# Morgan's Manual *of the* United States... Homestead, Townsite *and* Mining Laws.

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# MORGAN'S MANUAL

OF THE UNITED STATES

# Homestead, Townsite

AND

# Mining Laws.

BY

DICK T. MORGAN,

OF THE

PERRY BAR,

Perry, Oklahoma.

KANSAS CITY, MO.:
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# LETTER

FROM THE

**SECRETARY OF THE INTERIOR.**

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**Hon. John W. Noble, when Secretary of the Interior, said of "Morgan's Manual":**

**DEPARTMENT OF THE INTERIOR,**
**Washington, Sept. 11, 1891.**

**Dick T. Morgan, Esq., Attorney at Law, Guthrie, Oklahoma:**

**My dear Sir,—I thank you for the copy of your "Manual of United States Homestead and Townsite Laws," and have to say that on submission thereof to the Assistant Attorney-General assigned to this Department, and the attorneys acting with him, they have expressed their favorable opinion, and think it ought to be well commended as fairly representing the policy of the Department in the administration of the public land laws. I take pleasure in joining in this commendation. You can send me, if you please, five additional copies, for which I shall expect to reimburse you.**

**Yours truly,**
**(Signed) JOHN W. NOBLE,**
**Secretary.**

# Morgan's Manual.

**OPINIONS OF PROMINENT OFFICIALS.**

Hon. C. M. Barnes, Governor of Oklahoma, and ex-Receiver of the U. S. Land Office, Guthrie, Okla., says: "I regard it as the most valuable compilation of the laws and regulations bearing on these questions that I have ever seen."

Hon. John I. Dille, ex-Register of the U. S. Land Office, Guthrie, says: "I regard it the best work of the kind published. It should be in the hands of every homesteader and every land office practitioner."

Hon. J. C. Delaney, Receiver of Land Office, Oklahoma City, says: "All seekers after correct information should possess themselves of a copy of your 'Manual.' "

Hon. J. C. Roberts, Register U. S. Land Office. Kingfisher, Okla., says: "I know it will be of great value to persons having business before local land offices."

Hon. John W. Scothorn, Special Agent of the General Land Office, Washington, D. C., says: "It should be in the hands of every homesteader."

Hon. J. V. Admire, Receiver U. S. Land Office, Kingfisher, Okla., says: "It seems to me that this work is exactly what is needed for the use of the general public."

Hon. S. L. Overstreet, ex-Register U. S. Land Office, Guthrie, Okla., says: "I regard this work as of much value to those seeking homes on the public domain."



# Kiowa and Comanche Treaty.

The following is a synopsis of the treaty of the United States with the Comanche, Kiowa, and Apache tribes of Indians for these lands:

"ARTICLE I. Subject to the allotment of land, in severalty, to the individual members of the Comanche, Kiowa, and Apache tribes of Indians in the Indian Territory, as hereinafter provided for, and subject to the setting apart as grazing lands for said Indians, four hundred and eighty thousand acres of land as hereinafter provided for, and subject to the conditions hereinafter imposed, and for the considerations hereinafter mentioned the said Comanche, Kiowa, and Apache Indians hereby cede, convey, transfer, relinquish, and surrender forever and absolutely, without any reservation whatever, express or implied, all their claim, title and interest, of every kind and character, in and to the lands embraced in the following described tract of country in the Indian Territory, to-wit: Commencing at a point where the Washita River crosses the ninety-eighth meridian west from Greenwich; thence up the Washita River, in the middle of the main channel thereof, to a point thirty miles, by river, west of Fort Cobb, as now established; thence due west to the north fork of Red River, provided said line strikes said river east of the one hundredth meridian of west longitude; if not, then only to said meridian line, and thence due south, on said meridian line, to the said north fork of Red River; thence down said north fork, in the middle of the channel thereof, from the point where it may be first intersected by the lines above described, to the main Red River; thence down said Red River, in the middle of the main channel thereof, to its intersection with the ninety-eighth meridian of longitude west from Greenwich; thence north, on said meridian line, to the place of beginning.

"ARTICLE II. Article II. provides for the allotment of 160 acres, according to the legal survey, to each member of these tribes.

"ARTICLE III. Article III. provides that the Secretary of Interior shall set aside 480,000 acres of grazing lands for the use in common of said Indian tribes. The same is to be set apart in one or more tracts, as will best subserve the interests of said Indians. And said article further provides that the allotments shall not be taken upon sections sixteen (16) or thirty-six (36), unless an Indian has made improvements upon said section.

"ARTICLE IV. Article IV. refers to the time in which the allotments may be made. But this seems to be controlled by the Act of Congress hereinafter quoted.

"ARTICLE V. Article V. provides that the allotments shall be held in trust for the allottees, for a period of twenty-five years, at which time title to said land shall be conveyed in fee simple to the allottees.

"ARTICLE VI. Article VI. refers to the sum of money to be paid to the Indians for said land.

"ARTICLE VII. This does not appear in Act of Congress.

"ARTICLE VIII. Article VIII. refers to the manner of taking allotments.

"ARTICLE IX. Article IX. refers to the leases in force, at the time of the ratification of Congress of this agreement.

"ARTICLE X. Article X. provides for making allotments to certain individuals.

"ARTICLE XI. Article XI. provides that said agreement shall become effective when ratified by the Congress of the United States."

## KIOWA AND COMANCHE ACT.

The following is the Act of Congress, approved June 6, 1900, ratifying the above treaty, and providing for the opening of said lands:

**Allotments.—**

Said agreement be, and the same hereby is, accepted, ratified, and confirmed as herein amended.

That the Secretary of the Interior is hereby authorized and directed to cause the allotments of said lands, provided for in said treaty among said Indians, to be made by any Indian inspector or special agent.

That all allotments of said land shall be made under the direction of the Secretary of the Interior to said Indians within ninety days from the passage of this Act, subject to the exceptions contained in article four of said treaty: Provided, That the time for making allotments shall in no event be extended beyond six months from the passage of this Act.

**Homestead and Townsite Laws Made Applicable.—**

That the lands acquired by this agreement shall be opened to settlement by proclamation of the President within six months after allotments are made and be disposed of under the general provisions of the homestead and townsite laws of the United States.

**Cost of Land.—**

Provided, That in addition to the land office fees prescribed by statute for such entries the entryman shall pay one dollar and twenty-five cents per acre for the land entered at the time of submitting his final proof.

**Commutation.—**

And Provided, Further, That in all homestead entries where the entryman has resided upon and improved the land entered in good faith for the period of fourteen months he may commute his entry to cash upon the payment of one dollar and twenty-five cents per acre.

**Rights of Soldiers.—**

And Provided, Further, That the rights of honorably discharged Union soldiers and sailors of the late civil war,



as defined and described in sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes, shall not be abridged.

**Persons Who Have Failed to Secure Title, or Commuted Entries.—**

And Provided, Further, That any person who, having attempted to, but for any cause failed to secure a title in fee to a homestead under existing laws, or who made entry under what is known as the commuted provision of the homestead law, shall be qualified to make a homestead entry upon said lands.

**Settlers on Lands Lying Contiguous.—**

And Provided, Further, That any qualified entryman having lands adjoining the lands herein ceded, whose original entry embraced less than one hundred and sixty acres in all, shall have the right to enter so much of the lands by this agreement ceded lying contiguous to his said entry as shall, with the land already entered, make in the aggregate one hundred and sixty acres, said land to be taken upon the same conditions as are required of other entrymen.

**Settlers on "Neutral Strip."—**

And Provided, Further, That the settlers who located on that part of said lands called and known as the "Neutral Strip" shall have preference right for thirty days on the lands upon which they have located and improved.

**Sections 16, 36, 13, and 33 Reserved.—**

That sections sixteen and thirty-six, thirteen and thirty-three, of the lands hereby acquired in each township shall not be subject to entry, but shall be reserved, sections sixteen and thirty-six for the use of the common schools, and sections thirteen and thirty-three for university, agricultural colleges, normal schools, and public buildings of the Territory and future State of Oklahoma; and in case either of said sections, or parts thereof, is lost to said Territory by reason of allotment under this Act or otherwise, the governor thereof is hereby authorized to locate other lands not occupied in quantity equal to the loss.

**Mining Laws in Force.—**

That should any of said lands allotted to said Indians, or opened to settlement under this Act, contain valuable mineral deposits, such mineral deposits shall be open to location and entry, under the existing mining laws of the United States, upon the passage of this Act, and the mineral laws of the United States are hereby extended over said lands.

**Payment of Money to Indians.—**

That none of the money or interest thereon which is, by the terms of the said agreement, to be paid to said Indians shall be applied to the payment of any judgment that has been or may hereafter be rendered under the provisions of the Act of Congress approved March third, eighteen hundred and ninety-one, entitled "An Act to provide for the adjudication and payment of claims arising from Indian depredations."

By the above Act, Congress has provided that these lands shall "BE DISPOSED UNDER THE GENERAL PROVISIONS OF THE HOMESTEED and TOWNSITE

laws," and "SHALL BE OPEN TO LOCATION AND ENTRY UNDER THE EXISTING MINING LAWS OF THE UNITED STATES," upon the passage of the Act, and that "THE MINERAL LAWS OF THE UNITED STATES ARE HEREBY EXTENDED OVER SAID LANDS." In other words, these lands may be taken under the Homestead, Townsite, and Mining Laws, in case the land applied for contains valuable minerals. The Act does not say what these laws are. The object of this volume is to present these laws, so far as possible in a work of this kind.

## THE HOMESTEAD LAW.

The homestead privilege is conferred by Section 2289, U S. Revised Statutes. This section, together with Sections 2290 and 2301, were amended by Act of Congress approved March 3, 1891, to read as follows:

SECTION 5. That Sections 2289 and 2290, in said chapter numbered 5, of the Revised Statutes, be and the same are hereby, amended, so that they shall read as follows:

"SEC. 2289. Every person who is the head of a family or who has arrived at the age of twenty-one years, and is a citizen of the United States, or who has filed his declaration of intention to become such, as required by the naturalization laws, shall be entitled to enter one-quarter section, or a less quantity, of unappropriated public lands to be located in a body in conformity to the legal subdivisions of the public lands; but 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. And every person owning and residing on land may, under the provisions of this section, enter other land lying contiguous to his land which shall not, with the land so already owned and occupied, exceed in the aggregate 160 acres."

The above section is in force generally in the United States, but by Act of May 2, 1890 (see Index, "Act of May 2, 1890"), Section 20, one cannot enter land in Oklahoma Territory who owns one hundred and sixty acres or more of land in any state or territory.

"SEC. 2290. That any person applying to enter land under the preceding section shall first make and subscribe before the proper officer and file in the proper land office an affidavit that he or she is the head of a family, or is over twenty-one years of age, and that such 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, and that he or she will faithfully and honestly endeavor to comply with all the requirements of the law as to settlement, residence and cultivation necessary to acquire title to the land applied for; that he or she is not acting as agent for any person, 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 or the timber thereon; that he or she does not apply to enter the same for the purpose of speculation, but in good faith to obtain a home for himself or herself, and that he or she 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 which he or she might acquire from the government of the United States should inure, in whole or in part, to the benefit of any person, except himself or herself; and upon filing such affidavit with the register or receiver on payment of $5 when the entry is not more than 80 acres, and on payment of $10 when the entry is for more than 80 acres, he or she shall thereupon be permitted to enter the amount of land specified."

In addition to the fee of $5 for an 80-acre tract and $10 for 160 acres, there is also charged at the time of entry a "commission" of $2 on an 80-acre tract and $4 on 160 acres. Therefore, an entryman must pay $7 fees and commissions on 80 acres and $14 on 160 acres. At the time of making final proof which means the time one makes the proof of his residence and improvements necessary to acquire title, he must also pay for 80 acres, additional fees and commissions of $2, and for 160 acres $4, additional fees and commissions. With some exceptions the above applies to Oklahoma lands and a large number of states. In lands within the limits of certain railroad grants, and in states and territories west of Kansas, Nebraska and the Dakotas, the fees and commissions are some higher.

## COMMUTATION.

SEC. 6. That Section 2301 of the Revised Statutes be amended so as to read as follows:

"SEC. 2301. Nothing in this chapter shall be so construed as to prevent any person who shall hereafter avail himself of the benefits of Section 2289 from paying the minimum price for the quantity of land so entered at any time after the expiration of fourteen calendar months from the date of such entry, and obtaining a patent therefor, upon making proof of settlement and of residence and cultivation for such period of fourteen months, and the provisions of this section shall apply to lands on the ceded portion of the Sioux reservation, by act approved March 2, 1889, in South Dakota, but shall not relieve said settlers from any payments now required by law."

The fourteen months' clause does not apply to all the lands in Oklahoma. To determine the length of residence required, before title can be acquired, reference should be made to the special act applicable to the land entered.

### CONVEYANCE OF HOMESTEAD.

By same act Section 2288 was amended to read as follows:

SEC. 3. That Section 2288 of the Revised Statutes be amended to read as follows:

"SEC. 2288. Any bona fide settler under the pre-emption, homestead or other settlement law shall have the right to transfer, by warranty against his own acts, any portion of his claim for church, cemetery or school purposes, or for the right of way of railroads, canals, reservoirs, or ditches for irrigation or drainage across it; and the transfer for such public purposes shall in no way

vitiate the right to complete and perfect the title of his claim."

SECTION 3, ACT MAY 14, 1880. That any settler who has settled, or who shall hereafter settle, on any of the public lands of the United States, whether surveyed or unsurveyed, with the intention of claiming the same under the homestead laws, shall be allowed the same time to file his homestead application and perfect his original entry in the United States Land Office as is now allowed to settlers under the pre-emption laws to put their claims on record, and his right shall relate back to the date of settlement, the same as if he settled under the pre-emption law.

Approved May 14, 1880.

## HOW TO INITIATE HOMESTEAD RIGHT.

There are two ways by which to initiate a right to a tract of land under the homestead law. These are, first, by Entry; second, by Settlement. To these might be added a third, the right given to the ex-Union soldiers and sailors, to initiate their claims by filing, in person, or by agent, a Declaratory statement. These will be treated in the order named.

## HOMESTEAD BY ENTRY.

To make an entry one must make an application at the proper land office, accompanied by proper affidavits showing his qualifications to make homestead entry, and pay the fees and commissions, which in Oklahoma are for 160 acres, $14, for 80 acres, $7, and for 40 acres, $6. It is very important that entry papers be correctly made.

The oath required as shown by amended Section 2290, modified to correspond to special statutes applicable to Oklahoma.

**Examination of the Land.—**

It is not necessary to examine the land before making homestead entry, except entries upon lands held to be mineral lands. By Act aproved March 3, 1891 (see Index, Act March 3, 1891), the lands in Oklahoma were declared to be non-mineral lands. Hence as a rule, lands in Oklahoma may be entered without first viewing the lands. But by Act of Congress, approved June 6, 1900, opening the Kiowa, Comanche, and Apache lands to settlement, the mining laws of the United States were extended over these lands, and following the ordinary rule in such cases, persons desiring to make homestead entries of these lands will be required to make the non-mineral affidavit, which is in substance to the effect that a personal examination of the land has been made, and that there are no indications of minerals on the land.

**Where to Make Entry.—**

Prior to Act of May 26, 1890 (10 L. D. 688), the entryman must go in person before the Register and Receiver at the land office and make the homestead affidavits, unless the family of the applicant or some member thereof was actually residing on the land and the applicant being prevented by reason of distance bodily infirmity or other



good cause from personal attendance at the district land office.

By the Act of April 26, 1890, referred to above, the law was amended by striking out the provision requiring the family of applicant or some member thereof to be actually residing on the land.

By said act, Section 2294, U. S. Revised Statutes, is amended to read:

"In any case in which the applicant for the benefit of the homestead * * * law is prevented by reason of distance, bodily infirmity or other good cause, from personal attendance at the district land office, he or she may make the affidavit required by law before any commissioner of the United States Circuit Court or the clerk of a court of record for the county in which the land is situate and transmit the same with the fee and commission to the Register and Receiver."

The Department of the Interior has held that under the above statute Probate Judges, being their own clerks are qualified to administer the oath, in homestead affidavits in proper cases, coming under the above statute. Under Section 2, Act of Congress approved March 2, 1895, "United States Court Commissioners," appointed by the chief justice of the territorial supreme court, are authorized to administer oaths under the above section, the same as United States Circuit Court Commissioners.

The commissioner of the general land office has held that persons fifty miles distant came within the above statute. He also held that U. S. commissioners appointed by our territorial courts or judges were not "commissioners of the U. S. circuit courts."

**Who Can Make Homestead Entry.—**

Every person who is the head of the family or who has arrived at the age of twenty-one years, who is a citizen of the United States or who has declared his intention to become such, may make homestead entry in Oklahoma, providing he does not own 160 acres of land, and has not before made homestead entry or filed soldier's declaratory statement. The general rule is that the right is forever exhausted by making one homestead entry or filing one declaratory statement, but there are exceptions to this rule, which will be treated of under "second entries." See Index.

A person under twenty-one years of age, but who is the head of a family is a qualified entryman. 2 L. D. 82. A widow, who as the heir of her deceased husband is holding her husband's claim, entered prior to his death, may make an entry in her own right. Sullivan vs. Snyder, 5 L. D. 184. The wife of a helpless paralytic is the head of a family and as such may make entry. Copp's Land Laws, 371.

Service in the Army or Navy of the United States in the War of the Rebellion, for a period of ninety days, entitles one to make a homestead entry without regard to age or citizenship. R. S. U. S., Section 2304. If the soldier be dead his widow, and if she be dead then his minor heirs by guardian duly appointed and credited at the Department in Washington, may make homestead entry and have all the benefits of Section 2304. See R. S. U. S., Section 2307.

A married woman, the head of a family or one deserted by her husband, is a qualified homesteader.

Kamanski vs. Riggs, 9 L. D. 186.

Wilbur vs. Goode, 10 L. D. 527.

**Who Can Make Entry in the Kiowa and Comanche Lands?—**

Generally, any person may make homestead entry of the lands in the Kiowa, Comanche, and Apache country, who is qualified to make entry under the homestead law. An examination of the Act of June 6, 1900, will show that it contains the following proviso:

"That any person, who having attempted to but for any cause failed to secure a title in fee to a homestead, under existing law, or who made entry under what is known as the commuted provision of the homestead law, shall be qualified to make homestead entry upon said lands."

The above proviso has been made a part of this statute for the purpose of permitting persons to make entry of lands, who have exhausted their homestead rights, by making an entry prior to the passage of the act. As is well known, generally speaking, one homestead entry exhausts the right. A proviso, similar to the above, was a part of the act which opened to settlement and entry the Iowa, Sac and Fox lands, and has received a construction by the Department. Under the first clause of the proviso any person who, prior to the approval of the act, has reliquished his homestead entry, is qualified to make a homestead entry upon the lands in the Kiowa and Comanche country.

There is more difficulty, however, with the second clause of the proviso, which provides that any person "who made entry under what is known as the commuted provision of the homestead law, shall be qualified to make a homestead entry upon said lands."

The difficulty arises over what Congress meant by the "commuted provisions of the homestead law." It has been held by the Department of the Interior that Section 2301, of the Revised Statutes of the United States, is "the commuted provision of the homestead law"; and the Secretary of Interior held that a person who "commuted" his homestead entry under a special act of Congress had not commuted under the "provisions of the homestead law."

The "commutations" in Oklahoma have, as a rule, at least, been made under special Act of Congress, and not under Section 2301. It is very doubtful, therefore, whether persons who have commuted their homestead entries, upon lands in Oklahoma are qualified to make homesteads in the lands to be opened to settlement in the Kiowa, Comanche and Apache reservation. This question came before the Department in the case of James M. Clark, reported in 17 L. D., page 46. Clark had made entry of a tract of land in that portion of Oklahoma opened to settlement April 22, 1889. Prior to the opening of the Sac and Fox lands, Clark commuted his homestead entry. The Act of Congress opening the Sac and Fox reservations to settlement, among other things, provided that any person otherwise qualified, who made entry under what was known as the commuted provisions of the homestead law, should be qualified to make entry upon said lands.



Clarks' application to make entry was rejected by the Department of Interior on the grounds that Clark had commuted under Section 21, of the Act of May 2, 1890. and not under Section 2301, of the Revised Statutes of the United States.

As a rule, commutations throughout all the Western States and Territories are made under Section 2301, of the Revised Statutes of United States. It would seem a great injustice to the homestead entrymen who have commuted in Oklahoma under special acts not to be granted the same privilege in these new lands which is granted to the settlers who have commuted under the general section. Possibly the former ruling of the Secretary may be modified or reversed.

**Simultaneous Application.—**

It sometimes happens that two persons apply to enter land at the same time in which case the rule is as follows:

First. Where neither party has improvements on the land the right of entry should be awarded to the highest bidder.

Second. When one has actual settlement and improvements, and the other has not it should be awarded to the actual settler.

Third. Where both allege settlement and improvements, an investigation must be had and the right of entry awarded to the one who shows prior actual settlement and substantial improvements so as to be notice on the ground to any competitor.

(See General Land Office Circular, 1829, page 10, also Helfrich vs. King, 1 Copp's L. L. p. 378.)

The above rules will indicate the importance of making settlement and improvements prior to entry.

**Entry an Appropriation.—**

The entry of the land is an appropriation of it. It is thereby segregated from the public domain. It is not subject to entry or valid settlement by another, and the entryman acquires an inchoate right—an equity in the land which can not be defeated, except by failure on the part of the entryman, to comply with the law, provided, of course, that the land was not appropriated prior to the entry by settlement of another.

Attorney General McVeah, 1 L. D. 30; Graham vs H & D. R. R. Co., 1 L. D. 362; Wolf vs. Struble, 1 L. D. 449; Legan vs. Thomas et al., 4 L. D. 441; Schrotberger vs Arnold, 6 L. D. 425; Grove vs. Cook, 7 L. D. 140.

Entry consists of three things, viz.: The application, the affidavit and the payment of fees and commissions. The settler must comply with all these elements, or his entry will be rejected, and he can claim no rights thereunder. Gilbert vs. Spearing, 4 L. D. 463; Iddings vs. Burns, 8 L. D. 224.

## HOMESTEAD BY SETTLEMENT.

Having considered the first method, viz.: By entry, we will now consider the second method of initiating a homestead right, viz.: By settlement.

Prior to May 14, 1880, it was only by entry that a homestead right to a tract of land could be initiated. Christesen vs. Mathorn, 7 L. D. 537.

The third section of the act approved on that date provided:

SEC. 3. That any settler who has settled, or who shall hereafter settle on any of the public lands of the United States, whether surveyed or unsurveyed, with the intention of claiming the same under the homestead law, shall be allowed the same time to file his homestead application and perfect his original entry in the United States land office, as is allowed to settlers under the preëmption laws.

By reference to the preëmption law, U. S. R. S., Section 2265, we find that the settler has three months from date of his settlement in which to make his filing. Therefore under act of May 14, 1880, a homestead settler has three months from date of his settlement in which to make his entry and his rights relate back to date of settlement.

Murphy vs. Taft, 1 L. D. 83; Wolf vs. Struble, 1 L. D. 449; Watts vs. Forsyth, 5 L. D. 624; Christesen vs. Mathorn, 5 L. D. 537; Watts vs. Forsyth, 6 L. D. 306; Way vs. Matz, 6 L. D. 257.

By settlement one acquires an inchoate interest in the land—of equal importance and validity of an entry—which his heirs inherit in case of death before entry.

**Make Entry within Three Months.—**

It is very important that the entry be made within three months from date of settlement. A failure to make entry within three months from date of settlement will open the land to the next settler or claimant who has complied with the law. Sickness, poverty, distance, neglect, oversight, mistake, unexpected delay—in short, no excuse has been accepted by the department, providing there is a valid adverse claim has attached either by settlement or entry.

Bishop vs. Porter, 2. L. D., 119.
Same Case, 3 L. D., 103.
Watts vs. Forsyth, 5 L. D., 624.
Same Case, 6 L. D., 306.
Crestensen vs. Mathorn, 7 L. D., 537.
Ways vs. Matz, 6 D. D., 257.

Of course, if there is no valid intervening claim the entry may be made at any time.

M. B. McNeal's case, 6 L. D., 653.

**Residence to Follow.—**

The settler should then proceed within a reasonable time —within thirty days if possible—to establish his actual residence upon the land. If the settler has a family, he should remove his family to the claim with him, but if his circumstances are such that he cannot take his family to the claim with him he should go to the claim himself, prepare a home for his family and have his family follow him as soon as practicable. If a settler makes entry shortly after his initiatory acts of settlement and there is another person claiming the land by virtue of settlement, he should establish residence on the land as soon as possible. He should not take six months in which to establish his residence on the land, after entry. To do so would probably be held an abandonment of his settlement right, and his rights would be held to attach only from entry. The entry being subsequent to the settlement of the other claimant, would be inferior, and thus the entryman, who in



fact made the first settlement, would lose the land, by reason of not following his settlement with residence within reasonable time.

**Settlement Defined.—**

Want of knowledge as to what constituted valid settlement—settlement that appropriated the land—and reserved it from the claims of others, has caused many much trouble, great annoyance, expensive litigation, and finally the loss of a home.

The settlement of the land in Oklahoma has led to the promulgation of a new rule or definition of settlement. In other words, the Department of the Interior has, by various decisions, held that the circumstances under which the lands in Oklahoma and in some of the western states recently have been opened to settlement, have made it necessary to modify the old rule. It is now well settled that where lands are opened under such laws and regulations that make it necessary for the settlers to make a race for the lands, the Department will take these circumstances into consideration and not require settlers to perform such acts as would constitute valid settlement under the old conditions where men could go deliberately, and initiate their settlement rights. Persons who contemplate taking claims by settlement should, however, clearly understand the old rule and for this reason we will first present this. It should be borne in mind that the old rule is still in force except when the settlement right is initiated upon the day of the opening, or so near it, or under such circumstances, as make it equitable to apply the new rule.

## SETTLEMENT UNDER THE OLD RULE.

Secretary Teller says in the Howden-Piper case, 3 L. D. 294: "It has also been repeatedly held by this department that mere intention is insufficient to constitute a preemption settlement, and that one claiming such settlement must do something in the nature of reducing the land to his possesssion, or of exehcising ownership over it."

See also Buchanan vs. Minton, 2 L. D. 186; Slate vs. Door, 2 L. D. 635.

There must be an intent to appropriate the land and some act upon it indicative of the intent, and the two must harmonize. Neither alone is sufficient.

The Secretary also quotes the opinion of Attorney General Mason, to the effect: "From the moment, therefore, that he (the preëmption claimant) enters in person on land open to such a claim with the animus manendi, or rather with the intention of availing himself of the provisions of the act referred to, and does an act in execution of that intention, he is a settler." One can not make settlement by agent. He must go upon the land in person. No amount of improvements will avail anything in the absence of personal presence on the land. McLean vs. Foster, 2 L. D. 175; Byer vs. Burnell, 6 L. D. 521; Knight vs. Hauck, 2 L. D. 188; Powers vs. Ady, 11 L. D. 175.

Two things are necessary—going upon the land with the intention of claiming the tract under the homestead

laws, and the doing of some act equivalent to the public announcement of his claim, so that his purpose will be manifest. 10 C. L. O. 6.

An "actual settler" is one who goes upon the land specified with the intention of making it his home under the settlement laws, and does some act in execution of such intention sufficient to give notice thereof to the public. U. S. vs. Atterberry, 8 L. D. 173; Lytle vs. Arkansas, 22 How. 193. The act of settlement is complete from the instant the settler goes upon the land with the intention of making it his home and performs some act indicative of such intent. Franklin vs. Murch, 10 L. D. 582. One of the objects of settlement is to give notice to all comers that the tract settled upon is claimed by the settler. Burnett vs. Crow, 5 D. D. 372.

An act of settlement must consist of some substantial and visible improvements of the land, having the character of permanency with the intent to appropriate it under the law. Howden-Piper case, 3 L. D. 162 and 294. Residence must follow settlement within a reasonable time.

The above indicates in a general way what constitutes settlement. The good faith of the claimant is always an important factor, and one's good faith is judged by his acts. Every settler should do all within his power to give the world notice of his claim. The settler's rights attach the instant he goes upon the land and drives a stake, or blazes a tree, or throws one spade of earth, or hoists a flag, or does any act, however small, if he follows the act immediately with acts of greater importance, with improvements of more substantial nature, and continues on within a reasonable time, by the erection of a habitable house, cultivation and actual residence.

The homesteader should, however, take no chances. From the moment he sets foot upon the tract he should diligently apply himself to the work of erecting substantial and permanent improvements. He should take with him an ax and spade, if nothing else. If there be timber on the claim, a temporary house should be begun with logs. If no timber, then a dug-out should be begun, or some act done upon the land that will in itself be notice to the world that the tract is claimed by a settler. Mounds thrown up at the corners, plowing, the erection of a tent, cutting poles or logs and placing them in the form of a square, placing posts in the form of a square, with even brush for a covering, or no covering at all, are all acts which will suggest that the land has been appropriated. As a matter of precaution the settler should also have witnesses to his first acts of improvement, so that in case of conflict, he may be able to prove these facts. In contests over land, it is important that one should not only have done the first acts of settlement, but he should be able to establish the fact by competent testimony. The settler is required to make such improvements as will be notice to the public, but in case others come upon his claim he should at once notify them by word of mouth of the extent of his claim. Actual notice of one's claim, in the absence of improvements sufficient to give the world notice, may answer the purpose of such improvements. (Sanford vs. Cooper, 11 L. D. 404.)



It is important for other reasons, however, that one desiring to enter a tract of land should make a careful examination of the land before filing.

First—That the settler may know the character of the land he is entering.

Second—That he may know that no one else is claiming the land.

Be certain that the land examined is the land being entered. Frequently one enters through carelessness the wrong piece of land. Even where one can show he has used reasonable diligence in selecting his land, so that he may amend his entry, it will nevertheless occasion much delay and considerable expense.

**Leading Cases.—**

The settler may be given a better idea of what constitutes settlement by briefly considering a few of the cases decided by the Department of the Interior. These cases have arisen where one has claimed by settlement the other by entry, or where the alleged settlement of the one who went upon the land first has been held insufficient to appropriate the land.

In the Seacord-Talbert case, 2 L. D. 184, the Secretary of the Interior held, that the driving of four stakes upon the land, for the purpose of indicating a site for a house, was not sufficient to hold the land. A third party by the name of Adams had done some breaking on the land, partially dug a cellar, but had abandoned his improvements and never had established a residence on the land. He informed Seacord he would give up his claim if he would buy his improvements. Seacord went upon the land and drove four stakes to indicate where he would build a house in case he decided to purchase it. These stakes were driven March 17, 1879. He did not return to the land until April 28, 1879, over a month later, at which time he established his residence upon it. Talbert came upon the land March 28, 1879, with his family, and at once established his residence upon it. He had notice of Adams' breaking and the partially dug cellar, and of house in two parts, empty and not set on a foundation, and of the fact that no one had ever lived on the land. Talbert was given the land on the ground that Seacord's "temporary presence there on March 17, 1879, and the act of driving the stakes did not amount to a legal settlement, and such a settlement he could only effect by again going on the land, animo manendi"—that is, with the intention of remaining on the land.

In 3 L. D. 162 and 294 is reported the Howden-Piper case. The facts are set forth in the opinion, page 294, as follows: "Upon the day of Howden's alleged settlemen, a person engaged in the business of locating settlers upon the public lands took Howden and two others to different tracts for that purpose—the three each taking boards with them and a pick. The first went to the lands in question—remaining not over one-half hour—where Howden (one or more of the others assisting him), 'picked' a piece of frozen ground about six or eight feet in area, to an average depth of not over one inch. He then erected two boards—at a different place—(which were directly blown down) to show, in the language of the witness, 'that the land was taken,' 'to attract atention to

his settlement,' 'and to give notice to the other parties that he claimed the land.' He did nothing further, but returned to town, and soon after returned to Iowa for the purpose of bringing his family to Dakota. He returned to the land May 1, a period of over two months and a half since he made his alleged settlement, it having been February 11 when he first went to the land. On March 30, Piper purchased a house on the land from a former occupant, broke and sowed to crop five acres, and was residing on the land when Howden returned May 1." Secretary Teller, in deciding the case, held that Howden's doings manifested an intent only to reserve the land for his future settlement, and that what he did was not "such an act of substantial or permanent or visible improvement as amounted to an act of settlement, or excluded the land from other actual settlement," and the land was awarded to Piper.

In Thompson vs. Jacobson, 2 D. D. 620, Acting Secretary Joslyn says: "The erection of the board, with a statement of his claim, was not an act of settlement, but indicative merely of a future intent to settle on and claim the tract." This ruling was based upon the fact that the settler did nothing else, but immediately returned to his former home in Iowa. Sustaining these rulings see 2 L. D. 186, 635 and 620.

In Burnet vs. Crow, 5 L. D. 372, Acting Secretary Muldrow says: "One of the objects of settlement is to furnish notice to all comers that the tract settled upon is claimed by the settler. A midnight settlement, followed by a departure of the party in a few hours and before daylight, without leaving any evidence of having been present, is such an act as this department would be slow to accept as the settlement required by the preëmption law."

Davis vs. Davidson, 8 L. D. 417, Assistant Secretary Chandler says: "The digging of a few holes in 'a gully' near the corner of the tract, placing posts in two of them, and laying fifteen rocks on the ground, in a rectangular form (whether in the gully or not is not stated), at 'dusk' in the evening, are not calculated to give the public generally notice of the claim. The time and place (in a gully, after dark) selected by Davidson indicate, if his acts were otherwise sufficient to constitute settlement, an intention to make (if that were possible) a clandestine appropriation of the land, and not an open, honest settlement, with a view of giving the public notice of his claim. But I am of the opinion that Davidson's acts of settlement even if open and notorious were in themselves insufficient, but at most indicated an intention to reserve the land for future settlement." These cases generally turn on the fact that the other claimant did not have actual notice of the existence of the first claimant's settlement.

In Franklin vs. Murch, 10 L. D. 582, Assistant Secretary Chandler says: "Franklin became an 'actual settler' the instant he pitched his tent upon the land, with the intention of making it his home." The facts in the opinion show Franklin put up a tent, and afterward erected a house and resided upon the land. In Witter vs. Rowe, 3 L. D. 449, it is said: "The arrangement in the form of a square of a few logs, left on the land by a former settler and not followed by other acts of settlement and improvement, does not constitute valid settlement." These acts were done May 20, and the adverse entry was made July 31, some six weeks afterward. The entryman seemed to have no notice of the alleged settlement and the settler gave no excuse for not following his first acts of settlement with further acts of settlement and improvement.



In Bowman vs. Davis, 12 L. D. 415, the facts set forth in the opinion show that Bowman's acts of settlement consisted of "piling up a few stones" in one place, another pile, estimated from 12 to 50, and in size from size of a man's fist to that of a bushel basket, in another locality, and three small piles near northern boundary of the claim. Fourteen days later he established residence on the land. The local office held these acts were not sufficient to hold the land and the Commissionerof the General Land Office concurred. The Department of the Interior overruled the decision. Assistant Secretary Chandler quotes and approves the definition of settlement give in Franklin vs. Murch, 10 L. D. 582, that "an act of settlement is complete from the instant the settler goes upon the land with the intention of making it his home, and performs some act indicative of such intent," and says: "This definition of a settler does not, in my judgment, require that such act should necessarily be done in connection with his residence on the land, such as commencing the erection of a house to reside in, but it may be any visible act tending to disclose a design to appropriate the land under and in accordance with the preëmption (homestead) laws. The fact that Bowman did not intend to use the stones for the construction of a house, well or fence, or for any other purpose, except to get them out of the way of the plow, is not material."

"It is sufficient that some such act is done denoting an intention to claim the land." The case of Etnier vs. Zoak, 11 L. D. 452, is quoted and approved. Etnier's acts of settlement "which gave her priority, consisted in surveying the land and throwing up sod mounds on the boundaries of her claim."

In the case of Cooper vs. Sanford, 11 L. D. 404, Sanford's acts of settlement consisted in cutting several poles from the banks of the Arkansas River, each of which was about twelve feet long, and from three to five inches in diameter. He hauled them to the land, and placed them in the form of a square, to represent a foundation. While he was placing the poles Cooper came up and asked Sanford "whether he thought the structure of poles was sufficient to hold the land." Sanford said he did. Both parties left the land. Cooper filed on it the next day. Sanford returned to the land in about two weeks and established his actual residence on the land. The land was awarded to Sanford. One important point in the case was that Cooper had actual notice of Sanford's claim, and the decision seems to have turned largely on this point. Actual notice of the extent of the claim is as good as that given by improvements. Hence, the importance of a settler informing all parties who come upon his claim the extent of the settler's claim. This is especially important where the settler has not had time to put upon his claim such perma-

nent and visible improvements as would be regarded notice to the world.

**Oklahoma Rule.—**

Though this may be called the Oklahoma Rule, it applies in other States or Territories where lands are opened under similar circumstances. This rule was first announced in the case of Hurt vs. Griffin, 17 L. D., 162. In this case it is said:

"It is a notorious fact, that in the great race for homes in the Territory, he who first reached a tract and STAKED it, was regarded as the prior settler, and as eager as men were to secure homes, this kind of settlement was generally respected by the honest people who rushed into the Territory, for as a matter of fact, to stake a claim, or dig a hole, or put up a wagon sheet or tent, was about all that the great majority of the settlers could accomplish in the afternoon of the 22d of April, 1889, circumstanced as they were, and very many settlements have been held valid in Oklahoma that were no better indicated, fixed and determined than was the settlement of Hurt. This settlement has been diligently followed up until it has ripened into a good home, good faith being manifest at all times."

In the case of Penwell vs. Christian, 20 L. D., 10, the opinion says:

"The only act of the contestant done prior to the entryman consisted in setting said stake with his handkerchief attached, and the question is whether this act is such an assertion of title as will defeat the entry of Christian. Ordinarily it would not be deemed sufficient, in the absence of actual notice to the entryman, but in cases of this nature where the good faith of both parties is established and neither party is guilty of laches, I am of the opinion that the only sound rule that can be adopted is to award the land to the person who was first upon the land and performed any act that evinces an intention to insert title.

"In the race for lands in Oklahoma Territory, the sticking of a stake with a flag or card attached was the recognized method of asserting possession, and too many cases have been adjudicated in accordance with the rule above stated to justify a departure therefrom.

"In the acquisition of homesteads in Oklahoma under the Proclamation of the President and under the rules and regulations which anticipated the rush or race that would inevitably occur in the efforts of claimants to secure their homesteads, and which rules and regulations sought to secure to all equal opportunity and fairness in competing for prior possession or settlement, and where the rights of contestants for a certain tract are in other respects equal, the maxim of 'Qui prior est tempore prior est jure' applies, and he who was first in point of time in reaching the tract, and performed some act which signified an intention to claim it as his own, and followed such primary act by residence within such reasonable time as clearly shows his good faith, should be held to have the better title. No safer rule can in my opinian be applied in such a case than that he has the better title who was first in point of time."



The above case was cited and approved in Hensley vs. Waner, 24 L. D. 62.

## RESIDENCE.

**When to Establish.—**

There are two rules in regard to WHEN residence should be established upon a homestead claim, and it is very important to understand this and clearly distinguish between the two. Where one initiates his claim by settlement he must establish his residence within a reasonable time and he does not have SIX MONTHS in which to do this.

If one initiates his homestead right by entry he has six months in which to establish his residence upon the land, at which time he should have a habitable house upon the land and be living therein with his family. When the right to a tract of land under the homestead law is initiated by settlement and the settler desires to date his right to the land back to the date of settlement, the actual residence must follow within a "reasonable time." In case of contest the department would decide in each case, under all the circumstances, whether or not the residence was established within a "reasonable time." A "reasonable time" in one case might not apply in another. One claiming by settlement should, if possible, establish his residence on the land within thirty days from settlement. If he cannot have his family on the land in that time he should be there himself, preparing a home for them, with the intention of having his family follow him as soon as possible. If one initiates his homestead right by settlement, and at any time within three months makes entry of the land, and is certain he has no adverse claimant to the land, he may then abandon his claim as to settlement and claim under his entry, and would have six months from entry in which to establish residence on the land. But if there is an adverse claim to the land, residence must follow within a reasonable time after settlement.

**Rule Where No Contestant.—**

When one initiates his right by settlement, secures his entry, and has no contestant, he may, if he prefers, abandon his settlement right, and hold only by his entry in which case he has six months from the date of his entry to make his residence on the land. A settler should, however, be very careful to know not only that he had no adverse claimant on the day of the opening, but also that no other person had claimed the land at any time prior to day and hour of entry.

**Rule Applicable to Soldiers.—**

Ex-Union soldiers should bear in mind that if they initiate their claims by settlement, all the above apply to them. The may file their Declaratory statements, if they choose, but if they want their rights to date back to the hour or date of their settlement they must do two things, viz.: 1, Make their actual homestead entry within three months from the date of their settlement (and not within six months from the date of their Declaratory); and 2, Establish their residence within a reasonable time after their settlement, and not within six months from the

date of their Declaratory statement, as would be required were they claiming the land only from the date of their Declaratory.

