 1914—Motion Denied.
- Postlewait, Rose—Homestead—August 26, 1914—Reversed.
- Poston, Ernest—Desert Land—September 21, 1914—Affirmed.
- Poston, Ernest—Desert Land—October 26, 1914—Motion Denied.
- Poston, Jessie S.—Desert Land—September 21, 1914—Affirmed.
- Poston, Jessie S.—Desert Land—October 26, 1914—Motion Denied.
- Potter, Cora B.—Homestead—August 13, 1914—Affirmed.
- Potter, James A.—Homestead—March 7, 1914—Affirmed.
- Potter, James A.—Homestead—August 19, 1914—Motion Allowed.
- Pottorf and Freeman—Homestead—March 19, 1914—Affirmed.
- Potts, James M.—Desert Land—September 17, 1914—Affirmed.
- Potvin, Fred T.—Homestead—May 26, 1914—Affirmed.
- Pound, Earl C., assignee of Child—Soldiers' Additional—August 6, 1914—Remanded.
- Pounder, John A.—Desert Land—March 12, 1914—Vacated.
- Powel, Arthur E., assignee of Baker—Soldiers' Additional—November 7, 1914—Motion Denied.
- Powell, A. P.—Homestead—May 12, 1914—Reversed.
- Powell, Thomas M.—Homestead—December 16, 1914—Affirmed.
- Powell v. Bancroft—Homestead—August 19, 1914—Affirmed.
- Power, Charles B., assignee of Fountain—Soldiers' Additional—June 6, 1914—Remanded.
- Power, John W.—Desert Land—May 29, 1914—Remanded.
- Powers, Manuel E.—Timber and Stone—December 30, 1914—Affirmed.
- Powers, Manuel E.—Timber and Stone—February 27, 1915—Motion Denied.
- Powers, Pearl—Desert Land—September 30, 1914—Petition Granted.
- Powers, Pearl—Desert Land—October 30, 1914—Instructions.
- Pratt, Helen—Timber and Stone—December 30, 1914—Affirmed.
- Pratt, Helen—Timber and Stone—February 27, 1915—Motion Denied.
- Pratt, Howard V.—Timber and Stone—December 16, 1914—Affirmed.
- Pratt, Parley P.—Homestead—October 31, 1914—Affirmed.
- Pray, Anna M.—Homestead—February 19, 1914—Reversed.
- Prescott v. McNeece—Homestead—August 27, 1914—Affirmed.
- Prescott v. Reesor—Homestead—June 23, 1914—Affirmed.
- Preshull, Joseph S.—Homestead—December 11, 1914—Affirmed.
- Prestes, George—Homestead—October 19, 1914—Affirmed.
- Preston, Charles H.—Homestead—September 14, 1914—Remanded.
- Preuitt, Ross F.—Homestead—September 17, 1914—Reversed.
- Prewitt *et al.* v. Stenger—Crow Scrip—March 12, 1914—Affirmed.
- Price, Sanford W.—Homestead—March 21, 1914—Vacated.
- Price v. Cleary—Homestead—June 12, 1914—Affirmed.
- Price v. Draver—Homestead—March 31, 1914—Affirmed.
- Priest, Charles J.—Homestead—October 31, 1914—Affirmed.
- Pritchard *et al.*—Homestead—March 25, 1914—Affirmed.
- Provatten v. Egge—Homestead—November 4, 1914—Reversed.
- Provost, Peter, Walter P. Dunton, trans.—Homestead—March 19, 1914—Affirmed.
- Pruyn, William, The Northwest Timber Co., trans.—Timber and Stone—December 16, 1914—Petition Denied.

- Pryor *v.* Higgins—Homestead—September 8, 1914—Affirmed.
- Pugh, Louisa K.—Desert Land—June 6, 1914—Affirmed.
- Pughe, Charles—Homestead—May 28, 1914—Remanded.
- Pugmire *v.* Loveland—Homestead—March 11, 1914—Affirmed.
- Pugsley *v.* Stevens—Homestead—November 27, 1914—Reversed.
- Purdee, Armstrong, assignee of Kilbee—Soldiers' Additional—February 25, 1915—Affirmed.
- Purdy, James A.—Homestead—January 29, 1914—Remanded.
- Purdy, James A.—Homestead—April 29, 1914—Reversed.
- Purvis, Roy B.—Homestead—August 19, 1914—Remanded.
- Pyle *v.* Grant—Desert Land—September 17, 1914—Affirmed.
- Qualheim, Bern L.—Timber and Stone—January 27, 1915—Affirmed.
- Qualheim, Bern L.—Homestead—January 29, 1915—Affirmed.
- Qualheim, Rasmus O.—Homestead—January 29, 1915—Affirmed.
- Quenzer, Katherina, formerly Oster—Homestead—April 10, 1914—Reversed.
- Quinlan, David, Dick Lumber Co., trans.—Timber and Stone—October 14, 1914—Affirmed.
- Quinn, Ella X.—Homestead—January 28, 1914—Affirmed.
- Quinn, Emma—Homestead—January 28, 1914—Affirmed.
- Quinn, Sarah R.—Homestead—January 28, 1914—Affirmed.
- Quinn, Thomas C.—Homestead—February 10, 1914—Affirmed.
- Quintana, M.—Homestead—January 14, 1915—Affirmed.
- Raaum *v.* Mantei—Homestead—November 24, 1914—Affirmed.
- Raber, Chris—Desert Land—August 31, 1914—Affirmed.
- Race *v.* Paulus—Homestead—December 16, 1914—Affirmed.
- Rader *v.* Northern Pacific Ry. Co.—Selection—December 26, 1914—Affirmed.
- Rader *v.* Northern Pacific Ry. Co.—Desert Land—February 18, 1915—Motion Denied.
- Raether *v.* Estes—Homestead—September 14, 1914—Affirmed.
- Rainey, Elmer, Dick Lumber Co., trans.—Timber and Stone—October 14, 1914—Affirmed.
- Rainville, Pierre J.—Homestead—December 23, 1914—Affirmed.
- Ralya, John M.—Homestead—September 5, 1914—Reversed.
- Ramey, A. H., *et al.*—Survey—August 15, 1914—Instructions.
- Ramquist, Ellen K.—Homestead—October 13, 1914—Remanded.
- Randle, George C.—Homestead—January 29, 1914—Reversed.
- Randolph, Samuel N., Independent Coal & Coke Co., trans.—Coal Entry—September 5, 1914—Affirmed.
- Rankin, John W.—Desert Land—February 16, 1915—Reversed.
- Ranous *v.* Bramley—Homestead—July 2, 1914—Affirmed.
- Rare Metals Mining and Milling Co. *v.* Boericke—Mineral—December 16, 1914—Affirmed.
- Rarick, Charles C.—Timber and Stone—August 28, 1914—Affirmed.
- Rarick, Charles C.—Timber and Stone—November 4, 1914—Motion Denied.
- Rathbone, John D.—Homestead—February 5, 1914—Affirmed.
- Rathbun, Frank D.—Valentine Scrip—April 24, 1914—Remanded.
- Rawn, Seth—Repayment—October 3, 1914—Affirmed.
- Ray, Oscar H.—Homestead—August 31, 1914—Affirmed.
- Raymond *v.* Reister—Homestead—January 29, 1915—Reversed.
- Rea, Robert M.—Homestead—October 17, 1914—Remanded.
- Rebhausen *v.* Collins—Homestead—October 7, 1914—Affirmed.
- Redd, Harry M.—Homestead—January 27, 1915—Affirmed.

- Rebillet, Louis G.—Homestead—September 26, 1914—Affirmed.
- Redenbaugh, Martha—Homestead—February 28, 1914—Reversed.
- Redondo Development Co.—Survey—January 9, 1914—Instructions.
- Redondo Development Co.—Survey—April 18, 1914—Affirmed.
- Redondo Development Co.—Survey—June 6, 1914—Motion Denied.
- Reebe *v.* Grigsby—Desert Land—January 27, 1915—Affirmed.
- Reece *v.* Southern Pacific R. R. Co.—Homestead—December 16, 1914—Affirmed.
- Reed, John A.—Homestead—October 20, 1914—Reversed.
- Reed, May S.—Homestead—April 10, 1914—Reversed.
- Reed *v.* Alexander—Homestead—August 15, 1914—Affirmed.
- Reed *v.* Brightwiser—Homestead—March 18, 1914—Remanded.
- Reed *v.* McElligott—Homestead—April 10, 1914—Affirmed.
- Reed *v.* Navoditzky—Desert Land—August 26, 1914—Affirmed.
- Reed *v.* St. Paul, Minneapolis & Manitoba Railway Co.—Selection—January 16, 1914—Instructions.
- Reed *v.* St. Paul, Minneapolis and Manitoba Railway Co.—Selection—April 22, 1914—Motion Denied.
- Reeve *v.* Doyle—Desert Land—February 28, 1914—Affirmed.
- Reeves, William T.—Repayment—October 19, 1914—Reversed.
- Reher *v.* Hawkins—Desert Land—August 6, 1914—Affirmed.
- Rehmstedt, Henry—Homestead—October 26, 1914—Affirmed.
- Reichert *v.* Northern Pacific Ry. Co.—Selection—May 15, 1914—Reversed.
- Reilly, Richard J.—Desert Land—February 28, 1914—Affirmed.
- Renn, Paul, assignee of Fleming—Soldiers' Additional—February 19, 1914—Affirmed.
- Renn, Paul, assignee of Fleming—Soldiers' Additional—April 20, 1914—Motion Denied.
- Reno, Amos—Homestead—June 23, 1914—Affirmed.
- Reno *v.* Nienhauser—Homestead—April 24, 1914—Petition Granted.
- Renstrom, Binni, *et al.*—Homestead—March 27, 1914—Reversed.
- Rentfro, James R.—Homestead—October 20, 1914—Reversed.
- Rentz *v.* Mendenhall—Homestead—April 10, 1914—Affirmed.
- Reslock *v.* Sullivan—Homestead—August 19, 1914—Affirmed.
- Resner, Lena J., formerly Van Donseelaar—Homestead—June 23, 1914—Reversed.
- Reyelt *v.* Bearfield—Homestead—July 28, 1914—Affirmed.
- Reynolds, Alvin H.—Desert Land—August 21, 1914—Affirmed.
- Reynolds *v.* Montana—March 25, 1914—Affirmed.
- Reynolds *v.* Ross—Homestead—January 29, 1914—Affirmed.
- Rhodes, Lauvinia—Timber and Stone—October 7, 1914—Modified and Remanded.
- Rice, Harriet N.—Desert Land—September 19, 1914—Reversed.
- Rice, James E., assignee of Newman—Soldiers' Additional—May 29, 1914—Remanded.
- Rice, Newton J., assignee of Crowell—Desert Land—November 27, 1914—Reversed.
- Rice *v.* Brawner—Homestead—March 14, 1914—Affirmed.
- Rice *v.* Martens—Homestead—January 26, 1914—Petition Denied.
- Rice *v.* Moore—Desert Land—August 28, 1914—Reversed.
- Rice *v.* Moore—Desert Land—December 29, 1914—Motion Denied.
- Rice *v.* Simmons—Homestead—March 12, 1914—Reversed.
- Rich Bar Mining Co. *v.* Gensey—Homestead—December 26, 1914—Affirmed.
- Richards, James A.—Homestead—April 29, 1914—Affirmed.
- Richards, John S.—Homestead—October 31, 1914—Vacated.
- Richards, William W.—Homestead—April 27, 1914—Reversed.

