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DEPARTMENT OF THE INTERIOR,

General Land Office.
Washington, D. C., September 14, 1907.

ORDER.

All cases pending in this Office will be acted upon in the regular order except when the contrary course is required by a proper regard for the public interest, or is deemed necessary to avoid extreme hardship in individual cases, and only in the latter event upon a showing, by affidavit of the individual or qualified officer of the corporate entryman, that the emergency which it is alleged requires special action is not such as could have been reasonably anticipated, and no cases will be made special except upon order of the Commissioner.

All orders in conflict or inconsistent with the terms of this order are hereby revoked.

Very respectfully,

R. A. Ballinger,
Commissioner.

RULE OF APPROXIMATION.

"The rule is that where the difference between the excess and the deficiency that would be produced by approximation is but slight, the entry may be allowed to stand as made. (Vernon B. Matthews, 8 L. D., 79.) Also the rule of approximation will not be enforced where it operates to deprive the entryman of his improvements, and the difference between the excess and the deficiency is but slight." (Davis v. N. Pacific, 27 L. D., 78.)

Dickie v. Kennedy, 27, L. D., p. 308; 176.18 acres allowed.

The rule followed in the above case is to calculate the excess and the deficiency, and where the excess does not exceed the deficiency the rule obtains. It will also obtain where the difference is slight. It will obtain in cases where the applicant has valuable improvements of the land and a relinquishment or enforcement of the rule would operate to deprive him of his improvements.

The following cases demonstrate the application of the rule:

As entry was made before survey, and valuable improvements placed on each subdivision, an exception is made to the present rule enforcing an entry to approximate one hundred and sixty acres, as its enforcement herein would work irreparable injury to the entryman, who purchased under the former practice of the Department.

Joseph H. McComb, 5 L. D., 295; 187.24 acres allowed.

In view of the fact that settlement, with valuable improvements, was made long prior to survey, and that the entry, which was allowed, covers land so situated that the relinquishment of a portion thereof would be without value to the Government, and of the small amount involved, an exception is made to the rule of approximation.

Alexander Bouret, 5 L. D., 298; 176.50 acres allowed.

Initiation of claim prior to Government survey, extent of cultivable land falling within the lines of the claim as finally surveyed, and valuable improvements on each subdivision considered sufficient reasons for waiving the requirement of approximation.

Lafayette Council, 5 L. D., 631; 185.90 acres allowed.

The entry of a surveyed quarter section as such is authorized by the preemption and homestead laws, and the limit of acreage applied only when entry is made of parts of quarter sections.

William C. Elson, 6 L. D., 797; 183.70 acres allowed.

Where the difference between the excess and the deficiency that would be produced by approximation is but slight, the entry may be allowed to stand as made.

Vernon B. Matthews, 8 L. D., 79; 180.27 acres allowed.

A homestead entry for parts of different quarter sections should approximate one hundred and sixty acres, but exceptions to this rule are recognized when valuable improvements would be disturbed, or other like injury follow the relinquishment of a subdivision.

Frank Aldrich, 10 L. D., 587; 176.70 acres allowed.

An additional entry of a contiguous subdivision under Section 5, Act of March 2, 1889, is not defeated by excessive acreage, if the amount covered by both entries approximates one hundred and sixty acres as nearly as may be without abandoning the improvements or destroying the contiguity of the tracts entered.

Abram A. Still, 13 L. D., 610; 182.04 acres allowed.

The rule of approximation will not be enforced where it operates to deprive the entryman of his improvements, and the difference between the excess and the deficiency is but slight.

Joseph C. Herrick, 14 L. D., 222; 180.45 acres allowed.

Dickie v. Kennedy, 27 L. D., 305; 176.18 acres allowed.

The occupancy of a tract in connection with settlement and residence upon adjoining land operates to exclude such tract from indemnity selection.

The rule of approximation will not be enforced when it will deprive the the entryman of his improvements, and the difference between the excess and the deficiency is but slight.

Davis v. Northern Pacific R. R. Co., 27 L. D., 78; 171 acres allowed.

See also 33 L. D., 606; 37 L. D., 330.

ALIEN.

An alien is a foreigner, or one who owes his allegiance to some other government. Some aliens cannot make entry of public lands

because they cannot become citizens of the United States. Notably the Chinese and Japanese.

No rights can attach to lands claimed by aliens before filing his declaration to become a citizen of the United States. Settlement rights cannot be acquired, but where there is no adverse claim after survey, and the claimant makes declaration to become a citizen his right will relate back to date of settlement.

Consult title "Homestead," giving qualifications.

Under Sec. 2291 of the Revised Statutes, as amended by the act of June 6, 1812, the claimant must bear true allegiance to the Government of the United States. Commutation proof cannot be made upon a declaration to become a citizen. The claimant must be a full citizen when final proof is submitted.

Where the wife makes entry, either as the deserted wife, *feme sole* or as the widow of the husband who is a foreign born, evidence of his citizenship will need be shown.

Widow and Minor Children of Alien Entryman, Who Becomes Insane Before Final Naturalization, May Be Naturalized Without Making Declaration of Intention.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That when any alien, who has declared his intention to become a citizen of the United States, becomes insane before he is actually naturalized, and his wife shall thereafter make a homestead entry under the land laws of the United States, she and their minor children may, by complying with the other provisions of the naturalization laws be naturalized without making any declaration of intention. (Public No. 413, Approved, February 24, 1911.)

[CIRCULAR.]

Instructions Relative to Final Orders and Certificates of Naturalization Issued Since March 3, 1903, Not in Keeping With Section 39 of the Act of That Date.

Department of the Interior, General Land Office, Washington, D. C., August 11, 1906. Registers and Receivers, United States Land Offices. Sirs: Your attention is called to Section 39, Act March 3, 1903 (32 Stat., 1222), which declares that all final orders and certificates of naturalization thereafter issued or made by courts or tribunals granting naturalization shall be null and void if they do not show on their faces specifically that there has been made and filed of record in such court or tribunal an affidavit executed by the applicant for naturalization reciting and affirming the truth of every material fact requisite to his naturalization; and you are directed to reject all such orders or certificates, or copies thereof, as have not been made in conformity with that statute when presented by persons who claim to have been naturalized since the date of that act. Very respectfully, G. F. Pollock, Acting Commissioner. Approved August 11, 1906, Thos. Ryan, Acting Secretary.

AMENDMENT.

Instructions as to Amendments Under Section 2372, Revised Statutes, as Amended by Act of February 24, 1909. Public No. 258.

Department of the Interior,
General Land Office.
Washington, D. C., April 22, 1909.

Registers and Receivers,
United States Land Offices.

Gentlemen: By act of February 24, 1909, section 2372, United States Revised Statutes, is amended to read as follows:

Sec. 2372. In all cases where an entry, selection, or location has been or shall hereafter be made of a tract of land not intended to be entered, the entryman, selector, or locator, or, in case of his death, his legal representatives, or, when the claim is by law transferable, his or their transferees, may, in any case coming within the provisions of this section, file his or their affidavit, with such additional evidence as can be procured showing the mistake as to the numbers of the tract intended to be entered and that every reasonable precaution and exertion was used to avoid the error, with the register and receiver of the land district in which such tract of land is situate, who should transmit the evidence submitted to them, in each case, together with their written opinion both as to the existence of the mistake and the credibility of every person testifying thereto, to the Commissioner of the General Land Office, who, if he be entirely satisfied that the mistake has been made and that every reasonable precaution and exertion has been made to avoid it, is authorized to change the entry and transfer the payment from the tract erroneously entered to that intended to be entered, if the same has not been disposed of and is subject to entry, or if not subject to entry, then to any other tract liable to such entry, selection, or location; but the oath of the person interested shall in no case be deemed sufficient, in the absence of other corroborating testimony, to authorize such change of entry, nor shall anything herein contained affect the right of third persons.