## WHAT CONSTITUTES RESIDENCE.

**Mere Visits Not Residence.—**

Mere visits to the land to keep up the fiction of a residence does not constitute a compliance with the law. Hopkins' case, 10 L. D. 472; Strawn vs. Moher, 3 L. D. 235; West vs. Owen, 4 L. D. 412.

In the West-Owen case (4 L. D. 412) Secretary Lamar says: "The idea that an individual can acquire or maintain a residence on a tract of public land, by making occasional visits thereto while his family are residing elsewhere, and while all his interests and household effects apparently are with his family, has been long since exploded, if indeed it ever had any real existence. That is to say, in order for an individual to establish residence on a tract of land, as required under the homestead law, it is necessary that there be a combination of act and intent on his part, the act of occupying and living on said tract, and the intention of making the same his home to the exclusion of a home elsewhere. That is a "true, fixed and permanent home and principal establishment, and to which, whenever he is absent, he has the intention of returning." Story's "Conflict of Laws," page 35.

Acts indicating an intention to make the land a home, to the exclusion of one elsewhere, are required to establish the fact of residence in good faith. Wise vs. Fisher, 10 L. D. 140. The excuse givn in this case was severe weather, a poor house, and an invalid wife. The evidence showed the entryman was a man of considerable means, and the department held all the circumstances did not show good faith and the excuse given for absence from the land was not accepted. Residence largely a matter of intent. Thomas vs. Thomas, 1 L. D. 89.

**Act and Intent.—**

In Mary Campbell's case, 10 L. D. 331, Secretary Noble says: "Residence, however, cannot be acquired or maintained by going upon or visiting the claim solely for the purpose of complying with the letter of the law, with a view of thereby acquiring title to the land, no matter how honestly the claimant believes such visits all that the law requires. To establish residence the act of going upon the land must concur with an intent to make it a permanent home to the exclusion of one elsewhere.

**Colorable Compliance.—**

"Residence is not acquired by one who goes upon public land with the fixed intention of leaving the same after a colorable compliance with the law, and in the meantime substantially maintains a home elsewhere." Spalding vs. Calfer, 8 L. D., 615. A settler who goes upon public land with the intention of remaining just long enough to secure title by a colorable compliance with the law, and then returns to his former home where his family has in the meantime resided, and the greater part of his property remained, does not establish or maintain the residence required by the homestead law. Van Astrum vs. Young,



6 L. D. 25. A claim of residence is not consistent with the substantial maintenance of a home elsewhere. Van Gordon vs. Ems, 6 L. D. 422.

The letter of the homestead law is not the principal thing. The spirit of the law must be complied with. Sidney F. Thompson's case 8 L. D. 285. Residence must be personal. The residence and improvements of a tenant will not avail. No amount of improvements will obviate the necessity of or answer the place of actual residence of the homestead entryman. Farrel vs. Linde, 11 L. D. 602.

**Presumed to Be with Wife.—**

A married man's residence, is, in the absence of proof to the contrary, presumed to be where his wife or family resides. Spalding vs. Calfer, 8 L. D. 615; Strond vs. Wolf, 4 L. D. 394; Bales vs. Bissel, 9 L. D. 546; Bullard vs. Sullivan, 11 L. D. 22; Thomas E. Henderson's case, 10 L. D. 266; Augie L. Williamson's case, 10 L. D. 30; Garner's case, 11 L. D. 207. But entryman who abandons his wife, not protected by the residence of his wife on claim. Thomas vs. Thomas, 1 L. D. 89.

The residence of wife and family on land near the homestead tract, under the facts in George F. Herman's case, 10 L. D. 326, held rebut claim of residence. Actual inhabitancy of the land, either actual or constructive, is required to comply with the homestead law as to residence. Smith vs. Brearly, 9 L. D. 175. Residence must be in good faith, and this good faith must be shown by the acts of the claimant. The law abhors subterfuges and pretenses. Dayton vs. Dayton, 8 L. D., 284. The Department of the Interior cannot ignore the requirements of the law, because it works a hardship to individuals. The letter and spirit of the law must be complied with, as the law is construed by the department. Crumpler vs. Swett, 8 L. D., 584. A claim of residence is not compatible with the maintenance of a home elsewhere. Huck vs. Heirs of Medler, 7 L. D. 267.

**Presence and Residence.—**

Presence and residence on land are not synonymous, or convertible terms. Manning's case, 7 L. D., 144. Residence cannot be acquired without abandonment of the former home, and the act and intent must concur. Penrose's case, 5 L. D., 179. The acts of homesteader must not indicate a purpose to evade the requirements of the law. Benedict vs. Herberger, 5 L. D., 273. Cultivation and improvements are not equivalents of residence. Knox vs. Bassett, 5 L. D. 351. What is residence? Every one of ordinary intelligence has in his own mind, what is commonly meant by this term, but even our best writers have difficulty in defining the term. Intention has much to do in determining one's residence, but in administering the law, one's intentions must be judged by his acts. Justice Story, in his "Conflict of Laws," says: "By the term 'domicile' in its ordinary acceptation is meant the place where a person lives or has his home. In this sense the place where a person has his actual residence, or inhabitancy, is sometimes called his domicile. In a strict and legal sense that is properly the domicile of a person where he has his true, fixed, permanent home and principal establishment, and to which, whenever he is absent,

he has the intention of returning." Bouvier defines residence to be "the place where a person has fixed his ordinary dwelling without a present intention of removal," and cites 10 Mass., 488, 8 Cranch, 278.

**Domicile.—**

The Supreme Court of Massachusetts (1st Metcalf, 345), by the Chief Justice, Shaw, says: "The question of residence, inhabitancy, or domicile—for although not in all respects precisely the same, they are nearly so, and depend much upon the same evidence—are attended with more difficulty than almost any other which are presented for adjudication. No exact definition can be given for domicile; it depends upon no one fact or combination of circumstances, but from the whole taken together it must be determined in each particular case."

From these definitions it will be seen that it is often difficult to determine in what place a person has his true and proper domicile. One's residence is often of a very equivocal nature, and his intention is often still more obscure. While it may be difficult to define residence, it is very easy for a homesteader to bring himself safely within the limits of the term, and every settler should pursue the safe course. Avoid the appearance of evil. Keep safely within the law and rules and regulations of the department. Otherwise contests, litigation, uncertainty, and endless trouble may come, even though intentions may be good.

**What Excuses Want of Residence.—**

It is not every absence that consitutes abandonment, or breaks the continuity of residence. When the good faith of the party appears, and there is no adverse claim, and when the question of abandonment or failure to comply with the law is between the entryman and the government, and when the failure to comply with the law results from causes beyond the reasonable control of the party, the clemency of the government will be extended, and the entry will not be forfeited. Peter vs. Spaulding, 1 L. D. 77. Threats and fear of violence and an adverse decision by local land office have been held to excuse lack of residence. Nichols vs. Bird et al., 4 L. D. 43. Actual, personal, and continuous residence is not necessary, where one complies with the law as to cultivation and improvements, and has no other home, and all of his acts show good faith. Edwards vs. Sixson, 1 L. D. 63. Residence once established is not lost by temporary absence on business. Hilton vs. Kelton, 11 L. D., 505; case of Patrick Manning, 7 L. D., 144. Sickness and poverty has been held to be a valid excuse for absence from claim.

La Barre vs. Hartwell's Heirs, 11 L. D., 497; Meyers' case, 10 L. D., 492; Riggs' case, 10 L. D., 526; Smith's case, 9 L. D., 146; Peter Weber, 9 L. D., 150; John W. Anderson, 8 L. D., 517; Evan L. Morgan, 5 L. D., 215.

**Temporary Absence.—**

Temporary absence occasioned by poverty, and for the purpose of earning a livelihood, and where the honest intention of the settler is apparent, will be excused. Helen E. Dement, 8 L. D. 639. Absence caused by sickness does not interrupt the continuity of residence. James Edwards case, 8 L. D., 353. Absence from claim for several years,



to earn means to support the family residing on the claim, is not abandonment. Thrasher vs. Mahoney, 8 L. D., 626. Inhabitancy not impeached by temporary absence to secure means to improve the land. Pennell's case, 8 L. D. 645; Farringer's case, 7 L. D. 360. Absence rendered necessary by sickness of parent does not constitute abandonment. Bailiff's case, 7 L. D. 170. Poverty will not excuse total want of residence. Geisendoffer vs. Jones, 4 L. D., 185.

Absence to secure support and improve the land excused. Prescott's case, 6 L. D. 245; Israel Martel, 6 L. D. 566; Thompson's case, 6 L. D. 576.

The condition of the family and severity of the climate and poverty of claimant may be taken in consideration as excuse for absence from the land. Nilson vs. St. M. & M. R'y Co., 6 L. D. 567; Olson's case, 6 L. D. 311; Harris' case, 6 L. D. 154; Ballard's case, 6 L. D. 170; Sandell vs. Davenport, 2 L. D. 157; Clark vs. Lawson, 2 L. D. 149.

The illness of the wife of claimant, requiring her to be taken away for treatment, excuses absence. Egbert vs. Paine, 2 L. D. 156.

**Threats and Violence.—**

Threats, intimidation and violence against homestead claimant will sometimes excuse want of residence. Underwood vs. Eves, 2 L. D. 600; Miller vs. Ransom, 3 L. D. 366. Actual violence is not necessary to constitute such duress as will be an excuse for absence from land. Dorgan vs. Pitt, 6 L. D. 616; Parsons vs. Hughes, 8 L. D. 593. But failure to establish residence will not be excused, on plea of duress, when a part of the land, at date of entry and thereafter, is free from adverse claim. Swain vs. Call, 9 L. D. 22.

**Widows and Minor Heirs.—**

The widow or heirs of deceased homestead entryman are not required to reside upon the land, but may obtain title by complying with the law as to cultivation and improvement.

Swanson vs. Wisly's Heirs, 9 L. D., 31.

Taner vs. Heirs of Mann, 4 L. D. 433.

Stewart vs. Jacob, 1 L. D. 636.

The marriage of two persons, who are holding claims by entry, will necessitate the abandonment of one of the claims. Separate residences cannot be maintained. Garner's case, 11 L. D. 207; Henderson, 10 L. D. 266; Tavener's case, 9 L. D. 426. But the marriage of a woman who has a homested claim will not invalidate her entry, if she and her husband reside on her claim. Maria Good, 5 L. D. 196.

Absence on official duty was held to excuse absence from land in the case of Reeve vs. Burtis, 9 L. D. 525; A. E. Flint, 6 L. D. 668.

**Judicial Compulsion.—**

Will excuse absence from the claim. Kane et al. vs. Devine, 7 L. D. 532; Anderson vs. Anderson, 5 L. D. 6; Bohall vs. Dilla, 114 U. S. 47.

Contest will not lie against homestead entry for abandonment until expiration of six months and a day, from date of entry, exclusive of day of entry. Baxter vs. Cross, 2 L. D. 69.

**Leave of Absence.—**

By the Act of March 2, 1889, settlers may generally secure a leave of absence (see Index) from their claims for any valid excuse, and they should not leave their claims without first securing or attempting to secure a leave of absence.

**Length of Residence Required.—**

Sections 2291 and 2292, United States Revised Statutes, provide:

Sec. 2291. No certificate, however shall be given, or patent issue therefor, under the expiration of five years from the date of such entry, and if at the expiration of such time, or at any time within two years thereafter, 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, proves 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, and makes affidavit that no part of said land has been alienated, except as provided in Section twenty-two hundred and eighty-eight, and that he, she or they will bear true allegiance to the government of the United States; then, in such case, he, she or they, if at that time citizens of the United States, shall be entitled to a patent, as in other cases provided by law.

**Minor Heirs.—**

Sec. 2292. In case of the death of both father and mother, leaving an infant child or children under twenty-one years of age, the right and fee shall inure to the benefit of such infant child or children; and the executor, administrator or guardian may, at any time within two years after the death of the surviving parent, and in accordance with the laws of the State in which such children, for the time being, have their domicile, sell the land for the benefit of such infants, but for no other purpose and the purchaser shall acquire the absolute title by the purchase, and be entitled to a patent from the United States on the payment of the office fees and sum of money above specified.

**Commutation.—**

Sec. 2301. This is what is known as "the commuted provision of the homestead law." Under this section, one could acquire title after six months' residence, cultivation and improvement, and the payment of the prescribed amount of money. March 3, 1891, this section was amended. The principal change was requiring FOURTEEN months' residence instead of six.

Amended Section 2301 is as follows:

Sec. 6. That Section 2301 of the Revised Statutes be amended so as to read as follows:

Sec. 2301. Nothing in this chapter shall be so construed as to prevent any person who shall hereafter avail himself of the benefits of Section 2289 from paying the minimum price for the quantity of land so entered at any time after the expiration of fourteen calendar months from the date of such entry, and obtaining a patent therefor, upon making proof of settlement and of residence and cultivation for such period of fourteen months, and the provisions



of this section shall apply to lands on the ceded portion of the Sioux reservation, by act approved March 2, 1889, in South Dakota, but shall not relieve said settlers from any payments now required by law.

The fourteen months clause in the above section does not apply generally to the lands in Oklahoma. To determine the length of residence required, before title can be acquired by payment, we must refer to the special acts applicable to the various reservations.

**Old Oklahoma.—**

By Section 21 of the Organic Act, title to the lands opened to settlement April 22, 1889, may be acquired after twelve months' residence, on payment of $1.25 per acre.

**Sac and Fox Lands.—**

The act opening the Sac and Fox lands to settlement, approved February 13, 1891, provided that title to these lands might be acquired, on proof of twelve months' residence, and the payment of $1.25 per acre.

**Cheyenne and Arapahoe and Pottawatomie Lands.—**

The lands in these reservations, by Act of October 20, 1893 (28 Stat. 3), may be commuted after twelve months of residence, and the payment of $1.50 per acre.

**Cherokee Outlet and Kickapoo Lands.—**

These lands, under act approved August 15, 1894 (28 Stat. 336), may be commuted after fourteen months' residence, on payment of the prices per acre, as provided for in the act opening these lands to settlement. The price charged for the Kickapoo lands is $1.50. The prices for lands in the Cherokee Outlet range from $1.00 to $2.50 per acre, according to location.

**The Kiowa and Comanche Lands.—**

Under the Act of Congress, approved June 6, 1900, title may be acquired to these lands after fourteen months' residence, and the payment of one dollar and twenty-five cents per acre.

## RIGHTS OF SOLDIERS.

Below are quoted the sections of the Revised Statutes conferring special privileges upon those who served for ninety days in the Army of the United States during the War of the Rebellion. Upon lands where settlers are required to make cash payment for lands, the soldier virtually has no advantage, except to file declaratory statement personally or by agent.

Section 2304. Every private soldier and officer who has served in the Army of the United States during the recent rebellion, for ninety days, and who was honorably discharged, and has remained loyal to the government, including the troops mustered into service of the United States by virtue of the third section of an act approved February thirteenth, eighteen hundred and sixty-two, and every seaman, marine and officer who has served in the Navy of the United States, or in the Marine Corps, during the rebellion, for ninety days, and who was honorably discharged, and has remained loyal to the government, shall, on compliance with the provisions of this chapter, as hereinafter modified, be entitled to enter upon and re-

ceive patents for a quantity of public lands not exceeding one hundred and sixty acres, or one quarter-section, to be taken in compact form, according to legal subdivisions, including the alternate reserved sections of public land along the line of any railroad or other public work, not otherwise reserved or appropriated, and other lands subject to entry under the homestead laws of the United States; but such 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.

Section 2305. The time which the homestead settler has served in the Army, Navy, or Marine Corps shall be deducted from the time heretofore required to perfect title, or if discharged on account of wounds received or disability incurred in the line of duty, then the term of enlistment shall be deducted from the time heretofore required to perfect title, without reference to the length of time he may have served; but no patent shall issue to any homestead settler who has not resided upon, improved and cultivated his homestead for a period of at least one year after he shall have commenced his improvements.

Section 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.

Section 2307. 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 oprhan 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 title.

Section 2308. Where a party at the date of his entry of a tract of land under the homestead laws, or subsequently thereto, was actually enlisted and employed in the Army or Navy of the United States, his services therein shall, in the administration of such homestead laws, be construed to be equivalent, to all intents and purposes, to a residence for the same length of time upon the tract so entered. And if his entry has been cancelled by reason of his absence from such tract while in the military or naval service of the United States, and such tract has not been disposed of, his entry shall be restored; but if such tract has been disposed of, the party may enter another tract subject to entry under the homestead laws, and his right to a patent therefor may be determined by the proofs touching his residence and cultivation of the first tract and his absence therefrom in such service.

Section 2309. Every soldier, sailor, marine officer or other person coming within the provisions of Section



two thousand three hundred and four, may, as well by an agent as in person, enter upon such homestead by filing a declaratory statement, as in preëmption cases; but such claimant in person shall within the time prescribed make his actual entry, commence settlement and improvements on the same, and thereafter fulfill all the requirements of law.

**Exhausts Homestead Right.—**

The declaratory exhausts homestead right. The filing of soldier's declaratory statement, generally speaking, exhausts the homestead right. Roberts vs. Howard, 4 L. D. 562; Stevens vs. Ray, 5 L. D. 134; case M. C. Arter, 7 L. D. 136. An exception to this rule has been held where there was a prior adverse right to the land at the time the declaratory statement was filed. 4 L. D. 9: 6 L. D. 362.

The act of March 2, 1889 (25 Stat. 854); 8 L. D. 317, provides that "any person who has not heretofore perfected title to a tract of land of which he has made entry, under the homestead laws may make a homestead entry of not exceeding one quarter section of public land subject to such entry, such previous filing or entry to the contrary notwithstanding." See 9 L. D. 382; 11 L. D. 384.

Under this section it has been held that filing declaratory statement prior to March 2, 1889, and failing to secure title thereunder, does not preclude that person from filing another declaratory and entry thereunder. 9 L. D. 382; 11 L. D. 384.

**Declaratory Statement, Form.—**

For forms and blanks to make soldier's filings, see "Forms," pp. 42 to 44.

**Certificate of Discharge.—**

A soldier in filing a declaratory statement must file therewith the original or a certified copy of his discharge. In case the discharge or a duly certified copy thereof cannot be produced, the soldier's own affidavit, showing his service in the army, should be corroborated by two disinterested witnesses, but in case it is shown that the two witnesses cannot be produced, then the applicant's own affidavit will answer. The soldier in filing his declaratory statement by himself or agent, thereby uses and exhausts his homestead right.

This is the general rule with the same exceptions as to amending entry and making second entry as would generally be allowed in homestead entries.

A declaratory statement does not segregate the land from the public domain and another will be permitted to make entry upon the same tract. The second entry will not interfere with the soldier's right to perfect his entry and hold the land. See 1 L. D. 79.

**Six Months to Make Entry and Establish Residence.—**

The soldier or marine must within six months after filing his declaratory statement, make his final entry, commence settlement and improvement, and thereafter fulfill all the requirements of the law. A failure in any of these particulars will cause a forfeiture of the land, in presence of an adverse claim. Prior to December 15, 1882 (1 L. D. 648, and Milne vs. Ellsworth, 3 L. D. 213), a soldier's homestead entry was not subject to contest until six months after

homestead entry, thus giving the soldier twelve months from date of declaratory statement to commence his settlement and establish his residence on the tract.

As shown by the above references, this is no longer permitted, and the soldier must make his entry and establish his residence in a habitable dwelling within six months from filing his declaratory statement. Charles Hotaling, 3 L. D. 17; Snyder vs. Ellison, 5 L. D. 353; Joseph M. Adair, 6 L. D. 200. For climatic reasons General Land Commissioner may extend the time to one year. 6 L. D. 368.

**Caution to Soldiers Making Settlement.—**

Ex-soldiers should not be confused or misled by the above. The rule allowing the soldier six months in which to establish his residence and make entry of the land, applies only when his claim is initiated by the declaratory statement. If the soldier initiates his right by settlement, and desires his right to relate back to the date of his settlement, he must establish his residence within a reasonable time and make his entry within three months from date of his settlement. Otherwise he forfeits his settlement right and holds only from date of the filing of his declaratory statement. This is very important in case of contest between claimants to determine who has the prior right to a tract of land.

In Wood vs. Tyler, 22 L. D. 679, the Secretary of the Interior says:

"The purpose of the hearing was apparently to enable Tyler to show when he made settlement on the land claimed by him, his contentions being that his settlement was prior to that of Wood, was protected by his said declaratory statement, and therefore his right to the land in controversy was superior to that of Wood. In view of the fact that Tyler did not make entry nor apply to make entry of the land until October 18, 1899, more than three months after his alleged settlement, and subsequent to the entry of Wood, it is immaterial in face of Wood's settlement, contest, and entry when Tyler made his settlement. * * * If he (Tyler) elects to stand upon his settlement and entry, even conceding for the sake of argument that his settlement was prior to that of Wood, he was fatally in default in failing to make entry within three months of his settlement, as against Wood's contest and prior entry."

In Thomas vs. Reed et al., 27 L. D. 532, this question was further discussed. The opinion says:

"Where one who files a soldier's declaratory statement is also the prior settler, he may at his election make such settlement the basis of his right to the land by making application to make entry thereof under the act of May 14, 1880, supra, or he may permit that time to expire and then make entry under his declaratory statement. In the former case his right shall relate back to date of settlement, the same as if he settled under the preëmption laws, and in the latter case his right will relate back only to the date of filing his Soldier's Declaratory Statement." See Jared vs. Reeves, 27 L. D., 597.

**Computation of Time.—**

In computation, the 6 months in which a soldier may make his homestead entry, after filing his declaratory statement, the day of filing the declaratory statement



should be excluded and the last day of the specified period included. Carner vs. Byers, 24 L. D., 38.

**Filing Declaratory by Mail.—**

In Culom vs. Hemer et al., 22 L. D. 392, it was held that a Soldier's Declaratory Statement could not be filed through the mail, but must be personally presented by agent or in person. In this decision the case of Wickstram vs. Calkins, 20 L. D., 459, was directly overruled. See also Ex-parte Philip Casey, 21 L. D. 551. Also see Thrailkill vs. Long, 24 L. D., 639.

**Service in Army Equivalent to Residence.—**

The Act of Congress approved June 16, 1898 (30 Stat. 473), provides:

That in every case in which a settler on the public land of the United States under the homestead laws enlists or is actually engaged in the Army, Navy, or Marine Corps of the United States as private soldier, officer, seaman, or marine, during the existing war with Spain, or during any other war in which the United States may be engaged, his services therein shall, in the administration of the homestead laws, be construed to be equivalent to all intents and purposes to residence and cultivation for the same length of time upon the tract entered or settled upon; and hereafter no contest shall be initiated on the ground of abandonment, nor allegation of abandonment sustained against any such settler, unless it shall be alleged in the preliminary affidavit or affidavits of contest, and proved at the hearing in cases hereafter initiated, that the settler's alleged absence from the land was not due to his employment in such service: Provided, That if such settler shall be discharged on account of wounds received or disability incurred in the line of duty, then the term of his enlistment shall be deducted from the required length of residence without reference to the time of actual service: Provided, Further, That no patent shall issue to any homestead settler who has not resided upon, improved, and cultivated his homestead for a period of at least one year after he shall have commenced his improvements.

**Power of Attorney.—**

Soldiers desiring to give power of attorney to another to file declaratory statements for them may use the following form:

**(Form 1.)**

SOLDIER'S POWER OF ATTORNEY.

I.. . ..... . ..... ...of.....
County, and State or Territory of.....
do solemnly swear that I served for a period of.....
in the Army of the United States during the war of the rebellion, and was honorably discharged therefrom, as shown by a statement of such service herewith, and that I have remained loyal to the government; that I have never made homestead entry or filed a declaratory statement under Sections 2290, 2304, or 2309 of the Revised Statutes;.....do hereby appoint.....of.....
and State of.....my true and lawful agent, under Section 2309 aforesaid, to select for me and in my name, and to file my declaratory statement for a homestead under the aforesaid sections; and I hereby give notice of

my intention to claim and enter said tract under said statute; that my said attorney has no interest, present or prospective, in the premises, and that I have made no arrangement or agreement with him or any other person for any sale or attempted sale or relinquishment of my claim in any manner or for any consideration whatever, and that I have not signed this declaration in blank, that I am not the proprietor of one hundred and sixty acres of land in any State or Territory, that my said 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, and that I will faithfully and honestly endeavor to comply with all the requirements of law, as to settlement, residence, and cultivation necessary to acquire title to the land applied for; that I am not acting as agent of any person, 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, or the timber thereon, that I do not apply to enter the same for the purpose of speculation, but in good faith to obtain a home for myself, 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 might acquire from the Government of the United States should inure in whole or in part to the benefit of any person except myself, and further that since August 30, 1890, I have not entered under the land laws of the United States, or filed upon, a quantity of land, agricultural in character and not mineral, which with the tracts now applied for would make more than three hundred and twenty acres. (Here add an exception, if any, of land entered prior to August 30, 1890, giving date of settlement commenced, and describing improvement.).....
.....

Acknowledged, sworn to and subscribed before me this .....day of....., 189..., and I certify that the foregoing declaration was fully filled out before being subscribed and attested. .....
(Official Seal.)

ATTORNEY'S STATEMENT.

By virtue of the foregoing, and of a certain power of attorney therein named, duly executed on the...day of..... and filed herewith, I herewith select the.....
as the homestead of the.....aforesaid, and do solemnly swear that the same is filed in good faith for the purpose therein specified, and that I have no interest or authority in the matter, present or prospective, bevond the filing of the same as the true and lawful agent of the said.....as provided by Section 2209 of the Revised Statutes of the United States. .....Agent.
Sworn and subscribed to before me this....day of....189..
(Official Seal.)



DECLARATORY STATEMENT.

The following may be used where soldier files declaratory in person:

**(Form 2.)**

"I.....of..... . ..... . .....County, and State or Territory of.....do solemnly swear that I served for a period of.....in the Army of the United States during the war of the rebellion, and was honorably discharged therefrom, as shown by a statement of such service herewith, and that I have remained loyal to the government; that I have never made homestead entry or filed a declaratory statement under Sections 2290 and 2304 of the Revised Statutes; that I have located as a homestead under said statute the.....quarter of section.....in township.....range.... . .....
That I am not the proprietor of 160 acres of land in any State or Territory; that my said 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, and that I will faithfully and honestly endeavor to comply with all the requirements of law as to settlement, residence and cultivation necessary to acquire title to the land applied for; that I am not acting as agent of any person, 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, or the timber thereon; that I do not apply to enter the same for the purpose of speculation, but in good faith to obtain a home for myself, and 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 might acquire from the Government of the United States should inure in whole or in part to the benefit of any person except myself, and further, that since August 30, 1890, I have not entered under the land laws of the United States, or filed upon, a quantity of land, agricultural in character, and not mineral, which with the tracts now applied for, would make more than three hundred and twenty acres. . ..... . .....
and hereby give notice of my intention to claim and enter said tract.
My present postoffice address is.....
Sworn and subscribed to before me this.....day of .....190...
(Seal.)
NOTE.—This form may be used where the soldier files his own declaratory statement.

## CONFLICTING CLAIMS.

**Conflicting Claims and Contests.—**

Conflicting claims and contests are not infrequent. Every settler should know how to proceed that he may not lose any rights which he may have acquired. A settler should not leave the land until he has done sufficient to consitute valid settlement. Settlers are often in too great haste to get to the land office and make entry. There

is some advantage in securing the entry, but one who relies upon his settlement right should not fail in his initiatory acts. In the preceding pages, what constitutes valid settlement has been shown. When this is done, one should, without delay, go to the proper land office and make his entry. He should immediately return to his land, and make further improvements, and follow with the residence within a reasonable time. If one finds that the land on which he settled has been entered by another he may proceed in two ways:

First—He should present himself at the proper land office, and offer his written application, and necessary affidavits, to enter said land and at the same time tender fees and commissions. There being one entry on the land the second application will be rejected. The applicant should request the register of the land office to endorse the rejection and the reasons therefor on the application. The application and affidavits should then be left with the land officials. The fact of the application will then be noted on the records. He should then within thirty days from that date (the time allowed for appeal to the commissioner from the rejection of his application) file a contest affidavit in the land office, alleging his priority of settlement. The contest affidavit must be corroborated by at least one witness. The department has held that where another has wrongfully entered the land, as against a prior settler, the filing of a contest within three months protects the settler's rights and the formal application to enter is unnecessary.

Second—A practice more simple than the above and perhaps preferable, is to file with your application to enter the land, an affidavit alleging fact of settlement, date of time of settlement, and acts constituting the settlement. If the allegations show settlement prior to date or time of entry, the aplication will not be rejected, but a hearing (contest) will be ordered to determine who is entitled to the land. See James et al. vs. Nolan, 5 L. D. 526; James A. Forward's case, 8 L. D. 528; Willis vs. Parker, 8 L. D. 623; Todd vs. Tait, 15 L. D. 379; Baxter vs. Crilly, 12 L. D. 684; Ex-parte Austain, 18 L. D. 23.

## AMENDING ENTRIES.

**Amending Entries.—**

Sometimes an entry is made by mistake, and the land intended to have been entered is still free from any valid adverse claim. In such case the proper method is to apply to amend the original entry, by transferring it to tract desired.

Johnson vs. Cjevre, 3 L. D. 156.
Brown vs. West, 3 L. D. 413.
Florey vs. Moat, 4 L. D. 365.
Sloatskey's case, 6 L. D. 505.
Barr's case, 6 L. D. 644.
Cowen vs. Asher, 6 L. D. 785.

**Rules for Amending Entries.—**

Applications to amend filings or entries must be filed with the register and receiver, and be by them transmitted for the consideration of the commissioner of the general land office. Registers and receivers will not change an



entry or filing so as to describe another tract, or change a date after the same has been recorded.

A party who alleges a mistake in the description of his filing or entry and desires to amend or change the same so as to describe another tract may do so in the manner herein prescribed.

He must file with the register and receiver a statement under oath, corroborated by at least two witnesses, or sustained by strong corroborating facts and circumstances, showing the nature of the alleged mistake and how the same occurred, and that every reasonable precaution and exertion had been made to avoid the error, and that he has not sold, assigned or relinquished his alleged erroneous filing or entry, or his claim to the land described therein, nor agreed to do so.

He must show that the error did not result from want of personal examination of the land by himself before making his filing or entry, and must state the date when he first examined the land he desired to enter and the date he commenced his settlement or improvements thereon, if any, and the character, extent and value of any such improvements, and how he learned that the alleged error in description had been made.

The register and receiver must investigate the facts and transmit the evidence submitted to them in each case to the commissioner of the general land office, together with their written opinion both as to the existence of the mistake and credibility of each person testifying thereto and their recommendation in the matter.

In case of an application for an entry being returned to the district land office for amendment, the register and receiver should write across the face therof: "Amended to (here inserting the proper description) as per commissioner's letter of (here giving initial and date)." This notation must be signed by the entryman, after which the register and receiver will attest the same over their signatures and return the application to this office. Circular General Land Office, 1899, p. 90.

## RELINQUISHMENT.

The first section of the Act of May 14, 1880 (see Index), provides that when a preëmption, homestead or timber culture claimant shall file a written relinquishment of his claim in the land office, the land covered by such claim shall be held as open to settlement and entry without further action on the part of the Commissioner of the General Land Office.

The register will note on each relinquishment, over his signature, the day and hour of its receipt, and will write the words "cancelled by relinquishment" (giving date) opposite the record of the entry in the tract book, the register of entries, and the register of receipts, and will draw a line over the number of the entry on the township plat.

On Monday of each week the register and receiver are directed to transmit to this office all the relinquishments accepted by them the preceding week, classifying the same in their letter of transmittal by class of entry so transmitted.

Relinquishments run to the United States alone, and no person obtains any right to the land by the mere purchase of a relinquishment of a filing or entry.

Entries and filings made for the purpose of holding the land for speculation and the sale of relinquishments are illegal and fraudulent, and every effort in the power of the government will be exerted to prevent such frauds and to detect and punish the perpetrators.

Purchasers of relinquishments of fraudulent filings or entries should understand that they purchase at their own risk so far as the United States is concerned, and must seek their own remedies under local laws, against those who, by imposing such relinquishments upon them, have obtained their money without valuable consideration. Gen. Cir. 1899, p. 91.

## FORM OF RELINQUISHMENT.

The following form may be used in executing a relinquishment:

**(Form 3.)**

I hereby relinquish to the United States all my right, title, and interest to and in the following described tract of land, to-wit: (here describe the land) and request that my homestead entry No. .....be cancelled of record.

(Signature.).....

Subscribed and acknowledged before me this .....day of .....

(Seal.) (Signature of officer.).....

The relinquishment should be acknowledged before an officer having a seal, to avoid any question concerning the legality of the same.

The receiver's duplicate receipt, should be filed with relinquishment, or affidavit should accompany relinquishment accounting for the absence of the same.

Before filing relinquishment, records should be examined to see that no adverse right is of record.

## DECISIONS OF DEPARTMENT.

Not voluntary when made because of conflict. 1 L. D. 45.

If filed pending contest it inures to the benefit of contestant. 1 L. D. 103 and 155, 145.

Executed but not filed is not proof of abandonment. 2 L. D. 28.

Executed but not delivered to the government is not a ground of contest. 2 L. D. 41.

Takes effect immediately on filing, notwithstanding contest and opens the land to the first legal applicant subject to the preferred right of the successful contestant. 2 L. D. 266, 283, 313 and 619; 3 L. D. 343, 560; 13 L. D. 192; 15 L. D. 182.

May be shown to have been filed independently of the contest and is then not evidence for the contestant. 2 L. D. 283.

Of no effect until filed. 3 L. D. 224.

Filed as result of a contest inures thereto. 3 L. D. 225; 8 L. D. 357-400.



Void if procured through fraud. 4 L. D. 281; 3 L. D. 376.

Filed pending contest prima facie the result thereof, but such presumption is not conclusive. 7 L. D. 442 and 46; 13 L. D. 437.

Filed pending contest presumed to be the result thereof, but this presumption may be overcome. 9 L. D. 440 and 461; 11 L. D. 65 and 210; 13 L. D. 196-495.

Basis of contest. 15 L. D. 495.

Executed during intoxication. 14 L. D. 133.

Accompanied with the application to enter. 14 L. D. 144.

Right of transferee. 14 L. D. 224-644.

Inures to whose benefit. 14 L. D. 306, 383, 420.

Failure of local officers to properly note. 15 L. D. 121.

Executed by a minor. 15 L. D. 162.

Purchaser of acquires no right to the land. 15 L. D. 181.

Administrator not authorized to file. 15 L. D. 264.

Contestant may proceed with his suit and establish the charges. 15 L. D. 320.

Subject to prior settlement right. 15 L. D. 42.

Rights of a deserted wife to enter the land. 15 L. D. 555.

Filed pending proceedings by the government takes effect at once, and the land is opened to the first legal applicant. 26 L. D. 337.

If relinquishment is filed, pending attack by several parties alleging settlement, the question of priority should be determined before either party is allowed to make entry. 26 L. D. 177.

Entry must be reinstated when relinquishment is procured from a person of unsound mind. 26 L. D. 178.

Must be voluntary act of entryman. 25 L. D. 197.

Not the result of a contest, when, at the date of its execution, notice of contest had not issued, and entryman had cured his default. 25 L. D. 359.

Probate court has no authority to authorize the guardian of insane person to execute a relinquishment. 24 L. D. 494.

Cannot be held to be the result of contest which prior to the relinquishment had been decided in favor of the entryman. 24 L. D. 428.

Takes effect eo instanti, when filed. 23 L. D., 492.

May be made on part of the land covered by entry. 22 L. D. 128.

The department has nothing to do with consideration between the parties. 22 L. D. 150.

Executed and delivered to secure debt, entryman cannot complain if filed for non-payment of same. 22 L. D., 398.

Who can call in question the legality of? 22 L. D. 415.

Does not inure to the benefit of contestant, unless filed as a result of contest. 21 L. D., 333.

Cannot operate, to defeat, or impair the right of contestant. 21 L. D., 474.

Not necessary to be acknowledged before an officer. 17 L. D., 393: 20 L. D. 366.

To invalidate, on account of alleged intoxication of entryman, must be shown that he was deprived of the use of his reason and understanding through his intoxication. 20 L. D. 195.

Does not defeat the right of contestant. 18 L. D. 92, 108.
Ineffectual until filed. 18 L. D. 589.
Holder of relinquishment not entitled to contest the entry. 18 L. D., 144, 358.
Purchaser of relinquishment does not secure preferred right to enter the land. 17 L. D., 180.
Irregularities in the execution of. 17 L. D. 396.
Right of settler on land covered by entry of another attaches at once on filing of relinquishment and defeats an application to enter filed by the third party, immediately after the relinquishment. 16 L. D. 386.

## LEAVE OF ABSENCE.

**Act March 2, 1889.—**
By the third section of Act of Congress approved March 2, 1889, the Register and Receiver of local land offices are authorized to grant settlers leaves of absence, for certain causes, for not exceeding one year. The section 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 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.

**Application for Leave of Absence.—**
Under the regulations of the Department of the Interior, one desiring to obtain a leave of absence from his claim, should present his written application therefor to the local land office. He must show in his application, duly corroborated by affidavit of at least two witnesses, the following facts:
1. The character and date of the entry, date of establishing residence on the land, and what improvements have been made thereon by the applicant.
2. How much of the land has been cultivated by the applicant and for what period of time.
3. In case of failure or injury to crop, what crops have failed or been injured or destroyed, to what extent and the cause thereof.
4. In case of sickness, what disease, or injury, and to what extent claimant is prevented thereby from continuing upon the land: and if practicable a certificate from a reliable physician should be furnished.
5. In case of "other unavoidable casualty," the character, cause and extent of such casualty, and its effects upon the land or the claimant.
6. In each case full particulars upon which intelligent action may be based by the register and receiver.



7. The dates from which and to which leave of absence is asked. (9 L. D. 433.)
Leave of absence is no protection against a contest filed for abandonment, where the entryman prior to such leave has failed to comply with the law. Silva vs. Paugh, 17 L. D., 540; Carpenter vs. Forness, 21 L. D., 428; 29 L. D., 203; Yarbeau vs. Graham, 16 L. D. 348.
Where leave of absence has been granted contest for abandonment will not lie until the expiration of six months after the time for which the leave was granted. Hiltner vs. Wortler, 18 L. D. 331; Jacobs vs. Brigham, 26 L. D. 268.

## SOONERISM.

The term "soonerism" has acquired a well defined meaning in Oklahoma, and, as used with reference to the public land means the entering upon and occupying lands in this Territory, prior to the time said lands are legally opened to entry and settlement.

### SEMINOLE LANDS.

The act of March 2, 1889 (see Index), the original Oklahoma act, contained the following clause:
"But until said lands are opened for settlement by proclamation of the President, no person shall be permitted to enter upon and occupy the same, and no person violating this provision shall ever be permitted to enter any of said lands or acquire any right thereto."
A similar provision has been applied to all the reservations which have heretofore been opened to settlement in Oklahoma.

### KIOWA AND COMANCHE LANDS.

The act of June 6, 1900, providing for the opening of the Kiowa, Comanche, and Apache lands, does not contain any provision prohibiting entry upon said lands prior to the time the same shall be opened to settlement, by the proclamation of the President, and does not provide for any penalty for entering upon and occupying said lands prior thereto.
We will, however, give below the important decisions of the Interior Department upon what is known as the "Sooner" clause in various acts applicable to tracts of land opened to settlement in Oklahoma.

**The Law Construed.—**
The prohibitory clause in the act of March 2. 1889, above quoted, has been construed by the Interior Department in a number of important cases. In Blanchard vs. White et al., 13 L. D., 66, it was held that one who entered the lands prior to the time the same were legally opened to settlement, in violation of the act of March 2, 1889, and the proclamation of the President issued thereunder, with the intent to secure an entry in advance of others, is disqualified to make an entry under said act. Also, "that the disqualification imposed by said statute extends to the applicant who remains outside of said Territory until noon of April 22, 1889, but seeks to evade the prohibitory provision of the statute through the instance of another, whom he has theretofore employed to enter said Territory for such purpose."

In other words, to send an agent in prior to the time the lands are legally opened, to aid one in securing advantage of others, would disqualify the one whose agent so entered.

In the Oklahoma City Townsite vs. Thornton, et al., 13 L. D. 409, the syllabus of the case is as follows: "Any person who entered within the limits of Oklahoma Territory prior to the time for the opening of the lands therein to settlement, and remained therein up to and after the hour fixed for said opening, and who took advantage of his presence to enter upon and occupy lands, shall not be permitted to obtain title to the same, even though he was lawfully within the limits of said Territory prior to the hour of the opening."

In the Guthrie Townsite vs. Paine, et al., 13 L. D. 562, it was held, "a settler on Oklahoma lands cannot evade the prohibitory effect of the statute by entering said Territory through the assistance of one who enters the same prior to the time fixed for the opening thereof." In the same case, as reported in 12 L. D. 653, it was held: "The entry of one who was lawfully within said Territory prior to noon, April 22, 1889, and takes advantage of his presence therein to secure settlement right in advance of others is in violation of the statutes opening said lands to settlement." Also, "that soldiers' declaratory statements filed on April 22, 1889, through an agent who was in the Territory prior to 12 o'clock noon, of said day, is illegal and void." Also, "a townsite entry cannot be allowed in the interest of those who entered said Territory prior to the time fixed in the President's proclamation, and in violation of the statutes opening said lands to entry."