- Richardson, S., *et al.*—Mineral—October 12, 1914—Affirmed.
- Richardson, S., *et al.*—Mineral—January 29, 1915—Motion Denied.
- Richardson, Elizabeth A.—Desert Land—February 4, 1915—Affirmed.
- Richardson, Joseph M.—Desert Land—November 7, 1914—Affirmed.
- Richardson, Joseph M.—Desert Land—February 9, 1915—Petition Denied.
- Richardson *v.* Southern Pacific R. R. Co.—Soldiers' Additional—January 19, 1915—Affirmed.
- Richter, Fred—Desert Land—June 5, 1914—Remanded.
- Ricketts, William P.—Lieu Selection—March 28, 1914—Motion Denied.
- Ricks, James B.—Desert Land—March 28, 1914—Motion Denied.
- Ricks, James B.—Desert Land—December 29, 1914—Petition Denied.
- Riddick, Carl W., assignee of Thompson—Soldiers' Additional—January 28, 1915—Affirmed.
- Rife, Edward H.—Soldiers' Additional—October 6, 1914—Remanded.
- Rife, Edward H.—Soldiers' Additional—November 18, 1914—Affirmed.
- Rinehart, Laura B.—Timber and Stone—January 29, 1915—Affirmed.
- Ring *v.* Selah—Homestead—August 12, 1914—Affirmed.
- Ringdahl, Gust.—Homestead—July 21, 1914—Affirmed.
- Rink, Emil C.—Homestead—February 26, 1915—Affirmed.
- Rinker *v.* Fry—Homestead—February 18, 1914—Petition Denied.
- Ripley, Ben—Homestead—March 25, 1914—Remanded.
- Ripple, Martin, sr.—Homestead—October 10, 1914—Remanded.
- Risa, Martin, assignee of Chadwick—Soldiers' Additional—October 31, 1914—Affirmed.
- Ritchet *v.* Northern Pacific Ry. Co.—Homestead—June 2, 1914—Affirmed.
- Ritchev *v.* Gilmore—Homestead—March 19, 1914—Affirmed.
- Ritter, Otto T.—Homestead—July 2, 1914—Affirmed.
- Roach *v.* Gye—Homestead—September 14, 1914—Affirmed.
- Robbins, Dora W.—Desert Land—September 19, 1914—Affirmed.
- Robbins, Elmer G.—Homestead—February 28, 1914—Reversed.
- Robbins *et al. v.* Williams—Homestead—November 18, 1914—Affirmed.
- Robbins, George E.—Desert Land—July 13, 1914—Reversed.
- Robbins *v.* Elliott—Homestead—February 19, 1914—Motion Denied.
- Robbins *v.* Northern Pacific Ry. Co.—Selection—January 2, 1914—Motion Denied.
- Roberts, Arthur M.—Homestead—November 4, 1914—Reversed.
- Roberts, Frank—Homestead—November 7, 1914—Affirmed.
- Roberts, George T.—Homestead—November 30, 1914—Affirmed.
- Roberts, Laura B.—Repayment—October 12, 1914—Affirmed.
- Roberts, Nathaniel H.—Repayment—August 18, 1914—Affirmed.
- Roberts *v.* Coghlan—Homestead—December 26, 1914—Affirmed.
- Roberts *v.* Johnston—Desert Land—February 12, 1914—Motion Sustained.
- Roberts *v.* Woods—Homestead—September 30, 1914—Petition Denied.
- Robertson, Peter T.—Homestead—March 24, 1914—Affirmed.
- Robertson *v.* Northern Pacific Ry. Co.—Homestead—June 23, 1914—Affirmed.
- Robbins, Eleazor T.—Repayment—August 22, 1914—Affirmed.
- Robicheau, Joseph—Homestead—March 18, 1914—Petition Denied.
- Robinett, Hezekiah J.—Homestead—January 16, 1914—Remanded.
- Robinett, Hezekiah J.—Homestead—December 29, 1914—Petition Dismissed.
- Robinson, Anna E.—Repayment—September 26, 1914—Affirmed.
- Robinson, Charles E.—Desert Land—March 14, 1914—Affirmed.
- Robinson Improvement Co.—Cash Entry—May 12, 1914—Affirmed.
- Robinson, John W.—Homestead—November 4, 1914—Affirmed.

- Robinson, Josephine F.—Repayment—September 26, 1914—Affirmed.
- Robinson, Louis—Homestead—September 26, 1914—Remanded.
- Robinson, Melvin—Homestead—April 30, 1914—Reversed.
- Robinson, Rose—Homestead—January 20, 1914—Dismissed.
- Robinson v. Reboweitra—Homestead—February 16, 1915—Reversed.
- Roby, Elizabeth B., J. S. Lyons, trans.—Timber and Stone—September 5, 1914—Affirmed.
- Roby, Elizabeth B., J. S. Lyons, trans.—Timber and Stone—December 16, 1914—Motion Denied.
- Rockney v. Briedal—Homestead—March 12, 1914—Remanded.
- Rodefer, Blanche—Homestead—May 28, 1914—Modified.
- Rodefer, Blanche—Homestead—August 31, 1914—Modified.
- Rodgers v. Laster—Homestead—September 14, 1914—Affirmed.
- Roe, George W.—Homestead—December 16, 1914—Affirmed.
- Rogers, Elizabeth—Desert Land—September 14, 1914—Affirmed.
- Rogers, Emanuel—Homestead—January 29, 1914—Affirmed.
- Rogers, Francis E., assignee of Lane—Soldiers' Additional—April 28, 1914—Remanded.
- Rogers, John J.—Homestead—June 9, 1914—Affirmed.
- Rogers v. Southern Pacific R. R. Co.—Desert Land—February 28, 1914—Affirmed.
- Rogers v. Southern Pacific R. R. Co.—Desert Land—May 27, 1914—Motion Denied.
- Rogers v. Southern Pacific R. R. Co.—Desert Land—May 27, 1914—Petition Denied.
- Rogers v. Southern Pacific R. R. Co.—Desert Land—November 7, 1914—Affirmed.
- Rogers v. Southern Pacific R. R. Co.—Desert Land—December 26, 1914—Affirmed.
- Roland v. Heirs of Blanchard—Homestead—October 29, 1914—Affirmed.
- Romer, L. J., assignee of Bagley—Soldiers' Additional—February 2, 1915—Affirmed.
- Romine v. Barlow—Homestead—August 25, 1914—Petition Denied.
- Romine v. Barlow—Desert Land—December 26, 1914—Petition Denied.
- Ronning v. Sage—Homestead—February 12, 1914—Motion allowed.
- Rookledge, Mrs. Sadie—Desert Land—June 29, 1914—Affirmed.
- Rootwick, Enoch B.—Homestead—March 19, 1914—Motion Denied.
- Rosborough, John W., assignee of Coday, Sr.—Soldiers' Additional—September 14, 1914—Affirmed.
- Rose, Edmund—Homestead—February 28, 1914—Affirmed.
- Rosenburg v. Blackwood—Homestead—May 29, 1914—Affirmed.
- Ross, Alla F.—Timber and Stone—December 30, 1914—Affirmed.
- Ross, Alla F.—Timber and Stone—February 27, 1915—Motion Denied.
- Ross, Carl K.—Homestead—September 5, 1914—Remanded.
- Ross, Charles A.—Timber and Stone—January 29, 1915—Affirmed.
- Ross, Columbus J.—Homestead—September 17, 1914—Remanded.
- Ross, Dora D.—Homestead—October 7, 1914—Affirmed.
- Ross, Ellison L.—Timber and Stone—January 29, 1915—Affirmed.
- Ross, Joe C.—Homestead—November 19, 1914—Affirmed.
- Ross, Joe D.—Homestead—August 18, 1914—Affirmed.
- Ross, Thomas—Homestead—April 29, 1914—Reversed.
- Ross v. Brown's Heirs—Homestead—September 14, 1914—Affirmed.
- Ross v. Brown's Heirs—Homestead—November 14, 1914—Motion Denied.
- Ross v. McGillic—Homestead—February 20, 1914—Affirmed.
- Ross v. McGillic—Homestead—April 29, 1914—Motion Denied.
- Rossom, Fred B., assignee of James F. Richards—Soldiers' Additional—March 18, 1914—Remanded.

- Roth, Bena E.—Repayment—April 10, 1914—Affirmed.
- Rothe *v.* Heirs of Stewart—Homestead—September 14, 1914—Affirmed.
- Rothie *v.* Ash—Homestead—December 30, 1914—Affirmed.
- Rountree, Rufus V.—Desert Land—October 3, 1914—Affirmed.
- Rowe *v.* Northern Pacific Ry. Co.—Homestead—June 20, 1914—Affirmed.
- Rowe *v.* Northern Pacific Ry. Co.—Selection—October 29, 1914—Motion Denied.
- Rowland, Hubert M.—Desert Land—September 26, 1914—Affirmed.
- Rublee, Francis M.—Desert Land—August 28, 1914—Affirmed.
- Rublee, Francis M., jr.—Desert Land—August 28, 1914—Affirmed.
- Rucker, Bethel J.—Selection—March 12, 1914—Reversed.
- Rucker, Silus—Homestead—November 18, 1914—Affirmed.
- Rudisill, Charles L.—Homestead—March 19, 1914—Reversed.
- Rudolph, William H.—Homestead—January 2, 1915—Remanded.
- Ruellan, Stanislas—Homestead—February 19, 1914—Reversed.
- Rumsey, Roy L.—Desert Land—May 1, 1914—Affirmed.
- Runkle, Pearle—Homestead—October 31, 1914—Vacated.
- Rupert, George—Homestead—August 31, 1914—Motion Remanded.
- Rupp, Earl M.—Homestead—February 28, 1914—Reversed.
- Rush *v.* Mosier—Homestead—August 12, 1914—Affirmed.
- Rush *v.* Mosier—Desert Land—October 16, 1914—Motion Denied.
- Russell, John F.—Homestead—September 26, 1914—Remanded.
- Russell, Maggie J.—Homestead—October 30, 1914—Reversed.
- Russell, Michael H.—Repayment—November 21, 1914—Affirmed.
- Russell, William—Homestead—September 14, 1914—Affirmed.
- Russell *v.* Anderson—Homestead—February 16, 1915—Reversed.
- Rutherford, Lewis W.—Homestead—February 26, 1915—Remanded.
- Rutherford, William R., Ringsrud Mercantile Co., trans.—Homestead—May 27, 1914—Reversed.
- Rutledge, Eliza B.—Homestead—April 28, 1914—Affirmed.
- Ryan, Eugena B.—Homestead—February 9, 1915—Affirmed.
- Ryan, John L.—Timber and Stone—February 10, 1914—Affirmed.
- Ryan *v.* Sjöberg—Homestead—February 2, 1915—Affirmed.
- Ryerson, Ramah R.—Homestead—August 26, 1914—Affirmed.
- Ryerson, Ramah R.—Homestead—December 16, 1914—Motion Denied.
- Rykken, Lars T.—Homestead—September 26, 1914—Affirmed.
- Sack, John F.—Homestead—September 17, 1914—Affirmed.
- Sackett, Samuel A.—Desert Land—February 4, 1915—Affirmed.
- Sagen *v.* Pierce—Homestead—October 6, 1914—Affirmed.
- Sager, Marion—Homestead—December 16, 1914—Affirmed.
- Sahr *v.* Eidsness—Homestead—August 26, 1914—Reversed.
- Sahr *v.* Eidsness—Homestead—October 30, 1914—Motion Denied.
- Saine, Grace W.—Desert Land—January 29, 1915—Affirmed.
- St. Louis, Iron Mountain & Southern Ry. Co.—Selection—December 16, 1914—Affirmed.
- St. Louis, Iron Mountain & Southern Ry. Co.—Selection—December 30, 1914—Affirmed.
- St. Paul, Minneapolis & Manitoba R. R. Co.—Selection—February 16, 1915—Modified.
- Sais *v.* Storey—Homestead—November 24, 1914—Affirmed.
- Saling, Allen W., The Northwest Timber Co., trans.—Timber and Stone—December 16, 1914—Petition Denied.
- Salisbury, Stuart M., assignee of Finister—Soldiers' Additional—May 12, 1914—Remanded.
- Salisbury, Stuart M., assignee of Winter—Soldiers' Additional—May 12, 1914—Remanded.