The following rules are given which are to govern in the consideration of applications to amend entries, selections, or locations:

1. Applications for amendment must be filed in the local land office of the United States having jurisdiction over the land sought to be entered, and should be substantially in accordance with the printed form herewith. This form may be used for the amendment of non-mineral entries where the applicant is either the original entryman, the assignee, or transferee, by making such modifications as the facts may justify. Each application must be verified by the oath of the applicant and corroborating witnesses, and must describe the land erroneously entered as well as that desired by way of amendment, by subdivision, section, township, and range; and where the land originally intended to be entered has been disposed of the applicant must describe that land also and show why he can not obtain it.

2. The application must contain a full statement of all the facts and circumstances, showing how the mistake occurred and what precautions were taken prior to the filing of the erroneous entry, selection, or location, to avoid error in the description. The showing in this regard must be complete, because no amendment will be allowed unless it is made to appear that the proper precaution was taken to avoid error at the time of making the original entry, location, or selection; and where there has been undue delay in applying for amendment the application will be closely scrutinized and will not be allowed unless the utmost good faith is shown and the delay explained to the entire satisfaction of the Commissioner of the General Land Office.

3. The application must also show that no timber or other thing of value has been taken from the land erroneously entered, located, or selected; that the land sought by way of amendment is not occupied or claimed by any adverse claimant; that it is of the character contemplated by the law under which the claim is presented, and in cases of nonmineral claims the kind and quantity of timber on each legal subdivision applied for must be stated.

4. Where the final certificate has been issued and the amendment is sought by the original claimant, it must be shown that the

land embraced in the erroneous entry, location, or selection has not been sold, assigned, relinquished, or in any way encumbered, and for this purpose the affidavit of the applicant, corroborated as hereinafter required, will be sufficient; but where final certificate has issued or where amendment is sought by a transferee, it must be shown by a certificate from the proper recording officer of the county in which the land is situated, or by satisfactory abstract of title, that the applicant is the owner of such land under the entry, location, or selection, as the case may be, and it must also be shown that there are no liens, unpaid taxes, or other incumbrance charged against the land. Where patent has been issued reconveyance of the land embraced in the patent must be made by deed executed by the claimant and also by his wife, if he be married, in accordance with the laws governing the execution of deeds conveying real estate in the State in which the land is situated, which deed must be recorded in the proper county office and accompanied by a certificate from the recording officer, or a satisfactory abstract showing the title to be clear and free from incumbrance.

5. The affidavit of the applicant must be corroborated by at least two witnesses who have been well acquainted with him for a sufficient length of time to enable them to testify as to the character and reputation of the applicant for truth and veracity. Also, at least one witness must make affidavit, showing that he has personal knowledge of the facts concerning the alleged mistake, what opportunity he had for learning the facts, and setting out fully all pertinent knowledge he has relative thereto. The witness who testifies as to the facts from his personal knowledge may be one of the witnesses testifying as to the truth and veracity of the applicant.

6. The affidavit of the applicant must be executed before the register or receiver of the land office where the application is made or before a United States Commissioner or commissioner of the court exercising federal jurisdiction in the territory or before the judge or clerk of any court of record in the county, parish, or land district in which the lands are situated, as required by the act of March 4, 1904 (33 Stat., 59). The corroborating affidavits may be made before any officer authorized to administer oaths and using a seal.

7. When an application to amend is filed in your office, you will make proper notations on your records and forward it to the General Land Office with your monthly returns, with your recommendation written at the place indicated in the form, and thereafter you will make no disposition of the land applied for until instructed by the General Land Office.

8. When an application to amend is received in the General Land Office, together with proper report and recommendation from the register and receiver, it will be considered, and, if found satisfactory, the amendment will be allowed and proper correction made on the records, of which you will be duly advised, to the end that the necessary corrections may be made on the records of your office and the applicant properly notified. Where an application is denied, an appeal may be taken to the Department.

9. Where amendments are allowed of claims upon which final proof has been submitted and publication or posting of notice is required, republication of notice applicable to the class of entry for

which application to amend is made will be required; and if the land sought by way of amendment is the land originally intended to be entered, the witnesses who testified when the final proof was made on the erroneous entry must make affidavit showing that the land described in the application for amendment is the same land to which they intended to refer in their testimony, formerly given. If, however, the same witnesses can not be secured, or if the land sought by way of amendment is not the land originally intended to be entered, new proof must be made.

10. The act in terms provides for amendment in all cases where an entry, selection, or location has been or shall hereafter be made of a tract of land not intended to be entered, and therefore, perhaps, if strictly construed, provides for amendment only in cases where there has been a mistake in description or numbers of the land originally intended to be entered. However, under the supervisory authority of the Secretary of the Interior, the Department will allow amendments of entries made under laws which require settlement, cultivation, or improvement of the land entered in cases where, through no fault of the entryman, the land is found to be so unsuitable for the purpose for which it was entered as to make the completion of the entry impracticable if not impossible. In such cases at least one legal subdivision, approximating 40 acres in area, of the land embraced in the original entry shall be retained, and the tracts included by way of amendment must be contiguous thereto. Furthermore, in such cases and as an assurance of good faith, the application to amend must be filed within one year from date of the original entry. Applications for such amendments may be made under the rules given above, and on the prescribed form in so far as the same are applicable. A supplemental affidavit should also be furnished, if necessary, to show the facts.

11. Where entries, selections, or locations are improperly allowed by the land department, as where the lands are not subject to such entries, or locations, amendments will not be allowed because such claims, being invalid, should be canceled, and upon cancellation thereof a new entry, selection, or location may be allowed as though the former had never been made.

The circular of February 29, 1908 (36 L. D., 287), and all other circulars or instructions concerning amendments, incompatible herewith are hereby revoked.

Very respectfully,

Fred Dennett,
Commissioner.

Approved April 22, 1909.
R. A. Ballinger,
Secretary.

Note: Applications for lands designated under the enlarged homestead law should contain a statement as to the amount of timber thereon, and whether or not the land sought is susceptible of irrigation from any known source of water supply. See approved form.

Consult title "Second Homestead Entries—Equitable Rule."

See 16 L. D., 171; 27 L. D., 389; 33 L. D., 110; 37 L. D., 655; 39 L. D., 48, and 40 L. D., 434 and 577.

4—005

(Form approved by the Secretary of the Interior January 18, 1912.)

DEPARTMENT OF THE INTERIOR.

APPLICATION FOR AMENDMENT.

(Section 2372, R. S., amended.)