In the case of Taft vs. Chapin, 14 L. D. 593, it was held: "One who was lawfully in the Territory of Oklahoma at the passage of the Act of March 2, 1889, and so remains until the lands are opened to settlement and entry and does not take advantage of his presence as against others to enter upon and occupy lands, is not, by such presence in said Territory, disqualified to enter lands therein."

In Winans vs. Beidler, 15 L. D. 256, it was held: "One who is lawfully in the Territory of Oklahoma prior to the date when the lands therein were opened to settlement and entry, and takes advantage of such presence to secure lands in advance of others, is disqualified by statutory provision from acquiring title thereto."

In Hagan vs. Severns et al., 15 L. D. 451, it was held: "One who is lawfully within the Territory of Oklahoma at the opening thereof, but takes advantage of his presence to secure lands in advance of others, is not qualified to perfect title."

In Faull vs. Lexington Townsite, 15 L. D., 389, it was held: "The provisions of Section 13 of the act of March 2, 1889, (above quoted) prohibit the examination and selection of the tract after the date of said act and prior to the time fixed for the opening to settlement of the lands embraced therein."

In Donnel vs. Kittrell, 15 L. D., 582, it was held: "One who by mistake enters Oklahoma Territory prior to the time fixed by proclamation for settlement therein, but takes no advantage of his presence in said Territory and



leaves the same on the discovery of his mistake, is not thereafter disqualified to enter lands in said Territory."

See also Townsite of Kingfisher vs. Wood et al., 11 L. D., 330.

The law may be violated by employing an agent. 27 L. D., 696.

Making a race from railroad right of way, violation of the law, 27 L. D., 438.

Presence in the Territory at the time of opening disqualifies one to make entry or settlement on that day, but if by such presence no advantage is secured, such a person is not necessarily disqualified thereafter. 27 L. D., 277.

May violate the law by passing through the Territory on railroad train. 27 L. D., 474.

See 28 L. D., 169, 303; 16 L. D., 375, 253, 132; 17 L. D., 402, 526, 175.

## SECOND ENTRIES.

The general rule is that one homestead entry or filing of declaratory statement exhausts the right under the homestead law. There are numerous exceptions to this rule, however. Congress has passed a number of laws, permitting second homestead entries. The Department of the Interior has also, by numerous decisions, permitted persons to make second homestead entry, where the original entry was not made under such circumstances that exhausted the homestead right. As this volume is prepared especially for persons who desire to make entry of the lands in the Kiowa, Comanche, and Apache reservations, to avoid confusion, we will again refer to second entry, as permitted upon these lands.

**Kiowa and Comanche Country.—**

As heretofore pointed out, the Act of Congress opening the Kiowa, Comanche, and Apache lands to settlement contains the following clause, to-wit: "That any person who having attempted to, but for any cause failed to secure a title in fee to a homestead under existing law, or who made entry under what is known as the commuted provision of the homestead law, shall be qualified to make a homestead entry upon said lands."

It will be observed that the above provision contains two clauses. The first provides, "That any person who having attempted to, but for any cause failed to secure a title in fee to a homestead under existing laws, * * * shall be qualified to make a homestead entry upon said lands."

The above provision is very broad and sweeping, and virtually restores the homestead right to any person who has failed to secure title to the land covered by his former homestead entry, either through relinquishment or cancellation.

Section 13 of the Act of March 2, 1889, referring to the lands opened to settlement April 22, 1889, contains a provision word for word as the one above quoted. This provision was construed by the Secretary of the Interior in the case of James W. Lowry, 26 L. D., 448. Lowry had commuted his former homestead subsequent to the passage of the Act of March 2, 1889. The question arose as to

whether Lowry, having commuted his entry subsequent to the passage of the above act, was qualified to make a second homestead entry, under the above provisions. Secretary Bliss held that Lowry was qualified. In the decision of the case (supra), the secretary says: "If then any person has, at the date of his application under this act, attempted to, but for any cause failed to secure a title in fee to a homestead under existing law, or shall have made entry under the commuted provision of the homestead law, he is by virtue of this act qualified to make entry."

The same question arose in the case of Henderson et al. vs. Smith, 28 L. D. 303. The department in this case had under consideration the above provision, which word for word was a part of the Act of March 3, 1893, opening to settlement the Kickapoo lands. One of the parties to the case had relinquished a homestead entry upon a tract of land in Missouri subsequent to March 3, 1893, the date of the approval of the act providing for the opening to settlement the Kickapoo lands. In that case Secretary Hitchcock, under date of April 19, 1899, held that if a party had relinquished his entry prior to the date of his application to make second entry, that, under the above provision, he was a qualified entryman.

Under the above rulings of the department any person who has had his entry cancelled or relinquished it, or who has made entry under what is known as the commuted provisions of the homestead law, prior to the time that he initiated his right to lands in the Kiowa and Comanche country, either by settlement or entry, will be entitled to make a second entry in these lands. In other words, persons who fail to secure title to their lands, or commute their entries between now and the time the Kiowa, Comanche, and Apache country is opened to settlement, or the time their rights to the land are initiated, will have the same privilege to make entry of these lands as those who have commuted or failed to secure title prior to June 6, 1900, the date of the approval of the Kiowa and Comanche bill. At least, the above decisions seem to so hold.

**Caution to Those Who Have Commuted.—**

We again call attention to the question as to whether parties who have commuted entries in Oklahoma are entitled to make entry in the Kiowa and Comanche country, under the second clause of the above provisions, which provides: "That any person who * * * made entry under what is known as the commuted provision of the homestead law shall be qualified to make a homestead entry upon said lands." Under the construction given to a similar provision in the act, which provided for the opening of the Sac and Fox lands, the Secretary of Interior held, that parties who had commuted in Old Oklahoma, under Section 21 of the Act of May 2, 1890, were not entitled to make a second entry upon the land in the Sac and Fox reservation. The department held that the Act of May 2, 1890, providing for the commutation of homestead entries in what is known as Old Oklahoma was a special act, and that this special act was not "the commuted provision of the homestead law." As all commutations in Oklahoma have been made under special acts



and not under Section 2301 of the Revised Statutes, the rulings of the department would seem to apply to all commutations made in Oklahoma. Unless the above decision is overruled or modified, persons who have "commuted" in Oklahoma cannot make a second entry in the Kiowa, Comanche, and Apache lands. See Clark's case, 17 L. D., 46.

## ACT JUNE 5, 1900.

**General Act.—**

The Act of June 5, 1900, provides:

Sec. 2. That any person who has heretofore made entry under the homestead laws and commuted same under provisions of Section twenty-three hundred and one of the Revised Statutes of the United States and the amendments thereto shall be entitled to the benefits of the homestead laws, as though such former entry had not been made, except that commutation under the provisions of Section twenty-three hundred and one of the Revised Statutes shall not be allowed of an entry made under this section of this act.

Sec. 3. That any person who, prior to the passage of this act, has made entry under the homestead laws, but from any cause has lost or forfeited the same, shall be entitled to the benefits of the homestead laws as though such former entry had not been made: Provided, That persons who purchased land under and in accordance with the terms of an act entitled "An Act to Provide for the Sale of Lands Patented to Certain Members of the Flathead Band of Indians in the Territory of Montana, and for Other Purposes," approved March second, eighteen hundred and ninety-nine, shall not be held to have impaired or exhausted their homestead rights by or on account of any such purchase. (Approved June 5, 1900.)

The provisions of the above act apply generally to all lands subject to homestead entry in the United States, and, of course, apply to lands in Oklahoma, unless there is some special provision or Act of Congress applying to Oklahoma lands to the contrary.

**Other Lands.—**

The Acts of Congress providing for the opening of the various reservations to settlement are hereinafter quoted. If one desires to make second entry upon any of said lands, refer to the special act for information. These acts may be found by referring to index.

One who has abandoned all claims under former entry is not disqualified as a settler claiming the right of second entry, under Section 13, Act of March 2, 1899 (25 Statutes, 980), by the fact that the first entry had not been cancelled of record at the date of his settlement. 29 L. D., 108.

Section 10, Act of March 3, 1893, makes the provisions of Section 13, Act of March 2, 1899, applicable to lands in the Cherokee Outlet, not only as to the manner of opening said lands, but also as to the qualifications of the claimants therefor. 29 L. D. 108, 246.

The right to make second homestead entry, under the Act of March 2, 1899 (25 Statutes, 980), by persons "who having attempted to, but for any cause failed to secure,

title in fee to a homestead under existing law," is applicable to entries in the Cherokee Outlet, and is determined by the status of the applicant at the date of his application. 29 L. D., 372.

## ACT MARCH 2, 1889.

We quote below the several sections of general Act of March 2, 1889, relative to second entries:

Section 2. That any person who has not heretofore perfected title to a tract of land of which he has made entry under the homestead law, may make a homestead entry of not exceeding one quarter section of public land subject to such entry, such previous filing or entry to the contrary notwithstanding; but this right shall not apply to persons who perfect title to lands under the preëmption or homestead laws already initiated: Provided, That all preëmption settlers upon the public lands whose claims have been initiated prior to the passage of this act may change such entries to homestead entries and proceed to perfect their titles to their respective claims under the homestead law notwithstanding they may have heretofore had the benefit of such law, but such settlers who perfect title to such claims under the homestead law shall not thereafter be entitled to enter other lands under the preëmption or homestead laws of the United States.

George W. Blackwell, 11 L. D. 384; James W. Barry, 10 L. D. 634; Robert Brandon, 9 L. D. 145; A. P. Toombs, 9 L. D. 312; John P. Newcomb, 9 L. D. 556; Barget's case, 9 L. D. 412; Fitzpatrick, 12 L. D. 268; Lewis Jones, 12 L. D. 361; Hartzell's case, 12 L. D. 558.

Section 5. That any homestead settler who has heretofore entered less than one quarter section of land may enter other and additional land lying contiguous to the original entry, which shall not, with the land first entered and occupied, exceed in the aggregate one hundred and sixty acres, 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, then the patent shall issue without further proof: Provided, That this section shall not apply to or for the benefit of any person who at the date of making application for entry hereunder does not own and occupy the lands covered by the original entry: And provided, That if the original entry should fail for any reason prior to patent, or should appear to be illegal or fraudulent, the additional entry shall not be permitted, or, if having been initiated, shall be cancelled,

John Goodman, 8 L. D. 428; John Schnabelin, 8 L. D. 474; John R. Cannon, 10 L. D. 78; T. B. Hartzell, 10 L. D. 681.

Section 6. That every person entitled, under the provisions of the homestead laws, to enter a homestead, who has heretofore complied with or who shall hereafter comply with the conditions of said laws, and who shall have made his final proof thereunder for a quantity of land less than one hundred and sixty acres and received the receiver's final receipt therefor, shall be entitled under said laws to enter as a personal right, and not assignable, by legal subdivisions of the public lands of the United States subject to homestead entry, so much additional land as added to the quantity previously so entered by



him shall not exceed one hundred and sixty acres: Provided, That in no case shall patent issue for the land covered by such additional entry until the person making such additional entry shall have actually and in conformity with the homestead laws resided upon and cultivated the lands so additionally entered and otherwise fully complied with such laws: Provided, also, That this section shall not be construed as affecting any rights as to location of soldiers' certificates heretofore issued under Section two thousand three hundred and six of the Revised Statutes.

P. D. Gilbert, 8 L. D. 500; J. T. Stewart, 9 L. D. 543; Jacob Farley, 10 L. D. 601; E. M. Hutchinson, 11 L. D. 364.

## ACT DECEMBER 29, 1894.

The right to make a second entry under the Act of December 29, 1894, extends to such persons as have therefore forfeited their entries for such reasons as would have entitled them to a leave of absence under Section 3, Act of March 2, 1889.

The party applying to make second entry will be required to file, in the district land office having jurisdiction over the land he desires to enter, an application for a specific tract of land, and to submit testimony to consist of his own affidavit, corroborated by the affidavits of disinterested witnesses, executed before the register or receiver or some officer in the land district using a seal and authorized to administer oaths, setting forth in detail the facts on which he relies to support his application, and which must be sufficient to satisfy the register and receiver, who are enjoined to exercise their best and most careful judgment in the matter, that his former entry was in fact forfeited by reason of his inability, caused by a total or partial destruction or failure of crops, sickness, or other unavoidable casualty, to secure a support for himself or those dependent upon him, upon the land settled upon.

The facts to be shown embrace the following, viz.:

1. The character and date of the entry, date of establishing residence upon the land, and what improvements were made thereon by the applicant.

2. How much land was cultivated by the applicant, and for what period of time.

3. In case of failure or injury to crop, what crops failed or were injured or destroyed, to what extent, and the cause thereof.

4. In case of sickness, what disease or injury, and to what extent the claimant was thereby prevented from continuing upon the land, and if practicable a certificate from a reliable physician should be furnished.

5. In case of "other unavoidable casualty," the character, cause, and extent of such casualty, and its effect upon the land or the claimant.

6. In each case full particulars upon which intelligent action may be based by the register and receiver.

The foregoing is intended to indicate what facts should be set forth in the required affidavits, leaving with the register and receiver of the several district offices the duty of making application of the law to the particular cases presented.

If the showing made by any party in support of his application under said act is satisfactory to the district land officers, they will allow him to make entry as in other cases.

Parties claiming under any special act will be required to show themselves entitled to the benefit thereof in accordance with such instructions as may be issued thereunder.

## DEPARTMENTAL DECISIONS.

**Second Entries under Departmental Decisions.—**

It is not every homestead entry that exhausts the homestead right. On general principles the Department of Interior has from time to time permitted persons to make second entry independent of all special statutes. The following are some of the leading cases of this kind:

"An entry must be cancelled where it is duly shown, after the expiration of the statutory life of the entry, that the entryman died prior to the completion of his entry, and that there are no heirs of the entryman who are entitled to perfect said claim." 25 L. D. 453.

"A second may be allowed where the land embraced in the first does not afford a supply of water fit for domestic use, and the entryman does not appear to have been wanting in diligence or good faith. 21 L. D. 390.

"The right to make a second may be recognized where the first was cancelled on account of the entryman's failure to establish residence and such failure was due to circumstances beyond his control." 22 L. D. 179.

"The right to make a second will not be accorded to one who relinquishes his prior entry on account of a money consideration or its equivalent." 23 L. D. 87.

"Permission to make a second homestead may be accorded where there is no adverse claim, and the first is relinquished on account of the worthless character of the land, and the applicant, under the circumstances, is not chargeable with negligence in the premises." 28 L. D. 259.

"The right to make a second may be accorded to one who in good faith relinquishes the first on account of an adverse claim asserted to the land included therein." 24 L. D. 531.

"The right to make a second may be recognized where the first through mistake was not made for the land intended, and was accordingly relinquished." 24 L. D. 16.

"A second will not be allowed on account of the worthless character of the land covered by the first, if such entry was made without examination of the land." 26 L. D. 23.

"The right to make a second accorded when the first, through no fault of the entryman, was made for land covered by a prior bona fide preëmption claim." 10 L. D. 9; 8 L. D. 98.

"The right to make a second recognized when the first, made in good faith, was abandoned on account of conflict with the bona fide preëmption claim of another." 8 L. D. 100.

"Second allowed where the first, for equitable reasons, was relinquished on account of conflict with the prior settlement right of a preëmptor who was in default in the matter of submitting proof." 8 L. D. 131.



"Second allowed where the first was made in good faith for land afterwards held not subject thereto, and accordingly cancelled on relinquishment." 8 L. D. 137.

"Second may be made where the first was relinquished under the belief that it could not be maintained without danger to the entryman's life." 8 L. D. 587.

"Second allowed where water fit for domestic use could not be obtained on the land covered by the first." 9 L. D. 207, 333.

"Where the right to make a second rests on the non-inhabitable character of the land covered by the first, the facts as to the nature and conditions of both tracts should be clearly set forth." 9 L. D. 207.

## FINAL PROOFS.

(From General Land Office Circular, issued July 11, 1899.)

**Address.—**

1. Applicants to make entries and claimants and witnesses making final proof must in all cases state their place of actual residence, their business or occupation, and their postoffice address. It is not sufficient to name the County and State or Territory where a party lives, but the town or city must be named, and, if residence is in a city, the street and number must be given. The register and receiver will note the postoffice address in their tract book.

2. Where the residence of a party or witness is on surveyed land the subdivision, section, township, and range must be stated in every case.

**Notice.—**

3. Notice by registered letter, directed to claimant's last-known postoffice address, is the prescribed means of giving legal notice to him of official action taken in respect to his entry, either before or after proof (circular approved October 28, 1886, 5 L. D. 204). Claimants and entrymen should therefore give prompt notice to the register and receiver of any change of residence or postoffice address. (See Rules of Practice 11, 14 and 17, as amended May 26, 1898.)

**Written Application.—**

4. Any claimant desiring to make final proof of having complied with the provisions of law in respect to residence, cultivation, or improvement must first file with the register of the proper land office a written notice of his intention to do so, which notice must be transmitted by the register and receiver to this office, with the proof. The notice must describe the land claimed, and the claimant must give the names and residences of the witnesses by whom the necessary facts as to settlement, residence, cultivation, etc., are to be established. He must also state the day when, the place where, and the officer before whom the proof is to be taken.

**Deposit Money.—**

5. The filing of notice of intention to make proof must be accompanied by a deposit of sufficient money to pay the cost of publishing the notice to be given by the register, the deposit to be made with the receiver, who will notify the register thereof, that he may cause the notice

to be published, but settlers are not to be deprived of the right to make their own contracts for publishing notices of intention to make final proof and to make payment therefor directly to the publishers of the paper, after the notice has been prepared by the register and the paper designated by him, on presenting to the register a statement from the publisher or his agent that the money for the payment of said notice has been paid to or deposited with said publisher.

**Length of Publication.—**

6. Upon the filing of the notice by the applicant the register will publish a notice that such application has been made once each week for a period of thirty days, in a newspaper which he shall designate by an order written on said application, as published nearest the land described in the application, and he shall also post said notice in some conspicuous place in his office for the same period. If published in a weekly paper a compliance with the law will require the notice to be published weekly five successive weeks, the day fixed for the submission of the final proof to be at least thirty days after the first publication.

**Contents of Notice.—**

7. The notice to be given by the register must state that application to make final proof has been filed; the name of the applicant; the kind of entry, whether homestead, preëmption, or other; a description of the land and the names and residences of the witnesses as stated in the application; also the day when, the place where, and the officer before whom the proof is to be taken.

**Combine Notices.—**

8. To save expense, the register may embrace two or more cases in one publication, when it can be done consistently with the legal requirements of publication in a newspaper published nearest the land.

**Publisher's Duty.—**

9. Publishers should cause each proof notice to be carefully compared by copy, and should send at least one copy of the paper containing the notice to the party in interest. This course will avoid errors or secure their correction in proper time.

**Proof of Publication.—**

10. Proof of publication will be the affidavit of the publisher or foreman of the newspaper employed that the notice (a copy of which notice must be annexed to the affidavit) was published in said newspaper once a week (if a weekly paper), for five successive weeks, or for thirty days in a daily paper, as the case may be. Such affidavit must show that the notice was published in the regular and entire issue of every number of the paper during the period and time of publication, and that the notice was published in the newspaper proper and not in a supplement. Affidavits of publication not in conformity with these requirements will be rejected by the register and receiver.

**Posting.—**

11. Proof of posting notice in the district land office will be the certificate of the register that the notice of



the application (a copy of which should be annexed to the certificate) was posted by him in a conspicuous place in his office for a period of thirty days.

**Publication and Posting.—**

12. The proof of the publication and posting of the notice must be filed and preserved by the register, to be forwarded to the General Land Office with the final papers when issued.

**General Provisions.—**

13. Proof should in every case be made at the time and place advertised, and before the officer named in the notice. On the day advertised the officer named in the notice shall call the case for hearing, and should the claimant fail to appear the officer should continue the case until the next day, and on that day or on any succeeding day, should the claimant fail to appear, proceed in like manner until the expiration of ten days from the day advertised, after which the proof, if presented, should not be received. Proper notice should be given of the continuances, made in the most effective way the circumstances admit of, to any parties interested. Parties proposing to cross-examine claimant's witnesses or submit rebutting testimony will be allowed to do so on the date advertised, in case of the appearance of the claimant and his proof being made on that day. In case of his non-appearance protests or affidavits of contest may be filed, and if a sufficient ground of objection is set forth therein the protestant, adverse claimant, or contestant may appear at any subsequent day to which the case may be adjourned, with the same rights of cross-examination and of submitting rebutting testimony as if the appearance had been made on the day advertised, should he so elect, and if he should not do so, the register and receiver of the proper district land office will take measures to secure the protestant, contestant, or adverse claimant, an opportunity to be heard, on the grounds of objection presented after due notice to all parties according to rules of practice before allowing final entry to be made, and the appearance of the protestant or adverse claimant, or filing of protest or contest affidavit, on the day advertised, or on any day to which the case may be continued as above, will suffice to protect their rights in the premises as fully as though both parties had appeared and the proof been taken on the day advertised. The proceedings had should be duly docketed and be made to appear by proper entries on the proof papers, to which any protest or contest affidavit filed should be attached, by the officer named in the notice. The witnesses to the proofs must be two of the persons named as witnesses in the notices. Other persons cannot be substituted as witnesses without readvertisement.

Section 7, Act of March 2, 1889, legalizes proof taken within ten days following the date advertised, where unavoidable delay prevents compliance with the notice. (10 L. D. 301, 397.)

There is no law or rule of the Department that warrants the local officers in extending the time for taking final proof beyond ten days from the time set therefor in the advertisement. (20 L. D. 343.)

**Duties of Officers.—**

14. When proof is made before the proper United States commissioner, judge, or clerk of court (as the case may be), the affidavits and testimony must be duly authenticated and transmitted to the register and receiver, together with the "fee and charges" allowed by law to them. There may be transmitted therewith the fees and commissions, if any, legally payable on the entry at the time of making final proof, and in addition thereto in homestead and timber-culture entries under acts of March 3, 1877 (19 Stat. L. 403; Appendix No. 5, p. 165), and March 3, 1891 (26 Stat. L. 1095; Appendix No. 44, p. 221), the legal fee for "examining and approving" the testimony, which is 15 cents, or in the Pacific states and territories, 22½ cents, for each 100 written words. Printed words are not to be counted.

15. When the land is within an unorganized county, the fact that the county in which the land lies is unorganized and that the county in which the proof is made is adjacent thereto must be certified by the attesting officer.

**Attesting.—**

16. Attesting officers must sign in their true official capacity. If proof is taken by a judge in his capacity as clerk of his own court, he should sign as "ex-officio clerk."

**Examination of Witnesses.—**

17. Registers and receivers, judges and clerks of courts, and other officers taking proofs are enjoined to use the utmost strictness in the examination of parties and witnesses, and to obtain full, specific, and unevasive answers to all the questions propounded, and all necessary oral cross-examinations will be made by attesting officers to further attest the good faith of claimants and the reliability of the testimony of claimants and witnesses. Officers will certify to their oral cross-examinations.

18. Registers and receivers will carefully examine all proofs transmitted to them by other officers, and will not issue certificates nor place entries on record, nor transmit the proofs to this office, until the same have been thus examined. Defective, insufficient, or unsatisfactory proofs will be rejected and new proof required.

19. Proofs taken by other officers than registers and receivers must be immediately transmitted to the register and receiver and the money paid to the latter. When any interval of time, other than that required for immediate and expeditious transmittal, elapses between the date of proof and date of its receipt, with the money, at the district land office, a new affidavit, duly corroborated, showing non-alienation and continued residence, covering date of receipt of proof and payment by the register and receiver, will be required before certificate is issued or the entry placed of record.

Proof without payment must in no case be accepted or received by registers and receivers. If, however, this should occur by inadvertence in any case, additional evidence as above should be at once required of the claimant before allowing entry.

All discrepancies between date of proof and date of register's certificate and receiver's receipt must be accounted for by certificate from the register and receiver attached to each case.



20. As settlers on unsurveyed lands are allowed three months after the filing of the township plat of survey within which to put their claims on record, no final proof on homestead or preëmption entries should be permitted until after the expiration of said three months.

## DECISIONS OF DEPARTMENT.

**Day to Take Final Proof.—**

Final proof must be taken on the day advertised, except that by Section 7, Act March 2, 1889 (see 8 L. D. 317 and 381), testimony in final proof may be taken "within ten days following the day advertised as upon which final proof shall be made in cases where accident or unavoidable delays have prevented the applicant or witnesses from making such proof on the date specified." See Index.

The general instructions to be followed in taking final proofs will be found in 5 L. D. 426; 8 L. D. 3; 9 L. D. 123.

**Not During Contest.—**

Final proof should not be submitted during pendency of contest.

Laffoon vs. Artis, 9 L. D. 279; Scott v. King, 9 L. D. 299; Eastlake Land Co. v. Brown, 9 L. D. 322; Alice Summerfield, 10 L. D. 372; Frank Aldrich, 10 L. D. 587; Hasket v. Cannon, 11 L. D. 449; Willis v. Buchanan, 11 L. D. 256 and 452.

**May After Contest Tried.—**

The above has been modified by rule allowing entryman to make final proof if contest has been tried.

**Special Notice—**

Special notice should be given to adverse claimants, of intention to submit final proof. Tuttle vs. Parkin, 9 L. D. 495.

**Indefinite Notice.—**

Final proof submitted on indefinite notice may be accepted, in the absence of protest, after republication. Kemp's case, 9 L. D. 439.

**Names and Addresses of Witnesses.—**

In giving notice of intention to make final proof, the settler must publish the names and postoffice addresses of his witnesses. Four disinterested witnesses must be named in the notice, two of whom must appear and testify in behalf of claimant. The witnesses should be near neighbors. Nellie E. Burch, 8 L. D. 651; Whitcomb vs. Boos, 5 L. D. 448. In case other witnesses are substituted, republication will have to be made, and in case of no protest, proof may be accepted. Lutz's case, 11 L. D. 266; Herbert Higgins, 9 L. D. 646; Wenzel Paows, 8 L. D. 473.

**Description of Land.—**

The land must be correctly described. If not, republication must be made. Sarah J. Tate, 10 L. D. 469; Ulrich Fuchser, 7 L. D. 467; Clark's case, 7 L. D. 485; Adam's case, 6 L. D. 705.

Supplemental proof may be submitted, when good faith appears, and there is no adverse claim or protest. Mease's case, 10 L. D. 183; Clara L. Meguity, 6 L. D. 809.

Names of witnesses should be properly given and must be correctly printed. Great care should be exercised in

this. In case of mistake in names, republication will be required. Amos E. Smith, 8 L. D. 204.

If by mistake Sunday is fixed for final proof, the day following will answer. George Linen, 8 L. D. 233.

If proof is submitted within the shortest possible time "special scrutiny" is invited. Burch's case, 8 L. D. 651; Francis M. Cull, 5 L. D. 348. But see E. B. Gate's case, 5 L. D. 207. Also Chrisinger case, 4 L. D. 347.

**Publication Notice.—**

The notice must be published in a paper published nearest the land, and if not new publication will be required. Ensign's case, 7 L. D. 314; Wellman's case, 5 L. D. 503. The usual route of travel governs. 1 L. D. 108.

Final proof proceedings may be continued from day to day until completed. Zimmerman's case. 7 L. D. 418.

In commutation proofs, if the evidence of residence and cultivation is not satisfactory, new proof may be made at any time within lifetime of entry, where there is no adverse claimant to the land. Vandevoort's case, 7 L. D. 86.

Every fact necessary to entitle claimant to make final proof should appear affirmatively from the proof. U. S. vs. Skahen, 6 L. D. 120. The proof should be clear and explicit. Park's case, 6 L. D. 549.

The good faith fo claimant must appear from the proof, but good faith is not determined by any fixed rule. Garlick's case, 6 L. D. 310. The facts and circumstances around each case are considered. Healey's case, 4 L. D. 80, and E. J. De Lendrecie, 3 L. D. 110.

Local office on account of press of business may continue final proof, but should be to a day certain. Lalcorner vs. Hunt et al., 6 L. D. 512; John McCorty, 6. L. D. 806.

Proof must be taken at the time and place designated in the published notice. Lent's case, 6 L. D. 110; Sherlock's case, 6 L. D. 155; Gray vs. Ney, 6 L. D. 232.

The publication of a notice to make final proof is an invitation to the world to appear and object to the allowance of the proof. U. S. vs. Fernandez, 6 L. D. 379; Brady vs. S. P. R. R., 5 L. D. 407.

Use of witness not named in notice will not invalidate the proof. Cull's case, 5 L. D. 348.

Notice must be posted in land office. S. P. R. R. Co. vs. Brady, 5 L. D. 399.

**Protest.—**

When protest is filed, local office should order a hearing. Fenton vs. Caldwell, 1 L. D. 448. Protestant may appear, cross-examine final-proof claimant's witness and introduce counter proof. Houge vs. Treman, 2 L. D. 596.

## RULES OF PRACTICE.

(Approved June 27, 1899.)

I.

(Proceedings before Registers and Receivers.)

1.—INITIATION OF CONTEST.

**Rule 1.—Contests may** be initiated by adverse party or other person against a party to any entry, filing or other



claim under laws of Congress relating to the public lands, for any sufficient cause affecting the legality or validity of the claim.

Above rule permits contest against alleged abandoned or forfeited homestead or timber culture entries by any person, but in all other cases only by party in interest. 1 L. D. 219, 9 L. D. 209.

**Indian Trust Land.—**

Entries on may be contested. 9 L. D. 329. Local officers have jurisdiction to order hearing at any time before final certificate issues. 13 L. D. 126.

Contest may be initiated against scrip or certificate location. 14 L. D. 588.

**Application to Enter—**

Not contestable under above rule. (15 L. D. 150.) An application to enter "is simply the expression of a desire to establish a claim." 15 L. D. 150.

**Preference Right—**

To enter awarded to one who initiates contest under above rule and furnishes evidence. 10 L. D. 399, 13 L. D. 115; see 7 L. D. 9, 1 L. D. 314.

Rules 1, 2 and 3 must be complied with to initiate valid contest. 22 L. D. 208.

Affidavit must be corroborated. 16 L. D. 391.

Rule 2.—In every case of application for a hearing an affidavit must be filed by the contestant with the register and receiver, fully setting forth the facts which constitute the grounds of contest. When the contest is against the heirs of a deceased entryman, the affidavit shall state the names of all the heirs. If the heirs are non-resident or unknown, the affidavit shall set forth the fact and be corroborated with respect thereto by the affidavit of one or more persons.

Affidavit must be filed (11 L. D. 326), but this might be waived by contestee. Rule directory. 13 L. D. 126. Charges must be sepcific, and amendment cannot be made on hearing ordered by commissioner, after final certificate has issued when amendment set up new grounds of contest. 14 L. D. 147.

Object of rule that parties against whom charges are made may know what they are and be prepared to meet them. 15 L. D. 306, see 2 L. D. 437.

Affidavit need not be made before register and receiver. 17 L. D. 540.

Rule 3.—Where an entry has been allowed and remains of record the affidavit of contestant must be accompanied by the affidavits of one or more witnesses in support of the allegations made.

In the absence of affidavit required to initiate a contest one cannot be assumed to the detriment of the party who has complied with the law. 2 L. D. 57.

Affidavits must be filed fully setting forth the grounds of contest. Affidavits may be made out before any official authorized to administer oaths in the district where the land is situated. 2 L. D. 213.

An affidavit may be rejected if not properly corroborated. Defective affidavits cannot be amended in the presence of an adverse right. 8 L. D. 446; 11 L. D. 326.

A letter from the receiver of a land office attached to the affidavit of contest in support of the charge contained therein may be accepted as due corroboration where the charge against the entry involves a matter of record within the official knowledge of said officer.

Affidavit of contest may be based on the information and belief of the contestant. 15 L. D. 114.

An objection to the sufficiency of a contest affidavit includes within it the sufficiency of the corroboration. 15 L. D. 300.

A corroborating affidavit may be on information and belief. 14 L. D. 576; 15 L. D. 300.

Protest by State against mining claim must be corroborated. 22 L. D. 629. Object of contest affidavit. 17 L. D. 96.

Corroboration of protest is not essential, where Department is bound to take judicial knowledge of the matters charged. 27 L. D. 53.

## 2.—HEARING IN CONTESTED CASES.

Rule 4.—Registers and receivers may order hearings in all cases wherein entry has not been perfected and no certificate has been issued as a basis for patent.

Jurisdiction attaches generally when contest affidavit is filed and notice has been issued to settler. Generally, any question involving the sufficiency of the information on which the local office has elected to proceed disappears from the moment that notice was issued to the settler. 2 L. D. 57.

A party offering a corroborating affidavit should be allowed time to amend subject to any intervening adverse claim. 2 L. D. 210.

It is by a notice to the settler that the local office acquires jurisdiction, and not by force of any affidavits on which citation is issued. 2 L. D. 312.

Rule 5.—In case of an entry or location on which final certificate has been issued the hearing will be ordered only by direction of the commissioner of the general land office.

The register and receiver may order hearings in all cases where final certificate is not issued. 2 L. D. 302. Register and receiver have no jurisdiction to allow an amendment to contest affidavit upon entry where final certificate has issued and a hearing has been ordered by commissioner. 14 L. D. 447.

Contestant entitled to notice. 17 L. D. 133.

Rule 6.—Applications for hearings under Rule 5 must be transmitted by the register and receiver, with special report and recommendation, to the commissioner for his determination and instructions.

## 3.—NOTICE OF CONTEST.

Rule 7.—At least thirty days' notice shall be given of all hearings before the register and receiver unless by written consent an earlier day shall be agreed upon.

Thirty days' notice for hearing before the register and receiver. 4 L. D. 540. But this rule does not apply to hearings ordered elsewhere, and if a party wants more time he should appear and ask for a continuance.



In computing time, exclude the day on which notice is served or day on which trial is to take place. 21 L. D. 164; 22 L. D. 640; 17 L. D. 139; 18 L. D. 478.

Rule 8.—The notice of contest and hearing must conform to the following requirements:

1. It must be written or printed.
2. It must be signed by the register and receiver or by one of them.
3. It must state the time and place of hearing.
4. It must describe the land involved.
5. It must state the register and receiver's number of the entry and the land office where, and the date when made, and the name of the party making the same.
6. It must give the name of the contestant, and briefly state the grounds and purpose of the contest.
7. It may contain any other information pertinent to the contest.

The mere omission of the register to affix to his signature on a notice of contest his official designation does not invalidate the process. 11 L. D. 269. Need not be signed by both register and receiver. 11 L. D. 418.

After appearance to the merits of an action it is too late to object to the sufficiency of the notice. 11 L. D. 418. See 12 L. D. 462. Notice must be issued by the local land officers. This authority cannot be delegated. It must state time and place of hearing and describe the land. If defective in these particulars it confers no jurisdiction. 13 L. D. 429.

Evidence must be confined to the grounds set forth in the notice. 15 L. D. 305.

Copy of charge need not be made in notice. 23 L. D. 142.

## 4.—SERVICE OF NOTICE.

Rule 9.—Personal service shall be made in all cases when possible if the party to be served is resident in the State or Territory in which the land is situated, and shall consist in the delivery of a copy of the notice to each person to be served. When the contest is against the heirs of a deceased entryman, the notice shall be served on each heir. If the heirs of the entryman are non-resident or unknown, notice may be served upon them by publication as hereinafter provided. If the person to be personally served is an infant under fourteen years of age or a person who has been legally adjudged of unsound mind, service of notice shall be made by delivering a copy of the notice to the statutory guardian or committee of such infant or person of unsound mind, if there be one; if there be none, then by delivering a copy of the notice to the person having the infant or person of unsound mind in charge.

Where defendant admits that he is a non-resident he cannot be heard to say that contestant has not used due diligence to secure personal service. 5 L. D. 456.

Service may be made by party in interest. 6 L. D. 552.

Irregular service confers no jurisdiction. 9 L. D. 75.

Mode of proof of service is immaterial where service is admitted, or not denied. 10 L. D. 274, 6 L. D. 669.

Appearance and procuring a continuance is a waiver of defect in service. 10 L. D. 274.

An affidavit stating that the defendant is a non-resident of the State or Territory where the land is situated is held

sufficient to base an order for service by publication. 11 L. D. 261.

If the copy of notice served on defendant does not show true date of hearing, the notice is fatally defective. 12 L. D. 44.

Original notice instead of copy may be served. 5 L. D. 590.

Cost of taking testimony is taxed in Oklahoma fifteen cents per one hundred words. 12 L. D. 478.

Notice sent by registered letter to a resident is not personal service. 11 L. D. 604.

This case seems to overrule 10 L. D. 388, holding that "service by registered letter is personal service." See also to the same effect 12 L. D. 620.

After motion to dismiss on the account of defect in service nothing is waived by proceeding to trial. 12 L. D. 620.

The reading of the notice to the wife of the defendant and delivering her a copy at the house, the usual place of the defendant's residence, is not personal service.

Notice by registered letter not personal service. 18 L. D. 586; 24 L. D. 14. Publication proper when defendant non-resident. 21 L. D. 277.

No jurisdiction unless rule complied with. 16 L. D. 120. Requirements of rule must be affirmatively shown to confer jurisdiction. 27 L. D. 432.

Rule 10.—Personal service may be executed by any officer or person.

See 4 L. D. 86, 440 and 537; 5 L. D. 214; 6 L. D. 552; 9 L. D. 79; 10 L. D. 274; 11 L. D. 264.

By registered letter not personal service. 18 L. D. 586.

Rule 11.—Notice may be given by publication only when it is shown by affidavit presented on behalf of contestant and by such other evidence as the register and receiver may require that due diligence has been used and that personal service cannot be made. The affidavit must also state the present postoffice address of the person intended to be served, if it is known to the affiant, and must show what effort has been made to obtain personal service.

Due showing must be made before publication authorized. Non-residents will not be heard to deny due diligence. 5 L. D. 456. An affidavit which sets forth conclusions, not facts, is fatally defective as a basis for notice of publication. 6 L. D. 669.

An affidavit showing diligence is condition precedent to service by publication. 6 L. D. 669; 8 L. D. 452; 16 L. D. 26.

Service upon alleged guardian of a minor will not confer jurisdiction if the fact of guardianship is not established. Due showing must be made before publication authorized. 9 L. D. 218; 11 L. D. 315.

If affidavit shows that the defendant is not a resident of the State or Territory, and personal service cannot be made, it is not necessary to show what efforts have been made to secure personal service. 11 L. D. 261.

Affidavit may be made by any person possessing requisite information. 22 L. D. 566. See 22 L. D. 701.

No formal order of publication necessary. 21 L. D. 277.

Rule 12.—When it is found that the prescribed service cannot be had, either personal or by publication, in time for the hearing provided for in the notice, the notice may



be returned prior to the time fixed for the hearing, and a new notice issued fixing another time of hearing, for the proper service thereof, an affidavit being filed by the contestant showing due diligence and inability to serve the notice in time.

5 L. D. 214; 9 L. D. 132-606; 10 L. D. 621; 11 L. D. 605.

## 5.—NOTICE BY PUBLICATION.

Rule 13.—Notice by publication shall be made by advertising the notice at least once a week for four successive weeks in some newspaper published in the county wherein the land in contest lies; and if no newspaper be published in such county, then in the newspaper published in the county nearest to such land. The first insertion shall be at least thirty days prior to the day fixed for the hearing.

Notice defective unless published "once a week for four successive weeks," 5 L. D. 611; 9 L. D. 131. Period of publication must be followed strictly, 9 L. D. 606.

Day of first publication may be counted; 10 L. D. 620. On service by publication, see 4 L. D. 84; 5 L. D. 611; 7 L. D. 198; 9 L. D. 561.

Rule 14.—Where notice is given by publication a copy thereof shall, at least thirty days before the date for the hearing, be mailed, by registered letter, to each person to be so notified at the last address, if any, given by him as shown by the record, and to him at his present address named in the affidavit for publication required by Rule 11, if such present address is stated in such in such affidavit and is different from his record address. If there be no such record address and if no present address is named in the affidavit for publication, then a copy of the notice shall be so mailed to him at the postoffice nearest to the land. A copy of the notice shall also be posted in the register's office for a period of at least thirty days before the date for the hearing and still another copy thereof shall be posted in a conspicuous place upon the land for at least two weeks prior to the date set for the hearing. When notice of proceedings commenced by the Government against timber and stone entries is given by publication the posting of notices upon the land will not be required.

Sending copy by registered letter and posting are essential. 9 L. D. 75; 10 L. D. 131-606; 11 L. D. 434; 24 L. D. 350.

After motion to dismiss, participating in trial, will not give jurisdiction. 10 L. D. 131.

Rule modified as to timber and stone entries. 14 L. D. 54.

Notice by registered letter should be sent to last known address, and not to postoffice nearest the land. 21 L. D. 319.

Publication of notice is warranted on affidavit that alleges defendant to be a non-resident, and shows that personal service cannot be secured. 27 L. D. 654.

Registered letter addressed to defendant, to his address appearing of record, is sufficient. 27 L. D. 654.