- Salisbury, George — Homestead — July 13, 1914 — Reversed.
- Samelson, Samuel J. — Repayment — November 18, 1914 — Affirmed.
- Sampson, John — Homestead — May 6, 1914 — Reversed.
- San Francisco Chemical Co. v. United States Phosphate Co. — Mineral — September 21, 1914 — Dismissed.
- Sanchez, Andrella — Homestead — October 29, 1914 — Reversed.
- Sanchez v. Lynch — Homestead — October 31, 1914 — Affirmed.
- Sandage, Otis L. — Homestead — May 29, 1914 — Affirmed.
- Sandall, Carrie A. — Mineral — August 27, 1914 — Reversed.
- Sanders, Ellen — Homestead — November 19, 1914 — Affirmed.
- Sanders v. Evans — Desert Land — October 5, 1914 — Affirmed.
- Sanders v. Preston — Homestead — February 19, 1914 — Reversed.
- Sanderson, Henry — Homestead — October 23, 1914 — Affirmed.
- Sanderson, W. W. — Repayment — December 31, 1914 — Affirmed.
- Sandusky, Amanda E. — Desert Land — October 31, 1914 — Modified.
- Sandusky, Thomas — Desert Land — October 13, 1914 — Modified.
- Sanger, John S. — Repayment — September 26, 1914 — Affirmed.
- Sangston v. Northern Pacific Ry. Co. — Homestead — August 26, 1914 — Affirmed.
- Sanislo, John J. — Desert Land — July 9, 1914 — Reversed.
- Santa Fe Central Ry. Co. (2 cases) — Station Ground — October 30, 1914 — Reversed.
- Santa Fe Pacific Ry. Co. (2 cases) — Forest Lieu Selection — June 13, 1914 — Remanded.
- Santa Fe Pacific R. R. Co. — Selection — September 26, 1914 — Affirmed.
- Santa Fe Pacific R. R. Co. — Selection — December 3, 1914 — Affirmed.
- Santa Fe Pacific R. R. Co. — Selection — December 26, 1914 — Motion Modified.
- Santa Fe Pacific Ry. Co., H. M. Kelly — Selection — February 16, 1915 — Affirmed.
- Santa Fe Pacific Ry. Co. — Selection — February 26, 1915 — Approved.
- Santa Fe Pacific Ry. Co. — Selection — February 27, 1915 — Approved.
- Santa Fe Pacific Ry. Co. v. Northern Pacific Ry. Co. — Selection — October 31, 1914 — Affirmed.
- Santa Fe Pacific R. R. Co. v. Northern Pacific Ry. Co. — Selection — December 26, 1914 — Affirmed.
- Sargent, Fred W. — Desert Land — August 25, 1914 — Affirmed.
- Sargent v. Tanner — Homestead — December 23, 1914 — Affirmed.
- Sargent, Louie M. — Homestead — February 16, 1915 — Reversed.
- Sauter, William C. — Desert Land — September 26, 1914 — Affirmed.
- Savage, Herbert W. — Homestead — August 14, 1914 — Affirmed.
- Savage, Herbert W., assignee of Brist — Soldiers' Additional — November 14, 1914 — Motion Denied.
- Sawyer v. Southern Pacific R. R. Co. — Desert Land — February 28, 1914 — Affirmed.
- Sayles v. Severns — Timber and Stone — October 20, 1914 — Modified.
- Scalf, Coleman A. — Homestead — July 16, 1914 — Reversed.
- Scalf, John W. — Homestead — July 9, 1914 — Affirmed.
- Schachterle, Edward — Homestead — May 26, 1914 — Reversed.
- Schaefer v. Northern Pacific Ry. Co. — Homestead — June 20, 1914 — Affirmed.
- Schaefer v. Northern Pacific Ry. Co. — Homestead — August 31, 1914 — Affirmed.
- Scherzer v. Brown — Homestead — February 26, 1915 — Affirmed.
- Schielle, Sebastian — Homestead — March 11, 1914 — Reversed.
- Schireson, Bernard — Desert Land — August 13, 1914 — Affirmed.
- Schireson, Nathan W. — Desert Land — July 29, 1914 — Affirmed.
- Schireson, Nathan W. — Desert Land — October 5, 1914 — Motion Denied.

- Schlingman, J. F. C.—Desert Land—October 23, 1914—Affirmed.
- Schlingman, J. F. C.—Desert Land—December 29, 1914—Motion Denied.
- Schneider, Martin—Desert Land—May 15, 1914—Remanded.
- Schnur, Ann—Homestead—December 3, 1914—Affirmed.
- Schoeder *v.* Newhaus—Homestead—April 10, 1914—Reversed.
- Schoenburg, August—Homestead—March 12, 1914—Affirmed.
- Schoenburg, August—Homestead—May 20, 1914—Motion Denied.
- Schoenburg, Bernard—Homestead—March 12, 1914—Affirmed.
- Schoenburg, Bernard—Homestead—May 20, 1914—Motion Denied.
- Schofield *v.* State of Idaho—Homestead—February 16, 1915—Affirmed.
- Schoonmaker, Margaret—Homestead—September 30, 1914—Reversed.
- Schott *v.* Ducks—Homestead—June 29, 1914—Affirmed.
- Schrock *v.* Northern Pacific Ry. Co.—Homestead—September 5, 1914—Affirmed.
- Schroeder, Henry A.—Desert Land—October 14, 1914—Affirmed.
- Schubert *v.* Northern Pacific Ry. Co.—Selection—August 3, 1914—Affirmed.
- Schulz, Albert, *et al.*—Homestead—March 19, 1914—Affirmed.
- Schumacher *v.* Howe—Homestead—August 25, 1914—Petition Denied.
- Schumacher *v.* Howe—Desert Land—December 26, 1914—Petition Denied.
- Schuster, Anton—Homestead—February 19, 1914—Reversed.
- Schwerdt *v.* Kupperion—Homestead—March 27, 1914—Reversed.
- Schwertfeger, Herman—Desert Land—October 29, 1914—Affirmed.
- Scofield, Andrew L., *et al.*—Coal—December 14, 1914—Petition Denied.
- Scofield *v.* Northern Pacific Ry. Co.—Sioux Half-breed Scrip—May 7, 1914—Affirmed.
- Scorpion Mining Co.—Mineral—June 23, 1914—Reversed.
- Scott, George M., jr.—Homestead—September 26, 1914—Affirmed.
- Scott, Jennie M., assignee of Garcelon—Desert Land—November 27, 1914—Reversed.
- Scott, William E.—Homestead—March 12, 1914—Affirmed.
- Scott *v.* State of Minnesota—Homestead—February 21, 1914—Reversed.
- Scott *v.* Minnesota—Homestead—August 12, 1914—Motion Denied.
- Scott *v.* Whitehouse—Homestead—September 17, 1914—Affirmed.
- Scotten *v.* Lansiedel—Homestead—February 28, 1914—Motion Vacated.
- Scrivner, Mattie B., The Northwest Timber Co., trans.—Timber and Stone—December 16, 1914—Petition Denied.
- Scrifer, William B., The Northwest Timber Co., trans.—Timber and Stone—December 16, 1914—Petition Denied.
- Seadore *v.* Tanna—Homestead—August 22, 1914—Affirmed.
- Sears, Rosa D.—Homestead—January 2, 1914—Affirmed.
- Seattle Contact Copper Co.—Mineral—August 19, 1914—Affirmed.
- Seattle Contact Copper Co.—Mineral—October 30, 1914—Motion Granted.
- Sedlacek *v.* Viano—Homestead—August 12, 1914—Petition Denied.
- Sedlacek *v.* Viano—Homestead—October 26, 1914—Petition Denied.
- Seeger, William, D. R. Whitaker, trans.—Homestead—March 19, 1914—Affirmed.
- Seegrift *v.* Bergman—Homestead—March 21, 1914—Affirmed.
- Seidel *v.* Moore—Desert Land—March 14, 1914—Affirmed.
- Seidell *v.* St. Paul, Minneapolis and Manitoba Ry. Co.—Homestead—May 9, 1914—Petition Denied.
- Seigler, Henry A.—Homestead—August 15, 1914—Affirmed.
- Self, George—Timber and Stone—November 21, 1914—Remanded.
- Selfridge, Grant—Repayment—December 31, 1914—Affirmed.
- Selik, George—Homestead—September 13, 1914—Affirmed.
- Seljeskog, Louis S.—Homestead—September 26, 1914—Remanded.

- Sellers *v.* Barber—Homestead—September 21, 1914—Affirmed.
- Senger, Ernest H.—Desert Land—November 21, 1914—Affirmed.
- Sepulveda, Lola, *et al.*—Desert Land—February 17, 1914—Affirmed.
- Sepulveda, Lola, *et al.*—Desert Land—May 26, 1914—Motion Denied.
- Serna, Juan B.—Homestead—October 27, 1914—Affirmed.
- Serna *v.* Urioste—Homestead—February 21, 1914—Affirmed.
- Setser, Lee—Homestead—December 23, 1914—Modified.
- Setser, Lee—Homestead—February 26, 1915—Motion Denied.
- Seufert Bros. Co. *v.* Stewart—Homestead—October 16, 1914—Affirmed.
- Seufert Bros. Co. *v.* Stewart—Homestead—January 29, 1915—Motion Denied.
- Seupelt, J. G.—Survey—October 26, 1914—Motion Denied.
- Seveland, Sam—Homestead—February 19, 1914—Reversed.
- Sewright *v.* Southern Pacific R. R. Co.—Desert Land—August 31, 1914—Affirmed.
- Seymour, Bennett E.—Repayment—November 18, 1914—Affirmed.
- Seymour *v.* Renie *et al.*—Mineral—March 21, 1914—Affirmed.
- Seymour *v.* Renie *et al.*—Coal Entry—June 13, 1914—Motion Denied.
- Shad *v.* Roth—Homestead—June 9, 1914—Dismissed.
- Shad *v.* Roth—Homestead—August 13, 1914—Motion Sustained.
- Shaffer, Nettie V.—Desert Land—January 31, 1914—Remanded.
- Shallenberger, James B.—Timber and Stone—December 16, 1914—Affirmed.
- Shallenberger, James B.—Timber and Stone—February 16, 1915—Motion Denied.
- Shama, Elias—Homestead—March 31, 1914—Petition Denied.
- Shama, Elias, W. T. Plumb, trans.—Homestead—March 31, 1914—Reversed.
- Shama, Elias, W. T. Plumb, trans.—Homestead—April 29, 1914—Affirmed.
- Shanahan, Ambrose—Homestead—May 1, 1914—Reversed.
- Shanahan, Ambrose—Desert Land—January 29, 1915—Affirmed.
- Shaner, Harry S.—Homestead—June 23, 1914—Remanded.
- Shaneyfelt, Charles H.—Homestead—June 20, 1914—Affirmed.
- Shank *et al. v.* Holmes—Mineral—February 25, 1915—Petition Granted.
- Shanklin, James W.—Timber and Stone—November 7, 1914—Modified.
- Shanks *v.* Miller—Homestead—October 17, 1914—Affirmed.
- Shannon, John W.—Desert Land—June 9, 1914—Affirmed.
- Sharon, Albert C.—Homestead—August 19, 1914—Reversed.
- Sharp, David E.—Homestead—October 30, 1914—Reversed.
- Shaver, Mrs. Edward—Homestead—August 12, 1914—Affirmed.
- Shaw, John G.—Desert Land—November 18, 1914—Affirmed.
- Shaw, Minerva P.—Homestead—February 19, 1914—Reversed.
- Shawver, Parley—Homestead—May 28, 1914—Reversed.
- Shay, Edwin W.—Homestead—January 9, 1914—Reversed.
- Shaylor, John H.—Homestead—October 23, 1914—Affirmed.
- Shearer, Carl—Homestead—October 27, 1914—Affirmed.
- Shearer, James L.—Homestead—October 27, 1914—Affirmed.
- Shearer *v.* Northern Pacific Ry. Co. *et al.*—Selection—February 6, 1914—Affirmed.
- Sheehan *v.* Detrick *et al.*—Homestead—January 25, 1915—Affirmed.
- Sheehy, Margaret E.—Homestead—September 9, 1914—Affirmed.
- Sheeley *v.* Kulis, Heirs of—Homestead—February 7, 1914—Affirmed.
- Sheets *v.* Smith—Homestead—August 19, 1914—Affirmed.
- Sheffield, George E.—Homestead—March 25, 1914—Affirmed.
- Shelby *v.* Frakes—Homestead—March 14, 1914—Affirmed.