U. S. Land Office, ..., No. .....

I, ..., of .....,
(Give post-office address.)

having made ....., No. .....
(Kind of entry, selection, or location.)

for the .....
....., Section .....,
Township ....., Range ....., ... Meridian,
.....Land District, hereby apply to amend the same so that the description when amended will read as follows:
.....
....., Section .....,
Township ....., Range ....., ...Meridian,
and, being first duly sworn, upon oath say: That I originally intended to enter the .....
(Describe lands applicant intended to enter.)
....., Section .....,
Township ....., Range ....., ... Meridian.

I have not sold, assigned, transferred, or relinquished the lands embraced in my said former claim, nor agreed to do so; nor have I taken from said land any timber or other thing of value.

(Set out fully below all of the facts showing how the mistake occurred, the precaution taken to avoid error, the grounds upon which the application is based, etc., as required by the regulations.)

.....

I am well acquainted with the character of the land now applied for and with each and every legal subdivision thereof, having passed over each and every legal subdivision thereof, and from my personal knowledge I swear that there is not to my knowledge within the limits thereof any vein or lode of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or any deposit of coal; nor within the limits of said lands any placer, cement, gravel, or other valuable mineral deposits; nor is there any salt spring or deposits of salt in any form sufficient to render it chiefly valuable therefor; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially nonmineral land; and that my application therefor is not for the purpose of fraudulently obtaining title to mineral land; that the land applied for is not occupied nor claimed by any adverse claimant.

The character of the land applied for is as follows:

.....
(Describe the character of the land by legal subdivisions and state amount and kind of timber on each subdivision, if any.)

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

Note.—Every person swearing falsely to the above affidavit will be punished as provided by law for such offense. See Section 125, United States Criminal Code (over).

I Hereby Certify that the foregoing affidavit was read to or by affiant in my presence before affiant affixed signature thereto; that affiant is to me personally known (or has been satisfactorily identified before me by .....
(Give full name and postoffice address.)

that I verily believe affiant to be a qualified applicant and the identical person hereinbefore described; and that said affidavit was duly subscribed and sworn to before me, at my office, in .....
(Town.)

....., within the .....
(County and State.)

.....Land District, this .....
day of ....., 19....

.....

.....
(Official designation of officer.)

CORROBORATING AFFIDAVITS.

Affidavit of Witness as to Facts.

I, ..., whose post-office address
(Give full Christian name.)
is ....., being ..... years of age, and
(Insert address.)
by occupation a ....., do solemnly swear that the facts within my personal knowledge relative to the mistake of..... ..... in filing upon the ...., Section ....., Township ....., Range ....., ... Meridian, ... Land District, the precaution taken to avoid said error, and the grounds on which application for amendment is filed, are as follows:

.....

My knowledge of the foregoing facts was acquired as follows:

.....

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

I Hereby Certify that the foregoing affidavit was read to or by affiant in my presence before affiant affixed signature thereto; that affiant is to me personally known (or has been satisfactorily identified before me by .....), and I verily believe affiant to be a credible witness and the identical person hereinbefore described, and that said affidavit was duly subscribed and sworn to before me, at my office, in ....., ...County, State
(Town.)
of ....., within the .....
Land District, this .....day of ....., 19....

.....
(Official designation of officer.)

Note.—Every person swearing falsely to the above affidavit will be punished as provided by law for such offense. See Section 125, United States Criminal Code (over).

Affidavit of Witnesses as to Character and Reputation of Applicant.

We, ..., of .....
(Give full post-office address.)
(Give full Christian name.)
.....years of age, and by occupation.....,
(Give full Christian name.)
and ....., of .....
(Give full post-office address.)
.....years of age, and by occupation.....,
do solemnly swear that we have been well acquainted with the applicant for ..... years and ..... years, respectively; that we have read the statements made by him in his said application; that he is a person of truth and veracity, and that we believe said statements to be true.

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

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

I Hereby Certify that the foregoing affidavit was read to or by affiant in my presence before affiant affixed signature thereto; that affiant is to me personally known (or has been satisfactorily identified before me by .....), and I verily believe affiant to be a credible witness and the identical person hereinbefore described, and that said affidavit was duly subscribed and sworn to before me, at my office, in ....., ...County, State
(Town.)
of ....., within the .....
Land District, this .....day of ....., 19....

.....
(Official designation of officer.)

Note.—Every person swearing falsely to the above affidavit will be punished as provided by law for such offense. See Section 125, United States Criminal Code (over).

United States Land Office at.....
....., 19....

We Hereby Certify that the foregoing application is for surveyed land and that there is no prior valid adverse right to the same. We recommend that the application be.....
(If rejection is recommended, set out reasons therefor.)
.....
.....
Register.
.....
Receiver.

UNITED STATES CRIMINAL CODE.

Sec. 125. Whoever, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, shall willfully and contrary to such oath, state or subscribe any material matter which he does not believe to be true, is guilty of perjury, and shall be fined not more than two thousand dollars and imprisoned not more than five years.

APPLICATIONS.

Priority.
Simultaneous.
See Table of Circulars, Instructions and Regulations.

The public lands of the United States are subject to disposition under general and special Acts of Congress. The laws of general application are the homestead, desert, timber and stone and isolated tracts. These laws are treated elsewhere in this work. The purpose of this chapter is to present the question of priority and validity of applications.

The prospective settler or entryman under any of the public land laws, and particularly the agricultural public land laws, should determine the location of the land he wishes to acquire. A personal inspection is essential in order that he may be able to make the non-mineral affidavit required and to give a proper description of the land by legal subdivision. Applications for public lands must be made upon forms prescribed by the department. Applications should be made before an officer qualified to administer oaths in such cases within the district. It is true that in some instances the officer before whom application and papers involving public lands may be acknowledged varies according to the character of the application. As a general thing applications for lands are made before either the Register or Receiver of the Land Office, Judge or a Clerk of a court of record, or a United States Commissioner of the District within which the land is situated.

When the application is not made before the Register and Receiver because of time, distance and expense necessary to do so, the application may be made before the nearest and most accessible qualified officer, as may be provided by Department regulations covering the character of the application involved.

The land must be subject to entry under the application presented. For example, lands applied for under the desert law must be desert in character within the meaning of the Act concerning the disposition thereof and the regulations of the Department thereunder, and this is true of lands applied for under any other law or Act of Congress.

PRIORITY.

1. "Applications presented at the land office in person have a preference over those reaching the office through the mail.

2. "When two applications are presented at the same time, either in person or by mail, they are considered simultaneous.

"Applications must be presented during office hours. Land offices are open for public business from 9 a. m. until 4:30 p. m. No original business, however, will be accepted after 4 o'clock p. m."

3. "Proper sums of money required by law to be paid at time of filing must accompany the application. Applications cannot be presented at the land office to be filed at some subsequent date. The land office will not hold land unless there is a legal application presented therefor."

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

"The fact that the office cannot act upon the application on account of pressure of business will not alter the above rule."

Lewis v. Morse, 27 L. D. 113.

Mary v. Pierce, 28 L. D. 48.

5. "Where a relinquishment was received by mail but the letter presenting it was not opened by the local office for some time afterwards, the relinquishment is to be regarded as filed at the moment of the receipt of the letter containing it."

Wm. C. Young, 2 L. D. 326.

SIMULTANEOUS APPLICATION.

REGULATIONS OF THE DEPARTMENT.