(Rule of 1896.) Does not require, in service of notice by publication where the suit is against the heirs of the entryman, and the postoffice address of such heirs is unknown, that a copy of the notice should be sent to said heirs at the last known address of entryman. 29 L. D. 445-587.

If any error occurs in service by publication, which makes necessary a new publication, a new affidavit should be filed as a basis of an order therefor, except when the defect in the service is discovered during the period of publication and a proper publication is promptly made. 29 L. D. 693.

## 6.—PROOF OF SERVICE OF NOTICE.

Rule 15.—Proof of personal service shall be the written acknowledgment of the person served or the affidavit of the person who served the notice attached thereto, stating the time, place, and manner of service.

Delivery of copy only required, may be partly printed and partly written.

Where service is admitted or undisputed the "place" of service need not be shown in affidavit of proof of service. 6 L. D. 669.

Proof of service may be immaterial when service not denied. 21 L. D. 383.

Rule 16.—When service is by publication, the proof of service shall be a copy of the advertisement, with the affidavit of the publisher or foreman attached thereto, showing that the same was successively inserted the requisite number of times, and the date thereof.

## 7.—NOTICE OF INTERLOCUTORY PROCEEDINGS.

Rule 17.—Notice of interlocutory motions, proceedings, orders, and decisions, shall be in writing and may be served personally or by registered letter mailed to the last address, if any, given by or on behalf of the party to be notified, as shown by the record, and if there be no such record address, then to the postoffice nearest the land; and in all those contest cases where notice of contest is given by registered mail under Rule 14, and the return registry receipt shows such notice to have been received by the contestee, the address at which the notice was so received shall be considered as an address given by the contestee, within the meaning of this rule.

Rule must be followed. 9 L. D. 493. Notice to entryman's agent of cancellation held in 12 L. D. 189, to be notice to entryman. See 1 L. D. 479; 3 L. D. 99; 5 L. D. 235; 7 L. D. 335.

Notice of office, by registered letter, to contestant, is sufficient. 16 L. D. 47.

Rule 18.—Proof of service by mail shall be the affidavit of the person who mailed the notice, attached to the postoffice receipt for the registered letter.

Notice of cancellation should be in strict conformity of Rules 17 and 18. 9 L. D. 490; 11 L. D. 406.

## 8.—REHEARINGS.

Rule 19.—Orders for rehearing must be brought to the notice of the parties in the same manner as in case of original proceedings.

## 9.—CONTINUANCES.

Rule 20.—A postponement of a hearing to a day to be fixed by the register and receiver may be allowed on the day of trial on account of the absence of material witnesses, when the party asking for the continuance makes an affidavit before the register and receiver showing:



1. That one or more of the witnesses in his behalf is absent without his procurement or consent:
2. The name and residence of each witness;
3. The facts to which they would testify if present;
4. The materiality of the evidence;
5. The exercise of proper diligence to procure the attendance of the absent witnesses; and
6. That affiant believes said witnesses can be had at the time to which it is sought to have the trial postponed:
7. Where hearings are ordered by the commissioner of the general land office in cases to which the United States is a party, continuances will be granted in accordance with the usual practice in United States cases in the courts, without requiring an affidavit on the part of the government.

Continuance cannot be demanded as a matter of right because applicant's attorney is engaged in trial in another court. 9 L. D. 523.

Affidavit for continuance should show witnesses not absent by procurement or consent of applicant, and what diligence has been used. 7 L. D. 630.

Motion for continuance addressed to sound discretion of trial court. 7 L. D. 61; 6 L. D. 164, 342, 440.

Diligence must be shown in application for. 7 L. D. 497.

Sickness good cause for continuance. 17 L. D. 138. In some cases affidavit for continuance may be made by some person other than the party asking for it. 16 L. D. 106.

Application to take deposition does not supersede the necessity of applying for continuance. 16 L. D. 295.

Rule 21.—One continuance only shall be allowed to either party on account of absent witnesses, unless the party applying for a further continuance shall at the same time apply for an order to take the depositions of the alleged absent witnesses.

Rule 22.—No continuance shall be granted when the opposite party shall admit that the witnesses would, if present, testify to the statement set out in the applicaion for continuance.

## 10.—DEPOSITIONS ON INTERROGATORIES.

Rule 23.—Testimony may be taken by deposition in the following cases:

1. Where the witness is unable, from age, infirmity, or sickness, or shall refuse, to attend the hearing at the local land office.
2. Where the witness resides more than fifty miles from the place of trial, computing distance by the usual traveled route.
3. Where the witness resides out or is about to leave the State or Territory, or is absent therefrom.
4. Where from any cause it is apprehended that the witness may be unable or will refuse to attend, in which case the deposition will be used only in event that the personal attendance of the witness cannot be obtained.

Proper affidavit must be filed. 16 L. D. 97.

Rule 24.—The party desiring to take a deposition under Rule 23 must comply with the following regulations:

1. He must make affidavit before the register or receiver, setting forth one or more of the above named causes for taking such deposition, and that the witness is material.

2. He must file with the register and receiver the interrogatories to be propounded to the witness.

3. He must state the name and residence of the witness.

4. He must serve a copy of the interrogatories on the opposing party or his attorney.

Applications in time if made on day of trial. 8 L. D. 167; see 10 L. D. 480, 11 L. D. 575, 15 L. D. 262.

Commissioner not authorized to take depositions of witnesses not named in commission. 9 L. D. 135.

When proper showing made commission must be issued. 17 L. D. 324.

Rule 25.—The opposing party will be allowed ten days in which to file cross-interrogatories.

Rule 26.—After the expiration of the ten days allowed for filing cross-interrogatories a commission to take the deposition shall be issued by the register and receiver, which commission shall be accompanied by a copy of all the interrogatories filed.

Rule 27.—The register and receiver may designate any officer authorized to administer oaths within the county or district where the witness resides to take such deposition.

Rule 28.—It is the duty of the officer before whom the deposition is taken to cause the interrogatories appended to the commission to be written out and the answer thereto to be inserted immediately underneath the respective questions, and the whole, when completed, to be read over to the witness, and must be by him subscribed and sworn to in the usual manner before the witness is discharged.

Not necessary for certificate to show that officer read the deposition over to witness. 25 L. D. 144.

Rule 29.—The officer must attach his certificate to the deposition, stating that the same was subscribed and sworn to by the deponent at the time and place therein mentioned.

Rule 30.—The deposition and certificate, together with the commission and interrogatories, must then be sealed up, the title of the cause endorsed upon the envelope, and the whole returned by mail or express to the register and receiver.

Rule 31.—Upon receipt of the package at the local land office, the date when the same is opened must be indorsed on the envelope and body of the deposition by the local land officers.

Rule 32.—If the officer designated to take the deposition has no official seal, a proper certificate of his official character, under seal, must accompany his return.

Rule 33.—The parties in any case may stipulate in writing to take depositions before any qualified officer, and in any manner.

Rule 34.—All stipulations by parties or council must be in writing, and be filed with the register and receiver.

## 11.—ORAL TESTIMONY BEFORE OTHER OFFICERS THAN REGISTERS AND RECEIVERS.

Rule 35.—In the discretion of registers testimony may be taken near the land in controversy before a United States



commissioner or other officer authorized to administer oaths, at a time and place fixed by them and stated in the notice of hearing.

2. Officers taking testimony under the foregoing rule will be governed by the rulers applicable to trials before registers and receivers. (See rules 36 to 42, inclusive.)

3. Testimony so taken must be certified to, sealed up and transmitted by mail or express to the register and receiver, and the receipt thereof at the local office noted on the papers, in the same manner as provided in case of depositions by rules 29 to 32, inclusive.

4. On the day set for hearing at the local office the register and receiver will examine the testimony taken by the officer designated, and render a decision thereon in the same manner as if the testimony had been taken before themselves. (See rules 50 to 53, inclusive.)

5. No charge for examining testimony in such cases will be made by the register and receiver.

6. Officers designated to take testimony under this rule will be allowed to charge such fees as are properly authorized by the tariff of fees existing in the local courts of their respective districts, to be taxed in the same or equivalent manner as costs are taxed by registers and receivers under rules 54 to 58, inclusive.

7. When an officer designated to take testimony under this rule, or when an officer designated to take depositions, under rule 27, cannot act on the day fixed for taking the testimony or deposition, the testimony or deposition, as the case may be, will be deemed properly taken before any other qualified officer at the same place and time, who may be authorized by the officer originally designated, or by agreement of parties, to act in the place of the officer first named.

Thirty days' notice required of hearings before land office, but shorter time will answer for hearings elsewhere; 4 L. D. 640; 15 L. D. 289.

Where contest is dismissed notice should be given to contestant's attorney; 15 L. D. 436.

Notice to attorney, notice to party; 14 L. D. 700.

Protestant against final proof is under no obligation to submit testimony before the office designated to take such proof in absence of an order therefor under rule 35 of practice; 13 L. D. 203.

Apprehension that testimony will not be fairly taken is not sufficient excuse for failure to appear and submit testimony, under rule 35; 12 L. D. 30.

Under rule 35 an officer designated to take testimony in a contest may properly authorize any other qualified officer to take such testimony. 10 L. D. 418. As to authority of officer, see 11 L. D. 539. Officers before whom testimony is taken under rule 35 of practice are governed by rules applicable before the local offices. 10 L. D. 433. Authority to local office to issue a commission to take deposition and grant a continuance, although after testimony has been ordered and taken under rule 35. 10 L. D. 480. Local office may designate officer to take testimony under rule 35. 9 L. D. 209. Testimony may be taken near the land when reasonable cause for so doing is shown. 3 L. D 112. As to costs under this rule, see 3 L. D. 193. Also 3 L. D. 333. Rule 35 invests the register and receiver with a discretion

in permitting testimony taken elsewhere. 2 L. D. 231. Local offices have a discretion as to how far redirect and recross-examination should be carried. 2 L. D. 234. Irregularities waived by consent to the proceedings. 1 L. D. 474.

No commission need be issued to the officer under this rule. 23 L. D. 142.

Notary public proper officer. 17 L. D. 4.

After notice, too late to apply for order to take evidence under this rule. 16 L. D. 360.

Thirty days' notice necessary in contest cases, though an earlier date is sufficient in taking testimony under rule 35. 28 L. D. 301.

Rule 36.—Upon the trial of a cause the register and receiver may in any case, and should in all cases when necessary, personally direct the examination of the witnesses, in order to draw from them all the facts within their knowledge requisite to a correct conclusion by the officer, upon any point connected with the case.

Rule 37.—The register and receiver will be careful to reach, if possible, the exact condition and status of the land involved by any contest, and will ascertain all the facts having any bearing upon the rights of parties in interest.

See 3 L. D. 84.

Registers and receivers should carefully examine the record and testimony in reaching their conclusions. 16 L. D. 511.

Rule 38.—In preëmption cases they will particularly ascertain the nature, extent, and value of alleged improvements; by whom made, and when; the true date of the settlement of persons claiming; the steps taken to mark and secure the claim, and the exact status of the land at that date as shown upon the records of their office.

See 3 L. D. 86.

Rule 39.—In like manner, under the homestead and other laws, the conditions affecting the inception of the alleged right, as well as the subsequent acts of the respective claimants, must be fully and specifically examined.

Rule 40.—Due opportunity will be allowed opposing claimants to confront and cross-examine witnesses introduced by either party.

See 11 L. D. 421.

Parties have undisputed right to be present at the hearing and cross-examine the witnesses; 14 L. D. 472.

12.—EXCLUSION OF TESTIMONY.

Rule 41.—No testimony will be excluded from the record by the register and receiver on the ground of any objection thereto, but when objection is made to testimony offered, the exceptions will be noted, and the testimony, with the exceptions, will come up with the case for the consideration of the commissioner. Officers taking testimony will, however, summarily put a stop to obviously irrelevant questions.

Local officers are entrusted with the discretionary power to determine whether additional testimony will cause unnecessary expense, 12 L. D. 109.

Nothing but "obviously irrelevant" testimony should be excluded from the record; 11 L. D. 461; 4 L. D. 381; 6 L. D. 272.

Officers have a right to summarily put a stop to ob-



viously irrelevant questioning, but rule 56 makes it discretionary with the officers to allow such irrelevant questioning at the cost of the party making such examination; 10 L. D. 628.

Local officers have no authority to exclude testimony that is offered, but should summarily put a stop to obviously irrelevant questioning; 9 L. D. 130.

The right to be confronted with, and cross-examine witnesses, in a proceeding involving life, liberty or property, is one which all tribunals guard most jealously, and any interference therewith is not tolerated, but the abuse of the right should be guarded; 9 L. D. 131.

There is no rule for taking "obviously irrelevant and clearly incompetent testimony. This class of testimony should not be permitted at all." 22 L. D. 214.

Obviously irrelevant testimony is said to be "testimony readily recognized as irrelevant, not alone by the legal, but by the common mind." 22 L. D. 314.

Register and receiver should "put a stop to irrelevant questioning." 21 L. D. 55.

The register and receiver should enforce this rule as to irrelevant testimony. 21 L. D. 480.

See 18 L. D. 559.

Rule 42.—Upon the day originally set for hearing, and upon any day to which the trial may be continued, the testimony of all the witnesses present shall be taken and reduced to writing. When testimony is taken in short-hand, the stenographer's notes must be written out, and the written testimony then and there subscribed by the witness and attested by the officer before whom the same is taken.

Rule 42 modified in taking testimony in townsite cases; 12 L. D. 186.

Parties estopped from objecting to testimony taken, in compliance with rule 42, after consenting to take such testimony; 7 L. D. 292.

Rule 42 construed; 4 L. D. 541.

Local officers cannot dismiss case in contravention of rules 41 and 42. 2 L. D. 581.

Prior to April 18, 1899, where evidence is taken by stenographer the testimony must be written out and subscribed to by witness. The above rule was amended on the 18th day of April, 1899, permitting parties by written stipulation to waive that portion of the rule, requiring the testimony to be written out and subscribed by the witness. See 28 L. D. 301.

13.—APPEALS.

Rule 43.—Appeals from the final action or decisions of registers and receivers lie in every case to the commissioner of the general land office. (Revised Statutes, Sections 453, 2478.)

In cases dismissed for want of prosecution the register or receiver will by registered letter notify the parties in interest of the action taken, and that unless within thirty days a motion for reinstatement shall be made, the default of the plaintiff will be final, and that no appeal will be allowed; which notice shall be given as provided in circular of October 28, 1886. (5 L. D. 204.)

If such motion for reinstatement be made within the time limited, the local officers shall take action thereon, and grant or deny it, as they deem proper. If granted, no appeal shall lie. If overruled, the plaintiff shall have

the right of appeal, the time for which shall be thirty days, and run from the date of written notice to the plaintiff.

Rule 70, as amended October 26, 1885, provides: "Rules 43 to 48, inclusive, and rule 93 are not applicable to appeals from decisions rejecting applications to enter public lands.

Rules 43 to 48, inclusive, relate to appeals from final decisions of the local officers to the commissioner. 14 L. D. 661.

For rule in regard to service of notice of appeal, see 11 L. D. 621; 14 L. D. 622.

Failure to appeal within thirty days from the rejection of an application to enter land; party loses all right under his application. 13 L. D. 250.

Right of appeal should not be denied or abridged. 13 L. D. 277.

There is no appeal from an interlocutory order. 12 L. D. 63; 9 L. D. 252.

In appeals the conditions prescribed by the rules of practice must be complied with; 5 L. D. 671.

Distinction drawn between appeals from local and the general land offices; 1 L. D. 472.

Rules 43 to 48, inclusive, pertain to appeals from the local office. 27 L. D. 143.

Rule 44.—After hearing in a contested case has been had and closed, the register and receiver will, in writing, notify the parties in interest of the conclusions to which they have arrived, and that thirty days are allowed for an appeal from their decision to the commissioner, the notice to be served personally or by registered letter through the mail to their last known address.

Ten days additional allowed where notice of decision is sent through the mail; 7 L. D. 387; 1 L. D. 114; 1 L. D. 118.

As to costs, see 6 L. D. 765.

For construction of rule, see 5 L. D. 246.

Notice to attorneys is sufficient; 3 L. D. 183.

Notice cannot be made by a passing remark on the street. Notice must conform to the legal definition, to-wit: "A writing, containing formal, customary or presented information." 1 L. D. 479.

Rule 45.—The appeal must be in writing or in print, and should set forth in brief and clear terms the specific points of exception to the ruling appealed from.

Specifications of error to receive consideration must set out the particular objections raised to the decision from which appeal is taken; 14 L. D. 700.

Notice of appeal must be served on adverse party in interest; appeal may properly be dismissed on failure thereof; 10 L. D. 546-595; 11 L. D. 407.

Rule 46.—Notice of appeal and copy of specification of errors shall be served on appellee within the time allowed for appeal, and appellee shall be allowed ten days for reply before transmittal of the record to the General Land Office.

There is no form of words necessary to be used in giving notice of appeal; 11 L. D. 406.

Ten days additional allowed to file appeal where notice is sent through the mail; 7 L. D. 387.

Rule 46 applies with reference to the rights of parties between themselves, and shall not operate as a restriction upon the power or authority of the commissioner to reject or approve the finding of the local officers upon a question



of fact or other decision upon law applicable thereto; 5 L. D. 245.

Where notice of appeal is not served within required time, the finding of the local office becomes final as to the facts, and no appeal will lie from the decision of the commissioner affirming the action below. 18 L. D. 153.

Rule 47.—No appeal from the action or decisions of the register and receiver will be received at the General Land Office unless forwarded through the local officers.

Under rule 47, see 2 L. D. 169; 3 L. D. 184-608; 4 L. D. 277-571.

Rule 48.—In case of a failure to appeal from the decision of the local officers, their decision will be considered final as to the facts in the case and will be disturbed by the commissioner only as follows:

1. Where fraud or gross irregularity is suggested on the face of the papers.
2. Where the decision is contrary to existing laws or regulations.
3. In event of disagreeing decisions by the local officers.
4. Where it is not shown that the party against whom the decision was rendered was duly notified of the decision and of his right of appeal.

In the absence of appeal finding of local office is final as between litigants; 13 L. D. 37; 15 L. D. 400; 5 L. D. 585; 13 L. D. 686; 12 L. D. 419; 7 L. D. 20; 7 L. D. 98; 6 L. D. 359.

Appeal lies from the commissioner on refusal to order hearing; 15 L. D. 290.

Government has ample authority to rectify errors in local office without formality of appeal where there is no adverse claimant for the land; 13 L. D. 603.

Appeal should be from the original decision, and not from the refusal to consider such decision; 9 L. D. 388.

Decision of the local office contrary to law should be reversed by the commissioner in the absence of appeal, under the second exception of rule 48 of practice; 6 L. D. 392; 5 L. D. 624; 5 L. D. 212.

See 25 L. D. 345; 24 L. D. 244, 385. Where one party appeals from the decision of the local office, the case comes up for disposition on its merits, and not under rule 48. 23 L. D. 562.

To justify the finality as to the facts provided for under rule 48, the findings of the local office must be positive and unequivocal and not argumentative or presumptive. 22 L. D. 76.

Finding of facts by local office should not be held final if the findings are based on matters not properly at issue. 22 L. D. 67.

Failure of parties to appeal from an adverse decision leaves the case to be determined as between the government and party successful below. 21 L. D. 294.

When appeal is dismissed as insufficient the decision below as to facts should not be disturbed, except under rule 48. 20 L. D. 41, 456.

Where fraud or gross irregularity is suggested on the face of the papers the General Land Office is not precluded from an examination of the facts. 20 L. D. 516.

Failure to appeal from the decision of the local officers leaves their findings of facts final. 18 L. D. 409.

Appeal to secretary will not be considered in absence of notice to opposite party, although the appeal of other party to the commissioner was dismissed for failure to file the same in time. 17 L. D. 48.

In absence of appeal, register's and receiver's decision only final as to facts. 28 L. D. 48.

Rule 49.—In any of the foregoing cases the commissioner will reverse or modify the decision of the local officers or remand the case, at his discretion.

2 L. D. 265; 5 L. D. 212; 2 L. D. 655; 9 L. D. 439.

Rule 50.—All documents once received by the local officers must be kept on file with the cases, and the date of filing must be noted thereon; and no papers will be allowed under any circumstances to be removed from the files or from the custody of the register and receiver, but access to the same, under proper rules, so as not to interfere with necessary public business, will be permitted to the parties in interest, or their attorneys, under the supervision of those officers.

4 L. D. 246.

## 14.—REPORTS AND OPINIONS.

Rule 51.—Upon the termination of a contest the register and receiver will render a joint report and opinion in the case, making full and specific reference to the postings and annotations upon their records.

After a decision local officers have no jurisdiction until instructed by the general office. 6 L. D. 234. 8 L. D. 359. 10 L. D. 678. Decision should be retained in the local office for thirty days following notice of decision. 4 L. D. 203. After decision papers should be retained in local office ten days after the expiration of thirty days provided in rule 51, to allow appellee to examine papers. 3 L. D. 38. 2 L. D. 655.

Rule 52.—The register and receiver will promptly forward their report together with the testimony and all the papers in the case to the commissioner of the general land office, with a brief letter of transmittal, describing the case by title, the nature of the contest, and the tract involved.

4 L. D. 246-466. 5 L. D. 369. 6 L. D. 12. 10 L. D. 679-690.

Rule 53.—The local officers will thereafter take no further action affecting the disposal of the land in contest until instructed by the commissioner.

In all cases, however, where a contest has been brought against any entry or filing on the public lands, and trial has taken place, the entryman may, if he so desires, in accordance with the provisions of the law under which he claims and the rules of the department, submit final proof and complete the same with the exception of the payment of the purchase money or commissions, as the case may be; said final proof will be retained in the local land office, and should the entry finally be adjudged valid, said final proof, if satisfactory, will be accepted upon the payment of the purchase money or commissions, and final certificate will issue, without any further action on the part of the entryman, except the furnishing of a non-alienation affidavit by the entryman, or in case of his death, by his legal representatives.

In such cases the party making the proof, at the time of the submitting the same, will be required to pay the fees for reducing the testimony to writing.



1 L. D. 156. 2 L. D. 55-257-284. 3 L. D. 209-434. 4 L. D. 466. 5 L. D. 369. 8 L. D. 121-463.

Rule 53 as amended March 15, 1892, permits final proof to be taken and accepted by the local office after the trial of the contest involved in the entry. See 14 L. D. 250. 14 L. D. 411.

A relinquishment filed during the pendency of the appeal leaves the land open to the first legal application subject to the final disposition of the pending appeal. 13 L. D. 590. 12 L. D. 11-19. 10 L. D. 16-679. 9 L. D. 59-281-299-326-578.

One who submits final proof under this rule, during pendency of contest involving an adverse settlement claim, must stand or fall on the showing made. 26 L. D. 64.

## 15.—TAXATION OF COSTS.

Rule 54.—Parties contesting preëmption, homestead, or timber culture entries and claiming preference rights of entry under second section of the act of May 14, 1880 (21 Stat. 140), must pay the costs of the contest.

4 L. D. 207; 6 L. D. 600; 8 L. D. 494; 10 L. D. 628-680; 11 L. D. 389; 12 L. D. 109; 13 L. D. 290; 14 L. D. 92.

Under charge of non-compliance with the law, contestant must pay all the costs. 26 L. D. 210, 384.

Rule 55.—In other contested cases each party must pay the costs of taking testimony upon his own direct and cross-examination.

Rule 55 construed to mean that each party must pay the costs of taking testimony of witnesses, both in cross and direct examination of such witnesses. 11 L. D. 388; 10 L. D. 625.

This rule amended to allow register and receiver to tax costs on cross-examination where the said examination is irrelevant. 10 L. D. 680.

Officers may require deposit in advance for costs. 8 L. D. 493; 6 L. D. 599.

As to taxing costs. 26 L. D. 57.

Rule applies in hearings on special agent's report. 26 L. D. 519.

Rule 56.—The accumulation of excessive costs under rule 54 will not be permitted; but when the officer taking testimony shall rule that a course of examination is irrelevant and checks the same, under rule 41, he may, nevertheless, in his discretion, allow the same to proceed at the sole cost of the party making such examination. This rule will apply also to cross-examination in contests covered by the provisions of rule 55.

3 L. D. 52; 4 L. D. 207; 9 L. D. 134; 10 L. D. 628, 680; 12 L. D. 109.

Rule 57.—Where parties contesting preëmption, homestead, or timber-culture entries establish their right of entry under the preëmption or homestead laws of the land in contest by virtue of actual settlement and improvement, without reference to the act of May 14, 1880, the cost of contest will be adjudged under rule 55.

6 L. D. 661; 26 L. D. 210.

Rule 58.—Registers and receivers will apportion the costs of contest in accordance with the foregoing rules, and may require the party liable thereto to give security in advance of trial, by deposit or otherwise, in a reasonable sum or

sums, for payment of the costs of transcribing the testimony.

6 L. D. 599; 8 L. D. 494.

Rule 59.—The costs of contest chargeable by registers and receivers are the legal fees for reducing testimony to writing. No other contest fees or costs will be allowed to or charged by those officers directly or indirectly.

2 L. D. 223.

Rule 60.—Contestants must give their own notices and pay the expenses thereof.

Service of notice is left with the contestant, and failure to serve notice of contest and initiation of new proceedings by the contestant is an abandonment of the first contest and warrants a dismissal thereof. 10 L. D. 268.

Rule 61.—Upon the termination of a trial, any excess in the sum deposited as security for the costs of transcribing the testimony will be returned to the proper party.

Rule 62.—When hearings are ordered by the commissioner by the Secretary of the Interior, upon the discovery of reasons for suspension in the usual course of examination of entries, the preliminary costs will be provided from the contingent fund for the expenses of local land offices.

Rule 63.—The preliminary costs provided for by the preceding section will be collected by the register and receiver when the parties are brought before them in obedience to the order of hearing.

Rule 64.—The register and receiver will then require proper provision to be made for such further notification as may become necessary in the usual progress of the case to final decision.

Rule 65.—The register and receiver will append to their report in each case a statement of costs and the amount actually paid by each of the contestants, and also a statement of the amount deposited to secure the payment of the costs, how said sum was apportioned, and the amount returned, if any, and to whom.

## 16.—APPEALS FROM DECISIONS REJECTING APPLICATIONS TO ENTER PUBLIC LANDS.

Rule 66.—For the purpose of enabling appeals to be taken from the rulings or action of the local land offices relative to applications to file upon, enter, or locate the public lands the following rules will be observed:

1. The register and receiver will endorse upon every rejected application the date when presented and their reasons for rejecting it.

2. They will promptly advise the party in interest of their action and of his right of appeal to the commissioner.

3. They will note upon their records a memorandum of the transaction.

See 2 L. D. 278, 280; 3 L. D. 281; 4 L. D. 9; 5 L. D. 380; 12 L. D. 235, 648; 14 L. D. 661.

Rule 67.—The party aggrieved will be allowed thirty days from receipt of notice in which to file his apeal in the local land office. Where the notice is sent by mail, five days additional will be allowed for the transmission of notice and five for the return of the appeal.

2 L. D. 280; 7 L. D. 388; 13 L. D. 250.



Rule 68.—The register and receiver will promptly forward the appeal to the general land office, together with a full report upon the case.

3 L. D. 119.

Rule 69.—This report should recite all the facts and the proceedings had, and must embrace the following particulars:

1. A statement of the application and rejection, with the reasons for rejection.

2. A description of the tract involved and a statement of its status, as shown by the records of the local land office.

3. References to all entries, filings, annotations, memoranda, and correspondence shown by the record relating to said tract and to the proceedings had.

Rule 70.—Rules 43 to 48, inclusive, and rule 93 are applicable to all appeals from decisions of registers and receivers.

4 L. D. 234; 14 L. D. 661; 12 L. D. 93; 23 L. D. 412.

### II.

### (Proceedings before Surveyors-General.)

Rule 71.—The proceedings in hearings and contests before surveyor-general shall, as to notice, depositions, and other matters, be governed as nearly as may be by the rules prescribed for proceedings before registers and receivers, unless otherwise provided by law.

### III.

### (Proceedings before the Commissioner of the General Land Office and Secretary of the Interior.)

### 1.—EXAMINATION AND ARGUMENT.

Rule 72.—When a contest has been closed before the local land officers and their report forwarded to the general land office, no additional evidence will be admitted in the case unless offered under stipulation of the parties to the record, except where such evidence is presented as the basis of the motion for a new trial or in support of a mineral application or protest; but this rule will not prevent the commissioner, in the exercise of his discretion, from ordering further investigation when necessary.

5 L. D. 59, 352, 426; 9 L. D. 254, 626; 11 L. D. 261, 554; 15 L. D. 95, 195; 22 L. D. 199.

Rule 73.—After the commissioner shall have received a record of testimony in a contest case, thirty days will be allowed to expire before any action thereon is taken, unless in the judgment of the commissioner, public policy or private necessity shall demand summary action, in which case he will proceed at his discretion, first notifying the attorneys of record of his proposed action. 24 L. D. 203.

Rule 74.—When a case is pending on appeal from the decision of the register and receiver or surveyor-general and argument is not filed before the same is reached in its order for examination, the argument will be considered closed, and thereafter no further arguments or motions of any kind will be entertained except upon written stipulation duly filed or good cause shown to the commissioner.

Rule 75.—If before decision by the commissioner either party should desire to discuss a case orally, reasonable opportunity therefor will be given in the discretion of the

commissioner, but only at a time to be fixed by him upon notice to the opposing counsel, stating time and specific points upon which discussion is desired; and, except as herein provided, no oral hearings or suggestions will be allowed.

## 2.—REHEARING AND REVIEW.

Rule 76.—Motions for rehearing before registers and receivers, or for review or reconsideration of the decisions of the commissioner or secretary, will be allowed, in accordance with legal principles applicable to motions for new trials at law, after due notice to the opposing party.

24 L. D. 402.

Rule 77.—Motions for rehearing and review, except as provided in rule 114, must be filed in the office wherein the decision to be affected by such rehearing or review was made, or in the local land office, for the transmittal to the general land office; and, except when based upon newly-discovered evidence, must be filed within thirty days from notice of such decision.

14 L. D. 155; 13 L. D. 34, 266, 387; 12 L. D. 46, 648; 21 L. D. 164; 20 L. D. 118.

Motions for rehearing, except when based upon newly-discovered evidence, must be filed within thirty days after notice of decision. 26 L. D. 443.

Rule 78.—Motions for rehearing and review must be accompanied by an affidavit of the party, or his attorney, that the motion is made in good faith, and not for the purpose of delay.

11 L. D. 624; 12 L. D. 447, 648; 13 L. D. 265, 687; 23 L. D. 401; 22 L. D. 671.

Rule 79.—The time between the filing of the motion for rehearing or review and the notice of the decision upon such motion shall be excluded in computing the time allowed for appeal.

3 L. D. 540; 8 L. D. 421; 13 L. D. 195; 12 L. D. 62, 648; 24 L. D. 388.

Can only be invoked on behalf of litigant who has himself filed a motion for review (19 L. D. 294), but where a decision affects adversely the rights of two parties and one applies in time for review, the case will be considered on its merits. 26 L. D. 639.

Rule 80.—No officer shall entertain a motion after an appeal from his decision has been taken. 3 L. D. 540.

## 3.—APPEAL FROM THE COMMISSIONER TO SECRETARY.

Rule 81.—No appeal shall be had from the action of the commissioner of the general land office affirming the decision of the local officers in any case where the party or parties adversely affected thereby shall have failed, after due notice, to appeal from such decision of said local officers.

Subject to this provision, an appeal may be taken from the decision of the commissioner of the general land office to the Secretary of the Interior upon any question relating to the disposal of the public lands and to private land claims, except in case of interlocutory orders and decisions and orders for hearing or other matter resting in the discretion of the commissioner. Decisions and orders forming the above exception will be noted in the record, and will be considered by the secretary on review in case an appeal upon the merits be finally allowed.



9 L. D. 389; 10 L. D. 252; 13 L. D. 279, 348, 707, 721; 15 L. D. 188; 14 L. D. 698.

Rules 81 to 103, inclusive, pertain to appeal from commissioner. 27 L. D. 143; 22 L. D. 641; 21 L. D. 555.

Rule 82.—When the commissioner considers an appeal defective, he will notify the party of the defect, and if not amended within fifteen days from the date of the service of such notice the appeal may be dismissed by the Secretary of the Interior and the case closed.

8 L. D. 471; 9 L. D. 482, 599, 620; 10 L. D. 573, 595; 11 L. D. 375; 14 L. D. 217; 24 L. D. 231; 23 L. D. 412; 22 L. D. 436; 20 L. D. 130.

Rule 83.—In proceedings before the commissioner, in which he shall formally decide that a party has no right of appeal to the secretary, the party against whom such decision is rendered may apply to the secretary for an order directing the commissioner to certify said proceedings to the secretary and to suspend further action until the secretary shall pass upon the same.

11 L. D. 260; 13 L. D. 259, 397, 478, 635, 722; 14 L. D. 176; 15 L. D. 191, 244, 527; 21 L. D. 122; 20 L. D. 178, 287.

Rule 84.—Applications to the secretary under the preceding rule shall be made in writing, under oath, and shall fully and sepcifically set forth the grounds upon which the application is made.

11 L. D. 474; 13 L. D. 259, 397, 478, 635; 15 L. D. 191, 291; 22 L. D. 122; 20 L. D. 287.

Rule 85.—When the commissioner shall formally decide against the right of an appeal, he shall suspend action on the case at issue for twenty days from service of notice of his decision, to enable the party against whom the decision is rendered to apply to the secretary for an order, in accordance with rules 83 and 84.

10 L. D. 690; 15 L. D. 244, 527; 24 L. D. 385; 20 L. D. 287.

Rule 86.—Notice of an appeal from the commissioner's decision must be filed in the general land office and served on the appellee or his counsel within sixty days from the date of the service of notice of such decision.

9 L. D. 189, 265, 278; 10 L. D. 409; 11 L. D. 49, 440; 13 L. D. 697; 14 L. D. 428; 24 L. D. 227; 23 L. D. 413; 20 L. D. 89, 411.

Rule 87.—When notice of the decision is given through the mails by the register and receiver or surveyor-general, five days additional will be allowed by those officers for the transmission of the letter and five days for the return of the appeal through the same channel before reporting to the general land office.

9 L. D. 278; 11 L. D. 440; 12 L. D. 62; 13 L. D. 127, 501, 697; 14 L. D. 428; 24 L. D. 323, 472; 20 L. D. 89, 538.

Rule 88.—Within the time allowed for giving notice of appeal the appellant shall also file in the general land office a specification of errors, which specification shall clearly and concisely designate the error of which he complains.

9 L. D. 12, 278, 560, 599; 10 L. D. 547, 11 L. D. 198, 216; 12 L. D. 27, 30, 99; 12 L. D. 249, 306; 14 L. D. 218; 15 L. D. 567; 24 L. D. 231, 490; 20 L. D. 329.

What the specifications of error must contain. 28 L. D. 11; 27 L. D. 54.

Rule 89.—He may also, within the same time, file a written argument with citation of authorities, in support of his appeal.

Rule 90.—A failure to file a specification of errors within the time required will be treated as a waiver of the right of appeal, and the case will be considered closed.

4 L. D. 551; 5 L. D. 112, 252; 6 L. D. 315; 8 L. D. 470; 14 L. D. 249; 24 L. D. 231.

Rule 91.—The appellee will be allowed thirty days from the expiration of the sixty days allowed for appeal in which to file his argument.

Rule 92.—The appellant shall be allowed thirty days from service of argument of appellee in which to file argument strictly in reply, and no other or further arguments or motions of any kind shall be filed without permission of the commissioner or secretary and notice to the opposite party. 5 L. D. 676.

Rule 93.—A copy of the notice of appeal, specification of errors, and all arguments of either party, shall be served on the opposite party within the time allowed for filing the same.

10 L. D. 409, 547; 11 L. D. 48, 49, 249, 385, 392; 12 L. D. 61; 14 L. D. 661; 24 L. D. 230, 323, 402; 22 L. D. 89.

Rule 94.—Such service shall be made personally or by registered letter.

1 L. D. 110; 3 L. D. 135; 5 L. D. 476, 479; 9 L. D. 170, 189; 11 L. D. 249; 12 L. D. 61; 24 L. D. 490.

Rule 95.—Proof of personal service shall be the written acknowledgment of the party served, or the affidavit of the person making the service attached to the papers served, and stating time, place, and manner of service.

3 L. D. 135; 5 L. D. 479; 15 L. D. 388; 23 L. D. 530.

Rule 96.—Proof of service by registered letter shall be the affidavit of the person mailing the letter attached to a copy of the postoffice receipt.

3 L. D. 135; 5 L. D. 479; 9 L. D. 189; 12 L. D. 61; 13 L. D. 5; 15 L. D. 388; 24 L. D. 490.

This rule does not make a specific provision as to the manner in which notice of appeal shall be served.

27 L. D. 142.

Rule 97.—Fifteen days, exclusive of the day of mailing, will be allowed for the transmission of notices and papers by mail, except in case of notice to resident attorneys, when one day will be allowed.

4 L. D. 551; 6 L. D. 140; 11 L. D. 440; 14 L. D. 428; 26 L. D. 431.

Rule 98.—Notice of interlocutory motions and proceedings before the commissioner and secretary shall be served personally or by registered letter, and service proved as provided in rules 94 and 95.

Rule 99.—No motion affecting the merits of the case or the regular order of proceedings will be entertained except on due proof of service of notice.

3 L. D. 135; 4 L. D. 107; 13 L. D. 279; 14 L. D. 93.

Rule 100.—Ex-parte cases and cases in which the adverse



party does not appear will be governed by the foregoing rules as to notices of decisions, time for appeal, and filing of exceptions and arguments, as far as applicable. In such cases, however, the right to file additional evidence at any stage of the proceedings to cure defects in the proof or record will be allowed.

Rule 101.—No person hereafter appearing as a party or attorney in any case shall be entitled to a notice of the proceedings who does not at the time of his appearance file in the office in which the case is pending a statement in writing, giving his name and postoffice address and the name of the party whom he represents; nor shall any person who has heretofore appeared in a case be entitled to a notice unless within fifteen days after being requested to file such statement he shall comply with said requirement.

9 L. D. 12.

Rule 102.—No person not a party to the record shall intervene in a case without first disclosing on oath the nature of his interest.

8 L. D. 285; 9 L. D. 46, 249, 628; 11 L. D. 365, 499; 13 L. D. 392.

Rule 103.—When the commissioner makes an order or decision affecting the merits of a case or the regular order of the proceedings therein he will cause notice to be given to each party in interest whose address is known.

3 L. D. 53.

Rule 104.—In all cases, contested or ex-parte, where the parties in interest are represented by attorneys, such attorneys will be recognized as fully controlling the cases of their respective clients.

3 L. D. 409, 607; 4 L. D. 9; 14 L. D. 443; 24 L. D. 277; 21 L. D. 96.

Rule 105.—All notices will be served upon the attorneys of record.

3 L. D. 409, 608; 4 L. D. 9; 5 L. D. 480; 14 L. D. 443; 21 L. D. 277.

Rule 106.—Notice to one attorney in a case shall constitute notice to all counsel appearing for the party represented by him, and notice to the attorney will be deemed notice to the party in interest.

1 L. D. 120; 3 L. D. 184, 608, 409; 4 L. D. 9; 11 L. D. 395, 441; 15 L. D. 308; 20 L. D. 89.

Notice to the attorney is notice to the party.

25 L. D. 36.

Rule 107.—All attorneys practicing before the general land office and Department of the Interior must first file the oath of office prescribed by Section 3478, United States Revised Statutes.

Rule 108.—In the examination of any case, whether contested or ex-parte the attorneys employed in said case, when in good standing in the department, for the preparation of arguments, will be allowed full opportunity to consult the records of the case, the abstracts, field notes, and tract books, and the correspondence of the general land office or of the department not deemed privileged and confidential; and whenever, in the judgment of the commissioner, it would not jeopardize any public or official interest, may make verbal inquiries of chiefs of divisions at their respective desks in respect to the papers or status of said case; but such inquiries will not be made to said

chiefs or other clerks of division except upon consent of the commissioner, assistant commissioner, or chief clerk, and will be restricted to hours between 11 a. m. and 2 p. m.
4 L. D. 336; 5 L. D. 401.

Rule 109.—Any attorney detected in any abuse of the above privileges or of gross misconduct, upon satisfactory proof thereof, after due notice and hearing, shall be prohibited from further practicing before the department.

Rule 110.—Should either party desire to discuss a case orally before the secretary, opportunity will be afforded at the discretion of the department, but only at a time specified by the secretary, or fixed by stipulation of the parties.
20 L. D. 122.

Rule 111.—The examination of cases on appeal to the commissioner or secretary will be facilitated by filing in printed form such arguments as it is desired to have considered.

Rule 112.—Decisions of the commissioner not appealed from within the period prescribed become final, and the case will be regularly closed.
4 L. D. 508; 85 L. D. 422; 6 L. D. 6; 14 L. D. 683.

Rule 113.—The decision of the secretary, so far as respects the action of the executive, is final.