- Shelton, James O.—Homestead—June 18, 1914—Reversed.
- Shelyer *v.* McMurtrie—Desert Land—October 27, 1914—Affirmed.
- Shenk *v.* Maney—Homestead—December 23, 1914—Affirmed.
- Sheppard, Robert—Homestead—May 26, 1914—Affirmed.
- Sherburne, Frederick L.—Homestead—January 25, 1915—Affirmed.
- Sherer *v.* Dickerson—Desert Land—February 26, 1915—Remanded.
- Sherman, Cora D.—Desert Land—February 10, 1914—Motion Denied.
- Sherman, J. P.—Coal—December 16, 1914—Affirmed.
- Sherman, James H., *et al.*—Survey—February 7, 1914—Motion Denied.
- Sherman, John J.—Homestead—May 29, 1914—Remanded.
- Sherwood, Loyd E.—Homestead—February 28, 1914—Reversed.
- Shew, Robert H.—Desert Land—October 29, 1914—Affirmed.
- Shipman *v.* Zink—Homestead—June 12, 1914—Reversed.
- Shock, Christ—Homestead—June 9, 1914—Reversed.
- Shoecraft, William H., *et al.*—Coal Land—April 24, 1914—Reversed.
- Shoemaker *v.* Martin—Desert Land—April 10, 1914—Affirmed.
- Shore, Eva W., *et al.*—Desert Land—April 27, 1914—Affirmed.
- Short *v.* Brown—Homestead—March 11, 1914—Affirmed.
- Short *v.* Northern Pacific Ry. Co.—Homestead—June 23, 1914—Affirmed.
- Showalter, Clyde D.—Homestead—September 5, 1914—Affirmed.
- Shroll, Roy W.—Homestead—December 26, 1914—Affirmed.
- Shubert *v.* Northern Pacific Ry. Co.—Homestead—September 26, 1914—Motion Denied.
- Shugars *v.* Northern Pacific Ry. Co.—Homestead—September 26, 1914—Petition Denied.
- Shull, John—Desert Land—March 7, 1914—Remanded.
- Shull, Tice—Homestead—June 12, 1914—Affirmed.
- Shumard, Grace L.—Desert Land—October 7, 1914—Affirmed.
- Shumway, Ralph W.—Timber and Stone—September 26, 1914—Affirmed.
- Shyne, Dan—Repayment—September 9, 1914—Modified.
- Sierra Blue Lakes Water and Power Co.—Right of Way—December 16, 1914—Affirmed.
- Sifers *v.* Northern Pacific Ry. Co.—Homestead—January 29, 1915—Affirmed.
- Sigsgaard *v.* Britton—Homestead—September 18, 1914—Affirmed.
- Sigsgaard *v.* Britton—Homestead—December 16, 1914—Motion Denied.
- Siling, George M.—Homestead—December 5, 1914—Affirmed.
- Siling, Mamie L.—Homestead—December 5, 1914—Affirmed.
- Sill, Jasper, assignee of Randolph—Soldiers' Additional—October 5, 1914—Affirmed.
- Simmons, William A.—Homestead—January 12, 1915—Affirmed.
- Simmons *v.* Edgar—Homestead—August 21, 1914—Affirmed.
- Simmons *v.* Northern Pacific Ry. Co.—Homestead—January 29, 1915—Affirmed.
- Simms, Eugene S.—Timber and Stone—September 26, 1914—Affirmed.
- Simon *et al. v.* State of Montana—Mineral—October 17, 1914—Dismissed.
- Simons, Charles R., Dick Lumber Co., trans.—Timber and Stone—October 14, 1914—Affirmed.
- Simons, Walter A.—Desert Land—February 27, 1914—Dismissed.
- Simpson, Sallie C.—Desert Land—November 30, 1914—Affirmed.
- Simpson, John—Homestead—July 28, 1914—Remanded.
- Singer, Edith M.—Timber and Stone—January 29, 1915—Affirmed.
- Singer, Harold D.—Timber and Stone—January 29, 1915—Affirmed.
- Sinnott *v.* Chapman—Homestead—July 28, 1914—Affirmed.

- Sipple, Florence—Desert Land—February 4, 1915—Affirmed.
- Sisk, William H.—Homestead—October 10, 1914—Affirmed.
- Sistrunk, William J.—Desert Land—September 25, 1914—Affirmed.
- Sivertson, Ole A.—Homestead—January 12, 1915—Affirmed.
- Skelton, Rachel A.—Survey—November 30, 1914—Affirmed.
- Skinner *v.* Bellis—Homestead—August 13, 1914—Affirmed.
- Skog, Andrew—Homestead—March 12, 1914—Affirmed.
- Slack, E. Paul—Homestead—September 14, 1914—Affirmed.
- Slater, Thomas C.—Homestead—September 25, 1914—Reversed.
- Slaton, John T.—Homestead—November 18, 1914—Petition Denied.
- Slaton, John T.—Desert Land—February 15, 1915—Petition Denied.
- Slattery *et al. v.* Matthews—Swamp Land—September 17, 1914—Reversed.
- Slattery Patrick, Percy H. Shellenberger, trans.—Homestead—March 19, 1914—Affirmed.
- Slaughter *v.* Franklin—Homestead—March 18, 1914—Petition Denied.
- Slick *v.* Steadman—Homestead—May 29, 1914—Affirmed.
- Sligh, James M.—Desert Land—June 18, 1914—Reversed.
- Slocum, Crosby S.—Repayment—October 27, 1914—Affirmed.
- Small, Nancy L.—Homestead—October 30, 1914—Affirmed.
- Small *v.* Phillips—Homestead—November 18, 1914—Affirmed.
- Small *v.* Phillips—Homestead—February 26, 1915—Motion Denied.
- Smidt *v.* Westphal—Homestead—February 28, 1914—Affirmed.
- Smith, Amy—Homestead—December 12, 1914—Affirmed.
- Smith, Ansel M.—Survey—October 26, 1914—Affirmed.
- Smith, Ansel M.—Homestead—February 2, 1915—Motion Denied.
- Smith, Carl H.—Homestead—October 27, 1914—Remanded.
- Smith, Charles A.—Selection—November 30, 1914—Affirmed.
- Smith, Charles F.—Homestead—October 27, 1914—Remanded.
- Smith, Chester—Carey Act—February 26, 1915—Affirmed.
- Smith, Clement O.—Desert Land—February 4, 1915—Affirmed.
- Smith, Curry A.—Homestead—August 21, 1914—Petition Granted.
- Smith, David, Heirs of—Homestead—October 27, 1914—Reversed.
- Smith, E. Salisbury—Coal Land—November 30, 1914—Reversed.
- Smith, Edward F., *et al.*—Valentine Scrip—May 29, 1914—Modified.
- Smith, Edwin H.—Homestead—September 26, 1914—Reversed.
- Smith, Elmer S.—Homestead—January 29, 1915—Affirmed.
- Smith, Guy R.—Homestead—January 29, 1915—Reversed.
- Smith, Herman E., assignee of Perkins—Soldiers' Additional—September 17, 1914—Remanded.
- Smith, Herman E., assignee of Pulver—Soldiers' Additional—May 27, 1914—Remanded.
- Smith, Howard—Homestead—April 8, 1914—Remanded.
- Smith, Howard—Homestead—October 31, 1914—Affirmed.
- Smith, James A.—Mineral—December 23, 1914—Modified.
- Smith, John H.—Repayment—November 18, 1914—Affirmed.
- Smith, Margaret M.—Desert Land—May 1, 1914—Petition Dismissed.
- Smith, Margaret McVicar—Desert Land—May 1, 1914—Petition Dismissed.
- Smith, Martin V.—Homestead—August 26, 1914—Affirmed.
- Smith, Ozro S.—Homestead—February 6, 1914—Reversed.
- Smith, Paul C.—Homestead—September 21, 1914—Remanded.
- Smith, Sylvy—Homestead—December 31, 1914—Affirmed.
- Smith, Thomas J.—Homestead—January 29, 1915—Affirmed.
- Smith *v.* Beck—Homestead—May 7, 1914—Affirmed.

- Smith *v.* Beck—Homestead—August 15, 1914—Motion Allowed.
- Smith *v.* Beck—Homestead—October 30, 1914—Motion Denied.
- Smith *v.* Beegler—Mineral—November 14, 1914—Affirmed.
- Smith *v.* Heirs of Stevers—Homestead—January 27, 1915—Motion Denied.
- Smith *v.* McCabe *et al.*—Desert Land—February 16, 1915—Dismissed.
- Smith *v.* Northern Pacific Ry. Co.—Homestead—September 5, 1914—Affirmed.
- Smith *v.* Peterson—Homestead—August 31, 1914—Affirmed.
- Smith *v.* State of New Mexico—Homestead—August 31, 1914—Affirmed.
- Smithson, Adolph H.—Desert Land—May 6, 1914—Affirmed.
- Smizer *v.* Hetherington—Homestead—October 1, 1914—Affirmed.
- Smizer *v.* Hetherington—Homestead—December 26, 1914—Motion Denied.
- Smoot, Thomas H.—Homestead—February 19, 1914—Affirmed.
- Smyer, Joe E.—Right of Way—September 26, 1914—Affirmed.
- Sheddon *v.* Northern Pacific Ry. Co. (2 cases)—Homestead—June 23, 1914—Affirmed.
- Sneed *v.* Zelt—Homestead—August 26, 1914—Affirmed.
- Snoke *v.* Dimond (2 cases)—Homestead—September 8, 1914—Affirmed.
- Snow, George A., assignee of Benner—Soldiers' Additional—May 6, 1914—Vacated.
- Snuire, James A.—Reduction of Area—September 19, 1914—Affirmed.
- Snyder and Wilson—Mineral—June 6, 1914—Affirmed.
- Snyder, George A., assignee of Patterson—Desert Land—August 25, 1914—Affirmed.
- Snyder, Jesse D.—Homestead—May 15, 1914—Remanded.
- Solberg, Charley, Field Bohart, trans.—Homestead—March 19, 1914—Affirmed.
- Solberg *v.* Taylor—Homestead—May 4, 1914—Affirmed.
- Solberg *v.* Taylor—Homestead—July 22, 1914—Motion Modified.
- Sommers, Marie W.—Timber and Stone—August 28, 1914—Affirmed.
- Sommers, Marie W.—Timber and Stone—November 4, 1914—Motion Denied.
- Sorenson *v.* Gill—Desert Land—July 2, 1914—Affirmed.
- Sorenson *v.* Gill—Desert Land—November 7, 1914—Motion Denied.
- Sorenson *v.* Gladue—Homestead—March 24, 1914—Reversed.
- South Dakota, State of—Selection—December 26, 1914—Affirmed.
- Southard *v.* Miller—Desert Land—October 31, 1914—Affirmed.
- Southern Investment Co.—Survey—June 27, 1914—Affirmed.
- Southern Pacific Land Co.—Selection—January 2, 1914—Motion Denied.
- Southern Pacific R. R. Co. (3 cases)—Railroad List—December 30, 1914—Vacated.
- Southern Pacific Railroad Co. *v.* Hubbell—Selection—March 14, 1914—Reversed.
- Southern Sierras Power Co.—Right of Way—June 27, 1914—Modified.
- Southwick *v.* Hines—Homestead—January 28, 1914—Petition Denied.
- Southwick *v.* Lovegren—Homestead—January 28, 1914—Petition Denied.
- Southworh *v.* Scherz—Desert Land—August 15, 1914—Affirmed.
- Sparks, Arthur H., assignee of Anderson—Soldiers' Additional—April 27, 1914—Motion Allowed.
- Sparks, John W., assignee of Anderson—Soldiers' Additional—April 27, 1914—Motion Allowed.
- Sparks, John W., assignee of Anderson—Soldiers' Additional—July 29, 1914—Motion Denied.
- Sparks, Robert F.—Homestead—January 2, 1914—Affirmed.
- Sparta *v.* Scharnke—Homestead—July 2, 1914—Affirmed.
- Spear, Levi G., Heirs of—Homestead—September 17, 1914—Vacated.
- Speckmann, Silas E.—Homestead—August 19, 1914—Affirmed.