The regulations of the Department concerning simultaneous applications are as follows:

"In the case of simultaneous application to enter the same tract of land under homestead laws, the rule is as follows:

1. Where another party has improvements on the land, the right of entry should be awarded to the highest bidder;

2. Where one has actual settlement and improvements and the other has not, it should be awarded to the actual settler;

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

(See Report of General Land Office for 1866, page 19. Also case of Helfrich vs. King, 3 Copp's L. O., page 164.)

General Land Office Circular, January 25, 1904.

SETTLEMENT BEFORE SURVEY.

Section 3 of the Act of May 14, 1880—21 Statutes, 140—makes provision for protection of settlement rights upon lands prior to survey. For this see Title of Relinquishments, page —.

Settlement rights upon lands prior to survey should be asserted within three months after the filing of plat of survey in the local land office.

See Section 2265, Revised Statutes.

See Section 2274, Revised Statutes.

The Department recognizes the right of the heirs of the deceased entryman.

Where two persons settle upon a piece of land prior to survey, at the same time, the Department has provided three methods by

which the tract of land claimed by two settlers may be acquired. One is by the joint entry and another is to divide the land so as to award to each that portion to which he may be entitled. While the third is to award the land to the highest bidder. It frequently happens that two settlers claim a portion of a given forty acre tract and the rights of each may be determined by the fence which divides the respective claims of the parties, or by other means which determine that portion of the forty acres to which each may be entitled.

Under such circumstances an entryman has been allowed to make entry on a forty-acre tract upon filing a written agreement at the local Land Office to convey the portion thereof awarded to the second claimant after patent has been issued.

Consult on this subject the following cases:

Stone vs. Banegas & Holleran, 2 L. D. 104; Miller vs. Stever, 2 L. D. 150; Doyle vs. Dion, 4 L. D. 27; Benart vs. Nicholas, 4 L. D. 519; McKinnon vs. Anderson, 27 L. D. 154, and other cases cited.

Under Sec. 2274 of the Revised Statutes, page —, consult also the following cases: O'Toole vs. Spicer, 20 L. D. 392, and Hopkins vs. Wagner, 21 L. D. 485; Cain vs. Carrier, 36 L. D. 356.

The right of possession of unsurveyed land prior to survey as between two claimants, in which the Government is not a party, may be determined in the courts of the State in which the land is located, and the courts have jurisdiction under what is known as "forcible entry and detainer" or "unlawful detainer." Actions under the procedure of the State courts concerning forcible entry and detainer should not be confused with actions to determine adverse claims to mineral lands.

The matters that determine settlement is the good faith of the settler, the character of the settlement and the physical development of the land, together with his residence and occupancy thereof. The acts of the settler must be of such a nature as tends to reduce the land to his possession and the exercise of ownership over it.

Consult the following cases:
Buchanan vs. Munton, 2 L. D. 186.
Slate vs. Door, 2 L. D. 635.
McLean vs. Foster, 2 L. D. 175.
Boyer vs. Burnell, 2 L. D. 521.
Franklin vs. March, 10 L. D. 582.
Powers vs. Ady, 11 L. D. 175.
Burnett vs. Crow, 5 L. D. 372.
Howden Piper Case, 3 L. D. 162 and 294.

Under the rule announced in Allen vs. Price, regulating the disposition of lands subject to the Contestant's Preferred right of entry, an application tendered by a stranger to the record during the period accorded to the contestant for the exercise of his right to hold in abeyance under said rule, will take effect on the land covered thereby not taken by the contestant to the exclusion of a subsequent application of another therefor.

For provisions and right of entry see Contest:

State of California vs. Reeves, 22 L. D. 203.

Mayers vs. Dyer, 21 L. D. 187.

Application to enter and file subject to contestant's preferred right of entry take precedence in the order of filing if the contestant fails to exercise his privilege.

Residence on public land with no intention to acquire title thereto under the settlement laws, accords no right against subsequent entry and settlement.

Gaylor vs. Randle, 18 L. D. 187.

As to when the rights of applicants attach to lands, see case of Powell vs. Puff, 24 L. D. 181.

Stewart vs. Peterson, 28 L. D. 515.

Also table of circulars, regulations and instructions.

Applications to enter tendered in person or sent through the mail should be acted upon in the actual order or arrival and presentation at the Local Office; and the refusal of said office to observe such order of precedence will not defeat the right of the applicant to have his application subsequently considered as though acted upon in its proper order.

Lewis vs. Morris, 27 L. D. 113.

See 39 L. D. 409.

One asserting prior settlement as against the application of another, suspended because of the closing of the local office, must, in order to maintain his alleged claim, continue residence upon the land pending the determination of the question of superior right.

Pounder vs. Allen, 39 L. D. 348.

Where a tract of unsurveyed land within the primary limits of a railroad grant was at the date of definite location of the road in good faith occupied by a qualified homestead settler and by fences and connected and continuous occupancy or right passed from one settler to another down to date of filing for township plat of survey, the rights of the settler are superior to the claim of the company under its grant.

Curry vs. Central Pacific R. R. Co., 39 L. D. 5.

Circular of November 3, 1909, concerning application and selections for filing and location on unsurveyed lands provides as follows:

APPLICATIONS AND SELECTIONS FOR AND FILINGS AND LOCATIONS UPON UNSURVEYED LANDS.

[Circular.]

Department of the Interior,
General Land Office,
Washington, D. C., November 3, 1909.

Registers and Receivers, United States Land Offices.

Gentlemen: To remedy the confusion and uncertainty arising from applications and selections for and filings and locations upon unsurveyed public lands, you will hereafter reject any such application, selection, filing, or location, under whatsoever law permitted, unless it conforms to the following rules:

1. It must contain a description of the land by metes and bounds, with courses, distances, and reference to monuments by which the location of the tract on the ground can be readily and accurately ascertained. The monuments may be of iron or stone, or of substantial posts well planted in the ground, or of trees or natural objects of a permanent nature, and all monuments shall be surrounded with mounds of stone, or earth when stones are not accessible, and must be plainly marked to indicate with certainty the claim to the tract located. The land must be taken in rectangular form, if practicable, and the lines thereof follow the cardinal points of the compass unless one or more of the boundaries be a stream or other fixed object. In the latter event only the approximate course and distance along such stream or object need be given, but the other boundaries must be definitely stated; and the designation of narrow strips of land along streams, water courses, or other natural objects will not be permitted.

2. The approximate description of the land, by section, township, and range, as it will appear when surveyed must be furnished; or, if this can not be done, an affidavit must be filed setting forth a valid reason therefor.

3. The address of the claimant must be given, and it shall be the duty of the register and receiver, upon the filing of the township plat in their office, to notify him thereof, by registered letter, at such address, and to require the adjustment of the claim to the public survey within thirty days. In default of action by the party notified the register and receiver will promptly adjust the claim and report their action to the General Land Office.

4. Notice of the application, selection, filing, or location, describing the land as directed in Rule 1, must be posted in a conspicuous place upon the land, and a copy of such notice and proof of posting therefor filed with the application, selection, filing, or location, as the case may be.

5. Wherever, under existing regulations, notice of such application, selection, filing, or location is required to be posted elsewhere than upon the land and published in a newspaper, the description of the tract in the posted and published notice must conform to the requirements of Rule 1.

Very respectfully, FRED DENNETT,
Commissioner.

Approved:
R. A. BALLINGER, Secretary.

SETTLEMENT ON SCHOOL LAND.