Rule 114.—Motions for review or rehearing before the secretary must be filed with the commissioner of the general land office within thirty days after notice of the decision complained of, and will act as a supersedeas of the decision until otherwise directed by the secretary.

Any such motion must state concisely and specifically the grounds for review or rehearing, one or both as the case may be, upon which it is based, and may be accompanied by an argument in support thereof.

Upon its receipt, the commissioner of the general land office will forward the motion immediately to this department, where it will be treated as "special." If the motion does not show proper grounds for review or rehearing, it will be denied, and sent to the files of the general land office, whereupon the commissioner will remove the suspension and proceed to execute the decision before rendered. But if, upon examination, proper grounds are shown, the motion will be entertained and the moving party notified, whereupon he will be allowed thirty days within which to serve the same together with all argument in support thereof, on the opposite party, who will be allowed thirty days thereafter in which to file and serve an answer, but consideration of the motion will not be deferred for further argument.
6 L. D. 796; 10 L. D. 690; 12 L. D. 423; 13 L. D. 34; 23 L. D. 244, 406; 22 L. D. 671; 20 L. D. 407, 419.

When motions for review and rehearing have been acted upon, subsequent motions will not act as a supersedeas, except on express order of the secretary.
26 L. D. 443; 25 L. D. 154.

Petition for re-review should not be filed in the local office, but should be addressed to the Secretary of Interior.
25 L. D. 292.

Rule 115.—None of these rules shall be construed to deprive the Secretary of the Interior of either the directory or supervisory power conferred upon him by law.



## CONTESTS.

The following is taken from the general land office circular issued July 11, 1899:

Any person may contest an entry, location, or selection made under any law of the United States, for any sufficient cause affecting the legality or validity of the same.

Applications to contest must be filed with the register and receiver.

An affidavit is required in each case, setting forth the facts which constitute the grounds of contest. This affidavit should be corroborated by the affidavits of one or more witnesses in cases where an entry has been allowed and remains of record. Contest affidavits may be made before any officer authorized to administer oaths.

A person who contests and secures the cancellation of any entry of record has a preference right for thirty days from receipt of notice of such cancellation in which to enter the land formerly covered by contested entry, and during such period of thirty days the said land will be reserved from entry by any other person, though applications to enter made by other persons must, if presented, be received and held to await the expiration of the successful contestant's preference right, after which such intervening applications will be acted upon in the order in which they have been received.

Where an entry exists that is prima facie valid and an appropriation of the land, no application to enter will be received for another entry of the land until the existing entry is vacated by regular proceedings, except in cases of contests under the third section of the timber-culture act of June 14, 1878.

No application will be received, or any rights recognized as initiated by the tender of an application for a tract embraced in an entry of record until said entry has been cancelled upon the records of the local office. Thereafter, and until the period accorded a successful contestant has expired, or he has waived his preferred right, applications may be received, entered, and held subject to the rights of the contestant, the same to be disposed of in the order of filing upon the expiration of the period accorded the successful contestant or upon the filing of his waiver of his preferred right.

If a contest is brought against the heirs of a deceased entryman, the affidavit of contest must state the names of all known heirs, and the notice of hearing must be served on each heir. If the person to be served is an infant under 14 years of age, or is of unsound mind, service of notice shall be made by delivering a copy of the notice to the statutory guardian or committee of such infant or person of unsound mind, if there be one, and if there be none, then to the person having such infant or person of unsound mind in charge. (19 L. D. 45.)

It is provided by the amendatory Act of Congress approved July 26, 1892 (27 Stat. L., 270); that should any person who has initiated a contest die before the final termination of the same, said contest shall not abate by reason thereof, but his heirs who are citizens of the United States may continue the prosecution of such contest and be entitled to the same rights that contestant would have been if

his death had not occurred. In any case, when the death of the contestant is suggested upon the record, his heirs who are citizens of the United States will in all subsequent proceedings be treated as parties to the case, provided the death of contestant occurred subsequent to the passage of said act of July 26, 1892.

It is held by the Supreme Court of the United States (Bernier vs. Bernier, 147 U. S. 242), that upon the death of a homesteader who leaves no widow, but both adult and minor heirs, all rights under the entry pass to all the heirs equally and not to the minor heirs exclusively, as formerly held by the department. In case of a contest under such circumstances, therefore, all the heirs must be served with notice of such contest.

Where leave of absence is granted to a homestead entryman, contest for abandonment cannot be brought until six months from the expiration of such leave have elapsed, unless fraud in procuring the leave of absence is charged. (Hiltner vs. Wortler, 18 L. D. 331.)

No homestead, timber-culture, desert land, or preëmption entry can be contested after the lapse of two years from the date when final certificate has issued thereon. (Sec. 7 of act March 3, 1891, 26 Stat. L. 1095.)

When a contest has been closed before the local land officers and their report forwarded to the general land office, no additional evidence will be admitted in the case, unless offered under stipulation of the parties to the record, except where such evidence is presented as the basis of a motion for a new trial or in support of a mineral application or protest (rule 72 of Rules of Practice), and neither arguments, motions, letters containing ex-parte statements relative to the case, nor even appeals can be considered unless they bear evidence of having been duly served upon the adverse party or parties in interest.

When, pending a contest, a relinquishment of his entry is filed by the defendant, the register and receiver should accept the relinquishment as the result of the contest and, cancelling the entry thereupon, give proper notice to the contestant, and proceed, as regards the disposing of the land, as indicated in the above, according to the nature of the case, whether brought under the third section, act of June 14, 1878, with application to enter, or otherwise; but injury may be properly entertained on the allegation that the relinquishment was in fact an independent transaction and not the result of the contest, independent of the time when the relinquishment is filed, being before or after the hearing.

Contests of homestead entries on ground of abandonment can not be brought until after the expiration of six months from date of entry.

## SPECULATIVE AND COLLUSIVE CONTESTS.

No preference right of entry can be acquired through a contest which is shown by the evidence not to have been prosecuted in good faith. (Dayton v. Dayton, 6 L. D. 164.)

According to the well-settled interpretation of the homestead law in this department, residence upon a homestead is not required as a prerequisite to a patent, beyond the period of five years, and it is held that after a patent has



been earned by five years' actual residence and improvement, a homestead entry can not be successfully contested because of a change of residence therefrom within the statutory period for the submission of final proof. (Lawrence v. Phillips, 6 L. D. 140; Davis v. Fairbanks, 9 L. D. 530.)

The period within which final homestead proof may be submitted was extended to eight years from date of entry by the act of July 26, 1894 (28 Stat. L. 123), as to all entries then existing.

## DISQUALIFICATION OF LOCAL OFFICERS.

The Act of Congress of January 11, 1894 (28 Stat. L. 26), enacts as follows, viz.:

That no register or receiver shall receive evidence in, hear, or determine any cause pending in any district land office in which cause he is interested, directly or indirectly, or has been of counsel, or where he is related to any of the parties in interest by consanguinity or affinity within the fourth degree, computing by the rules adopted by the common law.

Sec. 2. That it shall be the duty of every register or receiver so disqualified to report the fact of his disqualification to the commissioner of the general land office as soon as he shall ascertain it, and before the hearing of such cause, who thereupon, with the approval of the Secretary of the Interior, shall designate some other register, receiver, or special agent of the Land Department to act in the place of the disqualified officer, and the same authority is conferred on the officer so designated which such register or receiver would otherwise have possessed to act in such case.

## CONTEST AFFIDAVIT.

### (Form 4.)

..... County of.....

Personally appeared before me .....
of ..... County, State of ....., who upon his oath says that he is well acquainted with the tract of land embraced in the homestead entry of .....
No. ....., made ....., 19.., at U. S. Land Office at ..... upon ..... (Here describe land).....
and knows the present condition of the same; that the said .....(Here insert entryman's name).....
(Here insert grounds of contest).....
and this the said contestant is ready to prove at such time as may be named by the register and receiver for a hearing in said case; and he therefore asks to be allowed to prove said allgations, and that said homestead entry, No..... may be declared cancelled and forfeited to the United States, he, the said contestant, paying the expenses of such hearing, or such portion as may be taxed to him

Subscribed and sworn to before me this.....day of ..... 19....

## CORROBORATING WITNESSES.

Also appeared at the same time and place.....
and .....who, being duly sworn, despose and say that they are acquainted with the tract described in the

within affidavit of .....and know from personal observation that the statemetns therein made are true.

Subscribed and sworn to before me this.....day of ..... 19....

## MISCELLANEOUS PROVISIONS.

### HEIRS OF A HOMESTEAD SETTLER.

Where a homestead settler dies before the consummation of his claim, the widow, or in case her death, the heirs may continue settlement or cultivation, and obtain title upon requisite proof at the proper time. If the widow proves up, the title passes to her: if she dies before proving up and the heirs make the proof, the title will vest in them. Sec. 2291, Rev. Stat.

Where both parents die, leaving infant children, the homestead may be sold for cash for the benefit of such children; and the purchaser will receive title from the United States, or residence or cultivation may continue for the prescribed period, when the patent will issue to the children. (Sec. 2292, Rev. Stat.)

Upon the death of a homesteader who leaves no widow, but both adult and minor heirs, the right to perfect entry passes alike to all the heirs. See Bernier v. Bernier (147 U. S. 242).

A homestead right cannot be devised away from a widow or minor children.

In case of the death of a person after having entered a homestead, the failure of the widow, children, or devisee of the deceased to take up residence on the land within six months after the entry or otherwise to fulfill the demands of the letter of the law as to residence will not necessarily subject the entry to forfeiture on the ground of abandonment. If the land is cultivated in good faith, the law will be considered as having been substantially complied with. (Tauer vs. The Heirs of Walter A. Mann, 4 L. D. 433.)

### HOMESTEAD CLAIMANTS WHO BECOME INSANE.

The rights of a homestead claimant who has become insane may, under act of June 8, 1880, be proved up and his claim perfected by any person duly authorized to act for him during his disability. 21 Stat. L. 166.

Such claim must have been initiated in full compliance with law, by a person who was a citiezn or who had declared his intention of becoming a citizen, and was in other respects duly qualified.

The party for whose benefit the act shall be invoked must have become insane subsequently to the initiation of his claim.

Claimant must have complied with the law up to the time of becoming insane; and proof of compliance will be required to cover only the period prior to such insanity; but the act will not be construed to cure a failure to comply with the law when the failure occurred prior to such insanity.

The final proof must be made by a party whose authority to act for the insane person during his disability shall be duly certified under seal of the proper probate court.



### CLIMATIC HINDRANCES.

The proviso annexed to Section 2297, Revised Statutes, by amendatory act of March 3, 1881 (21 Stat. L. 511), which applies only to homestead settlers, provides that in case such settler has been prevented by climatic reasons from establishing actual residence upon his homestead within six months from date of entry, the commissioner of the general land office may, in his discretion, allow him twelve months from that date in which to commence his residence.

In such case the settler must, on final proof, file with the register and receiver his affidavit, duly corroborated by two credible witnesses, setting forth in detail the storms, floods, blockades by snow or ice, or other hindrances dependent upon climatic causes which rendered it impossible for him to commence residence within six months. A claimant can not be allowed twelve months from entry when it can be shown that he might have established his residence on the land at an earlier day; and a failure to exercise proper diligence in so doing as soon as possible after the climatic hindrances disappear will imperil his entry in case of a contest.

### HOMESTEAD CLAIMS NOT LIABLE FOR A DEBT AND NOT SALABLE.

No lands acquired under the provisions of the homestead laws are liable for the satisfaction of any debt contracted prior to the issue of patent. Sec. 2296, Rev. Stat.

The sale of a homestead claim by the settler to another party before becoming entitled to a patent vests no title or equities in the purchaser as against the United States. In making final proof, the settler is by law required to swear that no part of the land has been alienated except for church, cemetery, or school purposes, or the right of way of railroads, canals, or ditches for irrigation or drainage across it. Sec. 2288, Rev. Stat., as amended by Sec. 3 of the act of March 3, 1891, 26 Stat. L. 1095.

### INDIAN HOMESTEADS.

By the provisions of the Indian appropriation act of July 4, 1884, 23 Stat. L. 96, any Indians who might then be located on public lands, or should thereafter so locate, may avail themselves of the privileges of the homestead laws as fully and to the same extent as citizens of the United States, but without payment of fees or commissions on account of such entries or proofs.

Indian homesteads can not be commuted and are not subject to sale, assignment, lease, or incumbrance. All patents issued for Indian homesteads under this act must 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, as aforesaid, in fee, discharged of

said trust and free from all charge or incumbrance whatsoever.

When any Indian applies to enter land under said act he will be allowed to do so without payment of fees or commissions, but will be required to furnish a certificate from the agent of the tribe to which he belongs that he is an Indian of the age of 21 years, or the head of a family, and not the subject of any foreign country.

### HEIRS, EXECUTORS AND ADMINISTRATORS.

Where application is made by heirs, satisfactory proof of heirship is required. This must be the best evidence that can be obtained, and must show that the parties applying are the heirs and the only heirs of the deceased. Where application is made by executors, a certificate of executorship from the probate court must accompany the application.

Where application is made by administrators, the original or a certified copy of the letters of administration must be furnished.

### CITIZENSHIP AND NATURALIZATION.

23. Parties should in all cases of application to make entry and in final proof state distinctly whether they are native-born or naturalized citizens. If naturalized, evidence of naturalization should be filed with the original entry application. If not naturalized, evidence of declaration of intention should be filed at the time the first entry or application is made.

The certification of naturalization papers or other court records should be received only when made under the hand and seal of the clerk of the court in which such papers appear of record, but where a judicial record is shown to have existed and is now lost or destroyed proof of the same may be made by secondary evidence, in accordance with the rules of evidence governing such proof.

### NATURALIZATION.

Under Section 2289 of the Revised Statutes, any person who is a citizen of the United States, or who has filed his declaration of intention to become such, shall be entitled to enter land under the homestead law. No one, however, can make final proof who has not become a citizen of the United States under our naturalization laws.

Under Section 2172 of the Revised Statutes, it is provided that the children of persons who have been duly naturalized under any law of the United States, being under the age of 21 years at the time of the naturalization of their parents, shall, if dwelling in the United States, be conisdered as citizens thereof. Persons coming under this provision and desiring to make homestead entry should present with their application a copy of their father's naturalization papers, with an affidavit identifying the applicant as the child of the person naturalized. See 8 L. D., p. 60; 11 L. D. 578.

In both of these cases it was held that the naturalization of the father, during the minority of the son, inures to the



benefit of the latter and makes him a citizen and qualified to make homestead entry.

### NECESSARY TIMBER.

Homestead or preëmption claimants who have made bona fide settlements upon public land, and who are living upon, cultivating, and improving the same, in accordance with law and the rules and regulations of this department, with the intention of acquiring title thereof, are permitted to cut and remove, or cause to be cut and removed, from the portion thereof to be cleared for cultivation, so much timber as is actually necessary for that purpose, or for buildings, fences and other improvements on the land entered.

In clearing for cultivation, should there be surplus of timber over what is needed for the purposes above specified, the entryman may sell or dispose of such surplus; but it is not allowable to denude the land of its timber for the purpose of sale or speculation before the title has been conveyed to him by patent.

The abandonment to settlement claim after the timber has been removed is presumptive evidence that the claim was made for the primary purpose of obtaining timber.

Squatters upon public lands have no right to cut timber.

### UNMARRIED WOMEN.

June 6, 1900, Congress passed the following act: "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled: That the third section of the Act of Congress approved May fourteenth, eighteen hundred and eighty, entitled 'An Act for the relief of settlers on the public lands,' be amended by adding thereto the following:

"Where an unmarried woman who has heretofore settled, or may hereafter settle, upon a tract of public land, improved, established and maintained a bona fide residence thereon, with the intention of appropriating the same for a home, subject to the homestead law, and has married, or shall hereafter marry, before making entry of said land, or before making application to enter said land, she shall not on account of her marriage forfeit her right to make entry and receive patent for the land: Provided, That she does not abandon her residence on said land, and is otherwise qualified to make homestead entry: Provided, further, That the man whom she marries is not, at the time of their marriage, claiming a separate tract of land under the homestead law.

"That this act shall be applicable to all unpatented lands claimed by such entrywoman at the date of passage."

## PUBLIC LAND SURVEYS.

The public surveys are made upon the rectangular system, by which the land is laid out like the squares on a checker-board. A line called the BASE-LINE is first run off upon the ground from east to west. At some convenient point a line called a PRINCIPAL MERIDIAN is run at right angles with the base-line. Beginning at the intersection of these two lines, the surveyor lays off other lines called TOWNSHIP LINES, at intervals of six miles,

along the meridian and base-lines and at right angles with them. This divides the land into TOWNSHIPS six miles square.

The township is then divided in a similar manner by running lines at right angles with the township lines, at intervals of one mile. These are called SECTION LINES, and divide each township into SECTIONS one mile square and containing 640 acres. No further subdivisional lines are run by the government surveyors, but a post, called a quarter-section post, is placed on the line, half way between the corners of the sections, and, by connecting these posts, the section is divided into four quarters, called the northeast quarter, the northwest quarter, the southeast quarter, and the southwest quarter, each containing 160 acres.

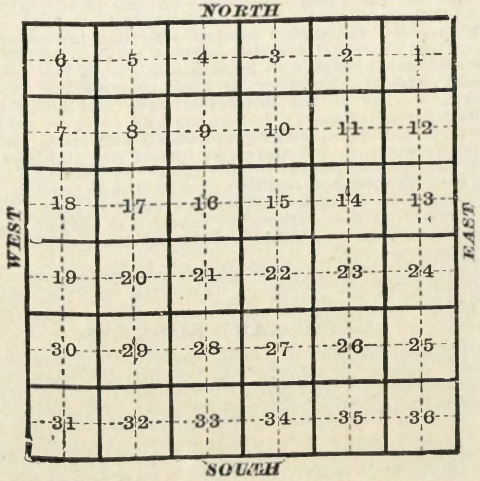
Each quarter may be further divided into four quarters by running lines half way between the quarter-section lines. These smallest subdivisions contain 40 acres each, and are designated as the northeast quarter of the northeast quarter, the northwest quarter of the southeast quarter, etc.

Some variations from the above plan arise through errors in making the survey, but this system is followed as closely as practicable. The deviations are found generally on the north and west sides of townships, where the smallest subdivisions may contain more or less than forty acres.

**TOWNSHIP PLAT.**

*Township* ..... *Range* .....

..... *County* .....






**How to Find Your Land.—**

The following extract from "Copp's Settler's Guide" will explain further the system of surveys:

The sections in each township are numbered, beginning in the northeast corner, from 1 to 36 inclusive, as shown in the township plat on this page. Sections 16 and 36 are called school sections, and, if agricultural, belong to the State, or are reserved in a territory for school purposes. They can only be bought at the State land office, unless they contain minerals or were settled upon prior to survey, when they are sold at the United States Land Office. The sections on the northern and western boundaries of a township are fractional, i. e., they do not contain 640 acres. The small fragments are called lots, and are numbered from one upwards in each section. Frequently sections in the interior are fractional on account of lakes, reservations and other causes.

**How Townships are Numbered.—**

A tier of townships running north and south is called a range, and each range is numbered as it is east or west of the principal meridian. Each township is also numbered as it is north or south of the base-line.

5 N means a fifth township north of the base-line. 2 S means a section township south of the base-line. 5 E means a township in range 5 east of the principal meridian. 2 W means a township in range 2 west of the principal meridian. Hence the township in the extreme northeast corner of the diagram is township 5 north of range 8 east. The principal meridian is named, if otherwise there is a possibility of mistake.

**TOWNSHIP CORNER MARKED BY POST.**

**Establishing Corners by Means of Posts.—**

Township, sectional or mile corners, and quarter-sectional or half-mile corners will be perpetuated by planting a post at the place of the corner, to be formed of the most durable wood of the forest at hand.

The posts must be set in the earth by digging a hole to admit them two feet deep, and must be very securely rammed in with earth, and also with stone, if any be found at hand. The portion of the post which extends above the earth must be squared off sufficiently smooth to admit of receiving the marks thereon, to be made with appropriate marking irons, indicating what it stands for. Thus the sides of township corner posts should square at least four inches (the post itself being five inches in diameter), and must protrude two feet at least above the ground; the sides of section corner posts must be square at least three inches (the post itself being four inches in diameter), and

protrude two feet from the ground; and the quarter-section corner posts and meander corner posts must be three inches wide, presenting flattened surfaces and protruding two feet from the ground.

**How to Tell Corners.—**

The following is from the Manual of Instructions on Public Surveys:

Where a township post is a corner common to four townships, it is to be set in the earth diagonally.

On each surface of the post is to be marked the number of the particular township and its range, which it faces. Thus, if the post be a common boundary to four townships, say one and two, south of the base-line, of range one, west of the meridian; also, to township one and two, south of the base-line, of range two, west of the meridian, it is to be marked thus:

| | | | |
|---|---|---|---|
| From N. to E. | R. 1W.<br>T. 1S.<br>S. 31. | From E. to S. | 1W.<br>2S.<br>6. |
| From N to W. | 2W.<br>1S.<br>36. | From W. to S. | 2W.<br>2S.<br>1. |

These marks are not only to be distinctly but neatly cut into the wood, at least the eighth of an inch deep; and to make them yet more conspicuous to the eye of the anxious explorer, the deputy must apply to all of them a streak of red chalk.

Section or mile posts, being corners of sections, and where such are common to four sections, are to be set diagonally in the earth (in the manner provided for township corner posts), and on each side of the squared surfaces (made smooth, as aforesaid, to receive the marks) is to be marked the appropriate number of the particular one of the four sections, respectively, which such side faces; also, on one side thereof are to be marked the numbers of its township and range; and to make such marks yet more conspicuous in manner aforesaid, a streak of red chalk is to be applied.

Opposite is represented a corner mound common to two townships or two sections only.

In every township, subdivided into thirty-six sections, there are twenty-five interior section corners, each of which will be common to four sections.

A quarter-section or half-mile post is to have no other mark on it than ¼ S., to indicate what it stands for.

**QUARTER-SECTION CORNER.**

Marked by post, mound and pits.

**Notching Corner Posts.—**

Township corner posts, common to four townships, are to be notched with six notches on each of the four angles of the squared part set to the cardinal points.

All mile posts on township lines must have as many notches on them, on two opposite angles thereof, as they are miles distant from the township corners, respectively. Each of the posts at the corners of sections in the interior of the township must indicate by a number of notches on each of the four corners, directed to the cardinal points, the corresponding number of miles that it stands from the outlines of the township, but only on two edges in surveys made since 1864. The four sides of the post will indicate the number of the section they respectively face.

Should a tree be found at the place of any corner, it will be marked and notched as aforesaid, and answer for the corner, in lieu of a post; the kind of tree and its diameter being given in the field-notes.

**SECTION CORNERS.**

Marked by post, mound and pits.

**Bearing Trees.—**

The position of all corner posts, or corner trees of whatever description that may be established, is to be evidenced in the following manner, viz.: From such post or tree the course must be taken and the distance measured to two or more adjacent trees, in opposite directions, as nearly as may be, and these are called "bearing trees." Such are to be distinguished by a large smooth blaze, with a notch at its lower end facing the corner, and in the blaze is to be marked the number of the range, township, and section; but at quarter-section corners nothing but ¼ S. need be marked. The letters B. T. (bearing trees) are also to be marked upon a smaller blaze, directly under the large one, and as near the ground as practicable.

At all township corners, and at all section corners, on range or township lines, four bearing trees are to be marked in this manner, one in each of the adjoining sections.

At interior section corners four trees, one to stand within each of the four sections to which such corner is common, are to be marked in manner aforesaid, if such be found.

A tree supplying the place of a corner post is marked in the manner directed for posts, but if such tree should be a beech or other smooth bark tree, the marks may be made on the bark and the tree not notched.

From quarter-sections and meander corners two bearing trees are to be marked, one within each of the adjoining sections.

**Corner Stones.—**

Where it is deemed best to use stones for boundaries in lieu of posts surveyors may at any corner insert endwise into the ground, to the depth of 7 or 8 inches, a stone, the number of cubic inches in which shall not be less than the number contained in a stone fourteen inches long, twelve inches wide and three inches thick—equal to 504 cubic inches—the edges of which must be set north and south, on north and south lines, and east and west, on east and west lines; the dimensions of each stone to be given in the field notes at the time of establishing the corner. The kind of stone should also be stated.

**SECTION CORNER MARKED BY STONE, MOUND AND PITS.**

**Marking Corner Stones.—**

Stones at township corners, common to four townships, must have six notches, cut with a pick or chisel on each edge or side toward the cardinal points; and where used as section corners on the range and township lines, or as section corners in the interior of a township, they will also be notched to correspond with the directions given for notching posts similarly situated.

Posts or stones at township corners on the base and standard lines, and which are common to two townships on the north side thereof, will have six notches on each of the west, north, and east sides or edges; and where such stones or posts are set for corners to two townships south of the base or standard, six notches will be cut on each of the west, south and east sides or edges.

Stones when used for quarter-section corners will have ¼ cut on them—on the west side on north and south lines, and on the north side on east and west lines.

**Mounds.—**

Whenever bearing trees are not found, mounds of earth, or stone, are to be raised around posts on which the corners are to be marked in the manner aforesaid. Wherever a mound of earth is adopted the same will present a conical shape.

Prior to piling up the earth to construct a mound, there is to be dug a spadeful or two of earth from the corner boundary point, and in the cavity so formed is to be deposited a marked stone, or a portion of charcoal (the quantity whereof is to be noted in the field-book); or in lieu of charcoal or marked stone, a charred stake is to be driven twelve inches down into such center-point; either of these



will be a witness for the future, and whichever is adopted, the fact is to be noted in the field-book.

When mounds are formed of earth, the spot from which the earth is taken is called the "pit," the center of which ought to be, wherever practicable, at a uniform distance and in a uniform direction from the center of the mound. There is to be a "pit" on each side of every mound.

At meander corners (1) the "pit" is to be directly on the line, eight links further from the water than the mound. Wherever necessity is found for deviating from these rules in respect to the "pits," the course and distance to each is to be stated in the field-books.

Perpetuity in the mound is a great desideratum. In forming it with light, alluvial soil, the surveyor may find it necessary to make due allowance for the future settling of the earth, and thus making the mound more elevated than would be necessary in a more compact and tenacious soil, and increasing the base of it. In so doing the relative proportions between the township mound and other mounds are to be preserved as nearly as may be.

The earth is to be pressed down with the shovel during the process of piling it up. Mounds are to be covered with sod, grass side up, where sod is to be had; but, in forming the mound, sod is never to be wrought up with the earth, because sod decays, and in the process of decomposing it will cause the mound to become porous, and therefore liable to premature destruction.

**QUARTER-SECTION CORNER MARKED BY STONE, MOUND AND PITS.**


**Posts in Mounds.—**

Must show above the top of the mound ten or twelve inches, and be notched and marked precisely as they would be for the same corner without the mound.

**Witness Mounds to Township or Section Corners.—**

If a township or section corner, in a situation where bearing or witness trees are not found within a reasonable distance therefrom, shall fall within a ravine, or in any other situation where the nature of the ground, or the circumstances of its locality, shall be such as may prevent or prove unfavorable to the erection of a mound, you will perpetuate such corner by selecting, in the immediate vicinity thereof, a suitable plot of ground as a site for a bearing or witness mound, and erect thereon a mound of earth in the same manner and conditioned in every respect, with charcoal, stone, or charred stake, deposited beneath, as before directed; and measure and state in your field-book the distance and course from the position of the corner-

stone of the bearing or witness mound so placed and erected.

**Double Corners.—**

Double corners are to be nowhere except on the base or standard lines, whereon are to appear both the corners which mark the intersections of the lines which close thereon, and those from which the surveys start on the north. On these lines, and at the time of running the same, the township, section and quarter-section corners are to be planted, and each of these is a corner common to two (whether township or section corners), on the north side of the line, and must be so marked.

The corners which are established on the standard parallel, at the time of running it, are to be known as "standard corners," and, in addition to all the ordinary marks (as herein described), they will be marked with the letters S. C. Closing corners will be marked with the letters C. C. in addition to the marks.

You will recollect that the corners (whether section or township corners) are not to be planted diagonally, like those which are common to four, but with the flat sides facing the cardinal points, and on which the notches and marks are made as usual. This, it will be perceived, will serve yet more fully to distinguish the standard parallel from other lines.

## INSTRUCTIONS FOR SURVEYS MADE SINCE JUNE 1, 1864.

By instructions to surveyors-general, dated June 1, 1864, the Surveying Manual was modified in the following particulars:

**Posts in Mounds.—**

All posts in mounds will hereafter be planted or driven into the ground to a depth of twelve inches, at the precise corner point; and the charcoal, charred stake, or marked stone required in the "Manual" will be deposited twelve inches below the surface, against the north side of the post when the deputy is running north, and against the west side when the deputy is running west, etc.

Township mounds will be five feet in diameter at their base, and two and a half feet in perpendicular height. Posts in township mounds are therefore required to be four and a half feet in length, so as to allow twelve inches to project above the mound.

Mounds at section, quarter-section and meander corners will be four and a half feet in diameter at their base, and two feet in perpendicular height, the posts being four feet in length, leaving twelve inches to project above the mound.

Pits should be of uniform dimensions. The pits for a township mound will be eighteen inches wide, two feet in length, and at least twelve inches deep, located six feet from the posts. At section corners the pits will be eighteen inches square, and not less than twelve inches in depth.

At township corners common to four townships, the pits will be dug on the lines and lengthwise to them. On base and standard lines, where the corners are common to only two townships or quarter sections, three pits only will be dug—two in line on either side of the post, and one on the line north or south of the corner, as the case may be. By



this means the standard and closing corners will be readily distinguished from each other.

**Notching Corner Section Posts.—**

Posts or stones at the corners of sections in the interior of townships will have as many notches on the south and east edges as they are miles from the south and east boundaries of the township instead of being notched on all four edges, as directed in the "Manual."

**Regions Remote from Timber and Stone.—**

By circular of July 24, 1873, surveys of such lands are marked thus: In addition to the manner of establishing corners of public surveys by mounds of earth with deposits at the point of the corner, deputy surveyors are required to drive in the center of one of the pits at each section and township corner sawed or hewed stakes not less than two inches square and two feet in length; said stakes to be marked in the manner heretofore prescribed for making corner posts, and to be driven one foot in the ground. At corners common to four townships, the stakes are to be driven in the pits east of the mound, and at corners common to four sections the stakes are to be driven in the pit southeast of the mound, and at corners common to two townships or sections they are to be driven in the pit east of the corner. This requirement does not apply to quarter-section corners.

**CORNERS IN REGIONS REMOTE FROM TIMBER AND STONE.**

**Bearing Trees.—**

Where a tree not less than two and a half inches in diameter can be found for a bearing tree within three hundred links of the corner, it should be preferred to the pit.

**Meandering Navigable Streams.—**

Standing with the face looking down stream, the bank on the left hand is termed the "left bank," and that on the right hand the "right bank." These terms are used to distinguish the two banks of a river or stream.

Both banks of navigable rivers are meandered by taking the courses and distances of their windings. At those points where either the township or section lines intersect the banks of a navigable stream, posts, or, where necessary, mounds of earth or stone, are established, called "meander corners."

**ILLUSTRATION.**

Suppose the settler finds a section corner marked by either a post or stone as shown above. What are the numbers of the adjoining land? By examining the east corner

of the post you will see notches. Every notch represents one mile from the east line of the township. This post has three notches, and by turning to the township plat you will see that it would be on the line running north and south between sections 33 and 34. As there are four notches on the south side you count up the line between 33 and 34 for four miles, you would then have the exact location of this post in the township, at the corner between sections 9, 10, 15 and 16. You could locate on either of these except 16, which is school land.

## ACT MAY 14, 1880.

**Relinquishment.—**

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled: That when a preëmption, homestead, or timber-culture claimant shall file a written relinquishment of his claim in the local land office, the land covered by such claim shall be held as open to settlement and entry, without further action on the part of the commissioner of the general land office.

**Preference Right.—**

Section 2. In all cases where any person has contested, paid the land office fees, and procured the cancellation of any preëmption, 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: Provided, That said register shall be entitled to a fee of one dollar for the giving of such notice, to be paid by the contestant, and not to be reported.

**Heirs.—**

By act approved July 26, 1892, Section 2 of the Act of May 14, 1880, was amended by adding the following proviso, to-wit:

Provided further, That should any such person who has initiated a contest die before the final determination of the same, said contest shall not abate by reason thereof, but his heirs who are citizens of the United States may continue the prosecution under such rules and regulations as the Secretary of the Interior may prescribe, and said heirs shall be entitled to the same rights under this act that contestant would have had if death had not occurred.

Section 3 of this act has been quoted heretofore under the head of Settlement.

## ACT AUGUST 30, 1890.

By act of above date one cannot acquire title to more than 320 acres, under all of the public land laws. The following is the clause of the statute applicable:

"No person who shall, after the passage of this act, enter upon any of the public lands with a view to occupation, 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 or the public lands, or whose occupation, entry, or settlemen 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." (Gen. Cir. 1892, page 71.)

## ACT MARCH 3, 1891.

Congress passed an important act the above date, relating to the public domain, amending various provisions of the land laws. The important amendments to the homestead law have been quoted in the first part of this work. We give below only a synopsis, as we have heretofore quoted all these acts so far as they apply to Oklahoma lands:

Section 1 of said act repeals the Timber-Culture, but preserves existing rights and provides that parties who have in good faith tried to comply with the Timber-Culture law, and who are resident of the State or Territory where land is situated, may commute said entries by paying $1.25 per acre.

Section 2 provides modification of the desert land act, providing fully for actual reclamation of the land entered, and preventing speculative accumulation of the land, with a saving of all rights under existing entries.

Section 3 enlarges Section 2288, Revised Statutes, by including reservoirs or ditches for irrigating purposes.

Section 4 repeals the preëmption laws, with a modification of the homestead law, and with provisions more strict as to proofs at entry and all final proofs, extending the commutation from six to fourteen months.

Sections 7 and 8 provide details as to final action in the Interior Department on final entries, and provide limitations as to contests, and suits to cancel patents, fixing the latter at five years as to patents now issued and six years as to future ones, and provisions as to timber trespasses.

Section 9 prohibits offering of public lands at public sale hereafter, thus preventing private or cash entries.

Sections 10 to 17 relate to lands in Alaska, for their acquisition for manufacturing and commercial purposes and for town sites.

Section 17 allows mineral entries, in addition to the maximum allowance of 320 acres allowed by existing law.

Sections 18, 19, 20 and 21 relate to ditches and reservoirs, and providing for their construction.

Section 23 cures defects in the titles of settlers on certain former Indian lands caused by different rulings of the Department of the Interior.

Section 24 authorizes the President to set apart trust reserves, where to preserve timber he shall deem it advisable.

## IOWA AND SAC AND FOX LANDS.

Act to Ratify and Confirm Agreements with Sac and Fox Nation and Iowa Tribe of Indians. Approved February 13, 1891.

Sec. 7. That whenever any of the lands acquired by the agreements of this act ratified and confirmed, shall by

operation of law or proclamation of the President of the United States be open to settlement, they shall be disposed of to actual settlers only, under the provisions of the homestead laws, except Section twenty-three hundred and one (2301), which shall not apply. Provided, however, that each settler under and in accordance with the provisions of said homestead laws, shall, before receiving a patent for his homestead, pay to the United States for the land so taken by him, in addition to the fees provided by law, the sum of one dollar and twenty-five cents for each acre thereof, and such person, having complied with all the laws relating to such homestead settlement, may at his option receive a patent therefor at the expiration of twelve months from the date of settlement upon said homestead, and any person otherwise qualified who has attempted to, but for any cause failed to secure a title in fee to a homestead under existing law, or who made entry under what is known as the commuted provision of the homestead law, shall be qualified to make a homestead entry upon any of said lands.

## OKLAHOMA PROPER.

Act of March 2, 1889, entitled "An act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes for the year ending June 30, 1890, and for other purposes."

**Oklahoma Proper.—**

What is known as Oklahoma proper, being the lands opened to settlement at noon, April 22, 1889, was opened under the sections hereinafter quoted. Section 13 of said act, by Act of March 3, 1893, is made applicable to the Cherokee Outlet. The sections are as follows:

Section 13. That the lands acquired by the United States under said agreement shall be a part of the public domain, to be disposed of only as herein provided, and sections sixteen and thirty-six of each township, whether surveyed or unsurveyed, are hereby reserved for the use and benefit of the public schools to be established within the limits of said lands under such conditions and regulations as may be hereafter enacted by Congress.

That the lands acquired by conveyance from the Seminole Indians hereunder, except the sixteenth and thirty-sixth sections, shall be disposed of to actual settlers under the homestead laws only, except as herein otherwise provided (except that Section two thousand three hundred and one of the Revised Statutes shall not apply): And provided further, That any person who having attempted to, but for any cause failed, to secure a title in fee to a homestead under existing laws, or who made entry under what is known as the commuted provision of the homestead laws, shall be qualified to make a homestead entry upon said lands: And provided further, That the rights of honorably discharged Union soldiers and sailors in the late Civil War as defined and described in Sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes shall not be abridged: And provided further, That each entry shall be in square form as nearly as practicable, and no person be permitted to



enter more than one quarter-section thereof, but until said lands are opened for settlement by proclamation of the President, no person shall be permitted to enter upon and occupy the same, and no person violating this provision shall ever be permitted to enter any of said lands or acquire any right thereto.

The Secretary of the Interior may, after said proclamation and not before, permit entry of said lands for townsites, under Sections twenty-three hundred and eighty-seven and twenty-three hundred and eighty-eight of the Revised Statutes, but no such entry shall embrace more than one-half section of land.

That all the foregoing provisions with reference to lands to be acquired from the Seminole Indians, including the provisions pertaining to forfeiture, shall apply to and regulate the disposal of the lands acquired from the Muskogee or Creek Indians by articles of cession and agreement made and concluded at the city of Washington on the nineteenth day of January, in the year of our Lord eighteen hundred and eighty-nine.

Section 14. The President is hereby authorized to appoint three commissioners, not more than two of whom shall be members of the same political party, to negotiate with the Cherokee Indians and with all other Indians owning or claiming lands lying west of the ninety-sixth degree of longitude in the Indian Territory, for the cession to the United States of all their title, claim or interest of every kind or character in and to said lands, and any and all agreements resulting from such negotiations shall be reported to the President and by him to Congress at the next session, and to the council or councils of the nation or nations, tribe or tribes, agreeing to the same for ratification, and for this purpose the sum of twenty-five thousand dollars, or as much thereof as may be necessary, is hereby appropriated, to be immediately available. Provided, That said commission is further authorized to submit to the Cherokee Nation the proposition that said nation shall cede to the United States in the manner and with the effect aforesaid, all the rights of said nation in said lands upon the same terms as to payment as is provided in the agreement made with the Creek Indians of date of January nineteenth, eighteen hundred and eighty-nine, and ratified by the present Congress, and if said Cherokee Nation shall accept, and by act of its legislative authority duly passed, ratify the same, the said lands shall thereupon become a part of the public domain for the purpose of such disposition as is herein provided, and the President is authorized, as soon thereafter as he may deem advisable, by proclamation to open said lands to settlement in the same manner and to the same effect as in this act provided concerning the lands acquired from said Creek Indians; but until said lands are opened for settlement by proclamation of the President, no person shall be permitted to enter upon and occupy the same, and no person violating this provision shall be permitted to enter any of said lands or acquire any right thereto.

**President's Proclamation.—**

Under Section 13 of this act, the President by proclamation dated March 23, 1889, declared the lands, known as

Oklahoma proper, opened to settlement and entry at noon, April 22, 1889.

**The "Sooner" Clause.—**

The President closed his proclamation in the following language:

"Warning is hereby again expressly given that no person entering upon and occupying said lands before said hour of twelve o'clock, noon, of the twenty-second day of April, A. D. eighteen hundred and eighty-nine, hereinbefore fixed, will ever be permitted to enter any of said lands or acquire any rights thereto, and that the officers of the United States will be required to strictly enforce the provision of the Act of Congress to the above effect."

## OKLAHOMA ORGANIC ACT.

(The Part Relating to Lands and Townsites.)

AN ACT to provide a temporary government for the Territory of Oklahoma, to enlarge the jurisdiction of the United States Court in the Indian Territory, and for other purposes. (Approved May 2, 1890.)

(This act is applicable to the Cherokee Outlet.)

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

* * * * * * * * * * * *

**School Lands.—**

Sec. 18. That sections numbered sixteen and thirty-six in each township in said Territory shall be, and the same are hereby reserved for the purpose of being applied to the public schools of the State or States hereafter to be erected out of the same. In all cases where sections sixteen and thirty-six, or either of them, are occupied by actual settlers prior to survey thereof, the county commissioners of the counties in which such sections are so occupied are authorized to locate other lands to an equal amount, in sections or fractional sections, as the case may be, within their respective counties, in lieu of the sections so occupied.

**Public Land Strip.—**

All the lands embraced in that portion of the Territory of Oklahoma known as the Public Land Strip shall be open to settlement under the provisions of the homestead laws of the United States, except Section twenty-three hundred and one of the Revised Statutes, which shall not apply; but all actual and bona fide settlers upon and occupants of the lands in said Public Land Strip at the time of the passage of this act shall be entitled to have preference to and hold the lands upon which they have settled under the homestead laws of the United States, by virtue of their settlement and occupancy of said lands, and they shall be credited with the time they have actually occupied their homesteads, respectively, not exceeding two years, on the time required under said laws to perfect title as homestead settlers.