- Speckman, Silas E.—Homestead—December 16, 1914—Motion Denied.
- Spellman *v.* Storholm—Homestead—June 18, 1914—Affirmed.
- Spence, La Verne H.—Soldiers' Additional—March 31, 1914—Remanded.
- Spencer, Anna F., The Northwest Timber Co., trans.—Timber and Stone—December 16, 1914—Petition Denied.
- Spencer, Frank A.—Homestead—August 28, 1914—Affirmed.
- Spencer, John G.—Homestead—September 14, 1914—Affirmed.
- Spencer, Septimus W., The Northwest Timber Co., trans.—Timber and Stone—December 16, 1914—Petition Denied.
- Spencer *v.* Oregon & California R. R. Co.—Scrip—November 17, 1914—Affirmed.
- Spiker, J. M.—Survey—February 28, 1914—Affirmed.
- Spiker, J. M.—Survey—July 2, 1914—Motion Denied.
- Spinney, Lucy W.—Desert Land—February 4, 1915—Affirmed.
- Spires, Fred L.—Homestead—August 28, 1914—Affirmed.
- Sprague, Ella L.—Desert Land—July 21, 1914—Remanded.
- Sprague *v.* Hoefler—Desert Land—August 15, 1914—Affirmed.
- Spratt *v.* Brown—Homestead—April 27, 1914—Affirmed.
- Spratt *v.* Brown—Homestead—July 22, 1914—Motion Allowed.
- Sproul, Alice W.—Homestead—September 17, 1914—Reversed.
- Stack, Bernard E., assignee of Yaney—Soldiers' Additional—October 5, 1914—Affirmed.
- Stack, Bernard E.—Soldiers' Additional—October 20, 1914—Affirmed.
- Stage, John H.—Homestead—September 30, 1914—Affirmed.
- Stage, Rhoda M.—Homestead—February 21, 1914—Affirmed.
- Stahl, Anna P.—Homestead—July 16, 1914—Affirmed.
- Stahl, John—Homestead—July 14, 1914—Affirmed.
- Stafford, John T.—Homestead—February 26, 1915—Motion Denied.
- Stalker, James H., assignee of Gillion—Soldiers' Additional—September 26, 1914—Reversed.
- Stallsmith *v.* Lewis—Homestead—August 31, 1914—Affirmed.
- Stam, John G.—Desert Land—October 26, 1914—Affirmed.
- Standart, George R.—Homestead—August 12, 1914—Affirmed.
- Standart, John W.—Homestead—August 12, 1914—Affirmed.
- Starbuck *v.* Southern Pacific R. R. Co.—Desert Land—August 31, 1914—Affirmed.
- Stark, Carl G., D. R. Whitaker, trans.—Homestead—March 19, 1914—Affirmed.
- Stark, James A.—Homestead—April 13, 1914—Remanded.
- Starner, Henry K.—Desert Land—September 25, 1914—Affirmed.
- Starner, Henry K.—Desert Land—December 29, 1914—Motion Denied.
- Starr, William W.—Homestead—November 30, 1914—Affirmed.
- State Bank of Morton County *et al.*—Homestead—February 16, 1915—Reversed.
- State of California, McCloud River Lumber Co., trans.—Selection—April 28, 1914—Motion Remanded.
- States, Silas J.—Homestead—September 26, 1914—Reversed.
- Statler, Luther W.—Homestead—June 27, 1914—Affirmed.
- Statler, Plas W.—Desert Land—April 22, 1914—Affirmed.
- Steege, Bertha A.—Homestead—March 28, 1914—Remanded.
- Steele, Edward W.—Homestead—January 27, 1915—Affirmed.
- Steen and Friedberg—Survey—May 1, 1914—Instructions.
- Steen, Charles P.—Homestead—November 18, 1914—Remanded.
- Steffin *v.* Northern Pacific Ry. Co.—Homestead—May 27, 1914—Affirmed.
- Steiner, Emil, *et al.*—Homestead—December 26, 1914—Modified.
- Steintorf, Ella A.—Desert Land—September 17, 1914—Affirmed.

- Steintorf, Ella A.—Desert Land—December 29, 1914—Motion Denied.
- Stemmerman, John L.—Homestead—February 28, 1914—Reversed.
- Stemple, Guy—Isolated Tract—September 26, 1914—Vacated.
- Stephens, Mary A.—Homestead—September 19, 1914—Affirmed.
- Stephens v. Mack—Homestead—August 6, 1914—Affirmed.
- Stephenson v. Pashgian—Homestead—March 18, 1914—Petition Denied.
- Sterns, Floyd B.—Isolated Tract—June 18, 1914—Affirmed.
- Stevens, Edward C., Milton L. Walker, trans.—Homestead—March 19, 1914—Affirmed.
- Stevens, Frank E.—Reduction of Area—October 20, 1914—Affirmed.
- Stevens, Horace—Lieu Selection—February 19, 1914—Petition Denied.
- Stevens, Howard—Homestead—March 9, 1914—Affirmed.
- Stevens, Le Roy—Homestead—November 19, 1914—Remanded.
- Stevens v. Northern Pacific Ry. Co.—Homestead—June 6, 1914—Affirmed.
- Stevens v. Ringheim—Homestead—March 28, 1914—Affirmed.
- Stewart, C. H., *et al.*—Homestead—March 31, 1914—Petition Denied.
- Stewart, Charles S.—Homestead—June 18, 1914—Reversed.
- Stewart, Had A.—Homestead—January 31, 1914—Reversed.
- Stewart, Lizzie M.—Homestead—March 21, 1914—Reversed.
- Stewart, Minna G., Heir of Marsh—Homestead—March 25, 1914—Reversed.
- Stewart, Samuel—Homestead—October 5, 1914—Affirmed.
- Stewart v. Banks—Homestead—August 26, 1914—Affirmed.
- Stewart v. Morrow—Homestead—August 25, 1914—Petition Denied.
- Stewart v. Morrow—Desert Land—December 26, 1914—Petition Denied.
- Stewart v. Southern Pacific R. R. Co.—Desert Land—December 26, 1914—Affirmed.
- Steyaert, John C., assignee of David Phillips—Soldiers' Additional—March 12, 1914—Motion Denied.
- Stieger v. Howland—Homestead—May 4, 1914—Petition Granted.
- Stiegler, Robert—Homestead—August 25, 1914—Affirmed.
- Stiehl, Myrtle R.—Homestead—January 29, 1915—Affirmed.
- Stiles, Eva E.—Homestead—September 19, 1914—Reversed.
- Stiles, Vincent H.—Coal Land—January 2, 1914—Affirmed.
- Stine, Epsa C.—Repayment—August 28, 1914—Affirmed.
- Stinson, John R.—Soldiers' Additional—April 22, 1914—Affirmed.
- Stinson, John R., assignee of Baty—Soldiers' Additional—October 23, 1914—Affirmed.
- Stiszel v. Perkins—Homestead—July 30, 1914—Remanded.
- Stites v. Dove—Homestead—October 31, 1914—Affirmed.
- Stockham, Hugh—Homestead—April 1, 1914—Affirmed.
- Stockham, Lewis C.—Homestead—April 1, 1914—Affirmed.
- Stoddard, Charles L.—Desert Land—October 1, 1914—Affirmed.
- Stoddard, Charles L.—Desert Land—December 26, 1914—Motion Denied.
- Stoddard, George B.—Homestead—March 18, 1914—Affirmed.
- Stoddard, Mary R.—Desert Land—January 29, 1915—Affirmed.
- Stoddard v. Southern Pacific R. R. Co.—Desert Land—August 31, 1914—Affirmed.
- Stoen v. Mahlum—Homestead—August 25, 1914—Affirmed.
- Stoen v. Mahlum—Homestead—October 20, 1914—Motion Denied.
- Stoll, Joseph—Homestead—February 20, 1914—Reversed.
- Stoll, Joseph—Homestead—April 20, 1914—Motion Denied.
- Stone, Barney O.—Reclamation—October 1, 1914—Reversed.
- Stone, James T.—Homestead—February 28, 1914—Reversed.

- Stone, Mary E., Dick Lumber Co., trans.—Timber and Stone—October 14, 1914—Affirmed.
- Stone, Wilfred D.—Desert Land—August 21, 1914—Affirmed.
- Stone v. Sieff, Jr.—Homestead—February 18, 1914—Remanded.
- Stonehocker, Lial—Homestead—February 6, 1915—Affirmed.
- Stonehocker, Lonzo—Homestead—May 12, 1914—Affirmed.
- Stonehocker, Simon—Homestead—May 12, 1914—Affirmed.
- Stoner, Samuel P., assignee of Springer—Soldiers' Additional—August 26, 1914—Modified.
- Stoner, Samuel P., assignee of Springer—Soldiers' Additional—November 24, 1914—Motion Denied.
- Storle, Ole O.—Homestead—October 20, 1914—Reversed.
- Stoughton, Elmer N.—Homestead—February 2, 1915—Affirmed.
- Stowe, Olive, Dick Lumber Co., trans.—Timber and Stone—October 14, 1914—Affirmed.
- Strain v. Brown, M. Eslick, intervener—Homestead—February 27, 1915—Affirmed.
- Strang, Melvin D.—Homestead—February 6, 1914—Remanded.
- Strang v. Northern Pacific Ry. Co.—Homestead—September 5, 1914—Affirmed.
- Stratton, Percy—Homestead—May 6, 1914—Reversed.
- Stratton v. Copper Queen Consolidated Mining Co.—Mineral—September 19, 1914—Affirmed.
- Stratton v. Dowling—Homestead—September 14, 1914—Affirmed.
- Straw v. Getter—Homestead—September 26, 1914—Affirmed.
- Straw v. Getter—Homestead—December 29, 1914—Motion Denied.
- Strayhorn, Thomas B.—Homestead—December 26, 1914—Affirmed.
- Street, Henry K., assignee of Hindman—Soldiers' Additional—July 30, 1914—Affirmed.
- Streiff, Peter—Homestead—March 24, 1914—Reversed.
- Strohbach, Richard—Repayment—July 17, 1914—Affirmed.
- Strom, Peter A.—Desert Land—March 24, 1914—Affirmed.
- Stromberg v. Northern Pacific Ry. Co.—Homestead—August 31, 1914—Affirmed.
- Stromquist, William A.—Desert Land—October 1, 1914—Affirmed.
- Stromquist, William A.—Desert Land—December 26, 1914—Motion Denied.
- Strong, Arthur L.—Homestead—April 22, 1914—Reversed.
- Strong, Walter R.—Homestead—April 22, 1914—Reversed.
- Strong v. Kimball—Desert Land—July 28, 1914—Affirmed.
- Stroup, Andrew B.—Desert Land—September 8, 1914—Affirmed.
- Strout, Edwin A.—Repayment—September 17, 1914—Affirmed.
- Stull, Sylvester J.—Homestead—April 20, 1914—Remanded.
- Stuper v. Marlow's Heirs—Homestead—February 26, 1915—Affirmed.
- Stutzman's, Menno S., Heirs—Homestead—February 20, 1914—Reversed.
- Sudermann, John—Homestead—March 12, 1914—Reversed.
- Sugars v. Northern Pacific Ry. Co.—Selection—June 13, 1914—Affirmed.
- Sullenburger, Samuel—Homestead—January 17, 1914—Reversed.
- Sullivan, Elizabeth A., *et al.*—Timber and Stone—March 25, 1914—Reversed.
- Sullivan Lake Mining & Milling Co. v. Pietsch—Homestead—October 20, 1914—Reversed.
- Sullivan v. Batchelder—Desert Land—February 26, 1915—Affirmed.
- Summers, Charlie R.—Homestead—February 21, 1914—Reversed.
- Sutherland, Nancy C.—Repayment—November 30, 1914—Affirmed.
- Suver, Charles W.—Desert Land—December 3, 1914—Affirmed.
- Swab v. Northern Pacific Ry. Co.—Homestead—November 19, 1914—Affirmed.
- Swaggart, Grover B.—Homestead—November 19, 1914—Affirmed.