A claimant making settlement on unsurveyed land prior to survey in the field, which proves to be school land after the survey has been accepted, has a superior right to that of the State. There are many decisions of the Department sustaining such settlements.

ISLANDS.

Islands may be surveyed upon application to the Surveyor General of the Public Land State in which such island may be located.

Forms and instructions concerning such matters should be obtained from such Surveyor Generals.

See 32 L. D. 474.

ASSIGNMENTS.

In the instructions of October 11, 1911, to the Register and Receiver of the United States Land Office at Belle Fourche, South Dakota, in reference to transfer made by purchasers of lots on time payments, the Secretary said: * * * "The Department will not recognize any one but the original purchaser, and will issue all papers necessary to the completion of title and also the patent in his name."

Under date of October 28, 1911, the Commissioner of the General Land Office issued instructions upon the above regulation as follows: "This decision is applicable to lots in all townsites where they may be purchased and paid for in installments, and you will be governed thereby in all such cases."

Passing upon this matter January 11, 1912, the Commissioner of the General Land Office said:

"A patent issued in the name of the original purchaser will inure to the benefit of his transferee, whoever he may be, which will fully protect all parties claiming under the purchase, and the Government by such course will be relieved from all unnecessary responsibility of ascertaining in each instance in whom the right to a patent is vested and to issue the patent accordingly."

Speaking of townsite lots, in his instructions of November 29, 1911, the Secretary said: * * * "A purchaser of lots in said townsites acquires a property right that he may, prior to the com-

pletion of his right to patent, transfer by deed, and such transferee may perform all the acts necessary to the completion of title."

The above instructions apply in all cases of lands sold, either on a cash or installment basis. The same applies to transfers of Crow, Rosebud, Uintah and other Indian lands which have been sold under proclamation of the President, or under instructions of the Department.

In cases where purchases were made for the benefit of minors, the right to transfer the same will depend upon the law of the State in which such lands may be situated.

Payments may be made by the assignee, in which event a notation showing the name of the original purchaser and by whom the remittance is made will appear upon the receipt.

For Assignments Coal Lands see page 187.

For Assignments Desert Entries see page 274.

For Assignments Water Rights Reclamation Protests see p. 486.

For Relinquishment all classes of entries see pp. 345, 349.

See, also, Desert Lands and Relinquishments; Indian Lands; Town Lots.

CIRCULAR RELATIVE TO ASSIGNMENT OF HOMESTEAD ENTRIES WITHIN RECLAMATION PROJECTS, AMENDING CIRCULAR OF SEPTEMBER 13, 1910.

Department of the Interior,
Washington, December 17, 1910.

Registers and Receivers,
United States Land Offices.
Project Engineers,
United States Reclamation Service.

Sirs: The circular entitled "Instructions under Reclamation Acts of June 11, 23, and 25, 1910, relative to entry, assignment, leave of absence, etc., approved September 13, 1910, is hereby amended by substituting for that portion of the circular relating to the Act of June 23, 1910, supra, the following:

"The Act approved June 23, 1910, entitled 'An Act providing that entrymen for homesteads within reclamation projects may assign their entries upon satisfactory proof of residence, improvement, and cultivation for five years the same as though said entry had been made under the original Homestead Act' (Public, No. 243), reads as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the filing with the Commissioner of the General Land Office of satisfactory proof of residence, improvement, and cultivation for the five years required by law, persons who have or shall make homestead entries within reclamation projects under the provisions of the act of June seventeenth, nineteen hundred and two, may assign such entries, or any part thereof, to other persons, and such assignees, upon submitting proof of the reclamation of the lands and upon payment of the charges apportioned against the same as provided in the said act of June seventeenth, nineteen hundred and two, may receive from the United States a patent for the lands: Provided, That all assignments made under the provisions of this act shall be subject to the limitations, charges, terms, and conditions of the reclamation act.

"Under the provisions of this Act persons who have made or may make homestead entries subject to the Reclamation Act may assign their entries in their entirety at any time after filing in this

office satisfactory proof of residence, improvements, and cultivation for the five years required by the ordinary provisions of the homestead law. The Act also provides for the assignment of homestead entries in part, but such assignments, if made prior to the establishment of farm units, must be made in strict accordance with the legal subdivisions of the public survey, and if made after such units are established must conform thereto, except as hereinafter provided.

"In cases where the entry involves two or more farm units, the entryman may file an election as to which farm unit he will retain, and he may assign and transfer to a qualified assignee any farm unit or farm units entirely embraced within the original entry. If an election by the entryman to conform to a farm unit be filed and no assignment made of the remainder of the entry, the entry will be conformed to the farm unit selected for retention and canceled as to the remainder. Assignments of parts of established farm units will be allowed only after report by the project engineer to the Department that the farm unit as proposed to be divided or as capable of adjustment in connection with surrounding lands will make two or more units each capable of supporting a family, the report to be accompanied with plats describing the amended farm units. Such plats will be submitted by the Director of the Reclamation Service to the Secretary of the Interior for approval, and, when approved by him, will be forwarded to the Commissioner of the General Land Office for transmission to the local land office with appropriate instructions; the assignment of the lands embraced within one of the farm units so established to be allowed only after a proper showing of the qualifications of the assignee, the filing of water-right application by him, and the payment of any amounts due upon the lands covered by the assignment under the terms of the public notices issued in connection with the project in which the lands are situated.

"If a survey shall be found necessary to determine the boundaries of the subdivision of any such farm unit, or the division of the irrigable area, a deposit equal to the estimated cost of such survey must be made with the special fiscal agent, Reclamation Service, on the project, by or on behalf of the parties concerned. Any excess over the actual cost will be returned to the depositor or depositors after the completion of the survey.

"No assignment of a portion of any farm unit will be recognized by the Department as modifying any approved water-right application, or releasing any part of the farm unit as originally established from any portion of the charges announced against it until after the approval of the amended farm unit by the Secretary of the Interior, the filing of evidence of the qualifications of the assignee, the receipt of a proper water-right application, and of the payments due upon the land included in the assignment.

"Assignments under this Act must be made expressly subject to the limitations, charges, terms, and conditions of the reclamation Act, and, inasmuch as that Act limits the right of entry to one farm unit, the assignee must present a showing in the form of an affidavit, duly corroborated, that he has not acquired title to and is not claiming any other farm unit or entry under the reclamation Act.

"Assignments made and filed in your office in accordance with these regulations must be noted on your records and forwarded to the General Land Office for consideration, and, if approved, the assignees in each case will be required to make payment of the water-right charges and submit proof of reclamation as would the original entryman and, after proof of full compliance with the law, may receive a patent for the land."

Very respectfully,

Fred Dennett,
Commissioner.

Approved.
R. A. Ballinger,
Secretary of the Interior.
December 17, 1910.

FORM OF ASSIGNMENT DESERT ENTRY.

Know All Men by These Presents: That I, ..., of ....., for and in consideration of the sum of ..... Dollars, in lawful money of the United States of America, to me in hand paid by ....., of ....., the receipt whereof is hereby acknowledged, do by these presents sell, assign, transfer and set over unto the said ..... all my right, title, and interest now acquire, or which I may hereafter in the perfection of the title all those certain lands now held and embraced in my desert land entry serial No. ....., made ..... at the United States District Land Office at ....., State of ....., on the ..... day of ....., ..., for the following described lands, to-wit: (Here describe lands.)