The lands within said Territory of Oklahoma, acquired by cession of the Muskogee (or Creek) Nation of Indians, confirmed by Act of Congress, approved March first, eighteen hundred and eighty-nine, and also the land acquired



in pursuance of an agreement with the Seminole Nation of Indians, by release and conveyance, dated March sixteenth, eighteen hundred and eighty-nine, which may hereafter be open to settlement, shall be disposed of under the provisions of Sections twelve, thirteen and fourteen of the "Act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes for the year ending June thirtieth, eighteen hundred and ninety, and for other purposes," approved March second, eighteen hundred and eighty-nine, and under Section two of an "Act to ratify and confirm an agreement with the Muskogee (or Creek) Nation of Indians in the Indian Territory, and for other purposes," approved March first, eighteen hundred and eighty-nine: Provided, however, That each settler under and in accordance with the provisions of said acts shall, before receiving a patent for his homestead on the land hereafter opened to settlement as aforesaid, pay to the United States for the land so taken by him, in addition to the fee provided by law, the sum of one dollar and twenty-five cents per acre.

Whenever any of the other lands within the Territory of Oklahoma, now occupied by any Indian tribe, shall, by operation of law or proclamation of the President of the United States, be open to settlement, they shall be disposed of to actual settlers only, under the provisions of the homestead law, except Section twenty-three hundred and one of the Revised Statutes of the United States, which shall not apply: Provided, however, That each settler, under and in accordance with the provisions of said homestead law, shall before receiving a patent for his homestead pay to the United States for the land so taken by him, in addition to the fees provided by law, a sum per acre equal to the amount which has been or may be paid by the United States to obtain a relinquishment of the Indian title or interest therein, but in no case shall such payment be less than one dollar and twenty-five cents per acre. The rights of honorably discharged soldiers and sailors in the late Civil War, as defined and described in Sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes of the United States, shall not be abridged except as to such payment All tracts of land in Oklahoma Territory, which have been set apart for school purposes, to educational societies, or missionary boards at work among the Indians, shall not be opened for settlement, but are hereby granted to the respective educational societies or missionary boards for whose use the same has been set apart. No part of the land embraced within the Territory hereby created shall inure to the use and benefit of any railroad corporation, except the rights of way and land for stations heretofore granted to certain railroad corporations. Nor shall any provision of this act or any act of any officer of the United States, done or performed under the provision of this act or otherwise, invest any corporation owning or operating any railroad in the Indian Territory, or territory created by this act, with any land or right to any land in either of said territories, and this act shall not apply to or affect any land, which, upon any condition on becoming a part

of the public domain, would inure to the benefit of, or become the property of, any railroad corporation.

**Land Office—Public Land Strip.—**

Sec. 19. That portion of the Territory of Oklahoma heretofore known as the Public Land Strip is hereby declared a public land district, and the President of the United States is hereby empowered to locate a land office in said district, at such a place as he shall select, and to appoint in conformity with existing law a register and receiver of said land office. He may also, whenever he shall deem it necessary, establish another additional land district within said Territory, locate a land office therein, and in like manner appoint a register and receiver thereof. And the commissioner of the General Land Office shall, when directed by the President, cause the lands within the territory to be properly surveyed and subdivided where the same has not already been done.

**Land Office Procedure.—**

Sec. 20. That the procedure in applications, entries, contests, adjudications in the Territory of Oklahoma shall be in form and manner prescribed under the homestead laws, except as modified by the provisions of this act, and the acts of Congress approved March first and second, eighteen hundred and eighty-nine, heretofore mentioned, shall be applicable to all entries made in said Territory, but no patent shall be issued to any person who is not a citizen of the United States at the time of making final proof.

All persons who shall settle on land in said Territory, under the provisions of the homestead laws of the United States, and of this act, shall be required to select the same in square form as nearly as may be; and no person who shall at the time be seized in fee simple of a hundred and sixty acres of land in any State or Territory shall hereafter be entitled to enter land in said Territory of Oklahoma. The provisions of Sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes of the United States shall, except so far as modified by this act, apply to all homestead settlements in said Territory.

**Commutation.—**

Sec. 21. That any person entitled by law to take a homestead in said Territory of Oklahoma, who has already located and filed upon or shall hereafter locate and file upon a homestead within the limits described in the President's proclamation of April first, eighteen hundred and eighty-nine, and under and in pursuance of the laws applicable to the settlement of the lands opened for settlement by such proclamation, and who has complied with all the laws relating to such homestead settlement, may receive patent therefor at the expiration of twelve months from date of locating upon said homestead upon payment to the United States of one dollar and twenty-five cents per acre for land embraced in such homestead.

Section 22 is quoted under the head of Townsites.

**Public Highways.—**

Sec. 23. That there shall be reserved public highways four rods wide between each section of land in said Territory, the section lines being the center of said highways; but no deduction shall be made, where cash payments are



provided for, in the amount to be paid for each quarter-section of land by reason of such reservation. But if the said highway shall be vacated by any competent authority, the title to the respective strips shall inure to the then owner of the tract of which it formed a part by the original survey.

**Crime.—**

Sec. 24. That it shall be unlawful for any person, for himself or any company, association or corporation, to directly or indirectly procure any person to settle upon any lands opened to settlement in the Territory of Oklahoma, with intent thereafter of acquiring title thereto; and any title thus acquired shall be void; and the parties to such fraudulent settlement shall severally be guilty of a misdemeanor, and shall be punished upon indictment, by imprisonment not exceeding twelve months, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment, in the discretion of the court.

Section 25 refers to Greer County and is quoted elsewhere in this book.

## POTTAWATOMIE AND CHEYENNE AND ARAPAHOE LANDS.

(Approved March 3, 1891.)

Below are given Sections 16, 17 and 18 of Act of March 3, 1891, entitled "An Act making appropriations for the current expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes, for the year ending June 30, 1892, and for other purposes." By referring to Cherokee Outlet bill it will be seen that the second proviso of Section 17 (relating to probate courts and judges thereof and townsite matters) and all of Section 18 (relating to school lands) are put in force as to Cherokee Outlet. The sections are as follows:

Sec. 16. That whenever any of the lands acquired by either of the three foregoing agreements respecting lands in the Indian or Oklahoma Territory, shall by operation of law or proclamation of the President of the United States be opened to settlement, they shall be disposed of to actual settlers only, under the provisions of the homestead and townsite laws (except Section twenty-three hundred and one of the Revised Statutes of the United States, which shall not apply): Provided, however, That each settler on said lands shall, before making a final proof and receiving a certificate of entry, pay to the United States for the land so taken by him, in addition to the fees provided by law, and within five years from the date of the first original entry, the sum of one dollar and fifty cents per acre, one-half of which shall be paid within two years: But the rights of honorably discharged Union soldiers and sailors, as defined in Sections twenty-three hundred and four (2304) and twenty-three hundred and five (2305) of the Revised Statutes of the United States, shall not be abridged except as to the sum to be paid as aforesaid, and all the lands in Oklahoma are hereby declared to be agricultural lands and proof of their non-mineral character shall not be required as a condition precedent to final entry.

Section 17 of the above act, referring to county lines, county seats, townsites and jurisdiction of probate judges, is quoted elsewhere in this volume under the head of Townsites.

Sec. 18. That the school lands reserved in the Territory of Oklahoma by this and former acts of Congress may be leased for a period of not exceeding three years for the benefit of the school fund of said Territory by the governor thereof, under regulations to be prescribed by the Secretary of the Interior.

## CHEROKEE OUTLET.

The act providing for the opening of the Cherokee Outlet was approved March 3, 1893. The important provisions of said act are as follows:

The President of the United States is hereby authorized, at any time within six months after the approval of this act and the acceptance of the same by the Cherokee Nation as herein provided, by proclamation, to open to settlement any or all of the lands not allotted or reserved, in the manner provided in Section thirteen of the act of Congress approved March second, eighteen hundred and eighty-nine, entitled "An act making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes, for the year ending June thirtieth, eighteen hundred and ninety, and for other purposes" (see page 120); and also subject to the provisions of the act of Congress approved May second, eighteen hundred and ninety, entitled "An act to provide a temporary government for the Territory of Oklahoma to enlarge the jurisdiction of the United States Court in the Indian Territory, and for other purposes" (see page 122); also, subject to the second proviso of Section seventeen, the whole of Section eighteen of the act of March third, eighteen hundred and ninety-one, entitled "An act making appropriations for the current expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes, for the year ending June thirtieth, eighteen hundred and ninety-two, and for other purposes" (see page 127); except as to so much of said acts and sections as may conflict with the provisions of this act. Each settler on the lands so to be opened to settlement as aforesaid shall, before receiving a patent for his homestead, pay to the United States for the lands so taken by him, in addition to the fees provided by law, the sum of two dollars and fifty cents per acre for any land east of ninety-seven and one-half degrees west longitude, the sum of one dollar and a half per acre for any land between ninety-seven and one-half degrees west longitude and ninety-eight and one-half degree west longitude, and the sum of one dollar per acre for any land west of ninety-eight and one-half degrees west longitude, and shall also pay interest upon the amount so to be paid for said land from the date of entry to the date of final payment therefor at the rate of four per centum per annum.

No person shall be permitted to occupy or enter upon any of the lands herein referred to, except in the manner prescribed by the proclamation of the President opening



the same to settlement; and any person otherwise occupying or entering upon any of said lands shall forfeit all right to acquire any of said lands. The Secretary of the Interior shall, under the direction of the President, prescribe rules and regulations, not inconsistent with this act, for the occupation and settlement of said lands, to be incorporated in the proclamation of the President, which shall be issued at least twenty days before the time fixed for the opening of said lands.

The allotments provided for in the fifth section of said agreement shall be made without delay by the persons entitled thereto, and shall be confirmed by the Secretary of the Interior before the date when said lands shall be declared open to settlement; and the allotments so made shall be published by the Secretary of the Interior, for the protection of proposed settlers. And a sum equal to one dollar and forty cents per acre for the lands so allotted shall be deducted from the full amount of the deferred payments, hereby appropriated for: Provided, That D. W. Bushyhead, having made permanent or valuable improvements prior to the first day of November, eighteen hundred and ninety-one, on the lands ceded by the said agreement, he shall be authorized to select a quarter-section of the lands ceded thereby, whether reserved or otherwise, prior to the opening of said lands to public settlement; but he shall be required to pay for such selection, at the same rate per acre as other settlers, into the treasury of the United States in such manner as the Secretary of the Interior shall direct.

The President of the United States may establish, in his discretion, one or more land offices, to be located either in the lands to be opened, or at some convenient place or places in the adjoining or organized Territory of Oklahoma; and to nominate, and by and with the consent of the Senate to appoint, registers and receivers thereof.

The sum of five thousand dollars, or so much thereof as may be necessary, the same to be immediately available, is hereby appropriated, out of any money in the treasury not otherwise appropriated, to pay for the services of the appraisers to be appointed as aforesaid, at a rate not exceeding ten dollars a day for the time actually employed by each appraiser, and their reasonable expenses, and to enable the Commissioner of Indian Affairs, under the direction of the Secretary of the Interior, to effect the removal of intruders required by the first paragraph of article two of said agreement as amended.

The sum of five thousand dollars, or so much thereof as may be necessary, the same to be immediately available, is hereby appropriated, out of any money in the treasury not otherwise appropriated, to enable the Commissioner of Indian Affairs, under the direction of the Secretary of the Interior, to employ such expert person or persons to properly render a complete account to the Cherokee Nation of moneys due said nation, as required in the fourth subdivision of article two of said agreement.

### TONKAWA AND PAWNEE LANDS.

Sec. 13. That the lands acquired by the agreements specified in the two preceding sections are hereby declared

to be a part of the public domain. Section sixteen and thirty-six in each township, whether surveyed or unsurveyed, are hereby reserved from settlement for the use and benefit of public schools, as provided in Section ten relating to lands acquired from the Cherokee Nation of Indians. And the land so acquired by the agreements specified in the two preceding sections not so reserved shall be opened to settlement by proclamation of the President at the same time and in the manner, and subject to the same conditions and regulations provided in Section ten relating to the opening of the lands acquired from the Cherokee Nation of Indians. And each settler on the lands so to be opened as aforesaid shall, before receiving a patent for his homestead, pay to the United States for the lands so taken by him, in addition to the fees provided by law, the sum of two dollars and fifty cents per acre; and shall also pay interest upon the amount so to be paid for said land from the date of entry to the date of final payment at the rate of four per centum per annum.

Sec. 14. Before any of the aforesaid lands are open to settlement it shall be the duty of the Secretary of the Interior to divide the same into counties, which shall contain as near as possible not less than five hundred square miles in each county. In establishing said county lines the Secretary is hereby authorized to extend the lines of the counties already located so as to make the area of said counties equal, as near as may be, to the area of the counties provided for in this act: Provided, That range one west and ranges one, two, three, and four east, in township twenty, shall be attached to and become a part of Payne County. At the first election for county officers the people of each county may vote for a name for each county, and the name which receives the greatest number of votes shall be the name of such county: Provided, further, That as soon as the county lines are designated by the secretary he shall reserve not to exceed one-half section of land in each county, to be located for county seat purposes, to be entered under Sections twenty-three hundred and eighty-seven and twenty-three hundred and eighty-eight of the Revised Statues, and all reservations for county seats shall be specified in any order or proclamation which the President shall make for the opening of the lands to settlement.

## KICKAPOO LANDS.

An Act to ratify and confirm an agreement with the Kickapoo Indians in Oklahoma Territory, and to make appropriations for carrying the same into effect.

Be it Enacted by the Senate and House of Representatives of the United States of America in Congress assembled: That said agreement be, and the same hereby is, accepted, ratified, and confirmed.

"That for the purpose of carrying into effect the provisions of the foregoing agreement there is hereby appropriated out of any moneys in the Treasury of the United States not otherise appropriated the sum of sixty-four thousand six hundred and fifty dollars. And after first paying to John T. Hill the sum of five thousand one hundred and seventy-two dollars for services rendered said Kickapoo Indians and in discharge of a written contract made with said Indians and recommended by the Secretary of the Interior, the remainder to be expended for the use of said Indians as stipulated in said contract: Provided, That should said Indians elect to leave any portion of said remaining balance in the treasury, the amount so left shall bear interest at the rate of five per cent per annum." Provided, That none of the money or interest thereon, which is by the terms of said agreement to be paid to said Indians, shall be applied to the payment of any judgment that has been or may hereafter be rendered under the provisions of the Act of Congress approved March third, eighteen hundred and ninety-one, entitled "An act to provide for the adjudication and payment of claims arising from Indian depredations."

Sec. 2. That for the purpose of making the allotments and payments provided for in said agreement, including the preparation of a complete roll of said Indians, the pay and expenses of a special agent, if the President thinks it necessary to appoint one for the purpose, and the necessary surveys or resurveys, there be, and hereby is, appropriated, out of any moneys in the treasury not otherwise appropriated, the sum of five thousand dollars, or so much thereof as may be necessary.

Sec. 3. That whenever any of the lands acquired by this agreement shall, by operation of law or proclamation of the President of the United States, be opened to settlement or entry, they shall be disposed of (except sections sixteen and thirty-six in each township thereof), to actual settlers only, under the provisions of the homestead and townsite laws (except Section twenty-three hundred and one of the Revised Statutes of the United States, which shall not apply): Provided however, That each settler on said lands shall, before making a final proof and receiving a certificate of entry, pay the United States for the land so taken by him, in addition to the fees provided by law, and within five years from the date of the first original entry, the sum of one dollar and fifty cents an acre, one-half of which shall be paid within two years; but the rights of honorably discharged Union soldiers and sailors, as defined and described in Sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes of the United States, shall not be abridged, except as to the sum to be paid as aforesaid. Until said lands are open to settlement by proclamation of the President of the United States, no person shall be permitted to enter upon or occupy any of said lands; and any person violating this provision shall never be permitted to make entry of any of said lands or acquire any title thereto: Provided, That any person having attempted to, but for any cause failed to acquire a title in fee under existing law, or who made entry under what is known as the commuted provision of the homestead law, shall be qualified to make homestead entry upon said lands.

Approved March 3, 1893.

## GREER COUNTY LANDS.

Chap. 62.—An act to provide for the entry of lands in Greer County, Oklahoma, to give preference rights to settlers, and for other purposes.

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

That every person qualified under the homestead laws of the United States, who, on March sixteenth, eighteen hundred and ninety-six, was a bona fide occupant of land within the Territory established as Greer County, Oklahoma, shall be entitled to continue his occupation of such land with improvements thereon, not exceeding one hundred and sixty acres, and shall be allowed six months preference right from the passage of this act within which to initiate his claim thereto, and shall be entitled to perfect title thereto under the provisions of the homestead law, upon payment of land office fees only, at the expiration of five years from the date of entry, except that such person shall receive credit for all time during which he or those under whom he claims shall have continuously occupied the same prior to March sixteenth, eighteen hundred and ninety-six. Every such person shall also have the right, for six months prior to all other persons, to purchase at one dollar an acre, in five equal annual payments, any additional land of which he was in actual possession on March sixteenth, eighteen hundred and ninety-six, not exceeding one hundred and sixty acres, which, prior to said date, shall have been cultivated, purchased or improved by him. When any person entitled to a homestead or additional land, as above provided, is the head of a family, and though still living shall not take such homestead or additional land, within six months from the passage of this act, any member of such family over the age of twenty-one years, other than a husband or wife, shall succeed to the right to take such homestead or additional land for three months longer, and any such member of the family shall also have the right to take, as before provided, any excess of additional land actually cultivated or improved prior to March sixteenth, eighteen hundred and ninety-six, above the amount to which such head of the family is entitled, not to exceed one hundred and sixty acres to any one person thus taking as a member of such family.

In case of the death of any settler who actually established residence and made improvement on land in said Greer County, prior to March sixteenth, eighteen hundred and ninety-six, the entry shall be treated as having accrued at the time the residence was established, and Sections twenty-two hundred and ninety-one and twenty-two hundred and ninety-two of the Revised Statutes shall be applicable thereto.

Any person entitled to such homestead or additional land shall have the right prior to January first, eighteen hundred and ninety-seven, from the passage of this act to remove all crops and improvements he may have on land not taken by him.

Sec. 2. That all land in said county not occupied, cultivated or improved, as provided in the first section hereof, or not included within the limits of any townsite or reserve, shall be subject to entry to actual settlers only, under the provision of the homestead law.



Sec. 3. That the inhabitants of any town located in said county shall be entitled to enter the same as a townsite under the provisions of Sections twenty-three hundred and eighty-seven, twenty-three hundred and ninety-eight and twenty-three hundred and eighty-nine of the Revised Statutes of the United States: Provided, That all persons who have made or own improvements on any town lots in said county made prior to March sixteenth, eighteen hundred and ninety-six, shall have the preference right to enter said lots under the provisions of this act and of the general townsite laws.

Sec. 4. Sections numbered sixteen and thirty-six are reserved for school purposes as provided in laws relating to Oklahoma, and sections thirteen and thirty-three in each township are reserved for such purposes as the Legislature of the future State of Oklahoma may prescribe. That whenever any of the lands reserved for school or other purposes under this act, or under the laws of Congress relating to Oklahoma, shall be found to have been occupied by actual settlers or for townsite purposes or homesteads prior to March sixteenth, eighteen hundred and ninety-six, an equal quantity of indemnity lands may be selected as provided by law.

Sec. 5. That all lands which on March sixteenth, eighteen hundred and ninety-six, are occupied for church, cemetery, school or other charitable or voluntary purposes, not for profit, not exceeding 2 acres in each case, shall be patented to the proper authorities in charge thereof under such rules and regulations as the Secretary of the Interior shall establish, upon payment of the government price therefor, excepting for school purposes.

Sec. 6. That there shall be a land office established at Mangum, in said county, upon the passage of this act.

Sec. 7. That the provisions of this act shall apply only to Greer County, Oklahoma, and that all laws inconsistent with the provisions of this act, applying to said Territory in said county, are hereby repealed; and all laws authorizing commutations of homesteads in Oklahoma shall apply to Greer County.

Sec. 8. That this act shall take effect from its passage and approval.

Approved January 18, 1897. (29 Stat. 490.)

**Preference Right.—**

The act approved March 1, 1899, provides:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled: That Section one of an act to give preference rights to settlers in Greer County, Oklahoma Territory, is hereby so amended as to allow parties who have had the benefit of the homestead laws of the United States, and who had purchased lands in Greer County from the State of Texas prior to March sixteenth, eighteen hundred and ninety-six, to perfect titles to said lands according to the provisions of Section one hereinbefore mentioned under such regulations as the Commissioner of the General Land Office may prescribe, and according to the legal subdivisions of the public surveys, if no adverse rights have attached:

Provided, That no settler shall be permitted to acquire to exceed three hundred and twenty acres under this provision.

## THE FREE HOME ACT.

May 17, 1900, the "Free Home Act" was approved and became a law. The following is the act:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled: That all settlers under the homestead laws of the United States upon the agricultural public lands, which have already been opened to settlement, acquired prior to the passage of this act, by treaty or agreement from the various Indian tribes, who have resided or shall hereafter reside upon the tract entered in good faith for the period required by existing law, shall be entitled to a patent for the land so entered upon the payment to the local land officers of the usual and customary fees, and no other or further charge of any kind whatsoever shall be required from such settler to entitle him to a patent for the land covered by his entry: Provided, That the right to cummute any such entry and pay for said lands in the option of any such settler and in the time and at the prices now fixed by existing laws shall remain in full force and effect: Provided, however, That all sums of money so released, which if not released would belong to any Indian tribe, shall be paid to such Indian tribe by the United States, and that in the event that the proceeds of the annual sales of the public lands shall not be sufficient to meet the payments heretofore provided for agricultural colleges and experimental stations by an Act of Congress, approved August thirtieth, eighteen hundred and ninety, for the more complete endowment and support of the colleges for the benefit of agricultural and mechanic arts, established under the provisions of an Act of Congress approved July second, eighteen hundred and sixty-two, such deficiency shall be paid by the United States: And provided, further, That no lands shall be herein included on which the United States Government had made valuable improvements, or lands that have been sold at public auction by said government.

Sec. 2. That all acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

## SCHOOL LANDS.

Under all the land laws applicable to Oklahoma, sections 16 and 36 have been reserved for the common public schools. Under the law, and the proclamation of the President, section 13 was reserved for university, agricultural colleges, normal schools, and section 33 for public buildings, and by act of June 6, 1900, sections 13 and 33, in Kiowa, Comanche, and Apache lands, were reserved for university, agricultural colleges, normal schools and public buildings. These lands may be leased.

School lands cannot be purchased in Oklahoma. The act of March 3, 1891, Sec. 18 (see Index), provided:

"That the school lands reserved in the Territory of Oklahoma by this and former acts of Congress may be



leased for the benefit of the school fund of said Territory by the governor thereof under regulations to be prescribed by the Secretary of the Interior."

### BOARD TO LEASE.

The Act of Congress approved ———, provides:

"That the reservation for university, agricultural college, and normal school purpose of section 13, in each township of the lands known as the Cherokee Outlet, the Tonkawa Indian reservation, and the Pawnee Indian reservation, in the Territory of Oklahoma, not otherwise reserved or disposed of, and the reservation for the public buildings of section 33 in each township in said land, not otherwise disposed of, made by the President of the United States in his proclamation of August 19, 1893, be, and the same are, hereby ratified, and all said lands and all the school lands in the said Territory may be leased under such laws and regulations as may be hereafter prescribed by the Legislature of said Territory; but until such legislative action, the governor, secretary of the territory, and superintendent of public instruction shall constitute a board for the leasing of said lands under rules and regulations heretofore prescribed by the Secretary of the Interior, for the respective purposes for which the said reservations were made, except that it shall not be necessary to submit leases to the Secretary of the Interior for his approval; and all the necessary expenses and costs incurred in the leasing, management, and protection of said lands and leases may be paid out of the proceeds derived from such leases."

## TOWNSITES.

**Kiowa and Comanche Act.—**

The Act of Congress, approved June 6, 1900, opening these lands, provides that they shall "be disposed of under the general provisions of the homestead and townsite laws of the United States." Under the above title we wish to consider what are the general provisions of the townsite laws of the United States, as restricted or modified by special laws applicable to Oklahoma.

**Location of County Seat Townsites.—**

Section 17 of the Act of Congress, approved March 3, 1891, provides as follows:

Sec. 17. That before any lands in Oklahoma are opened to settlement it shall be the duty of the Secretary of the Interior to divide the same into counties, which shall contain as near as possible not less than nine hundred square miles in each county. In establishing said county lines, the secretary is hereby authorized to extend the lines of the counties already located so as to make the areas of said counties equal, as near as may be, to the areas of the counties provided for in this act. At the first election for county officers the people of each county may vote for a name for each county, and the name which receives the greatest number of votes shall be the name of each county: Provided, further, That as soon as the county lines are designated by the secretary, he shall reserve not to exceed one-half section of land in each county, to be located near the

center of said county, for county-seat purposes, to be entered under Sections twenty-three hundred and eighty-seven and twenty-three hundred and eighty-eight of the Revised Statutes: Provided, That in addition to the jurisdiction granted to the probate courts and the judges thereof in Oklahoma Territory by legislative enactments, which enactments are hereby ratified, the probate judges of said Territory are hereby granted such jurisdiction in townsite matters and under such regulations as are provided by the laws of the State of Kansas. (Approved March 3, 1891.)

For jurisdiction of probate judge in townsite matters under Statutes of Kansas, see Index, "Kansas Statutes."

**General Townsite Provisions.—**

The general provisions for making entries, under United States townsite laws, are found in Sections 2387 and 2388, Revised Statutes of the United States, which are as follows:

Sec. 2387. Whenever any portion of the public lands has been or may be settled upon and occupied as a townsite, not subject to entry under the agricultural preëmption laws, it is lawful, in case such town be incorporated, for the corporate authorities thereof, and, if not incorporated, for the judge of the county court for the county in which such town is situated, to enter at the proper land office, and at the minimum price, the land so settled and occupied in trust for the several use and benefit of the occupants thereof, according to their respective interests; the execution of which trust, as to the disposal of the lots in such town, and the proceeds of the sale thereof, to be conducted under such regulations as may be prescribed by the legislative authority of the State or Territory in which the same may be situated.

Sec. 2388. The entry of the land provided for in the preceding section shall be made, or a declaratory statement of the purpose of the inhabitants to enter it as a townsite shall be filed with the register of the proper land office prior to the commencement of the public sale of the body of land in which it is included, and the entry or declaratory statement shall include only such land as is actually occupied by the town and the title to which is in the United States; but in any Territory in which a land office may not have been established, such declaratory statements may be filed with the surveyor-general of the surveying district in which the lands are situated, who shall transmit the same to the general land office.

**Commuting Homesteads to Townsites.—**

Section 22 of the Organic Act is as follows:

Sec. 22. That the provisions of title thirty-two, chapter eight, of the Revised Statutes of the United States, relating to "reservation and sale of townsites on public land," shall apply to the lands open, or to be opened to settlement in the Territory of Oklahoma, except those opened to settlement by proclamation of the President, on the twenty-second day of April, eighteen hundred and eighty-nine: Provided, That hereafter all surveys for townsites in said Territory shall contain reservations for parks (of substantially equal area if more than one park) and for schools and other public purposes, embracing in the aggregate not less than ten nor more than twenty acres; and patents for such reservations, maintained for such purposes, shall be issued to the towns respectively when organized as municipalities: Provided, further, That in case any lands in said Territory of Oklahoma, which may be occupied and filed upon as a homestead, under the provisions of law applicable to said Territory, by a person who is entitled to perfect his title thereto under such laws, are required for townsite purposes, it shall be lawful for such person to apply to the Secretary of the Interior to purchase the lands embraced in said homestead or any part thereof for townsite purposes. He shall file with the application a plat of such proposed townsite, and if such plat shall be approved by the Secretary of the Interior, he shall issue a patent to such person for the land embraced in said townsite, upon the payment of the sum of ten dollars per acre for all the lands embraced in such townsite, except the lands to be donated and maintained for public purposes as provided in this section. And the sums so received by the Secretary of the Interior shall be paid over to the proper authorities of the municipalities when organized, to be used by them for school purposes only.



It will be observed that under Section 17 of the Act of March 3, 1891, above quoted, that townsites for county seat purposes are to be entered under Sections 2387 and 2388 of the Revised Statutes of the United States. Section 22 of the Organic Act, above quoted, provides that provisions of title 32, chapter 8, of the Revised Statutes of the United States, relating to the reservation and sale of townsites on public lands, shall apply to lands opened or to be opened to settlement in the Territory of Oklahoma, except those opened to settlement April 22, 1889. Sections 2387 and 2388 of the Revised Statutes of the United States are a part of title 32, chapter 8, of the Revised Statutes of the United States, and hence these two sections are in force and apply to townsites upon all the lands in Oklahoma, except where some special provision has been made by Act of Congress. The Act of May 14, 1890, was a special townsite act, which applied originally to the land opened for settlement April 22, 1889. By joint resolution of Congress, September 1, 1893, this act was made applicable to the townsites in the Cherokee Outlet.

This special act, however, does not apply to the Kiowa and Comanche lands. Unless there is further legislation by Congress, townsites on these lands will be entered under Sections 2387 and 2388 of the Revised Statutes of the United States, above quoted, Section 17 of the Act of March 3, 1891, above set forth, and Section 22 of the Organic Act, as above quoted.

**Jurisdiction of Probate Judges.—**

As will be seen by Section 17 of the Act of March 3, 1891, referred to above the probate judges of said Territory are hereby granted such jurisdiction in townsite matters, and under such legislation, as are provided under the laws of Kansas. For further authority, therefore, we look to the Kansas Townsite Act.

## KANSAS TOWNSITE ACT.

(General Statutes of Kansas, 1889. Sections 7038 to 7949 inclusive.)

**How and by Whom Entered.—**

Section 1. In all cases in which any of the public land of the United States in the State of Kansas has been, or shall hereafter be, selected as a townsite, if the inhabitants of such town shall be at the time incorporated, it shall be the duty of the corporate authorities of such town, or, if not incorporated, then the probate judge of the county in which such town is situated, whenever called on by any of the occupants of such town, and the money for the entrance of such townsite furnished, to enter such townsite under Act of Congress in such case provided.

Guffin vs. Linney, 26 Kan. 717.
Allen vs. Houston, 21 Kan. 194.
Setter vs. Alvey, 15 Kan. 157.
McTaggart vs. Harrison, 12 Kan. 62.
Shevy vs. Sampson, 11 Kan. 611.
Winfield Town Co. vs. Maris, 11 Kan. 128.
Independence Town Co. vs. De Long, 11 Kan. 152.

**Corporate Authorities to Make Deeds, When?—**

Sec. 2. When a townsite is entered under the above cited Act of Congress, by the corporate authorities of any incorporated town, deeds shall be made by the mayor or other chief officer of such town for the time being, and said deed or deeds shall be attested by said city clerk or register, and shall be signed by such mayor or other chief officer, under the corporate seal of said city, attested by said city clerk or register, if said city shall have a corporate seal; and if it shall have no seal, under the scroll or private seal of said mayor or other chief officer, attested by the city clerk or register.

Matthew vs. Buckingham, 22 Kan. 166.
Sherry vs. Sampson, 11 Kan. 611.

**Probate Judge.—**

Sec. 3. In all cases where townsites have been or shall hereafter be, entered in this State by the probate judge of the county, for the use of the inhabitants thereof, as prescribed by law, it shall be the duty of such judge, so entering such site, to convey the same to the occupants and inhabitants of such townsite according to their respective interests, in the manner hereinafter prescribed. Jackson vs. Winfield T. Co., 23 Kan. 542; Fessler vs. Hass, 19 Kan. 216.

**Commissioners.—**

Sec. 4. At any time after the entry of any such townsite, the probate judge of the county in which such town may be situated may appoint three commissioners, who shall not be residents of such town or the owners of any interest therein, and it shall be the duties of such commissioners to cause an actual survey of such site to be made, conforming as near as may be to the original survey of such town, designating on such plat the lots or squares on which improvements are standing, with the name of the owner or owners thereof, together with the value of the same. Doster vs. Sterling, 33 Kan. 381; Rathbone vs. Sterling, 25 Kan. 444.



**Notice.—**

Sec. 5. Said commissioners shall, as soon as the survey and plat shall be completed, cause to be published in some newspaper published in the county in which such town is situated, a notice that such survey has been completed, and giving notice to all persons concerned or interested in such townsite that, on a designated day, the commissioners will proceed to set off to the persons entitled to the same, according to their respective interests, the lots, squares or grounds to which each of the occupants thereof shall be entitled. Such publication shall be made at least thirty days prior to the day set apart by such commissioners to make such division.

**The Apportionment.—**

Sec. 6. After such publication shall have been duly made, the commissioners shall proceed, on the day designated in such publication, to set apart to the persons entitled to receive the same the lots, squares or grounds to which each shall be entitled, according to their respective interests, including, in the portion or portions set apart to each person or company of persons, the improvements belonging to such persons or company. Yaxall v. Com., 20 Kans. 581.

**Tax Levied, for What Purpose?—**

Sec. 7. After the setting apart of such lots or grounds and the valuation of the same, as hereinbefore provided for, the said commissioners shall proceed to levy a tax on the lots and improvements thereon, according to their value, sufficient to raise a fund to reimburse to the parties who may have entered such site the sum or sums paid by them in securing the title to such site, together with all the expenses accruing in perfecting the same, the fees due the commissioners and the surveyor for their respective services, and other necessary expenses connected with the proceedings. 33 Kan. 381; Emmert v. D. Long, 12 Kan. 67.

**Commissioners' Return.—**

Sec. 8. Such commissioners shall make due return of their proceedings, to the probate judge, within ten days after the completion of their duties under this act, and shall with such return file all the papers, plats, valuations and assessments connected with such proceedings.

**Taxes.—**

Sec. 9. The said probate judge shall then proceed to collect the taxes, levied as aforesaid, and he shall make deeds to the lots so set apart to the various parties entitled to the same; but no deed shall be made to any person until such person shall have first fully paid all the tax or assessment so levied against him; and in case any person shall refuse or neglect to pay such tax or assessment, so made against him, the probate judge may proceed to offer such lots and improvements for sale, to the highest bidder, first giving such public notice as may be required in case of execution against the lands and tenements of a debtor in the district court.

Sec. 10. The probate judge shall reimburse the party or parties who may have entered and secured title to such site, together with all necessary expenses incurred, out of the fund thus provided, taking their receipts therefor;

which receipt shall be filed with the papers returned by the commissioners, and kept by him among the records of his court. 12 Kan. 67.

**Acknowledgment of Deeds.—**

Sec. 11. Deeds made by the probate judge in pursuance of this act shall be acknowledged by him, and may be recorded with like effect as other deeds.

Sec. 12. All persons who select and lay out a townsite, and their assigns, shall be deemed occupants of said townsite and the lots embraced therein, within the meaning of the above recited acts of Congress, and deeds shall be made accordingly. (See cases above recited.)

**Titles to Lots Subject to Mineral Claims.—**

Section 2386, Revised Statutes, provides: "Where mineral veins are possessed, which possession is recognized by local authority, and to the extent so possessed and recognized, the title of town lots to be acquired shall be subject to such recognized possession and the necessary use thereof; but nothing contained in this section shall be so construed as to recognize any color of title in possessors for mining purposes as against the United States."

**Number of Inhabitants.—**

"Sec. 2389. If upon surveyed lands, the entry shall in its exterior limit be made in conformity to the legal subdivisions of the public lands authorized by law; and where the inhabitants are in number one hundred and less than two hundred, shall embrace not exceeding three hundred and twenty acres; and in cases where the inhabitants of such town are more than two hundred and less than one thousand, shall embrace not exceeding twelve hundred and eighty acres; but for each additional one thousand inhabitants, not exceeding five thousand in all, a further grant of three hundred and twenty acres shall be allowed."

**No Title to Mines.—**

"Sec. 2392. No title shall be acquired, under the foregoing provisions of this chapter, to any mine of gold, silver, cinnabar or copper; or to any valid mining claim or possession held under existing laws."

**Townsites in Greer County.—**

Section 3 of the Act of January 18, 1897, relative to townsites in Greer County, is as follows:

"Sec. 3. That the inhabitants of any town located in said county shall be entitled to enter the same as a (4) townsite under the provisions of (5) Sections twenty-three hundred and eighty-seven, twenty-three hundred and eighty-eight, and twenty-three hundred and eighty-nine of the Revised Statutes of the United States: Provided, That all persons who have made or own improvements on any town lots in said county made prior to March sixteenth, eighteen hundred and ninety-six, shall have the preference right to enter said lots under the provisions of this act and of the general townsite laws.

**Cities May Purchase for Cemeteries and Parks.—**

The Act of Congress approved September 30, 1890, provides as follows:

"Be it enacted by the Senate and House of Representatives in Congress assembled: That incorporated cities and towns shall have the right, under rules and regulations



prescribed by the Secretary of the Interior, to purchase for cemetery and park purposes not exceeding one-quarter section of public lands not reserved for public use, such lands to be within three miles of such cities or towns: Provided, That when such city or town is situated within a mining district, the land proposed to be taken under this act shall be considered as mineral lands, and patent to such land shall not authorize such city or town to extract mineral therefrom, but all such mineral shall be reserved to the United States, and such reservation shall be entered into such patent."

**Townsites in Old Oklahoma and the Cherokee Outlet.—**

The Act of May 18, 1890, applicable to lands opened to settlement April 22, 1889 (Old Oklahoma), and the Cherokee Outlet opened to settlement September 16, 1893, is as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled: That so much of the public lands situate in the Territory of Oklahoma, now open to settlement, as may be necessary to embrace all the legal subdivisions covered by actual occupancy for the purpose of trade and business, not exceeding twelve hundred and eighty acres in each case, may be entered as townsites for the several use and benefit of the occupants thereof, by three trustees, to be appointed by the Secretary of the Interior for that purpose, such entry to be made under the provisions of Section twenty-three hundred and eighty-seven of the Revised Statutes as near as may be; and when such entry shall have been made, the Secretary of the Interior shall provide regulations for the proper execution of the trust by such trustees, including the survey of the land and streets, alleys, squares, blocks, and lots when necessary, or the approval of such survey as may already have been made by the inhabitants thereof, the assessment upon the lots of such sum as may be necessary to pay for the lands embraced in such townsite, costs of survey, conveyance of lots, and other necessary expenses, including compensation of trustees: Provided, That the Secretary of the Interior may when practicable cause more than one townsite to be entered and the trust thereby created executed in the manner herein provided by a single board of trustees, but not more than seven boards of trustees in all shall be appointed for said Territory, and no more than two members of any said boards shall be appointed from one political party.

Sec. 2. That in the execution of such trust, and for the purpose of the conveyance of title by said trustees, any certificate or other paper evidence of claim duly issued by the authority recognized for such purpose by the people residing upon any townsite the subject of entry hereunder, shall be taken as evidence of the occupancy by the holder thereof of the lot or lots therein described, except that where there is an adverse claim to said property such certificate shall be only prima facie evidence of the claim of occupancy of the holder: Provided, That nothing in this act contained shall be so construed as to make valid any claim now invalid of those who entered upon and occupied said lands in violation of the laws of the United States or the proclamation of the President thereunder: Provided

further, That the certificates hereinbefore mentioned shall not be taken as evidence in favor of any person claiming lots who entered upon said lots in violation of law or the proclamation of the President thereunder.

Sec. 3. That lots of land occupied by any religious organization, incorporated or otherwise, conforming to the approved survey within the limits of such townsite, shall be conveyed to or in trust for the same.

Sec. 4. That all lots not disposed of as hereinbefore provided for shall be sold under the direction of the Secretary of the Interior for the benefit of the municipal government of any such town, or the same or any part thereof may be reserved for public use as sites for public buildings, or for the purpose of parks, if in the judgment of the secretary such reservation would be for the public interest, and the secretary shall execute proper conveyance to carry out the provisions of this section.

Sec. 5. That the provisions of Sections four, five, six, and seven, of an act of the Legislature of the State of Kansas (see Index, Kansas Townsite Act) entitled "An act relating to townsites," approved March second, eighteen hundred and sixty-eight, shall, so far as applicable, govern the trustees in the performance of their duties hereunder.

Sec. 6. That all entries of townsites now pending, on application hereafter made under this act, shall have preference at the local land office of the ordinary business of the office and shall be determined as speedily as possible, and if an appeal shall be taken from the decision of the local office in any such case to the commissioner of the General Land Office, the same shall be made special, and disposed of by him as expeditiously as the duties of his office will permit, and so if an appeal should be taken to the Secretary of the Interior. And all applications heretofore filed in the proper land office shall have the same force and effect as if made under the provisions of this act, and upon the application of the trustees herein provided for, such entries shall be prosecuted to final issue in the names of such trustees, without other formality, and when final entry is made the title of the United States to the land covered by such entry shall be conveyed to said trustees for the uses and purposes herein provided.