- Swan, Henry—Homestead—July 14, 1914—Affirmed.
- Swanberg, John E.—Homestead—February 26, 1915—Affirmed.
- Swanson, Harriet—Desert Land—September 26, 1914—Affirmed.
- Swanson, Henry—Homestead—September 14, 1914—Affirmed.
- Swanson, Janet J.—Homestead—September 17, 1914—Remanded.
- Swanson, Martin—Homestead—August 21, 1914—Affirmed.
- Swanson, Martin—Homestead—February 26, 1915—Motion Denied.
- Swanson, Paul B.—Desert Land—February 4, 1915—Affirmed.
- Swanson v. Northern Pacific Ry. Co.—Homestead—June 6, 1914—Affirmed.
- Swanson v. Reynolds—Homestead—March 12, 1914—Reversed.
- Swanson v. Reynolds *et al.*—Homestead—February 27, 1915—Modified.
- Swanstrom, Matilda, D. R. Whitaker, trans.—Homestead—March 19, 1914—Affirmed.
- Sweem, Earl Barr—Homestead—August 22, 1914—Affirmed.
- Sweeney, Patrick T.—Homestead—January 2, 1914—Reversed.
- Sweet, Franklin P.—Homestead—January 29, 1915—Affirmed.
- Swett v. Gilroy—Homestead—March 24, 1914—Affirmed.
- Swett v. Gilroy—Homestead—June 18, 1914—Motion Denied.
- Swett v. Oregon & California R. R. Co.—Homestead—August 26, 1914—Affirmed.
- Swett v. Oregon and California R. R. Co.—Homestead—October 12, 1914—Motion Denied.
- Swingle, Frederick F.—Reduction of Area—August 19, 1914—Affirmed.
- Swires, Ida Brace—Homestead—September 26, 1914—Reversed.
- Syfrett, Joseph S.—Homestead—July 28, 1914—Vacated.
- Syme v. Wheeler—Homestead—July 28, 1914—Affirmed.
- Syme v. Wheeler—Homestead—October 16, 1914—Motion Denied.
- Symington v. Rust—Coal Land—November 19, 1914—Affirmed.
- Symonds, Edwin J.—Homestead—September 26, 1914—Reversed.
- Tague v. Voight—Homestead—August 22, 1914—Affirmed.
- Tahash, Elizabeth, Dick Lumber Co., trans.—Timber and Stone—October 14, 1914—Affirmed.
- Talbot v. Northern Pacific Ry. Co.—Homestead—June 29, 1914—Affirmed.
- Talbot v. Copeland—Desert Land—March 12, 1914—Affirmed.
- Talbott v. Turner—Homestead—May 29, 1914—Affirmed.
- Tanner v. Woullard—Homestead—September 8, 1914—Affirmed.
- Tarr Mining Co. v. Heirs of Cramsie—Mineral—September 5, 1914—Remanded.
- Taspa—Indian Allotment—October 7, 1914—Affirmed.
- Tatman v. Semingson—Homestead—April 22, 1914—Affirmed.
- Taylor, Alfred, Heirs of—Homestead—September 17, 1914—Affirmed.
- Taylor, Alfred—Homestead—December 30, 1914—Motion Denied.
- Taylor, Amanda J.—Homestead—February 19, 1914—Affirmed.
- Taylor, Edith, now Dardis—Homestead—September 19, 1914—Affirmed.
- Taylor, Elizabeth—Homestead—November 19, 1914—Affirmed.
- Taylor, Jean Henry—Homestead—September 26, 1914—Affirmed.
- Taylor, Jessie M.—Homestead—September 30, 1914—Reversed.
- Taylor, John C.—Homestead—February 16, 1915—Affirmed.
- Taylor, Lucius S.—Homestead—November 27, 1914—Affirmed.
- Taylor, Margaret B.—Homestead—March 30, 1914—Affirmed.
- Taylor, Margaret B.—Homestead—March 30, 1914—Reversed.
- Taylor, Margaret B.—Homestead—October 29, 1914—Motion Allowed.

- Taylor, Mary Ann—Homestead—July 14, 1914—Affirmed.
- Taylor v. Carter—Homestead—April 24, 1914—Remanded.
- Teal, Pearl—Coal Entry—June 12, 1914—Reversed.
- Teich, Oswald F.—Homestead—February 28, 1914—Vacated.
- Telford, Emery C.—Homestead—February 28, 1914—Affirmed.
- Telouse, Eli—Homestead—March 24, 1914—Remanded.
- Temple, Daniel H.—Homestead—March 25, 1914—Remanded.
- Temple, Henry S.—Homestead—May 29, 1914—Reversed.
- Tennessee Land Co.—Homestead—June 20, 1914—Dismissed.
- Terry, William E.—Homestead—May 15, 1914—Motion Denied.
- Terry v. Harris—Homestead—October 31, 1914—Affirmed.
- Teton Co-Operative Reservoir Co.—Right of Way—December 12, 1914—Reversed.
- Tetrault, Florida, Heirs of—Homestead—February 19, 1914—Affirmed.
- Tetrault, Florida, Heirs of—Homestead—March 26, 1914—Motion Denied.
- Textor, Clinton—Homestead—July 7, 1914—Reversed.
- Thachyk v. State of Montana—Homestead—January 19, 1915—Affirmed.
- Thacker, Elmer—Repayment—December 23, 1914—Affirmed.
- The Development and Mines Co.—Right of Way—January 26, 1914—Modified.
- The Treasury Tunnel Co.—Mineral—August 21, 1914—Affirmed.
- Theisen, Nicholas—Homestead—November 27, 1914—Affirmed.
- Thies, Frederick—Isolated Tract—February 19, 1914—Affirmed.
- Thirkell, John—Homestead—May 29, 1914—Affirmed.
- Thom, William J.—Homestead—July 9, 1914—Reversed.
- Thom, William J.—Homestead—September 8, 1914—Reversed.
- Thoman, Adolph—Homestead—March 9, 1914—Affirmed.
- Thomas, Annie Floyd—Repayment—October 30, 1914—Affirmed.
- Thomas, Ellen—Indian Selection—March 14, 1914—Affirmed.
- Thomas, John Wix—Repayment—August 18, 1914—Remanded.
- Thomas, Mark—Homestead—July 7, 1914—Motion Denied.
- Thomas, Meyer, North Coast R. R. Co., trans.—Homestead—March 12, 1914—Reversed.
- Thomas, Mitchell—Homestead—June 18, 1914—Affirmed.
- Thomas v. Bonney—Desert Land—August 21, 1914—Affirmed.
- Thomas v. Idaho, State of—Homestead—April 27, 1914—Remanded.
- Thomas v. Northern Pacific Ry. Co.—Homestead—June 29, 1914—Affirmed.
- Thomas v. O'Linn—Homestead—May 28, 1914—Reversed.
- Thomas v. O'Linn—Homestead—August 26, 1914—Motion Denied.
- Thomas v. Schlegelmilch—Mineral—November 24, 1914—Remanded.
- Thompson, Arthur B.—Homestead—May 26, 1914—Affirmed.
- Thompson, Arthur B.—Homestead—September 25, 1914—Affirmed.
- Thompson, Clownie—Homestead—March 9, 1914—Affirmed.
- Thompson, Clownie—Homestead—May 29, 1914—Affirmed.
- Thompson, Edward U.—Homestead—March 9, 1914—Reversed.
- Thompson, Harry C.—Homestead—September 26, 1914—Remanded.
- Thompson, Letta B.—Desert Land—September 26, 1914—Affirmed.
- Thompson, Peter O., Field Bohart, trans.—Homestead—March 19, 1914—Affirmed.
- Thompson, Sigel A.—Homestead—October 1, 1914—Affirmed.
- Thompson, William—Desert Land—July 29, 1914—Affirmed.
- Thompson, William—Desert Land—October 20, 1914—Motion Denied.

- Thompson, William A.—Homestead—March 14, 1914—Affirmed.
- Thompson, William G.—Homestead—February 16, 1915—Remanded.
- Thompson, Zella M.—Homestead—January 17, 1914—Reversed.
- Thompson v. Finnegan—Desert Land—March 14, 1914—Affirmed.
- Thompson v. Heirs of Fisher—Homestead—October 26, 1914—Affirmed.
- Thompson v. Lutchter *et al.*—Homestead—January 19, 1915—Affirmed.
- Thompson v. Southern Pacific Ry. Co.—Homestead—June 24, 1914—Remanded.
- Thompson v. Southern Pacific Ry. Co.—Homestead—December 16, 1914—Affirmed.
- Thompson v. State of Montana—Desert Land—December 3, 1914—Reversed.
- Thomson, Robert, assignee of Adams—Soldiers' Additional—August 21, 1914—Affirmed.
- Thomson v. Heath—Homestead—August 26, 1914—Affirmed.
- Thoreson v. Trothier—Homestead—January 7, 1914—Showing Required.
- Thoreson v. Trothier—Homestead—March 28, 1914—Reversed.
- Thornburgh, Robert H.—Homestead—May 28, 1914—Reversed.
- Thornton v. Schultz—Homestead—August 19, 1914—Affirmed.
- Thorp, Nathan L.—Homestead—September 5, 1914—Reversed.
- Thorpe, Jay—Homestead—February 19, 1914—Reversed.
- Tibbets, Luther A.—Homestead—November 21, 1914—Affirmed.
- Tidwell v. Lane—Homestead—September 9, 1914—Affirmed.
- Tierney, John, assignee of Adams—Soldiers' Additional—September 9, 1914—Affirmed.
- Tiffany, Oscar F.—Homestead—October 19, 1914—Affirmed.
- Tillard, Heirs of George, The Northwest Timber Co., trans.—Timber and Stone—December 16, 1914—Petition Denied.
- Tiller v. Ryszka—Homestead—May 29, 1914—Affirmed.
- Timminy v. Daley—Homestead—January 16, 1914—Remanded.
- Tinker, Grace M.—Homestead—August 12, 1914—Reversed.
- Tipton, Frank C.—Homestead—May 26, 1914—Affirmed.
- Tipton v. Brown—Homestead—March 9, 1914—Affirmed.
- Titsworth, Louis P.—Desert Land—November 18, 1914—Modified.
- Tittle, Sarah C.—Homestead—August 15, 1914—Remanded.
- Tobin, John H., A. J. Vance, trans.—Homestead—March 19, 1914—Affirmed.
- Tobin, Richard—Homestead—October 31, 1914—Vacated.
- Todd, Lydia R.—Homestead—September 5, 1914—Vacated.
- Toeys, Henry C.—Homestead—August 22, 1914—Affirmed.
- Tolefson, Julius B.—Timber and Stone—January 29, 1915—Affirmed.
- Toles v. Northern Pacific Ry. Co.—Homestead—August 3, 1914—Petition Denied.
- Tolford, Morley, The Grand Rapids Timber Co., trans. (2 cases)—Homestead—February 28, 1914—Reversed.
- Toller, Archie B.—Homestead—April 22, 1914—Affirmed.
- Tomlinson v. Danford—Homestead—October 29, 1914—Affirmed.
- Tomlinson v. Danford—Homestead—January 19, 1915—Motion Denied.
- Torrey v. Northern Pacific Ry. Co.—Homestead—August 28, 1914—Affirmed.
- Torrey v. Ohnesorge—Homestead—February 21, 1914—Affirmed.
- Torrey v. Ohnesorge—Homestead—May 6, 1914—Motion Allowed.
- Tourlotte, Ira B.—Homestead—October 23, 1914—Vacated.
- Tovey, David W., assignee of Hathaway—Soldiers' Additional—June 29, 1914—Remanded.
- Tovey, David W., assignee of Knapp—Soldiers' Additional—June 29, 1914—Remanded.
- Townsend and Cox—Timber and Stone—March 21, 1914—Reversed.