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and also possession, claim and demand whatsoever, as well in law and in equity and to every part and parcel thereof.

To have and to hold the same unto the said ....., his heirs, executors, administrators and assigns, subject nevertheless to the covenants, conditions and payments required to me made under the laws of the United States, and Departmental Regulations thereunder concerning Desert Land entries and final proofs thereunder, all of which the assignee submits and agrees to, and with such full understanding accepts this assignment.

And I hereby fully authorize and empower the said ..... to receive patent to said land upon the full and complete compliance with the law and regulations aforesaid, in the same manner, to all intents and purposes as I myself might or could do, were these presents not executed.

In witness whereof, I have hereunto set my hand and seal this ..... day of ....., ...

..... (Seal.)

Signed, sealed and delivered in the presence of—

.....
.....
Witnesses.

State of ....., County of ....., ss.

On this ..... day of ....., A. D. ....., before me, ... (state name of office taking acknowledgment) in and for County and State aforesaid, personally appeared ....., known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same freely and voluntarily, for the purposes therein named.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

.....

EXECUTION. JUDGMENT.

Homestead Lands Not Subject to for Satisfaction of Debts Contracted Prior to Patent.

Section 2296 of the Revised Statutes provides:

"Sec. 2296. No lands acquired under the provisions of this chapter shall in any event become liable to the satisfaction of any debt contracted prior to the issuing of patent therefor."

See decisions cited under this section in table of revised statutes cited and construed.

See mortgages.

See alienation.

CANALS, DITCHES, AND RESERVOIRS.

1. General statement.
2. Material on adjacent lands.
3. Control of water.
4. Nature of grant.
5. Right of way through national forests.
6. Right of way through proposed national forest.
7. Right of way partly on unsurveyed land.
8. Application by corporation.
9. Application by individuals.
10. Field notes.
11. Maps.
12. Initial and terminal points.
13. Connections on unsurveyed land.
14. Connections with monuments on unsurveyed land.
15. Forms for canal, etc., on unsurveyed land.
16. Forms for reservoir on unsurveyed land.
17. Right of way wholly on unsurveyed land.
18. Connections with public survey corners.
19. Witness monuments for destroyed public survey corners.
20. Method of establishing witness monuments.
21. Affidavit and certificate required.
22. Notations on maps and records.
23. Evidence of construction.
24. Right of way on segregated reservoir sites.
25. Requirements (oil pipe lines in Colorado and Wyoming).
26. General provisions. (Reservoirs for watering stock).
27. No lands sold.
28. Declaratory statement.
29. Application by corporation.
30. Action by the Land Department on declaratory statements, and size, location and number of reservoir sites.
31. Construction.
32. Map and field notes of constructed reservoir.
33. Notations by local land officers.
34. Approval.
35. Annual proof of maintenance.
36. Reservoir on unsurveyed land.
37. General statement. (Telegraph and telephone lines, electrical plants, canals, and reservoirs.)
38. Nature of grant.
39. Application for right of way through national forests.
40. Applications for right of way through land outside of national forests.
41. Buildings to be platted on map in main drawing and in separate drawing.
42. Unsurveyed lands.
43. National parks.
44. Indian reservations.
45. Notations and procedure.
46. Rights of way for tramroads. (Tramroads.)
47. General statement. (Right of way through national forests for dams, reservoirs, water plants, ditches, flumes, pipes, tunnels, and canals for municipal or mining purposes.)
48. Nature of grant.
49. Preparation of applications.
50. Water-plant structures.
51. Stipulation and bond.

52. Notation by register.
53. Right of way through unsurveyed land.
54. Circular 108. Addenda.

REGULATIONS FOR RIGHTS OF WAY OVER PUBLIC LANDS AND RESERVATIONS.

CANALS, DITCHES, AND RESERVOIRS.

1. General Statement.—Sections 18, 19, 20 and 21 of the Act of Congress approved March 3, 1891 (26 Stat., 1095), entitled "An Act to repeal timber-culture laws, and for other purposes," grant the right of way through the public lands and reservations of the United States for the use of canals, ditches, or reservoirs heretofore or hereafter constructed by corporations, individuals, or associations of individuals. If the right of way is upon a reservation not within the jurisdiction of the Interior Department, the application must be filed in accordance with these regulations, and will be submitted to the Department having jurisdiction. A map and field notes of the portion within any reservation, except in the case of a national forest, must be submitted in addition to the duplicates required herein. All maps and field notes must conform to the provisions of this circular.

The sections above noted read as follows:

Sec. 18. That the right of way through the public lands and reservations of the United States is hereby granted to any canal or ditch company formed for the purpose of irrigation, and duly organized under the laws of any State or Territory, which shall have filed or may hereafter file with the Secretary of the Interior a copy of its articles of incorporation and due proofs of its organization under the same to the extent of the ground occupied by the water of the reservoir and of the canal and its laterals, and fifty feet on each side of the marginal limits thereof; also the right to take from the public lands adjacent to the line of the canal or ditch, material, earth, and stone necessary for the construction of such canal or ditch: Provided, That no such right of way shall be so located as to interfere with the proper occupation by the Government of any such reservation, and all maps of location shall be subject to the approval of the Department of the Government having jurisdiction of such reservation, and the privilege herein granted shall not be construed to interfere with the control of water for irrigation and other purposes under authority of the respective States or Territories.

Sec. 19. That any canal or ditch company desiring to secure the benefits of this act shall, within twelve months after the location of ten miles of its canal, if the same be upon surveyed lands, and if upon unsurveyed lands within twelve months after the survey thereof by the United States, file with the register of the land office for the district where such land is located a map of its canal or ditch and reservoir; and upon the approval thereof by the Secretary of the Interior the same shall be noted upon the plats in said office, and thereafter all such lands over which such rights of way shall pass shall be disposed of subject to such right of way. Whenever any person or corporation, in the construction of any canal, ditch, or reservoir, 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.

Sec. 20. That the provisions of this act shall apply to all canals, ditches, or reservoirs heretofore or hereafter constructed, whether constructed by corporations, individuals, or association of individuals, on the filing of the certificates and maps herein provided for. If such ditch, canal, or reservoir has been or shall be constructed by an individual or association of individuals, it shall be sufficient for such individual or association of individuals to file with the Secretary of the Interior and with the register of the land office where said land is located a map of the line of such canal, ditch, or reservoir, as in case of a corporation, with the name of the individual owner or owners thereof, together with the articles of association, if any there be. Plats heretofore filed shall have the benefits of this act from the date of their filing, as though filed under it: Provided, That if any section of said canal or ditch shall not

be completed within five years after the location of said section the rights herein granted shall be forfeited as to any uncompleted section of said canal, ditch, or reservoir, to the extent that the same is not completed at the date of the forfeiture.

Sec. 21. That nothing in this act shall authorize such canal or ditch company to occupy such right of way except for the purpose of said canal or ditch, and then only so far as may be necessary for the construction, maintenance, and care of said canal or ditch.

2. Material on Adjacent Lands.—The word adjacent, as used in section 18 of the Act, in connection with the right to take material for construction from the public lands, must be construed according to the conditions of each case (28 L. D., 439). The right extends only to construction, and no public timber or material may be taken or used for repair or improvements (14 L. D., 566). These decisions were rendered under the railroad right-of-way Act, and are applied to this Act since the words are the same in both.