Sec. 7. That the trustees appointed under this act shall have the power to administer oaths, to hear and determine all controversies arising in the execution of this act, shall keep a record of their proceedings, which shall, with all papers filed with them and all evidence of their official acts, except conveyances, to be filed in the General Land Office and become a part of the records of the same, and all conveyances executed by them shall be acknowledged before an officer duly authorized for that purpose.

They shall be allowed such compensation as the Secretary of the Interior may prescribe, not exceeding ten dollars per day while actually employed; and such traveling and other necessary expenses as the secretary may authorize, and the Secretary of the Interior shall also provide them with necessary clerical force by detail or otherwise.

Sec. 8. That the sum of ten thousand dollars or so much thereof as may be necessary is hereby appropriated to carry into effect the provisions of this act, except that no portion of said sum shall be used in making payment for



land entered hereunder, and the disbursements therefrom shall be refunded to the treasury from the sums which may be realized from the assessments made to defray the expense of carrying out the provisions of this act.

By joint resolution of Congress, September 1, 1893, the above act was extended over the Cherokee Outlet.

Approved May 14, 1890.

## SETTLEMENT UPON TOWN LOTS.

In the first part of this work what constitutes settlement upon a homestead claim has been discussed at length. In so far as the initiatory acts are concerned, the same principles largely apply to settlement upon town lots. The law does not specify the amount of improvements required. They should be such as are regarded as valuable improvements and ordinarily should correspond with the value of the lot. There is one important distinction, however, between what is necessary to acquire title to a lot on a government townsite and that which is necessary to acquire title to a claim under the homestead law, and that is, that upon town lots residence is not required. One who places valuable improvements upon a town lot is regarded as an occupant thereof though he does not reside upon the lot. See Berry vs. Corette, 15 L. D. 210. In that case Assistant Secretary Chandler says: "I do not find that a person must actually live upon the lot as upon a homestead. It is sufficient that he makes settlement and improvements thereon, though the improvements be occupied by another. Such tenant occupies for him, the owner."

See Winfield Town Co. vs. Enoch Maris, et al., 11 Kan. 128.

**Time to Acquire Title.—**

It will require about three months after the settlement on the townsite before deeds can be secured. Of course, it may take much longer than this.

### DECISIONS OF DEPARTMENT.

Amount of land to be reserved, 23 L. D. 74. Occupancy of a tenant, 23 L. D. 196. Occupancy must be maintained to date of entry, 23 L. D. 196. Right of an assignee, 23 L. D. 384. Occupancy prevented by violence, 22 L. D. 31. Fractional part of lot, 22 L. D. 102. Possession by tenant, 22 L. D. 121, 177. Rights to streets and alleys occupied before survey, 22 L. D. 505. Joint deed to lot, 22 L. D. 505. Unconspicuous stake does not constitute settlement, 22 L. D. 505. Possessory right may be transferred, 22 L. D. 649. Reservation of land for park purposes, 22 L. D. 190, 367. Patent to trustees not necessarily final disposition of government title, 22 L. D. 367.

A portable business stand in front of lot not settlement, 21 L. D. 84. Occupancy of back part of lot may entitle occupant to deed for the whole lot, 21 L. D. 84. Unlawful entering in the Territory disqualifies, 21 L. D. 84. Any citizen of the United States qualified to take town lot, 21 L. D. 98. Right of way of railroads, 21 L. D. 482. Occupancy by tenant, 21 L. D. 98. Residence not necessary, 21 L. D. 522. Unlawful entry into the Territory, 21 L. D. 522. Abandonment of townsite subject to homestead entry, 21 L. D. 104. In commuting homestead to townsite purchaser must

pay for streets and alleys, 21 L. D. 462. Claim of townsite cannot defeat homestead entry prior thereto, 21 L. D. 367. Possession by force or fraud, 21 L. D. 542. No right acquired by wrongful possession, 20 L. D. 265. Right of landlord and tenant, 20 L. D. 264. What is voluntary abandonment of lot? 20 L. D. 425. Threats of force and armed violence, 20 L. D. 465. May be taken for business or residence or both, 20 L. D 495. Occupancy subsequent to the day of entry, 20 L. D. 202. In towns of less than one hundred inhabitants, 18 L. D. 223.

## MINING LAWS.

**Kiowa and Comanche Act.—**

The Act of Congress approved June 6, 1900, opening to settlement the Kiowa, Comanche, and Apache lands, contains the following, to-wit:

"That should any of said lands allotted to said Indians, or opened to settlement under this act, contain valuable mineral deposits, such mineral deposits shall be open to location and entry, under the existing mining laws of the United States, upon the passage of this act, and the mineral laws of the United States are hereby extended over said lands."

### GENERAL STATUTES.

The following are the important statutory provisions comprising the mining laws of the United States:

**Mineral Lands Reserved.—**

Sec. 2318. In all cases lands valuable for minerals shall be reserved from sale, except as otherwise expressly directed by law.

**Open to Purchase.—**

Sec. 2319. All valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States and those who have declared their intention to become such under regulations prescribed by law, and according to the local customs or rules of miners in the several mining districts, so far as the same are applicable and not inconsistent with the laws of the United States.

**Length of Mining Claims.—**

Sec. 2320. Mining claims upon veins or lodes of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper or other valuable deposits, heretofore located, shall be governed as to length along the vein or lode by the customs, regulations, and laws in force at the date of their location. A mining claim located after the tenth day of May, eighteen hundred and seventy-two, whether located by one or more persons, may equal, but shall not exceed, one thousand five hundred feet in length along the vein or lode; but no location of a mining claim shall be made until the discovery of the vein or lode within the limits of the claim located. No claim shall extend more than three hundred feet on each side of the middle of the vein at the surface, except where adverse rights existing on the tenth day of May, nor shall any claim be limited by



any mining regulation to less than twenty-five feet on each side of the middle of the vein at the surface, except where adverse rights existing on the tenth day of May, eighteen hundred and seventy-two, render such limitation necessary. The end lines of each claim shall be parallel to each other.

**Rights of Possession.—**

Sec. 2322. The locators of all mining locations heretofore made or which shall hereafter be made, on any mineral vein, lode or ledge, situated on the public domain, their heirs and assigns, where no adverse claim exists on the tenth day of May, eighteen hundred and seventy-two, so long as they comply with the laws of the United States, and with state, territorial, and local regulations not in conflict with the laws of the United States governing their possessory title, shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their location, and of all veins, lodes, and ledges throughout their entire depth, the top or apex of which lies inside of such surface lines extended downward vertically, although such veins, lodes, or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side lines of such surface locations. But their right of possession to such outside parts of such veins or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward as above described through the end lines of their locations, so continued in their own direction that such planes will intersect such exterior parts of such veins or ledges. And nothing in this section shall authorize the locator or possessor of a vein or lode which extends in its downward course beyond the vertical lines of his claim to enter upon the surface of a claim owned or possessed by another.

**Owners of Tunnels, Rights of.—**

Sec. 2323. Where a tunnel is run for the development of a vein or lode, or for the discovery of mines, the owners of such tunnel shall have the right of possession of all veins or lodes within three thousand feet from the face of such tunnel on the line thereof, not previously known to exist, discovered in such tunnel, to the same extent as if discovered from the surface; and locations on the line of such tunnel of veins or lodes not appearing on the surface, made by other parties after the commencement of the tunnel, and while the same is being prosecuted with reasonable diligence, shall be invalid, but failure to prosecute the work on the tunnel for six months shall be considered as an abandonment of the right to all undiscovered veins on the line of such tunnel.

**Regulations Made by Miners.—**

Sec. 2324. 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 location, manner of recording, amount of work necessary to hold possession of a mining claim, subject to the following requirements: The location must be distinctly marked on the ground so that its boundaries can be easily traced. All records of mining claims hereafter made shall contain the name or names of the locators, the date of the location and such a

description of the claim or claims located by reference to some natural object or permanent monument as will identify the claim. 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. On all claims located prior to the tenth day of May, eighteen hundred and seventy-two, ten dollars' worth of labor shall be performed or improvements made by the tenth day of June, eighteen hundred and seventy-four, and each year thereafter, for each one hundred feet in length along the vein until a patent has been issued therefor; but where such claims are held in common, such expenditure may be made upon any one claim; and upon a failure to comply with these conditions, the claim or mine upon which such failure occurred shall be open to relocation in the same manner as if no location of the same had ever been made, provided that the original locators, their heirs, assigns or legal representatives, have not resumed work upon the claim after failure and before such location. Upon the failure of any one of several co-owners to contribute his portion of the expenditures required hereby, the co-owners who have performed the labor or made the improvements may, at the expiration of the year, give such delinquent co-owner personal notice in writing or notice by publication in the newspaper published nearest the claim, for at least once a week for ninety days, and if at the expiration of ninety days after such notice in writing or by publication such delinquent should fail or refuse to contribute his proportion of the expenditure required by this section, his interest in the claim shall become the property of his co-owners who have made the required expenditures.

**Patents.—**

Sec. 2325. A patent for any land claimed and located for valuable deposits may be obtained in the following manner: Any person, association or corporation authorized to locate a claim under this chapter, having claimed and located a piece of land for such purposes, who has, or have, complied with the terms of this chapter, may file in the proper land office an application for a patent, under oath, showing such compliance, together with a plat and field-notes of the claim or claims in common, made by or under the direction of the United States Surveyor-General, showing accurately the boundaries fo the claim or claims, which shall be distinctly marked by monuments on the ground, 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 a patent, and shall file an affidavit of at least two persons that such notice has been duly posted, and shall file a copy of the notice in such land office, and shall thereupon be entitled to a patent for the land, in the manner following: The register of the land office, upon the filing of such application, plat, field-notes, notices, and affidavits, shall publish a notice that such application has been made, for the period of sixty days, in a newspaper to be by him designated as published nearest to such claim; and he shall also post such notice in his office for the same period. The claimant 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; that the plat is correct, with such further description by such reference to natural objects or permanent monuments as shall identify the claim and furnish an accurate description, to be incorporated in the patent. At the expiration of the sixty 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. If no adverse claim shall have been filed with the register and the receiver of the proper land office at the expiration of the sixty days of publication, it shall be assumed that the applicant is entitled to a patent, upon the payment to the proper officer of five dollars per acre, and that no adverse claim exists; and thereafter no objection from third parties to the issuance of a patent shall be heard, except it be shown that the applicant has failed to comply with the terms of this chapter.

**Adverse Claim, Proceedings on.—**

Sec. 2326. Where an adverse claim is filed during the period of publication, it shall be upon oath of the person or persons making the same, and shall show the nature, boundaries, and extent of such adverse claim, and all proceedings, except the publication of notice and making and filing of the affidavit thereof, shall be stayed until the controversy shall have been settled or decided by a court of competent jurisdiction, or the adverse claim waived. It shall be the duty of the adverse claimant, within thirty days after filing his claim, to commence proceedings in a court of competent jurisdiction, to determine the question of the right of possession, and prosecute the same with reasonable diligence to final judgment; and a failure so to do shall be a waiver of his adverse claim. After such judgment 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 the certificate of the surveyor-general that the requisite amount of labor has been expended or improvements made thereon, and the description required in other cases, and shall pay to the receiver five dollars per acre for his claim, together with the proper fees, whereupon the whole proceedings and the judgment roll shall be certified by the register to the commissioner of the General Land Office, and a patent shall issue thereon for the claim or such portion thereof as the applicant shall appear, from the decision of the court, to rightly possess. If it appears from the decision of the court that several parties are entitled to separate and different portions of the claim, each party may pay for his portion of the claim with the proper fees, and file the certificate and description by the surveyor-general, whereupon the register shall certify the proceedings and judgment roll to the commissioner of the General Land Office, as in the preceding case, and patents shall issue to the several parties according to their respective rights. Nothing herein contained shall be construed to prevent the alienation of a title conveyed by a patent for a mining claim to any person whatever.

**Description of Vein Claims.—**

Sec. 2327. The description of vein or lode claims, upon surveyed lands, shall designate the location of the claim with reference to the lines of the public surveys, but need not conform therewith; but where a patent shall be issued for claims upon unsurveyed lands, the surveyor-general, in extending the surveys, shall adjust the same to the boundaries of such patented claim, according to the plat or description thereof, but so as in no case to interfere with or change the location of any such patented claim.

**Conformity of Placer Claims to Surveys.—**

Sec. 2329. Claims usually called "placers," including all forms of deposit, excepting veins of quartz, or other rock in place, shall be subject to entry and patent, under like circumstances and conditions, and upon similar proceedings, as are provided for vein or lode claims; but where the lands have been previously surveyed by the United States, the entry in its exterior limits shall conform to the legal subdivisions of the public lands.

**Subdivisions of Ten-Acre Tracts.—**

Sec. 2330. Legal subdivisions of forty acres may be subdivided into ten-acre tracts; and two or more persons or associations of persons, having contiguous claims of any size, although such claims may be less than ten acres each, may make joint entry thereof; but no location of a placer claim, made after the ninth day of July, eighteen hundred and seventy, shall exceed one hundred and sixty acres for any one person or association of persons, which location shall conform to the United States surveys; and nothing in this section contained shall defeat or impair any bona fide preëmption or homestead claim upon agricultural lands or authorize the sale of the improvements of any bona fide settler to any purchaser.

**Conformity of Placer Claims to Surveys.—**

Sec. 2331. Where placer claims are upon surveyed lands, and conform to legal subdivisions, no further survey or plat shall be required, and all placer mining claims located after the tenth of May, eighteen hundred and seventy-two, shall conform as near as practicable with the United States system of public land surveys, and the rectangular subdivisions of such surveys, and no such location shall include more than twenty acres for each individual claimant; but where placer claims can not be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands; and where by the segregation of mineral lands in any legal subdivision a quantity of agricultural land less than forty acres remains, such fractional portion of agricultural land may be entered by any party qualified by law, for homestead or preëmption purposes.

**Proceedings for Patent for Placer Claim, Etc.—**

Sec. 2333. Where the same person, association or corporation, is in possession of a placer claim, and also a vein or lode included within the boundaries thereof, application shall be made for a patent for the placer claim, with the statement that it includes such vein or lode, and in such case a patent shall issue for the placer claim, subject to the provisions of this chapter, including such vein or lode, upon the payment of five dollars per acre for such vein or lode claim, and twenty-five feet of surface on each side thereof. The remainder of the placer claim,



or any placer claim not embracing any vein or lode claim, shall be paid for at the rate of two dollars and fifty cents per acre, together with all costs of proceedings; and where a vein or lode, such as is described in Section twenty-three hundred and twenty, is known to exist within the boundaries of a placer claim, an application for a patent for such placer claim which does not include an application for the vein or lode claim shall be construed as a conclusive declaration that the claimant of the placer claim has no right of possession of the vein or lode claim; but where the existence of a vein or lode in a placer claim is not known, a patent for the placer claim shall convey all valuable mineral and other deposits within the boundaries thereof.

**Verification of Affidavits.—**

Sec. 2335. All affidavits required to be made under this chapter may be verified before any officer authorized to administer oaths within the land district where the claims may be situated, and all testimony and proofs may be taken before any such officers, and when duly certified by the officer taking the same, shall have the same force and effect as if taken before the register and receiver of the land office. In cases of contest as to the mineral or agricultural character of land, the testimony and proofs may be taken as herein provided on personal notice of at least ten days to the opposing party; or if such party can not be found, then by publication of at least once a week for thirty days in a newspaper, to be designated by the register of the land office as published nearest to the location of such land; and the register shall require proof that such notice has been given.

**Where Veins Intersect, Etc.—**

Sec. 2336. Where two or more veins intersect or cross each other, priority of title shall govern, and such prior location shall be entitled to all ore or mineral contained within the space of intersection; but the subsequent location shall have the right of way through the space of intersection for the purposes of the convenient working of the mine. And where two or more veins unite, the oldest or prior location shall take the vein below the point of union, including all the space of intersection.

**Vested Rights to Use of Water.—**

Sec. 2339. Whenever, by priority of possession, rights to the use of water for mining, agricultural, manufacturing or other purposes, have vested and accrued, and the same are recognized and acknowledged by the local customs, laws, and the decisions of courts, the possessors and owners of such vested rights shall be maintained and protected in the same; and the right of way for the construction of ditches and canals for the purpose herein specified is acknowledged and confirmed; but whenever any person, in the construction of any ditch or canal, injures or damages the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage.

**Grant of Lands to States or Corporations.—**

Sec. 2346. No act passed at the first session of the Thirty-eighth Congress, granting lands to States or corporations to aid in the construction of roads or for other purposes, or to extend the time of grants made prior to the

thirtieth day of January, eighteen hundred and sixty-five, shall be so construed as to embrace mineral lands, which in all cases are reserved exclusivly to the United States, unless otherwise specially provided in the act or acts making the grant.

An Act to amend Section two thousand three hundred and twenty-four of the Revised Statutes, relating to the development of the mining resources of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled: That Section two thousand three hundred and twenty-four of the Revised Statutes be, and the same is hereby, amended so that where a person or company has or may run a tunnel for the purpose of developing a lode or lodes, owned by said person or company, the money so expended in said tunnel shall be taken and considered as expended on said lode or lodes, whether located prior to or since the passage of said act; and such person or company shall not be required to perform work on the surface of said lode or lodes in order to hold the same as required by said act.

Approved February 11, 1875.

An act authorizing the citizens of Colorado, Nevada, and the Territories to fell and remove timber on the public domain for mining and domestic purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled: That all citizens of the United States and other persons, bona fide residents of the State of Colorado or Nevada, or either of the Territories of New Mexico, Arizona, Utah, Wyoming, Dakota, Idaho or Montana, and all other mineral districts of the United States, shall be, and are hereby, authorized and permitted to fell and remove, for building, agricultural, mining or other domestic purposes, any timber or other trees growing or being on the public lands, said lands being mineral, and not subject to entry under existing laws of the United States except for mineral entry, in either of said States, Territories or districts of which such citizens or persons may be at the time bona fide residents, subject to such rules and regulations as the Secretary of the Interior may prescribe for the protection of the timber and of the undergrowth growing upon such lands, and for other purposes: Provided, The provisions of this act shall not extend to railroad corporations.

Sec. 2. That it shall be the duty of the register and the receiver of any local land office in whose district any mineral land may be situated to ascertain from time to time whether any timber is being cut or used upon any such lands, except for the purposes authorized by this act, within their respective land districts; and if so, they shall immediately notify the commissioner of the General Land Office of that fact; and all necessary expenses incurred in making such proper examinations shall be paid and allowed such register and receiver in making up their next quarterly accounts.

Sec. 3. Any person or persons who shall violate the provisions of this act, or any rules and regulations in pursuance thereof made by the Secretary of the Interior, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not exceeding five hundred dollars, and to which may be added imprisonment for any term not exceeding six months.



Approved June 3, 1878.

An Act to amend Sections twenty-three hundred and twenty-four and twenty-three hundred and twenty-five of the Revised Statutes of the United States, concerning mineral lands.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled: That Section twenty-three hundred and twenty-five of the Revised Statutes of the United States be amended by adding thereto the following words: "Provided, That where the claimant for a patent is not a resident of or within the land district wherein the vein, lode, ledge, or deposit sought to be patented is located, the application for patent and the affidavits required to be made in this section by the claimant for such patent may be made by his, her or its authorized agent, where said agent is conversant with the facts sought to be established by said affidavits: And provided, That this section shall apply to all applications now pending for patents to mineral lands."

Sec. 2. That Section twenty-three hundred and twenty-four of the Revised Statutes of the United States be amended by adding the following words: "Provided, That the period within which the work required to be done annually on all unpatented mineral claims shall commence on the first day of January succeeding the date of location of such claim, and this section shall apply to all claims located since the tenth day of May, anno Domini eighteen hundred and seventy-two."

Approved January 22, 1880.

An Act to amend Section twenty-three hundred and twenty-six of the Revised Statutes, relating to suits at law affecting the title to mining claims.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled: That if, in any action brought pursuant to Section twenty-three hundred and twenty-six of the Revised Statutes, title to the ground in controversy shall not be established by either party, the jury shall so find and judgment shall be entered according to the verdict. In such case costs shall not be allowed to either party, and the claimant shall not proceed in the land office or be entitled to a patent for the ground in controversy until he shall have perfected his title.

Approved March 3, 1881.

An Act to amend Section twenty-three hundred and twenty-six of the Revised Statutes, in regard to mineral 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 the adverse claim required by Section twenty-three hundred and twenty-six of the Revised Statutes may be verified by the oath of the duty authorized agent or attorney in fact of the adverse claimant cognizant of the facts stated: and the adverse claimant, if residing or at the time being beyond the limits of the district wherein the claim is situated, may make oath to the adverse claim before the clerk of any court of record of the United States or the State or Territory where the adverse claimant may

then be, or before any notary public of such State or Territory.

Sec. 2. That applicants for mineral patents, if residing beyond the limits of the district wherein the claim is situated, may make any oath or affidavit required for proof of citizenship before the clerk of any court of record or before any notary public of any State or Territory.

Approved April 26, 1882.

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

Sec. 16. That townsite entries may be made by incorporated towns and cities on the mineral lands of the United States, but no title shall be acquired by such towns or cities to any vein of gold, silver, cinnabar, copper or lead, or to any valid mining claim or possession held under existing law. When mineral veins are possessed within the limits of an incorporated town or city, and such possession is recognized by local authority or by the laws of the United States, the title to town lots shall be subject to such recognized possession and the necessary use thereof, and when entry has been made or patent issued for such townsites to such incorporated town or city, the possessor of such mineral vein may enter and receive patent for such mineral vein, and the surface ground appertaining thereto: Provided, That no entry shall be made by such mineral vein claimant for surface ground where the owner or occupier of the surface ground shall have had possession of the same before the inception of the title of the mineral vein applicant.

Approved March 3, 1891.

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.

An Act to amend section numbered twenty-three hundred and twenty-four of the Revised Statutes of the United States, relating to mining claims.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled: That the provisions of section numbered twenty-three hundred and twenty-four of the Revised Statutes of the United States, which require that on each claim located after the tenth day of May, eighteen hundred and seventy-two, and until patent has been issued therefor, not less than one hundred dollars' worth of labor shall be performed or improvements made during each year, be suspended for the year eighteen hundred and ninety-three, so that no mining claim which has been regularly located and recorded as required by the local laws and mining regulations shall be subject to forfeiture for non-performance of the annual assessment for the year eighteen hundred and ninety-three: Provided, That the claimant or claimants of any mining location, in order to secure the



benefits of this act, shall cause to be recorded in the office where the location notice or certificate is filed on or before December thirty-first, eighteen hundred and ninety-three, a notice that he or they in good faith intend to hold and work said claim: Provided, however, That the provisions of this act shall not apply to the State of South Dakota.

This act shall take effect from and after its passage.

Approved November 3, 1893.

## REGULATIONS OF THE INTERIOR DEPARTMENT.

### NATURE AND EXTENT OF MINING CLAIMS.

1. Mining claims are of two distinct classes: Lode claims and placers.

### LODE CLAIMS.

2. The status of lode claims located or patented previous to the 10th day of May, 1872, is not changed with regard to their extent along the lode or width of surface; but the claim is enlarged by Sections 2322 and 2328, by investing the locator, his heirs or assigns, with the right to follow, upon the conditions stated therein, all veins, lodes or ledges, the top or apex of which lies inside of the surface lines of his claim.

3. It is to be distinctly understood, however, that the law limits the possessory right to veins, lodes or ledges, other than the one named in the original location, to such as were not adversely claimed on May 10, 1872, and that where such other vein or ledge was so adversely claimed at that date, the right of the party so adversely claiming is in no way impaired by the provisions of the Revised Statutes.

4. From and after the 10th of May, 1872, any person who is a citizen of the United States, or who has declared his intention to become a citizen, may locate, record, and hold a mining claim of fifteen hundred linear feet along the course of any mineral vein or lode subject to location; or an association of persons, severally qualified as above, may make joint location of such claim of fifteen hundred feet, but in no event can a location of a vein or lode made after the 10th day of May, 1872, exceed fifteen hundred feet along the course thereof, whatever may be the number of persons composing the association.

5. With regard to the extent of surface ground adjoining a vein or lode, and claimed for the convenient working thereof, the Revised Statutes provide that the lateral extent of locations of veins or lodes made after May 10, 1872, shall in no case exceed three hundred feet on each side of the middle of the vein at the surface, and that no such surface rights shall be limited by any mining regulations to less than twenty-five feet on each side of the middle of the vein at the surface, except where adverse rights existing on the 10th of May, 1872, may render such limitation necessary; the end lines of such claims to be in all cases parallel to each other. Said lateral measurements can not extend beyond three hundred feet on either side of the middle of the vein at the surface, or such distance as is allowed by local laws; for example: 400 feet can not be taken on one side and 200 feet on the other. If, however, 300 feet on each side are allowed, and by reason of prior

claims but 100 feet can be taken on one side, the locator will not be restricted to less than 300 feet on the other side; and when the locator does not determine by exploration where the middle of the vein at the surface is, his discovery shaft must be assumed to mark such point.

6. By the foregoing it will be perceived that no lode claim located after the 10th of May, 1872, can exceed a parallelogram fifteen hundred feet in length by six hundred feet in width, but whether surface ground of that width can be taken depends upon the local regulations or State or Territorial laws in force in the several mining districts; and that no such local regulations or State or Territorial laws shall limit a vein or lode claim to less than fifteen hundred feet along the course thereof, whether the location is made by one or more persons, nor can surface rights be limited to less than fifty feet in width unless adverse claims existing on the 10th day of May, 1872, render such lateral limitation necessary.

7. The rights granted to locators under Section 2322, Revised Statutes, are restricted to such locations on veins, lodes or ledges as may be "situated on the public domain." In applications for lode claims where the survey conflicts with the survey or location lines of a prior valid lode claim and the ground within the conflicting surveys is excluded, the applicant not only has no right to the excluded ground, but he has no right to that portion of any vein or lode the top or apex of which lies within such excluded ground, unless his location was prior to May 10, 1872. His right to the lode claimed terminates where the lode, in its onward course or strike, intersects the exterior boundary of such excluded ground and passes within it. The end of his survey should not, therefore, be established beyond such intersection.

Provisions under 8 omitted because not now in force.

9. Locators can not exercise too much care in defining their locations at the outset, inasmuch as the law requires that all records of mining locations made subsequent to May 10, 1872, shall contain the name or names of the locators, the date of the location, and such a description of the claim or claims located, by reference to some natural object or permanent monument, as will identify the claim.

10. No lode claim shall be located until after the discovery of a vein or lode within the limits of the claim, the object of which provision is evidently to prevent the appropriation of presumed mineral ground for speculative purposes, to the exclusion of bona fide prospectors, before sufficient work has been done to determine whether a vein or lode really exists.

11. The claimant should, therefore, prior to locating his claim, unless the vein can be traced upon the surface, sink a shaft or run a tunnel or drift to a sufficient depth therein to discover and develop a mineral-bearing vein, lode or crevice; should determine, if possible, the general course of such vein in either direction from the point of discovery, by which direction he will be governed in marking the boundaries of his claim on the surface. His location notice should give the course and distance as nearly as practicable from the discovery shaft on the claim to some permanent, well-known points or objects, such, for instance, as stone monuments, blazed trees, the confluence



of streams, point of intersection of well-known gulches, ravines or roads, prominent buttes, hills, etc., which may be in the immediate vicinity, and which will serve to perpetuate and fix the locus of the claim and render it susceptible of identification from the description thereof given in the record of locations in the district, and should be duly recorded.

12. In addition to the foregoing data, the claimant should state the names of adjoining claims, or, if none adjoin, the relative positions of the nearest claims; should drive a post or erect a monument of stones at each corner of his surface ground, and at the point of discovery or discovery shaft should fix a post, stake or board, upon which should be designated the name of the lode, the name or names of the locators, the number of feet claimed, and in which direction from the point of discovery; it being essential that the location notice filed for record, in addition to the foregoing description, should state whether the entire claim of fifteen hundred feet is taken on one side of the point of discovery or whether it is partly upon one and partly upon the other side thereof, and in the latter case, how many feet are claimed upon each side of such discovery point.

13. The location notice must be filed for record in all respects as required by the State or Territorial laws and local rules and regulations, if there be any.

14. In order to hold the possessory title to a mining claim located prior to May 10, 1872, and for which a patent has not been issued, the law requires that ten dollars shall be expended annually in labor or improvements on each claim of one hundred feet on the course of the vein or lode until a patent shall have been issued therefor: but where a number of such claims are held in common upon the same vein or lode, the aggregate expenditure that would be necessary to hold all the claims, at the rate of ten dollars per hundred feet, may be made upon any one claim. The first annual expenditure upon claims of this class should have been performed subsequent to May 10, 1872, and prior to January 1, 1875. From and after January 1, 1875, the required amount must be expended annually until patent issues.

15. In order to hold the possessory right to a location made since May 10, 1872, not less than one hundred dollars' worth of labor must be performed or improvements made thereon annually until entry shall have been made. Under the provisions of the Act of Congress, approved January 22, 1880, the first annual expenditure becomes due and must be performed during the calendar year succeeding that in which the location was made. Expenditure made or labor performed prior to the first day of January succeeding the date of location will not be considered as a part of or applied upon the first annual expenditure required by law.

16. Failure to make the expenditure or perform the labor required upon a location made before or since May 10, 1872, will subject a claim to relocation, unless the original locator, his heirs, assigns or legal representatives have resumed work after such failure and before relocation.

17. Annual expenditure is not required subsequent to entry, the date of issuing the patent certificate being the date contemplated by statute.

18. Upon the failure of any one of several co-owners of a vein, lode or ledge, which has not been entered, to contribute his portion of the expenditures necessary to hold the claim or claims so held in ownership in common, the co-owners who have performed the labor or made the improvements as required by said Revised Statutes may, at the expiration of the year, give such delinquent co-owner personal notice in writing, or notice by publication in the newspaper published nearest the claim for at least once a week for ninety days; and if upon the expiration of ninety days after such notice in writing, or upon the expiration of one hundred and eighty days after the first newspaper publication of notice, the delinquent co-owner shall have failed to contribute his proportion to meet such expenditures or improvements, his interest in the claim by law passes to his co-owners who have made the expenditures or improvements as aforesaid. Where a claimant alleges ownership of a forfeited interest under the foregoing provision, the sworn statement of the publisher as to the facts of publication, giving dates and a printed copy of the notice published, should be furnished, and the claimant must swear that the delinquent co-owner failed to contribute his proper proportion within the period fixed by the statute.

## TUNNELS.

19. The effect of Section 2323, Revised Statutes, is simply to give the proprietors of a mining tunnel run in good faith the possessory right to fifteen hundred feet of any blind lodes cut, discovered or intersected by such tunnel, which were not previously known to exist, within three thousand feet from the face or point of commencement of such tunnel, and to prohibit other parties after the commencement of the tunnel, from prospecting for and making locations of lodes on the line thereof and within said distance of three thousand feet, unless such lodes appear upon the surface or were previously known to exist.

20. The term "face," as used in said section, is construed and held to mean the first working face formed in the tunnel, and to signify the point at which the tunnel actually enters cover; it being from this point that the three thousand feet are to be counted upon which prospecting is prohibited as aforesaid.

21. To avail themselves of the benefits of this provision of law, the proprietors of a mining tunnel will be required, at the time they enter cover as aforesaid, to give proper notice of their tunnel location by erecting a substantial post, board or monument at the face or point of commencement thereof, upon which should be posted a good and sufficient notice, giving the names of the parties or company claiming the tunnel right; the actual or proposed course or direction of the tunnel; the height and width thereof, and the course and distance from such face or point of commencement to some permanent well-known objects in the vicinity by which to fix and determine the locus, in manner heretofore set forth applicable to locations of veins or lodes, and at the time of posting such notice they shall, in order that miners or prospectors may be enabled to determine whether or not they are within the lines of the tunnel, establish the boundary lines thereof,



by stakes or monuments placed along such lines at proper intervals, to the terminus of the three thousand feet from the face or point of commencement of the tunnel, and the lines so marked will define and govern as to the specific boundaries within which prospecting for lodes not previously known to exist is prohibited while work on the tunnel is being prosecuted with reasonable diligence.

22. At the time of posting notice and marking out the lines of the tunnel as aforesaid, a full and correct copy of such notice of location defining the tunnel claim must be filed for record with the mining recorder of the district, to which notice must be attached the sworn statement or declaration of the owners, claimants or projectors of such tunnel, setting forth the facts in the case; stating the amount expended by themselves and their predecessors in interest in prosecuting work thereon; the extent of the work performed, and that it is bona fide their intention to prosecute work on the tunnel so located and described with reasonable diligence for the development of a vein or lode, or for the discovery of mines or both, as the case may be. This notice of location must be duly recorded, and, with the said sworn statement attached, kept on the recorder's files for future reference.

23. By a compliance with the foregoing much needless difficulty will be avoided, and the way for the adjustment of legal rights acquired in virtue of said Section 2323 will be made much more easy and certain.

24. This office will take particular care that no improper advantage is taken of this provision of law by parties making or professing to make tunnel locations, ostensibly for the purposes named in the statute, but really for the purpose of monopolizing the lands lying in front of their tunnels, to the detriment of the mining interests and to the exclusion of bona fide prospectors or miners, but will hold such tunnel claimants to a strict compliance with the terms of the statutes; and a reasonable diligence on their part in prosecuting the work is one of the essential conditions of their implied contract. Negligence or want of due diligence will be construed as working a forfeiture of their right to all undiscovered veins on the line of such tunnel.

## PLACER CLAIMS.

25. But one discovery of mineral is required to support a placer location, whether it be of twenty acres by an individual, or of one hundred and sixty acres or less by an association of persons.

26. The act of August 4, 1892, extends the mineral-land laws so as to bring lands chiefly valuable for building stone within the provisions of said law, by authorizing a placer entry of such lands. It does not operate, however, to withdraw lands chiefly valuable for building stone from entry under any existing law applicable thereto. Registers and receivers should therefore make a reference to said act on the entry papers in the case of all placer entries made for lands containing stone chiefly valuable for building purposes. It will be noted that lands reserved for the benefit of public schools or donated to any State are not subject to entry under said act.

27. It is to be observed that the provisions of the mineral laws relating to placers are extended by the act of February 11, 1897, so as to allow the location and entry thereunder of public lands chiefly valuable for petroleum or other mineral oils, and entries of that nature made prior to the passage of said act are to be considered as though made thereunder.

28. By Section 2330 authority is given for the subdivision of forty-acre legal subdivisions into ten-acre lots, which is intended for the greater convenience of miners in segregating their claims both from one another and from intervening agricultural lands.

29. It is held therefore, that under a proper construction of the law these ten-acre lots in mining districts should be considered and dealt with, to all intents and purposes, as legal subdivisions, and that an applicant having a legal claim which conforms to one or more of these ten-acre lots, either adjoining or cornering, may make entry thereof, after the usual proceedings, without further survey or plat.

30. In cases of this kind, however, the notice given of the application must be very specific and accurate in description, and as the forty-acre tracts may be subdivided into ten-acre lots, either in the form of squares of ten by ten chains, or, if parallelograms, five by twenty chains, so long as the lines are parallel and at right angles with the lines of the public surveys, it will be necessary that the notice and application state specifically what ten-acre lots are sought to be patented in addition to the other data required in the notice.

31. Where the ten-acre subdivision is in the form of a square it may be described, for instance, as the "SE. ¼ of the SW. ¼ of the NW. ¼," or, if in the form of a parallelogram as aforesaid, it may be described as the "W. ½ of the W. ½ of the SW. ¼ of the NW. ¼ (or the N. ½ of the S. ½ of the NE. ¼ of the SE. ¼) of section ——, township ——, range——," as the case may be; but, in addition to this description of the land, the notice must give all the other data that is required in a mineral application, by which parties may be put on inquiry as to the premises sought to be patented. The proofs submitted with applications for claims of this kind must show clearly the character and the extent of the improvements upon the premises.

The proof of improvements must show their value to be not less than five hundred dollars and that they were made by the applicant for patent or his grantors. The annual expenditure to the amount of $100, required by Section 2324, Revised Statutes, must be made upon placer claims as well as lode claims.

32. Applicants for patent to a placer claim, who are also in possession of a known vein or lode included therein, must state in their application that the placer includes such vein or lode. The published and posted notices must also include such statement. If veins or lodes lying within a placer location are owned by other parties, the fact should be distinctly stated in the application for patent, and in all the notices. But in all cases, whether the lode is claimed or excluded, it must be surveyed and marked upon the plat, the field-notes and plat giving the area of



the lode claim or claims and the area of the placer separately. It should be remembered that an application which omits to include an application for a known vein or lode therein must be construed as a conclusive declaration that the applicant has no right of possession to the vein or lode. Where there is no known lode or vein, the fact must appear by the affidavit of two or more witnesses.

33. By Section 2330 it is declared that no location of a placer claim, made after July 9, 1870, shall exceed one hundred and sixty acres for any one person or association of persons, which location shall conform to the United States surveys.

34. Section 2331 provides that all placer-mining claims located after May 10, 1872, shall conform as nearly as practicable with the United States system of public surveys and the subdivisions of such surveys, and no such locations shall include more than twenty acres for each individual claimant.

35. The foregoing provisions of law are construed to mean that after the 9th day of July, 1870, no location of a placer claim can be made to exceed one hundred and sixty acres, whatever may be the number of locators associated together, or whatever the local regulations of the district may allow: and that from and after May 10, 1872, no location can exceed twenty acres for each individual participating therein: that is, a location by two persons can not exceed forty acres, and one by three persons can not exceed sixty acres.

36. The regulations hereinbefore given as to the manner of marking locations on the ground, and placing the same on record, must be observed in the case of placer locations so far as the same are applicable, the law requiring, however, that where placer claims are upon surveyed public lands the locations must hereafter be made to conform to legal subdivisions thereof as near as practicable.

## PROCEDURE TO OBTAIN PATENT TO MINERAL LANDS.

37. As a condition for the making of application for patent according to Section 2325, there must be a preliminary showing of work or expenditure upon each location, either by showing the full amount sufficient to the maintenance of possession under Section 2324 for the pending year, or if there has been failure, it should be shown that work has been resumed so as to prevent relocation by adverse parties after abandonment.

The "pending year" means the calendar year in which application is made, and has no reference to a showing of work at date of the final entry.

38. This preliminary showing may, where the matter is unquestioned, consist of the affidavit of two or more witnesses familiar with the facts.

39. The claimant is required, in the first place, to have a correct survey of his claim made under authority of the surveyor-general of the State or Territory in which the claim lies, such survey to show with accuracy the exterior surface boundaries of the claim, which boundaries are required to be distinctly marked by monuments on the ground. Four plats and one copy of the original field-notes in each case will be prepared by the surveyor-gen-

eral; one plat and the original field-notes to be retained in the office of the surveyor-general, one copy of the plat to be given the claimant for posting upon the claim, one plat and a copy of the field-notes to be given the claimant for filing with the proper register, to be finally transmitted by that officer, with other papers in the case, to this office, and one plat to be sent by the surveyor-general to the register of the proper land district, to be retained on his files for future reference. As there is no resident surveyor-general for the State of Arkansas, applications for survey of mineral claims in said State should be made to the commissioner of this office, who, under the law, is ex-officio the U. S. Surveyor-General.

40. The survey and plat of mineral claims required to be filed in the proper land office with application for patent must be made subsequent to the recording of the location of the claim (if the laws of the State or Territory or the regulations of the mining district require the notice of location to be recorded), and when the original location is made by survey of a United States deputy surveyor such location survey can not be substituted for that required by the statute, as above indicated.

41. The surveyors-general should designate all surveyed mineral claims by a progressive series of numbers, beginning with survey No. 37, irrespective as to whether they are situated on surveyed or unsurveyed lands, the claim to be so designated at date of issuing the order therefor, in addition to the local designation of the claim; it being required in all cases that the plat and field-notes of the survey of a claim must, in addition to the reference to permanent objects in the neighborhood, describe the locus of the claim with reference to the lines of public surveys by a line connecting a corner of the claim with the nearest public corner of the United States surveys, unless such claim be on unsurveyed lands at a distance of more than two miles from such public corner, in which latter case it should be connected with a United States mineral monument. Such connecting line must not be more than two miles in length and should be measured on the ground direct between the points, or calculated from acutally surveyed traverse lines if the nature of the country should not permit direct measurement. If a regularly established survey corner is within two miles of a claim situated on unsurveyed lands, the connection should be made with such corner in preference to a connection with a United States mineral monument. The connecting line must be surveyed by the deputy mineral surveyor at the time of his making the particular survey, and be made a part thereof.

42. Upon the approval of the survey of a mining claim made upon surveyed lands the surveyor-general will prepare and transmit to the local land office and to this office a diagram tracing showing the portions of legal forty-acre subdivisions made fractional by reason of the mineral survey, designating each of such portions by the proper lot number, beginning with No. 1 in each section, and giving the area of each lot.

43. The following particulars should be observed in the survey of every mining claim:



(1) The exterior boundaries of the claim, the number of feet claimed along the vein, and, as nearly as can be ascertained, the direction of the vein, and the number of feet claimed on the vein in each direction from the point of discovery or other well-defined place on the claim, should be represented on the plat of survey and in the field-notes.