- Townsend, Harry—Homestead—May 29, 1914—Dismissed.
- Townsend, John B.—Desert Land—September 26, 1914—Vacated.
- Tracey, Willis F.—Homestead—June 9, 1914—Affirmed.
- Trainor, Catherine E.—Homestead—October 31, 1914—Affirmed.
- Treasury Tunnel Co.—Mineral—August 21, 1914—Affirmed.
- Trees, Daniel C.—Homestead—August 13, 1914—Affirmed.
- Tremper, George A., Sr.—Homestead—May 29, 1914—Affirmed.
- Trenkenschuh, John (2 cases)—Homestead—September 8, 1914—Affirmed.
- Tri v. Tygum—Homestead—September 14, 1914—Affirmed.
- Triebel, Louis G.—Isolated Tract—June 9, 1914—Affirmed.
- Trimble, Kate L.—Homestead—July 2, 1914—Vacated.
- Trimmer, H. B.—Coal—December 16, 1914—Affirmed.
- Tripp *et al.* v. Nelson—Homestead—October 31, 1914—Affirmed.
- Tripp, George B. (2 cases)—Repayment—October 27, 1914—Affirmed.
- Trout, F. Burton—Homestead—February 19, 1914—Reversed.
- Trovatten v. Egge—Homestead—January 28, 1915—Motion Denied.
- Trow, James A.—Homestead—February 13, 1914—Dismissed.
- Troylar, Betty—Homestead—November 18, 1914—Affirmed.
- Truelsen, Henry—Homestead—February 28, 1914—Reversed.
- Trumbo, George A.—Desert Land—October 3, 1914—Affirmed.
- Trumbo, George A.—Desert Land—December 29, 1914—Motion Denied.
- Trump, William J.—Homestead—June 5, 1914—Reversed.
- Tschider, John E.—Homestead—September 9, 1914—Affirmed.
- Tucker, Harley R.—Homestead—November 4, 1914—Affirmed.
- Tucker, Valis E.—Homestead—October 14, 1914—Remanded.
- Tucker v. Richards—Homestead—May 29, 1914—Affirmed.
- Tupper v. Kirchner *et al.*—Mineral—May 29, 1914—Affirmed.
- Turkula v. Northern Pacific Ry. Co.—Homestead—May 27, 1914—Affirmed.
- Turman, Wilson L.—Soldiers' Additional—September 9, 1914—Affirmed.
- Turman, Wilson L., assignee of McGill—Soldiers' Additional—June 2, 1914—Dismissed.
- Turman, Wilson L., assignee of McGill—Soldiers' Additional—November 7, 1914—Motion Denied.
- Turner v. Southern Pacific R. R. Co.—Desert Land—August 31, 1914—Affirmed.
- Turner v. Wallis—Homestead—January 29, 1914—Affirmed.
- Turnquist, Lyman K.—Homestead—October 29, 1914—Affirmed.
- Tutor v. Olson—Homestead—February 26, 1915—Affirmed.
- Tuttle v. Radford—Homestead—April 22, 1914—Reversed.
- Tveitmoe, A. Z. I.—Homestead—December 12, 1914—Affirmed.
- Twidwell, Absalom K.—Homestead—January 28, 1914—Reversed.
- Twining, Warren H.—Repayment—December 3, 1914—Affirmed.
- Twomey, Jennie—Homestead—November 18, 1914—Affirmed.
- Twomy, Jeremiah F.—Homestead—November 18, 1914—Affirmed.
- Tyler and Ramsey—Homestead—January 25, 1915—Affirmed.
- Underhill v. Will—Homestead—May 29, 1914—Affirmed.
- Underwood, Charles—Homestead—August 15, 1914—Affirmed.
- Union Pacific R. R. Co.—Coal Land—December 3, 1914—Affirmed.
- Union Pacific R. R. Co.—Selection—December 26, 1914—Affirmed.
- Utah, State of—Selection—February 26, 1915—Affirmed.
- Utah, State of v. Bradley *et al.*—Mineral—September 17, 1914—Affirmed.
- Utah, State of v. Bradley—Mineral—September 26, 1914—Affirmed.
- Utah, State of v. United States Phosphate Co.—Mineral—June 13, 1914—Remanded.

- Utah, State of *v.* United States Phosphate Co.—Mineral—October 31, 1914—Affirmed.
- Utah Withdrawal List No. 10—Selection—April 30, 1914—Instructions.
- Van Bergen, William S.—Homestead—February 18, 1914—Reversed.
- Van Demark, Fred—Homestead—March 31, 1914—Reversed.
- Van der Platt, Lawrence M.—Desert Land—January 31, 1914—Motion Denied.
- Van Derpoel, Andrew C.—Desert Land—July 29, 1914—Affirmed.
- Van Derpoel, Francis H.—Desert Land—April 30, 1914—Affirmed.
- Van Derpoel, Francis H.—Desert Land—July 16, 1914—Motion Denied.
- Van Gass, Nicholas—Homestead—October 29, 1914—Reversed.
- Van Hellen, George H.—Homestead—June 2, 1914—Affirmed.
- Van Hellen, George H.—Homestead—December 16, 1914—Affirmed.
- Van Horn, Ayla L.—Desert Land—June 30, 1914—Affirmed.
- Van Horn, Clarence E.—Desert Land—September 25, 1914—Affirmed.
- Van Horn, Ervin R.—Desert Land—February 26, 1915—Affirmed.
- Van Horn, William E.—Homestead—April 24, 1914—Affirmed.
- Van Tress, Barnabas H.—Homestead—October 31, 1914—Modified.
- Van Tress, Barnabas H.—Homestead—December 26, 1914—Motion Denied.
- Van Way, Fred—Desert Land—February 21, 1914—Affirmed.
- Vance, Clay—Isolated Tract—October 31, 1914—Affirmed.
- Vance, William H.—Homestead—February 20, 1914—Affirmed.
- Vance *v.* Ike—Homestead—October 3, 1914—Affirmed.
- Vannoy, Ransom G.—Homestead—January 2, 1914—Remanded.
- Vary, Adelbert C.—Repayment—October 27, 1914—Affirmed.
- Vasey, John W.—Homestead—May 12, 1914—Affirmed.
- Vaughn *v.* Bonkosky—Homestead—September 9, 1914—Affirmed.
- Vaughn *v.* Bonosky—Homestead—December 26, 1914—Petition Denied.
- Vaught *v.* Leek—Desert Land—February 2, 1915—Remanded.
- Vawter *v.* Maes—Homestead—September 14, 1914—Affirmed.
- Veatch, James C., assignee of Buzzel—Soldiers' Additional—January 19, 1915—Affirmed.
- Vereb *v.* Northern Pacific Ry. Co.—Homestead—November 19, 1914—Affirmed.
- Victor Fuel Co.—Scrip—April 24, 1914—Reversed.
- Vidovich, Jerome—Homestead—March 21, 1914—Affirmed.
- Vidovich, Jerome—Homestead—May 27, 1914—Motion Denied.
- Vigil *v.* Montoya—Homestead—March 26, 1914—Petition Denied.
- Viken, Bertha, now Sloan—Homestead—March 25, 1914—Reversed.
- Villanueva, Leandro—Homestead—March 9, 1914—Reversed.
- Vining, Florence F.—Desert Land—April 22, 1914—Affirmed.
- Voight, Joseph C.—Homestead—December 3, 1914—Affirmed.
- Voight, Joseph C.—Homestead—February 26, 1915—Motion denied.
- Voita, Rose—Homestead—July 25, 1914—Affirmed.
- Vollentine, Thomas W., trans. of Alexander—Homestead—August 13, 1914—Remanded.
- Von Euen, Walter—Homestead—May 12, 1914—Affirmed.
- Voss *v.* Chandler *et al.*—Homestead—February 20, 1914—Petition Denied.
- Voss *v.* Chandler *et al.*—Homestead—January 29, 1915—Certiorari Granted.
- Votaw, Joseph W.—Homestead—January 17, 1914—Affirmed.
- Votaw, Joseph W.—Homestead—August 12, 1914—Affirmed.
- Voyles, Jacob P.—Homestead—September 14, 1914—Vacated.

- Wade, Ida—Homestead—October 14, 1914—Remanded.
- Wade, T. A.—Town site—January 29, 1914—Affirmed.
- Wadman, Alfred—Timber and Stone—July 2, 1914—Modified.
- Waggy *v.* Delatour—Homestead—March 12, 1914—Affirmed.
- Wagner, William A., assignee of Hoch—Soldiers' Additional—August 14, 1914—Vacated.
- Wagner, William W.—Homestead—October 12, 1914—Reversed.
- Wagner *v.* Heying—Homestead—February 28, 1914—Affirmed.
- Wagner *v.* Northern Pacific Ry. Co.—Selection—February 19, 1914—Certiorari.
- Wagner *v.* Piper—Desert Land—November 27, 1914—Affirmed.
- Wagner *v.* Piper—Homestead—February 25, 1915—Affirmed.
- Wagner *v.* Sampson—Homestead—January 28, 1914—Motion Denied.
- Wagner *v.* Sampson—Homestead—February 16, 1914—Petition Denied.
- Waisner, G. W.—Timber and Stone—April 10, 1914—Affirmed.
- Waisner, Grace E.—Desert Land—December 3, 1914—Affirmed.
- Waisner, Willis E.—Homestead—July 14, 1914—Affirmed.
- Waisner, Willis E.—Homestead—September 19, 1914—Motion Denied.
- Walbridge *v.* Norstrant—Desert Land—March 12, 1914—Affirmed.
- Wales *v.* Witman—Homestead—January 29, 1914—Affirmed.
- Walden, Lawrence R.—Homestead—August 12, 1914—Remanded.
- Waldman *v.* Pfund—Homestead—September 26, 1914—Affirmed.
- Waldon and Jenkins—Homestead—July 9, 1914—Affirmed.
- Waldron *v.* Southern Pacific Ry. Co.—Selection—July 2, 1914—Affirmed.
- Wales *v.* Witman—Homestead—April 20, 1914—Motion Denied.
- Walker, Clinton L., trans.—Selection—December 30, 1914—Remanded.
- Walker, Frank—Homestead—November 14, 1914—Affirmed.
- Walker, John H.—Survey—July 27, 1914—Modified.
- Walker, Ray D.—Homestead—May 27, 1914—Reversed.
- Walker, Thomas B. (2 cases)—Selection—January 2, 1915—Affirmed.
- Walker *v.* Hahn—Soldiers' Additional—September 19, 1914—Affirmed.
- Walker *v.* Hahn—Soldiers' Additional—December 26, 1914—Motion Denied.
- Walker *v.* Heden—Homestead—August 14, 1914—Affirmed.
- Walker *v.* Reiland—Homestead—February 27, 1915—Affirmed.
- Walker *v.* Steiert—Homestead—August 31, 1914—Remanded.
- Wall, Mary—Homestead—September 26, 1914—Affirmed.
- Wall, Thomas C.—Homestead—October 31, 1914—Affirmed.
- Wallace, I. W.—Mineral—May 29, 1914—Reversed.
- Wallace, William B.—Desert Land—March 7, 1914—Remanded.
- Wallace *v.* Edgley—Homestead—February 2, 1915—Affirmed.
- Walley, Mary J.—Homestead—January 2, 1914—Affirmed.
- Wallin *v.* Rowe *et al.*—Homestead—March 21, 1914—Affirmed.
- Walsh *v.* Northern Pacific Ry. Co.—Soldiers' Additional—May 27, 1914—Affirmed.
- Walters *v.* Moller *et al.*—Homestead—September 14, 1914—Affirmed.
- Waltz *v.* Womble—Homestead—October 31, 1914—Affirmed.
- Wamsley *v.* White—Homestead—July 7, 1914—Remanded.
- Ward, J. W.—Coal—December 16, 1914—Affirmed.
- Ward, Melvin M.—Homestead—December 23, 1914—Affirmed.
- Ward, Royal E.—Homestead—February 28, 1914—Reversed.
- Ward, Samuel—Homestead—May 29, 1914—Affirmed.
- Ward *v.* Northern Pacific Ry. Co.—Selection—August 3, 1914—Affirmed.