Section 2 of the Act approved March 11, 1898 (30 Stat., 404), entitled "An Act to amend an Act to permit the use of the right-of-way through public lands for tramroads, canals, and reservoirs, and for other purposes," authorizes the use of rights of way granted under the Act of 1891 for purposes subsidiary to the main purpose of irrigation. The language of said section is as follows:

Sec. 2. That rights of way for ditches, canals, or reservoirs heretofore or hereafter approved under the provisions of sections eighteen, nineteen, twenty, and twenty-one of the act entitled "An act to repeal timber culture laws, and for other purposes," approved March third, eighteen hundred and ninety-one, may be used for purposes of a public nature; and said rights of way may be used for purposes of water transportation, for domestic purposes, or for the development of power, as subsidiary to the main purpose of irrigation.

3. Control of Water.—While these Acts grant rights of way over the public lands necessary to the maintenance and use of ditches, canals, and reservoirs, the control of the flow and use of the water is, so far as this Act is concerned, vested in the States or Territories, the jurisdiction of the Department of the Interior being limited to the approval of maps carrying the right of way over the public lands. If the right of way applied for under this Act in any wise involves the appropriation of natural sources of water supply, the damming of rivers, or the use of lakes, the maps should be accompanied by proof that the plans and purposes of the projectors have been regularly submitted and approved in accordance with the local laws or customs governing the use of water in the State or Territory in which such right of way is located. No general rule can be adopted in regard to this matter. Each case must rest upon the showing filed.

4. Nature of Grant.—The right granted is not in the nature of a grant of lands, but is a base or qualified fee. The possession and right of use of the lands are given for the purposes contemplated by law, but a reversionary interest remains in the United States, to be conveyed by it to the person to whom the land may be patented, whose rights will be subject to those of the grantee of the right of way. All persons settling on a tract of public land, to part of which right of way has attached for a canal, ditch, or reservoir, take the land subject to such right of way, and at the total area of the subdivision entered, there being no authority to make deduction in such cases. If a settler has a valid claim to land existing at the date of the filing of the map of definite location,

his right is superior, and he is entitled to such reasonable measure of damages for right of way as may be determined upon by agreement or in the courts, the question being one that does not fall within the jurisdiction of this Department. Section 21 of the Act of March 3, 1891, provides that the grant of a right of way for a canal, ditch, or reservoir does not necessarily carry with it a right to the use of land 50 feet on each side, but only such land may be used as is necessary for construction, maintenance and care of the canal, ditch, or reservoir. The width is not specified.

5. Right of Way Through National Forest.—Whenever a right of way is through a national forest, the applicant must enter into such stipulation and execute such bond as the Forest Service may require for the protection of such national forest. No construction will be allowed in a national forest until an application for right of way has been regularly filed and approved by the Secretary of the Interior, or unless permission for such construction work has been specifically given.

6. Right of Way Through Proposed National Forest.—If the right of way is through land within a proposed national forest, the applicant must file the following stipulations under seal:

(a) That the proposed right of way is not so located as to interfere with the proper occupation and use of the reservation by the Government.

(b) That the applicant will cut no timber from the reserve outside the right of way, and will remove no timber from the land within the right of way except such as is rendered necessary for the proper use and enjoyment of the privilege for which application is made.

(c) That he will remove from the reservation, or destroy, under such safeguards as may be deemed necessary by the General Land Office, all standing, fallen, and dead timber, as well as all tops, lops, brush, and refuse cuttings on the right of way, for such distance on each side of the central line as may be required by the General Land Office to protect the forest from fire.

(d) That the applicant will furnish free of charge such assistance in men and material for fighting fires as may be spared without serious injury to the applicant's business.

(e) That should any portion of said right of way be included in a National Forest, the applicant will build new roads, trails, and crossings, as required by the Forest Service, in case any roads or trails are destroyed or intercepted by construction work or flooding upon said right of way.

The applicant will also be required to give bond to be approved by the Commissioner of the General Land Office, stipulating that the United States will be compensated "for any and all damage to the public lands, timber, natural curiosities, or other public property on such reservation, or upon the lands of the United States, by reason of such use and occupation of the reserve, regardless of the cause or circumstances under which such damages may occur." A bond furnished by any surety company that has complied with the provisions of the Act of August 13, 1894 (28 Stat., 279), will be accepted. The amount of the bond can not be fixed until the application has been submitted to the General Land Office, when a form of bond will be furnished and the amount thereof fixed.

7. Right of Way Partly on Unsurveyed Land.—Canals, ditches, or reservoirs lying partly upon unsurveyed land can be approved if the application and accompanying maps and papers conform to these regulations, but the approval will only relate to that portion traversing the surveyed lands. (For right of way wholly on unsurveyed land, see section 17.)

8. Application by Corporation.—An incorporated company desiring to obtain the benefits of the law must file the papers and maps specified below with the register of the land district in which the canal, ditch, or reservoir is to be located. These papers and maps will be forwarded to the General Land Office, and, after examination, they will be submitted to the Secretary of the Interior with recommendations as to their approval:

(a) A copy of its articles of incorporation, duly certified to by the proper officers of the company under its corporate seal, or by the secretary of the State or Territory where organized.

(b) A copy of the State or Territorial law under which the company was organized (if it was organized under State or Territorial law), with certificate of the Governor or Secretary of State or Territory, under seal, that the same was the law at the date of incorporation. (See paragraph k of this section.)

(c) If the State or Territorial law directs that the articles of incorporation or other papers connected with the organization be filed with any State or Territorial officer, there must be submitted the certificate of such officer that the same have been filed according to law, and giving the date of the filing thereof.

(d) When a company is operating in a State or Territory other than that in which it is incorporated, it must submit the certificate of the proper officer of the State or Territory that it has complied with the laws of that State or Territory governing foreign corporations to the extent required to entitle the company to operate in such State or Territory.

No forms are prescribed for the above portion of the "due proofs" required, as each case must be governed to some extent by the laws of the State or Territory.

(e) The official statement, by the proper officer, under the seal of the company, that the organization has been completed, that the company is fully authorized to proceed with construction according to the existing law of the State or Territory in which it is incorporated, and that the copy of the articles filed is true and correct. (See Form 1, p. 112.)

(f) A true list, signed by the president, under the seal of the company, showing the names and designations of its officers at the date of the filing of the proofs. (See form 2, p. 112.)

(g) A copy of the company's title or right to appropriate the water needed for its canals, ditches, and reservoirs, certified as required by the State or Territorial laws. If the miner's inch is the unit used in such title, its equivalent in cubic feet per second must be stated. If the right to appropriate the water has not been adjudicated under the local laws, a certified copy of the notice of appropriation will be sufficient. If the notice of appropriation is accompanied by a map of the canal or reservoir it will not be necessary to furnish a copy of the map where the notice describes the location sufficiently to identify it with the canal or reservoir

for which the right-of-way application is made. If the water-right claim has been transferred a number of times it is not necessary to furnish a copy of each instrument of transfer; an abstract of title will be accepted.

(h) A copy of the State or Territorial laws governing water rights and irrigation, with the certificate of the Governor or Secretary of State or Territory that the same is the existing law. (See paragraph k of this section.)