(2) The intersection of the lines of the survey with the lines of conflicting prior surveys should be noted in the field-notes and represented upon the plat.

(3) Conflicts with unsurveyed claims, where the applicant for survey does not claim the area in conflict, should be shown by actual survey.

(4) The total area of the claim embraced by the exterior boundaries should be stated, and also the area in conflict with each intersecting survey, substantially as follows:

| | Acres. |
|---|---|
| Total area of claim | 10.50 |
| Area in conflict with survey No. 302 | 1.56 |
| Area in conflict with survey No. 948 | 2.33 |
| Area in conflict with Mountain Maid lode mining claim, unsurveyed | 1.48 |

It does not follow that because mining surveys are required to exhibit all conflicts with prior surveys the areas of conflict are to be excluded. The field-notes and plat are made a part of the application for patent, and care should be taken that the description does not inadvertently exclude portions intended to be retained. It is better that the application for patent should state the portions to be excluded in express terms.

44. The claimant is then required to post a copy of the plat of such survey in a conspicuous place upon the claim, together with notice of his intention to apply for a patent therefor, which notice will give the date of posting, the name of the claimant, the name of the claim, the number of the survey, the mining district and county, and the names of adjoining and conflicting claims as shown by the plat of survey. Too much care can not be exercised in the preparation of this notice, inasmuch as the data therein are to be repeated in the other notices required by the statute, and upon the accuracy and completeness of these notices will depend, in a great measure, the regularity and validity of the proceedings for patent.

45. After posting the said plat and notice upon the premises, the claimant will file with the proper register and receiver a copy of such plat and the field-notes of survey of the claim, accompanied by the affidavit of at least two credible witnesses that such plat and notice are posted conspicuously upon the claim, giving the date and place of such posting; a copy of the notice so posted to be attached to and form a part of said affidavit.

46. Accompanying the field-notes so filed must be the sworn statement of the claimant that he has the possessory right to the premises therein described, in virtue of a compliance by himself (and by his grantors, if he claims by purchase) with the mining rules, regulations, and customs of the mining district, State or Territory in which the claim lies, and with the mining laws of Congress; such sworn statement to narrate briefly, but as clearly as possible, the facts constituting such compliance, the origin

of his possession, and the basis of his claim to a patent.

47. This sworn statement must be supported by a copy of the location notice, certified by the officer in charge of the records where the same is recorded, and where the applicant for patent claims the interest of others associated with him in making the location, or only as purchaser, in addition to the copy of the location notice, must be furnished a complete abstract of title as shown by the record in the office where the transfers are by law required to be recorded, certified to by the officer in charge of the record, under his official seal. The officer should also certify that no conveyances affecting the title to the claim in question appear of record other than those set forth in the abstract, which abstract shall be brought down to the date of the application for patent. Where the applicant claims as sole locator, his affidavit should be furnished to the effect that he has disposed of no interest in the land located.

48. In the event of the mining records in any case having been destroyed by fire or otherwise lost, affidavit of the fact should be made, and secondary evidence of possessory title will be received, which may consist of the affidavit of the claimant, supported by those of any other parties cognizant of the facts relative to his location, occupancy, possession, improvements, etc., and in such case of lost records, any deeds, certificates of location or purchase, or other evidence which may be in the claimant's possession and tend to establish his claim, should be filed.

49. Before receiving and filing a mineral application for patent, local officers will be particular to see that it includes no land which is embraced in a prior or pending application for patent or entry, or for any lands embraced in a railroad selection, or for which publication is pending or has been made by any other claimants, and if, in their opinion, after investigation, it should appear that a mineral application should not, for these or other reasons, be accepted and filed, they should formally reject the same, giving the reasons therefor, and allow the applicant thirty days for appeal to this office under the Rules of Practice.

50. Upon the receipt of these papers, if no reason appears for rejecting the application, the register will, at the expense of the claimant (who must furnish the agreement of the publisher to hold applicant for patent alone responsible for charges of publication), publish a notice of such application for the period of sixty days in a newspaper published nearest to the claim, and will post a copy of such notice in his office for the same period. When the notice is published in a weekly newspaper, nine consecutive insertions are necessary: when in a daily newspaper, the notice must appear in each issue for sixty-one consecutive issues. In both cases the first day of issue must be excluded in estimating the period of sixty days.

51. The notices so published and posted must embrace all the data given in the notice posted upon the claim. In addition to such data the published notice must further indicate the locus of the claim by giving the connecting line, as shown by the field-notes and plat, between a corner of the claim and a United States mineral monument or a corner of the public survey, and thence the boundaries of the claim by courses and distances.



52. The register shall publish the notice of application for patent in a paper of established character and general circulation, to be by him designated as being the newspaper published nearest the land.

53. The claimant at the time of filing the application for patent, or at any time within the sixty days of publication, is required to file with the register, a certificate of the surveyor-general that not less than five hundred dollars' worth of labor has been expended or improvements made, by the applicant or his grantors, upon each location embraced in the application, or, if the application embraces several locations held in common, that an amount equal to five hundred dollars for each location has been so expended upon, and for the benefit of, the entire group; that the plat filed by the claimant is correct; that the field-notes of the survey, as filed, furnish such an accurate description of the claim as will if incorporated in a patent serve to fully identify the premises, and that such reference is made therein to natural objects or permanent monuments as will perpetuate and fix the locus thereof: Provided, That as to all applications for patent made and passed to entry before July 1, 1898, or which are by protests or adverse claims prevented from being passed to entry before that time, where the application embraces several locations held in common, proof of an expenditure of five hundred dollars upon the group will be sufficient and an expenditure of that amount need not be shown to have been made upon, or for the benefit of, each location embraced in the application.

54. The surveyor-general may derive his information upon which to base his certificate as to the value of labor expended or improvements made from his deputy who makes the actual survey and examination upon the premises, and such deputy should specify with particularity and full detail the character and extent of such improvements.

55. It will be the more convenient way to have this certificate indorsed by the surveyor-general, both upon the plat and field-notes of survey filed by the claimant as aforesaid.

56. After the sixty days' period of newspaper publication has expired, the claimant will furnish from the office of publication a sworn statement that the notice was published for the statutory period, giving the first and last day of such publication, and his own affidavit showing that the plat and notice aforesaid remained conspicuously posted upon the claim sought to be patented during said sixty days' publication, giving the dates.

57. Upon the filing of this affidavit the register will, if no adverse claim was filed in his office during the period of publication, permit the claimant to pay for the land according to the area given in the plat and field-notes of survey aforesaid, at the rate of five dollars for each acre and five dollars for each fractional part of an acre, except as otherwise provided by law, the receiver issuing the usual duplicate receipt therefor. The claimant will also make a sworn statement of all charges and fees paid by him for publication and surveys, together with all fees and money paid the register and receiver of the land office, after which the complete record will be forwarded to the Commissioner of the General Land Office and a patent issued thereon if found regular.

58. At any time prior to the issuance of patent, protest may be filed against the patenting of the claim as applied for, upon any ground tending to show that the occupant has failed to comply with the law in a matter which would avoid the claim. Such protest can not, however, be made the means of preserving a surface conflict lost by failure to adverse or lost by the judgment of the court in an adverse suit. One holding a present joint interest in a mineral location included in an application for patent who is excluded from the application, so that his interest would not be protected by the issue of patent thereon, may protest against the issuance of a patent as applied for, setting forth in such protest the nature and extent of his interest in such location, and such a protestant will be deemed a party in interest entitled to appeal. This results from the holding that a co-owner excluded from an application for patent does not have an "adverse" claim within the meaning of Sections 2325 and 2326 of the Revised Statutes. See Turner v. Sawyer, 150 U. S., 578-586.

59. Any party applying to make entry as trustee must disclose fully the nature of the trust and the name of the cestui que trust; and such trustee, as well as the beneficiaries, must furnish satisfactory proof of citizenship; and the names of beneficiaries, as well as that of the trustee, must be inserted in the final certificate of entry.

60. The proceedings to obtain patents for claims usually called placers, including all forms of deposit, excepting veins of quartz or other rock in place, are similar to the proceedings prescribed for obtaining patents for vein or lode claims; but where said placer claim shall be upon surveyed lands, and conforms to legal subdivisions, no further survey or plat will be required; and all placer mining claims located after May 10, 1872, shall conform as nearly as practicable with the United States system of public-land surveys and the rectangular subdivisions of such surveys, and no such location shall include more than twenty acres for each individual claimant; but where placer claims can not be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands. But where such claims are located previous to the public surveys, and do not conform to legal subdivisions, survey, plat, and entry thereof may be made according to the boundaries thereof, provided the location is in all respects legal.

61. The proceedings for obtaining patents for veins or lodes having already been fully given, it will not be necessary to repeat them here, it being thought that careful attention thereto by applicants and the local officers will enable them to act understandingly in the matter, and make such slight modifications in the notice, or otherwise, as may be necessary in view of the different nature of the two classes of claims; placer claims being fixed, however, at two dollars and fifty cents per acre, or fractional part of an acre.

62. The first care in recognizing an application for patent upon a placer claim must be exercised in determining the exact classification of the lands. To this end the clearest evidence of which the case is capable should be presented.



(1) If the claim be all placer ground, that fact must be stated in the application and corroborated by accompanying proofs; if of mixed placers and lodes, it should be so set out, with a description of all known lodes situated within the boundaries of the claim. A specific declaration, such as is required by Section 2333, Revised Statutes, must be furnished as to each lode intended to be claimed. All other known lodes are, by the silence of the applicant, excluded by law from all claim by him, of whatsoever nature, possessory or otherwise.

(2) Deputy surveyors shall, at the expense of the parties, make full examination of all placer claims surveyed by them, and duly note the facts as specified in the law, stating the quality and composition of the soil, the kind and amount of timber and other vegetation, the locus and size of streams, and such other matters as may appear upon the surface of the claim. This examination should include the character and extent of all surface and underground workings, whether placer or lode, for mining purposes.

(3) In addition to these data, which the law requires to be shown in all cases, the deputy should report with reference to the proximity of centers of trade or residence; also of well-known systems of lode deposit or of individual lodes. He should also report as to the use or adaptability of the claim for placer mining; whether water has been brought upon it in sufficient quantity to mine the same, or whether it can be procured for that purpose; and, finally, what works or expenditures have been made by the claimant or his grantors for the development of the claim, and their situation and location with respect to the same as applied for.

(4) This examination should be reported by the deputy under oath to the surveyor-general, and duly corroborated; and a copy of the same should be furnished with the application for patent to the claim, constituting a part thereof, and included in the oath of the applicant.

(5) Applications awaiting entry, whether published or not, must be made to conform to these regulations, with respect to examination as to the character of the land. Entries already made will be suspended for such additional proofs as may be deemed necessary in each case.

## MILL SITES.

63. Land entered as a mill site must be shown to be non-mineral. Mill sites are simply auxiliary to the working of mineral claims, and as Section 2337, which provides for the patenting of mill sites, is embraced in the chapter of the Revised Statutes relating to mineral lands, they are therefore included in this circular.

64. To avail themselves of this provision of law parties holding the possessory right to a vein or lode, and to a piece of non-mineral land not contiguous thereto for mining or milling purposes, not exceeding the quantity allowed for such purposes by Section 2337 or prior laws, under which the land was appropriated, the proprietors of such vein or lode may file in the proper land office their application for a patent, under oath, in manner already set forth herein, which application, together with the plat and field-notes,

may include, embrace, and describe, in addition to the vein or lode, such non-contiguous mill site, and after due proceedings as to notice, etc., a patent will be issued conveying the same as one claim. The owner of a patented lode may, by an independent application, secure a mill site, if good faith is manifest in its use or ooccupation in connection with the lode and no adverse claim exists.

65. Where the original survey includes a lode claim and also a mill site the lode claim should be described in the plat and field-notes as "Sur. No. 37, A," and the mill site as "Sur. No. 37, B," or whatever may be its appropriate numerical designation; the course and distance from a corner of the mill site to a corner of the lode claims to be invariably given in such plat and field-notes, and a copy of the plat and notice of application for patent must be conspicuously posted upon the mill site as well as upon the vein or lode for the statutory period of sixty days. In making the entry no separate receipt or certificate need be issued for the mill site, but the whole area of both lode and mill site will be embraced in one entry, the price being five dollars for each acre and fractional part of an acre embraced by such lode and mill site claim.

66. In case the owner of a quartz mill or reduction works is not the owner or claimant of a vein or lode, the law permits him to make application therefor in the same manner prescribed herein for mining claims, and after due notice and proceedings, in the absence of a valid adverse filing, to enter and receive a patent for his mill site at said price per acre.

67. In every case there must be satisfactory proof that the land claimed as a mill site is not mineral in character, which proof may, where the matter is unquestioned, consist of the sworn statement of two or more persons capable, from acquaintance with the land, to testify understandingly.

68. The proof necessary to establish the citizenship of applicants for mining patents must be made in the following manner: In case of an incorporated company, a certified copy of their charter or certificate of incorporation must be filed. In case of an association of persons unincorporated, the affidavit of their duly authorized agent, made upon his own knowledge or upon information and belief, setting forth the residence of each person forming such association, must be submitted. This affidavit must be accompanied by a power of attorney from the parties forming such association, authorizing the person who makes the affidavit of citizenship to act for them in the matter of their application for patent.

69. In case of an individual or an association of individuals who do not appear by their duly authorized agent, you will require the affidavit of each applicant, showing whether he is a native or naturalized citizen, when and where born, and his residence.

70. In case an applicant has declared his intention to become a citizen or has been naturalized, his affidavit must show the date, place, and the court before which he declared his intention, or from which his certificate of citizenship issued, and present residence.

71. The affidavit of the claimant as to his citizenship may be taken before the register or receiver, or any other



officer authorized to administer oaths within the land district; or, if the claimant is residing beyond the limits of the district, the affidavit may be taken before the clerk of any court of record or before any notary public of any State or Territory.

72. If citizenship is established by the testimony of disinterested persons, such testimony may be taken at any place before any person authorized to administer oaths, and whose official character is duly verified.

73. In sending up the papers in the case the register must not omit certifying to the fact that the notice was posted in his office for the full period of sixty days, such certificate to state distinctly when such posting was done and how long continued. The plat forwarded as part of the proof should not be folded, but rolled, so as to prevent creasing, and either transmitted in a separate package or so enclosed with the other papers that it may pass through the mails without creasing or mutilation. If forwarded separately, the letter transmitting the papers should state the fact.

74. No entry will be allowed until the register has satisfied himself, by a careful examination, that proper proofs have been filed upon all the points indicated in official regulations in force and that they show a sufficient bona fide compliance with the laws and such regulations.

75. The consecutive series of numbers of mineral entries must be continued, whether the same are of lode or placer claims or mill sites.

## POSSESSORY RIGHT.

76. The provisions of Section 2332, Revised Statutes, will greatly lessen the burden of proof, more especially in the case of old claims located many years since, the records of which, in many cases, have been destroyed by fire, or lost in other ways during the lapse of time, but concerning the possessory right to which all controversy or litigation has long been settled.

77. When an applicant desires to make his proof of possessory right in accordance with this provision of law, he will not be required to produce evidence of location, copies of conveyances, or abstracts of title, as in other cases, but will be required to furnish a duly certified copy of the statute of limitation of mining claims for the State or Territory, together with his sworn statement giving a clear and succinct narration of the facts as to the origin of his title, and likewise as to the continuation of his possession of the mining ground covered by his application; the area thereof; the nature and extent of the mining that has been done thereon; whether there has been any opposition to his possession or litigation with regard to his claim and, if so, when the same ceased; whether such cessation was caused by compromise or by judicial decree, and any additional facts within the claimant's knowledge having a direct bearing upon his possession and bona fides which he may desire to submit in support of his claim.

78. There should likewise be filed a certificate, under seal of the court having jurisdiction of mining cases within the judicial district embracing the claim, that no suit or action of any character whatever involving the right of possession to any portion of the claim applied for is pend-

ing, and that there has been no litigation before said court affecting the title to said claim or any part thereof for a period equal to the time fixed by the statute of limitations for mining claims in the State or Territory as aforesaid, other than that which has been finally decided in favor of the claimant.

79. The claimant should support his narrative of facts relative to his possession, occupancy, and improvements by corroborative testimony of any disinterested person or persons of credibility who may be cognizant of the facts in the case and are capable of testifying understandingly in the premises.

## ADVERSE CLAIMS.

80. An adverse mining claim must be filed with the register and receiver of the land office where the application for patent was filed, or with the register and receiver of the district in which the land is situated at the time of filing the adverse claim. It must be on the oath of the adverse claimant, or it may be verified by the oath of any duly authorizd agent or attorney-in-fact of the adverse claimant cognizant of the facts stated.

81. Where an agent or attorney-in-fact verifies the adverse claim, he must distinctly swear that he is such agent or attorney, and accompany his affidavit by proof thereof.

82. The agent or attorney-in-fact must make the affidavit in verification of the adverse claim within the land district where the claim is situated.

83. The adverse notice must fully set forth the nature and extent of the interference or conflict; whether the adverse party claims as a purchaser for valuable consideration or as a locator; if the former, a certified copy of the original location, the original conveyance, a duly certified copy thereof, or an abstract of title from the office of the proper recorder should be furnished; or, if the transaction was a merely verbal one, he will narrate the circumstances attending the purchase, the date thereof, and the amount paid, which facts should be supported by the affidavit of one or more witnesses, if any were present at the time; and if he claims as a locator, he must file a duly certified copy of the location from the office of the proper recorder.

84. In order that the "boundaries" and "extent" of the claim may be shown, it will be incumbent upon the adverse claimant to file a plat showing his entire claim, its relative situation or position with the one against which he claims, and the extent of the conflict: Provided, however, That if the application for patent describes the claim by legal subdivisions, the adverse claimant, if also claiming by legal subdivisions, may describe his adverse claim in the same manner, without further survey or plat. If the claim is not described by legal subdivisions, it will generally be more satisfactory if the plat thereof is made from an actual survey by a deputy mineral surveyor, and its correctness officially certified thereon by him.

85. Upon the foregoing being filed within the sixty days' publication, the register, or in his absence the receiver, will give notice in writing to both parties to the contest that such adverse claim has been filed, informing them that the party who filed the adverse claim will be required, within thirty days from the date of such filing, to commence proceedings in a court of competent jurisdiction to determine the question of right of possession, and to prosecute the same with reasonable diligence to final judgment, and that, should such adverse claimant fail to do so, his adverse claim will be considered waived, and the application for patent be allowed to proceed upon its merits.



86. When an adverse claim is filed as aforesaid, the register or receiver will indorse upon the same the precise date of filing, and preserve a record of the date of notifications issued thereon; and thereafter all proceedings on the application for patent will be suspended, with the exception of the completion of the publication and posting of notices and plat, and the filing of the necessary proof thereof, until the controversy shall have been adjudicated in court, or the adverse claim waived or withdrawn.

87. Where an adverse claim has been filed and suit thereon commenced within the statutory period, and final judgment determining the right of possession rendered in favor of the applicant, it will not be sufficient for him to file with the register a certificate of the clerk of the court, setting forth the facts as to such judgment, but he must, before he is allowed to make entry, file a certified copy of the judgment, together with other evidence required by Section 2326, Revised Statutes.

88. Where such suit has been dismissed, a certificate of the clerk of the court to that effect or a certified copy of the order of dismissal will be sufficient.

89. After an adverse claim has been filed and suit commenced, a relinquishment or other evidence of abandonment will not be accepted, but the case must be terminated and proof thereof furnished as required by the last two paragraphs.

90. Where an adverse claim has been filed, but no suit commenced against the applicant for patent within the statutory period, a certificate to that effect by the clerk of the State court having jurisdiction in the case, and also by the clerk of the circuit court of the United States for the district in which the claim is situated, will be required.

## APPOINTMENT OF DEPUTIES FOR SURVEY OF MINING CLAIMS—CHARGES FOR SURVEYS AND PUBLICATIONS—FEES OF REGISTERS AND RECEIVERS, ETC.

91. Section 2334 provides for the appointment of surveyors of mineral claims, and authorizes the commissioner of the General Land Office to establish the rates to be charged for surveys and for newspaper publications. Under this authority of law the following rates have been established as the maximum charges for newspaper publications in mining cases:

(1) Where a daily newspaper is designated the charge shall not exceed seven dollars for each ten lines of space occupied, and where a weekly newspaper is designated as the medium of publication five dollars for the same space will be allowed. Such charge shall be accepted as full payment for publication in each issue of the newspaper for the entire period required by law.

It is expected that these notices shall not be so abbreviated as to curtail the description essential to a perfect

notice, and the said rates established upon the understanding that they are to in the usual body type used for advertisements.

(2) For the publication of citations in contests or hearings involving the character of lands the charges shall not exceed eight dollars for five publications in weekly newspapers or ten dollars for publications in daily newspapers for thirty days.

92. The surveyors-general of the several districts will, in pursuance of said law, appoint in each land district as many competent deputies for the survey of mining claims as may seek such appointment, it being distinctly understood that all expenses of these notices and surveys are to be borne by the mining claimants and not by the United States. The claimant may employ any deputy surveyor within such district to do his work in the field. Each deputy mineral surveyor, before entering upon the duties of his office or appointment, shall be required to enter into such bond for the faithful performance of his duties as may be prescribed by the regulations of the Land Department in force at that time.

93. With regard to the platting of the claim and other office work in the surveyor-general's office, that officer will make an estimate of the cost thereof, which amount the claimant will deposit with any assistant United States treasurer or designated depository in favor of the United States Treasurer, to be passed to the credit of the fund created by "individual depositors for surveys of the public lands," and file with the surveyor-general duplicate certificates of such deposit in the usual manner.

94. The surveyors-general will endeavor to appoint mineral deputy surveyors, so that one or more may be located in each mining district for the greater convenience of miners.

95. The usual oaths will be required of these deputies and their assistants as to the correctness of each survey executed by them.

The duty of the deputy mineral surveyor ceases when he has executed the survey and returned the field-notes and preliminary plat thereof with his report to the surveyor-general. He will not be allowed to prepare for the mining claimant the papers in support of an application for patent or otherwise perform the duties of an attorney before the land office in connection with a mining claim.

The surveyors-general and local land officers are expected to report any infringement of this regulation to this office.

96. Should it appear that excessive or exorbitant charges have been made by any surveyor or any publisher, prompt action will be taken with the view of correcting the abuse

97. The fees payable to the register and receiver for filing and acting upon applications for mineral-land patents are five dollars to each officer, to be paid by the applicant for patent at the time of filing, and the like sum of five dollars is payable to each officer by an adverse claimant at the time of filing his adverse claim. (Sec. 2238, R. S., paragraph 9.)

98. At the time of payment of fee for mining application or adverse claim the receiver will issue his receipt therefor



in duplicate, one to be given the applicant or adverse claimant, as the case may be, and one to be forwarded to the commissioner of the General Land Office on the day of issue. The receipt for mining application should have attached the certificate of the register that the lands included in the application are vacant lands subject to such appropriation.

99. The register and receiver will, at the close of each month, forward to this office an abstract of mining applications filed, and a register of receipts, accompanied with an abstract of mineral lands sold, and an abstract of adverse claims filed.

100. The fees and purchase money received by registers and receivers must be placed to the credit of the United States in the receiver's monthly and quarterly account, charging up in the disbursing account the sums to which the register and receiver may be respectively entitled as fees and commissions, with limitations in regard to the legal maximum.

## HEARINGS TO DETERMINE CHARACTER OF LANDS.

101. The Rules of Practice in cases before the United States District Land Office, the General Land Office, and the Department of the Interior will, so far as applicable, govern in all cases and proceedings arising in contests and hearings to determine the mineral character of lands.

102. No public land shall be withheld from entry as agricultural land on account of its mineral character, except such as is returned by the surveyor-general as mineral; and the presumption arising from such a return may be overcome by testimony taken in the manner hereinafter described.

103. Hearings to determine the character of lands are practically of two kinds, as follows:

(1) Lands returned as mineral by the surveyor-general.

When such lands are sought to be entered as agricultural under laws which require the submission of final proof after due notice by publication and posting, the filing of the proper non-mineral affidavit in the absence of allegations that the land is mineral will be deemed sufficient as a preliminary requirement. A satisfactory showing as to character of land must be made when final proof is submitted.

In case of application to enter, locate, or select such lands as agricultural, under laws in which the submission of final proof after due publication and posting is not required, notice thereof must first be given by publication for sixty days and posting in the local office during the same period, and affirmative proof as to the character of the land submitted. In the absence of allegations that the land is mineral, and upon compliance with this requirement, the entry, location, or selection will be allowed, if otherwise regular.

(2) Lands returned as agricultural and alleged to be mineral in character.

Where as against the claimed right to enter such lands as agricultural it is alleged that the same are mineral, or are applied for as mineral lands, the proceedings in this class of cases will be in the nature of a contest, and the

practice will be governed by the rules in force in contest caes.

104. Where a railroad company seeks to select lands not returned as mineral, but within six miles of any mining location, claim, or entry, or where in the case of a selection by a State, the lands sought to be selected are within a township in which there is a mining location, claim, or entry, publication must be made of the lands selected at the expense of the railroad company or State for a period of sixty days, with posting for the same period in the land office for the district in which the lands are situated, during which period of publication the local land officers will receive protests or contests for any of said tracts or subdivisions of lands claimed to be more valuable for mining than for agricultural purposes.

105. At the expiration of the period of publication the register and receiver will forward to the commissioner of the General Land Office the published list, noting thereon any protests, or contests, or suggestions as to the mineral character of any such lands, together with any information they may have received as to the mineral character of any of the lands mentioned in said list, when a hearing may be ordered.

106. At the hearings under either of the aforesaid classes, the claimants and witnesses will be thoroughly examined with regard to the character of the land; whether the same has been thoroughly prospected; whether or not there exists within the tract or tracts claimed any lode or vein of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, or copper, or other valuable deposit, which has ever been claimed, located, recorded, or worked; whether such work is entirely abandoned, or whether occasionally resumed; if such lode does exist, by whom claimed, under what designation, and in which subdivision of the land it lies; whether any placer mine or mines exist upon the land; if so, what is the character thereof—whether of the shallow-surface description, or of the deep cement, blue lead, or gravel deposits; to what extent mining is carried on when water can be obtained, and what the facilities are for obtaining water for mining purposes; upon what particular ten-acre subdivisions mining has been done, and at what time the land was abandoned for mining purposes, if abandoned at all.

107. The testimony should also show the agricultural capacitites of the land, what kind of crops are raised thereon, and the value thereof; the number of acres actually cultivated for crops of cereals or vegetables, and within which particular ten-acre subdivision such crops are raised; also which of these subdivisions embrace the improvements, giving in detail the extent and value of the improvements, such as house, barn, vineyard, orchard, fencing, etc., and mining improvements.

108. The testimony should be as full and complete as possible; and in addition to the leading points indicated above, where an attempt is made to prove the mineral character of lands which have been entered under the agricultural laws, it should show at what date, if at all, valuable deposits of mineral were first known to exist on the lands.



109. When the case comes before this office such decision will be made as the law and the facts may justify; in cases where a survey is necessary to set apart the mineral from the aricultural land, the proper party at his own expense will be required to have the work done, at his option, either by United States deputy, county, or other local surveyor; application therefor must be made to the register and receiver, accompanied by a description of the land to be segregated, and the evidence of service upon the opposite party of notice of his intention to have such segregation made; the register and receiver will forward the same to this office, when the necessary instructions for the survey will be given. The survey in such case, where the claims to be segregated are vein or lode claims, must be executed in such manner as will conform to the requirements in Section 2320, United States Revised Statutes, as to length and width and parallel end lines.

110. Such survey when executed must be properly sworn to by the surveyor, either before a notary public, officer of a court of record, or before the register or receiver, the deponent's character and credibility to be properly certified to by the officer administering the oath.

111. Upon the filing of the plat and field-notes of such survey with the register and receiver, duly sworn to as aforesaid, they will transmit the same to the surveyor-general for his verification and approval; who, if he finds the work correctly performed, will properly mark out the same upon the original township plat in his office, and furnish authenticated copies of such plat and description both to the proper local land office and to this office, to be affixed to the duplicate and triplicate township plats respectively.

112. With the copy of plat and description furnished the local office and this office must be a diagram tracing, verified by the surveyor-general, showing the claim or claims segregated, and designating the separate fractional agricultural tracts in each 40-acre legal subdivision by the proper lot number, beginning with No. 1 in each section, and giving the area in each lot, the same as provided in paragraph 45, in the survey of mining claims on surveyed lands.

113. The fact that a certain tract of land is decided upon testimony to be mineral in character is by no means equivalent to an award of the land to a miner. In order to secure a patent for such land he must proceed as in other cases, in accordance with the foregoing regulations.

Blank forms for proofs in mineral cases are not furnished by the General Land Office.

## FREE USE OF TIMBER AND STONE.

The law provides that "the Secretary of the Interior may permit, under regulations to be prescribed by him, the use of timber and stone found upon such reservations, free of charge, by bona fide settlers, miners, residents, and prospectors for minerals, for firewood, fencing, buildings, mining, prospecting, and other domestic purposes, as may be needed by such persons for such purposes; such timber to be used within the State or Territory, respectively, where such reservations may be located."

This provision is limited to persons resident in forest reservations who have not a sufficient supply of timber or stone on their own claims or lands for the purposes enumerated, or for necessary use in developing the mineral or other natural resources of the lands owned or occupied by them. Such persons, therefore, are permitted to take timber and stone from public lands in the forest reservations under the terms of the law above quoted, strictly for their individual use on their own claims or lands owned or occupied by them, but not for sale or disposal, or use on other lands, or by other persons: Provided, That where the stumpage value exceeds one hundred dollars, application must be made to and permission given by the department.

BINGER HERMANN,
Commissioner.

Department of the Interior, June 24, 1899.

Approved:
E. A. HITCHCOCK, Secretary.



# Kiowa and Comanche Reservation.

## Location, Climate, Soil and Products, Agricultual and Mineral Wealth.

### BOUNDARIES.

The boundaries of the Kiowa, Comanche, and Apache lands are as follows: Commencing at a point where the Washita River crosses the ninety-eighth meridian west from Greenwich; thence up the Washita River, in the middle of the main channel thereof, to a point thirty miles, by river, west of Fort Cobb, as now established; thence due west to the north fork of Red River, provided said line strikes said river east of the one-hundredth meridian of west longitude; if not, then only to said meridian line, and thence due south, on said meridian line, to the said north fork, in the middle of the main channel thereof, from the point where it may be first intersected by the lines above described, to the main Red River; thence down said Red River, in the middle of the main channel thereof, to its intersection with the ninety-eighth meridian of longitude west from Greenwich; thence north on said meridian line to the place of beginning.

### GENERAL LOCATION.

The general location of this reservation is in the southwestern portion of Oklahoma. On the south is the main Red River and on the west is the north fork of the Red River. On the north is the Washita River.

**Description of Country.—**

The following article, descriptive of the Kiowa, Comanche, and Apache lands, recently appeared in the "Chickasha Express." As the editor has lived for years on the border of this reservation, and speaks from personal knowledge, we believe the information will be found reliable. We quote the following:

"The lands lying south of the mountains as well as to the north are largely susceptible to the tickling of the plow and the industry of the plowman and farmer. That these lands are productive is proven from the fact that such lands are now cultivated, and further by the evidence that the Chickasaw Nation on the east and the County of Greer on the west are in cultivation and producing good crops and sustaining large populations. There need be no

doubt as to the climate and productiveness of the reservation. It is not only a good climate, but has a productive soil. Surrounded as it is by counties already settled, cultivated by a people who are intelligent, cultivated, religious and refined, makes it a land very, very desirable in which to make a home.

"The Kiowa, Comanche, and Apache Indian Reservation lies between the Washita River on the north to Red River on the south, about 100 miles, and from the 98th degree of west longitude to the north fork of Red River on the west, a distance of about ninety miles, and comprises about four million acres of land. The location is easily found on any modern map.

**Wichita Mountains—Mineral Wealth.—**

"This reservation is composed of fine agricultural and grazing lands both north and south of the Wichita Mountains, which is a range of low but rough and rugged mountains reaching from the eastern to the western boundaries, and comprises about one million acres. These mountains contain minerals in untold quantities—untold for the reason that they have been guarded with the jealous eye of an agent and his Indian police and United States troops from the vigilant search and covetous grasp of the wily prospector. That rich minerals exist there cannot be doubted at this time. There has been enough found and tested to prove that gold, silver, tin, platinum, zinc and lead exist there in paying quantities. We have on our table a piece of ore that will fuse with heat of an ordinary wood fire, and a metal, either tin or lead, will flow from it. Gold and silver are yet undeveloped to an extent to prove their real value, but assays have shown values ranging from $4 to $130 per ton, and even much higher. The rush for these claims will equal that of the '49 days of California, that of Pike's Peak, and that of the latest gold find—the Klondike.

**Grazing Lands.—**

"Along the foot of this mountain range are numerous streams of running water, skirted with more or less timber. The land along these mountains is more or less broken, but affords fine little valleys of fertile lands and the finest of pasture or grazing lands, the principal grasses being the gamma and mesquite, being the most nutritious that grow. Cattle eat and fatten on this peculiar grass when it is dry and brown as the northern grass is in the dead of winter, and of which cattle will not eat at all at that time. Cattle are turned loose upon these mesquite pastures and never eat anything else, summer nor winter.

**Timber.—**

"Away from the mountains the land opens out into undulating plains, crossed and traversed with fine streams of fine flowing water, skirted with more or less timber. Often these plains are covered with mesquite trees, a stunted bush of a hard red wood, resembling cedar. It makes excellent fence-posts and a good wood for fuel. The tree has a large root of a more tangled and knotty growth than the top. These roots are easily worked and have great heating properties. These mesquite flats are fine grazing, and make fine wheat lands when cultivated.



**Water Supply.—**

"The water supply is abundant in every part ofo the reservation, being found in springs, creeks and by digging to depths of 20 to 40 feet. The rainfall in this reservation can only be estimated by the counties adjoining, which would be from 30 to 36 inches a year.

**Climate.—**

"The climate is all that one could ask for, the temperature in summer seldom going above 100, and in winter rarely going to zero, and really cold weather never lasting more than a day or two at a time. The climate is such that the sweltering heat of other sections is never felt here, while the nights are invariably fanned with a breeze that makes sleep not only possible, but refreshing. But little snow falls and it is but seldom that ice forms to keep cattle from drinking from running streams.

**Products.—**

"Farmers along the Washita River are this year gathering a crop of wheat of 20 bushels per acre, and corn will produce 50 to 60 bushels. These are actual figures and as the threshers of to-day are verifying.

**Indians.—**

"There may be a fear of settling among Indians in an Indian reservation. These Indians are virtually civilized—entirely so, so far as going to war, or killing white people, and old habits are concerned. They have many old habits of idleness, clinging to the native dress, and a dread of labor of any kind, but they are peaceable, and many of them are progressive and industrious. Many of the younger men and women are educated, speak English, and are doing a great work in inducing the older ones to accept the inevitable and follow the white man's lead.

**Place for a Home.—**

"To the person who chooses to settle on this reservation we can assure them a livelihood and a home with only the thrift and energy he has exhibited in the land he has left, and if he comes from Missouri, Nebraska, or other northern states, of a milder climate, a soil as rich, and a people as hospitable, cultivated, and refined as those he leaves behind.

**County Seats and County Lines.—**

"Under the law applicable to these lands the Secretary of Interior has the authority to divide the above tracts of land into counties, fix the boundaries thereof, locate the county seats, and reserve 320 acres of land at each county seat for townsite purposes. This will be all done before the land is opened to settlement. Parties will therefore know just where to go to reach these towns. Of course, this cannot be done until after the allotments have been made to the Indians. The lots in these county-seat towns are free to those who go upon them and improve them, except a very small fee to provide for the expense of proving up said townsites.

**U. S. Land Office.—**

"The land offices for these new lands have not been located, but this will be done in ample time for the public, generally, to have knowledge thereof.

**When Will These Lands Be Opened?—**

"No one can now state, definitely, just when these lands will be opened to settlement. The Secretary of Interior is required to make the allotments within ninety days from the passage of the Act (June 6, 1900), and in no event shall the making of allotments be extended beyond six months from the passage of this act. The law further provides that the lands shall be opened to settlement by the proclamation of the President, within six months after the allotments have been made. It is possible that these lands will be opened during the fall of 1900, but the general opinion, among those who are best posted, is, that the lands will not be opened until March or April, 1901."



# BRIEF DIGEST.

The following references are to Decisions of the Department of the Interior. The figures before "L. D." or before the "hyphen," refer to volume, the figures following to page.

**Abandonment.—**

All rights lost by actual, 4 L. D. 267;
Erroneous advice will not excuse, 4 L. D. 166;
Allegations of, should be specific, 4 L. D. 122;
Caused by judicial compulsion not, 13-214, 15-554; 5-6;
Absence in discharge of official duty not, 6-307;
Duress excuses, 6-616;
Family on claim excuses absence, 7-35;
Returning to land in presence of intervening claim does not overcome, 9-546;
Affidavit must charge abandonment for more than six months, 10-105;
Charge of, will not lie prior to the allowance of entry, 10-510; 13-154;
Absence occasioned by poverty not, 13-42, 113;
Charge of, will not be sustained where it appears that the entryman's family resided on the land in his absence, 28-121;
Charge of, premature if brought prior to the expiration of the period given under the law for the establishment of residence, 18-144.

**Amendments.—**

Department liberal in allowing, 2 L. D. 39, 217;
Defective affidavit may be, 2 L. D. 39, 210; 10-181, 407;
Barred by intervening adverse right, 10-105;
May be allowed on suggestion of defendant's death, 10 L. D. 261;
Of contest affidavit, 15 L. D. 223, 305; 14 L. D. 447.

**Attorney.—**

Failure to file written authority, 28 L. D. 8.

**Appearance.—**

Special and general, 17 L. D. 159, 393.

**Application to Enter.—**

Appropriates the land, 3 L. D. 218; 4-365, 455; 10-192, 516; 7-136;
Confers no right upon land embraced within an entry on record, 15 L. D. 309;
Is not a contest, 15 L. D. 415;
Accompanied with allegations of prior settlement, a hearing shall be ordered determining the rights of parties, 15 L. D. 379; 13 L. D. 502, 381;
May be amended, 28-333;
When time of is uncertain, preference given to settler, 28 L. D. 267;

**Application to Enter—Continued.—**
Law to protect settlement rights by, when prior application pending, 28-490;
No rights acquired by, upon land covered by entry, prior to cancellation, 24-81; 28-515;
To be valid, must be made when land is legally subject to entry, 17 L. D. 345;
Based upon affidavit executed while land is not subject to disposal, invalid, 17-529;
Second should be held in abeyance, pending disposition of first, 17-148, 592;
Filing contest within three months after date of settlement protects settlers' rights, 17-345.
Rule of local office regulating presentation of, conclusive upon party acting thereunder without protest, 18-14;
To enter, pending an appeal, if legal, reserves the land, 18-45;
When appeal rejected, no rights acquired under, 18-14;
Party entitled to notice of, in writing, 18-6;
Preliminary affidavits of, accompanied, should not be executed before land is legally subject to entry, 18-482;
Must be accompanied by proper affidavit, 18-557;
May embrace land in two land districts, by filing application in each district, 20-412;
Equivalent to an entry so far as rights of applicant concerned, 20-535, 288;
Properly rejected does not reserve the land even though appeal is taken, 20-93; but a different rule applies if improperly rejected, 20-135;
To enter that embraces in part land not subject to entry does not defeat the right of applicant to the land open to entry, 21-344; but in such case the party should appeal from the rejection of his application, 21-208;
In determining the time a successful contestant on the ground of prior settlement has in which to make entry after notice of cancellation, the time between his original application to enter and the date of the legal notice of cancellation should be excluded from the three months allowed by law, 26-1;
To enter, embracing in part, land covered by prior entry of another, while pending, serves to protect the rights of applicant as to lands opened to entry, 26-159;
Application by mail, 27-113;
Where entry is under contest, no rights are acquired, prior to cancellation of entry in local office, 29-29;

**Appeal.—**
Will not lie from interlocutory order, 11-84;
All rights are lost by failure to, 11-416, 660, 179; 15-37;
In the absence of, decision of local office final as to facts, 11-300; 14-574, 230; 13-697; 18-409;
Specifications of error, 10-111; 11-214; 15-566;
Copy of, must be served on opposite party, 11-249, 395, 406;
Notice of, must be served, 10-546, 408, 595; 11-214; 14-428; 13-225; 14-452; 18-421;
Pendency of, precludes entry of land, 10-15;
Pending, local officers should take no action, 9-59, 281, 299, 326, 578;



**Appeal—Continued.—**
Must be filed in time, 9-668;
Ten days additional time allowed when notice of decision is given by mail, 9-438; 14-352; 13-136, 150;
Waiver of right of, 9-29;
Time for, 15-249;
Cannot from interlocutory order, 14-696;
Time for, cannot be extended, 14-423;
When mailed must reach the local office within time allowed, 28-8;
Local office should notify party of his right of, 28-315;
Service of, in time if copy is mailed to opposite party within time allowed for filing appeal, 18-543; 21-35, 234;
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