- Ward *v.* Northern Pacific Ry. Co.—Homestead—September 26, 1914—Motion Denied.
- Wardell, James—Coal Land—June 24, 1914—Affirmed.
- Ware, Horace J.—Homestead—February 28, 1914—Affirmed.
- Ware *v.* Steffensmeier—Homestead—September 5, 1914—Affirmed.
- Ware *v.* Steffensmeier—Homestead—October 31, 1914—Motion Denied.
- Warkins, Eleanore M.—Homestead—April 22, 1914—Affirmed.
- Warn, Wilbur W.—Homestead—April 20, 1914—Remanded.
- Warner, Clarence N.—Cash Entry—April 22, 1914—Reversed.
- Warner, Reuben W.—Homestead—November 18, 1914—Remanded.
- Warren, Henry E., The Northwest Timber Co., trans.—Timber and Stone—December 16, 1914—Petition Denied.
- Warren, Leonard M.—Timber and Stone—December 30, 1914—Affirmed.
- Warren, Leonard M.—Timber and Stone—February 27, 1915—Motion Denied.
- Warren, Oliver—Homestead—June 23, 1914—Modified.
- Warrington, Chester H.—Homestead—January 29, 1915—Vacated.
- Warrington *v.* Dixon—Desert Land—November 4, 1914—Affirmed.
- Washburn, Heirs of L. E.—Homestead—February 9, 1915—Affirmed.
- Washington, State of, *v.* Smith—Homestead—December 16, 1914—Affirmed.
- Washington *v.* Smith—Homestead—February 7, 1914—Petition Denied.
- Washington *v.* Thompson—Homestead—February 7, 1914—Petition Denied.
- Washington, State of, *v.* Thompson—Homestead—December 16, 1914—Affirmed.
- Wasmer *v.* Darnell—Homestead—March 9, 1914—Affirmed.
- Waterbury *v.* Edgington—Homestead—August 15, 1914—Affirmed.
- Watkins, James H.—Repayment—October 30, 1914—Affirmed.
- Watkins, James H.—Repayment—January 26, 1915—Motion Denied.
- Watkins, Milton H., assignee of Fenn—Soldiers' Additional—October 31, 1914—Affirmed.
- Watkins, Milton H., assignee of Fenn—Soldiers' Additional—December 29, 1914—Motion Denied.
- Watkins *v.* Mathews—Homestead—October 31, 1914—Affirmed.
- Watson, Bert—Desert Land—September 26, 1914—Affirmed.
- Watson, Charles J.—Homestead—February 18, 1915—Affirmed.
- Watson, David—Homestead—February 21, 1914—Reversed.
- Watson, James C.—Homestead—February 28, 1914—Reversed.
- Watt, James Craig—Homestead—August 12, 1914—Reversed.
- Watt *v.* Smith—Homestead—August 22, 1914—Affirmed.
- Watters, Frederick M., W. E. Moses, trans.—Homestead—March 19, 1914—Affirmed.
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2. In case no contest, protest, or proceeding by the government was commenced against an entry within two years from the date of the issuance of final receipt, the land department is thereafter without jurisdiction to inquire into the known coal character of the land at the date of final receipt, but must issue unrestricted patent upon the entry. 246

3. The proviso to section 7 of the act of March 3, 1891, contemplates a receiver's receipt upon a final entry based upon an existent application or original entry; and the submission of final proof and payment of fees and commissions upon a canceled entry, and the issuance of register's certificate thereon, do not constitute a final entry within the meaning of said proviso. 426

4. Cases will not be reopened under the doctrine announced in Jacob Harris, 42 L. D., 611, where the proceeding has been closed and the entry canceled, without regard to the time that has elapsed since the final action of the land department; but cases in which the claimants have asserted in the courts their rights under entries which have been canceled as the result of proceedings begun more than

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two years after the issuance of receiver's receipt upon final entry, and have diligently and continuously prosecuted their claims, but relying upon the decision in the Harris case have dismissed their suits in court for the purpose of invoking the supervisory authority of the Department, are not regarded as coming within the terms or spirit of this rule. 262

5. The proviso to section 7 of the act of March 3, 1891, does not operate to confirm an entry against an act of Congress passed prior to the expiration of two years from the date of the issuance of the receiver's receipt upon final entry; and where within the two-year period the land was "classified, claimed or reported as being valuable for coal," and also within such period the act of March 3, 1909, was passed, the entry is not confirmed against said act, and patent if issued must be in accordance therewith; but in case more than two years had elapsed from the date of the issuance of the receiver's receipt upon final entry prior to classification, claim or report that the land was valuable for coal, or prior to the passage of the act of March 3, 1909, nothing would remain for the land department save the ministerial duty of issuing patent. 294

Contest.

See *Reservation*, 24, 25.

1. Absence of a homestead entryman from his claim due to judicial restraint does not break the continuity of his residence and does not render the entry liable to contest on the ground of abandonment. 189

2. One at liberty on bail which obligates him not to leave the jurisdiction of the court is under judicial restraint. 189

3. The act of August 19, 1911, relieving certain homestead entrymen from residence and cultivation from the date of that act until April 15, 1912, operated to relieve entrymen from the necessity of establishing residence during that period; and an entry within the act is not subject to contest for failure to establish residence until the expiration of six months from the time of making the entry exclusive of the period specified in said act. 247

4. A contestant against a homestead entry must file with his contest an affidavit stating specifically the law under which he intends to acquire title; and where he proposes to acquire title by means of scrip, he must state specifically the class of scrip he intends to file. 465

5. The government is a party in interest in every contest, and the land department may properly consider all that the record contains in order to do justice in the case, irrespective of technical *inter partes* rules of pleading and practice, and whether the parties themselves are entitled to have any particular portion of the record considered or not. 343

6. One who files a contest charging default subsequent to the submission of proof is

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merely a protestant, and acquires by virtue of such contest no such adverse claim as will prevent confirmation of the entry by the Board of Equitable Adjudication. 344

7. A homestead entryman is entitled under the act of June 6, 1912, to the whole of the second year of the entry within which to meet the requirement of that act that one sixteenth of the area of the entry be cultivated during that year; and a contest for failure to cultivate will not lie until the expiration of the second year. 379

8. In order to sustain a contest against a homestead entry it must be shown that the entryman, his widow or heirs, was in default at the time of the initiation of the contest, and not merely that such default had at some time theretofore occurred; and the contest must fail if the alleged default is in good faith cured prior to service of notice and such action is not induced by the contest. 196

9. As a general rule, an affidavit of contest based wholly upon information and belief, and corroborated in the same manner, should not be accepted. 357

10. The charge in an affidavit of contest that the entry is speculative and was made in the interest of some other party may be substantiated either by direct knowledge of the illegal agreement, by admissions of the parties thereto, or by circumstantial evidence tending to show the existence of such agreement; and where the contestant has personal knowledge of such agreement his averments should be direct and positive and not upon information and belief, but where he relies either upon admissions or circumstantial evidence, the contest affidavit should set forth sufficient of the facts to show a *prima facie* case upon which his information and belief rest. 357

Contestant.

See *Application*, 7; *Reclamation*, 7; *Reservation*, 24, 25; *Residence*, 4.

1. A preference right of entry is acquired by a successful contest against an entry within a forest reservation, but such right remains suspended until the land shall be restored and become subject to entry. 458

2. The act of May 14, 1880, awarding a preference right of entry to successful contestants, contemplates that contestant may exercise such right by any form of appropriation which he may use in acquiring title to the land; and where a contestant procures the Northern Pacific Ry. Co. to make for his benefit, within the preference right period, a selection of the land under the act of July 1, 1898, such selection is a proper exercise of the preference right. 536

3. Where a contestant purchases and files a relinquishment of the entry under contest, executed by the entryman prior to the initiation of the contest, and placed in the hands of another for speculative purposes, no preference right inures to him on the presumption that the relinquishment was

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the result of the contest; and by thus filing the relinquishment instead of prosecuting the contest, the contestant abandons his contest and all rights thereunder, and the rights of an adverse settler then on the land thereupon attach and bar the allowance of entry to contestant. 348

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See *Desert Land*, 11; *Homestead*, 42, 43.

Declaratory Statement.

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1. Paragraphs 12 and 13 of desert land circular of September 30, 1910, amended March 23, 1914. 203

2. Paragraph 13 of desert land circular of September 30, 1910, as amended March 23, 1914, further amended. 528

3. Instructions of April 24, 1914, under act of October 30, 1913, authorizing extension of time for proof on desert land entries. 227

4. An applicant for extension of time under the act of March 28, 1908, for the submission of final proof upon a desert land entry, is not required to show that he owns a water right sufficient for the irrigation of his entire entry. 282

5. Where at the time of making desert land entry the entryman in good faith expected to obtain water by means of ordinary surface wells, but subsequently ascertained that such wells would not furnish an adequate supply to irrigate the land, such unforeseen failure of his proposed water supply is proper ground for extension of time under the act of March 28, 1908. 241

6. The act of June 27, 1906, authorizing an extension of time for compliance with law on desert entries where the entryman has been hindered in the reclamation of the land by reason of a withdrawal under the reclamation act, has no application where the waters from which it is proposed to supply the Government project were withdrawn from all appropriation prior to the date of the entry, notwithstanding the withdrawal embracing the land was not made until after the entry. 189

7. The construction of an artesian well, with a view to procure water for the reclamation of a desert entry, is a construction of irrigating works within contemplation of section 3 of the act of March 28, 1908, and the acts of February 28, 1911, and April 30, 1912, and failure, after diligent effort, to obtain water by means of such attempted artesian well, without fault on the part of the entryman, is sufficient ground for extension of time as provided by said acts. 189

8. The act of March 28, 1908, conferring a preference right of entry upon persons who prior to survey take possession of unsurveyed desert land and reclaim or in good faith commence the work of reclaiming the same, has no retroactive effect. 346

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9. The act of March 23, 1903, according a preference right to make desert land entry, after survey, to one who has taken possession of and reclaimed or commenced to reclaim a tract of unsurveyed desert land, has no application to lands which, although theretofore surveyed and plat thereof filed, have been suspended from all forms of entry or disposal pending a resurvey..... 497

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