(i) A separate statement as follows: The amount of water flowing in the stream supplying the canal, ditch, or reservoir, at the point of diversion or damming, during the preceding year or years. For this purpose it will be necessary to give the maximum, minimum, and average flow in cubic feet per second for each month during the period for which records are available. In cases of reservoirs of 5,000 acre-feet capacity, or more, or of ditches of 100 cubic feet per second capacity, or more, the amount of water, in acre-feet, available for storage or diversion, and the amount of water which it is proposed to divert annually from the stream or streams affected, with the period during which the water is to be diverted. The length, cross-section, grade, and capacity of the ditches to be constructed and the characteristics of each ditch as affecting the flow of water. The surveyor or engineer of the applicant must certify to the above, and must certify that all available records (specifying them), official and otherwise, have been consulted. If there is no well-defined flow which can be measured, or if there is no record of the flow, the area of the water-shed, average annual rainfall, and estimated run-off at the point of diversion or damming must be given.

(j) Maps, field notes, and other papers, as hereinafter required.

(k) If certified copies of the existing laws regarding corporations and irrigation, and of new laws as passed from time to time, be forwarded to the General Land Office by the Governor or Secretary of the State or Territory, the applicant may file, in lieu of requirements of paragraphs b and h of this section, a certificate of the Governor or Secretary of State, under seal, that no change has been made since a given date, not later than that of the laws last forwarded.

9. Application by Individuals.—Individuals or associations of individuals making applications for right of way are required to file the information called for in paragraphs g, h, i, and j of the preceding section. Associations of individuals must, in addition, file their articles of association; if there be none, the fact must be stated over the signature of each member of the association.

10. Field Notes.—Field notes of the surveys must be filed in duplicate, separate from the map, and in such form that they may be folded for filing. Complete field notes should not be placed on the map, but the following data should be shown thereon: (a) The station numbers where deflections or changes of numbering occur; (b) station numbers with distances to corners at points where the lines of the public surveys are crossed, and (c) the lines of reference of initial and terminal points, with their courses and distances. Typewritten field notes with clear carbon copies are preferred, as they expedite the examination of applications. The field notes should contain, in addition to the ordinary records of

surveys, the data called for in this and in the following sections. They should state which line of the canal was run—whether middle or a specified side line. The stations or courses should be numbered in the field notes and on the map. The record should be so complete that from it the surveys could be accurately retraced by a competent surveyor with proper instruments. The field notes should show whether the lines were run on the true or the magnetic bearings, and if run on magnetic bearings the declination of the needle and date of determination must be stated. The kind and size of the instrument used in running the lines and its minimum reading on the horizontal circle should be noted. The line of survey should be that of the actual location of the proposed ditch and, as exactly as possible, the water line of the proposed reservoir. The method of running the grade lines of canals and the water lines of reservoirs must be described.

11. Maps.—The maps filed must be drawn on tracing linen in duplicate, and must be strictly conformable to the field notes of the survey. They must be filed in the land office for the district in which the right of way is located; but if the right of way is located in more than one district, duplicate maps and field notes need be filed in but one district, and single sets in the others. Other canals, ditches, laterals, or reservoirs with which connections are made must be shown, but distinguished from those for which right of way is desired by ink of a different color.

The scale of the map should be 2,000 feet to the inch in the case of canals or ditches and 1,000 feet to the inch in the case of reservoirs. The scale may, however, be 1,000 feet to the inch in the case of canals or ditches and 500 feet to the inch in the case of reservoirs when such a scale is absolutely necessary to properly show the proposed works.

All subdivisions of the public surveys on the map should have their entire boundaries drawn, and on all lands affected by the right of way the smallest legal subdivisions (40-acre tracts and lots) must be shown. The section, township, and range must be clearly marked on the map.

The map must bear a statement of the width of each canal, ditch, or lateral high-water line. If not of uniform width, the limits of the deviations must be clearly defined on the map. The field notes should record the changes in such a manner as to admit of exact location on the ground. In the case of a pipe line, the diameter of the pipe should be stated. The map must show the source of water supply.

In applications for right of way for a reservoir, the capacity of the reservoir must be stated on the map in acre-feet (i. e., the number of acres that will be covered to a depth of 1 foot by the water that the reservoir will hold; 1 acre-foot is 43,560 cubic feet). The map must show the source of water supply for the reservoir and the location and height of the dam.

12. Initial and Terminal Points.—The termini of a canal, ditch, or lateral should be fixed by reference of course and distance to the nearest existing corner of the public survey. The initial point of the survey of a reservoir should be fixed by reference of course and distance to the nearest existing corner outside the reservoir by a line that does not cross an area that will be covered with water

when the reservoir is in use. The map, field notes, engineer's affidavit, and applicant's certificate (Forms 3 and 4) should each show these connections.

13. Connections on Unsurveyed Land.—When either terminal of a canal, ditch, or lateral is upon unsurveyed land, it must be connected by traverse with an established corner of the public survey, if not more than 6 miles distant, and the single bearing and distance from the terminal point to the corner must be computed and noted on the map, in the engineer's affidavit, and in the applicant's certificate (Forms 3 and 4). The notes and all data for the computation of the traverse must be given in the field notes.

14. Connections With Monuments on Unsurveyed Land.—When an established corner of the public survey is more than 6 miles distant this connection will be made with a natural object or a permanent monument which can be readily found and recognized and which will fix and perpetuate the position of the terminal point. The map must show the position of such mark and must give the course and distance to the terminus. The field notes must give an accurate description of the mark and full data of the traverse as required above. The engineer's affidavit and applicant's certificate (Forms 3 and 4) must state the connections. These monuments are of great importance.

15. Forms for Canal, etc., on Unsurveyed Land.—When a canal, ditch, or lateral lies partly on unsurveyed land, each portion lying within surveyed and unsurveyed land will be separately described in the field notes and in Forms 3 and 4 by connections of termini, length, and width, as though each portion were independent. (See secs. 12, 13, and 14.)

16. Forms for Reservoir on Unsurveyed Land.—When a reservoir lies partly on unsurveyed land its initial point must be noted, as required for the termini of ditches in section 12. The reference line must not cross an area that will be covered with water when the reservoir is in use. The areas of the several parts lying on surveyed or unsurveyed land must be separately noted on the map, in the field notes, and in Forms 3 and 4.

17. Right of Way Wholly on Unsurveyed Land.—Maps showing canals, ditches, or reservoirs wholly upon unsurveyed lands may be received and placed on file in the General Land Office and the local land office of the district in which the land is located, for general information. The date of filing will be noted thereon; but the maps will not be submitted to nor approved by the Secretary of the Interior, as the Act makes no provision for the approval of any but maps showing the location in connection with the public surveys. The filing of such maps will not dispense with the filing of maps after the survey of the lands and within the time specified by the Act granting the right of way. If these maps are in all respects regular when filed, they will receive the Secretary's approval. In filing such maps the initial and terminal points will be fixed as indicated in sections 13 and 14.

18. Connections With Public Survey Corners.—Whenever the line of survey crosses a township or section line of the public survey, the distance to the nearest existing corner should be ascertained and noted. In the case of a reservoir the distance must not be measured across an area which will be covered with water when

the reservoir is in use. The map of the canal, ditch, or reservoir must show these distances, and the field notes must give the points of intersection and the distances. When corners are destroyed by the canal or reservoir, proceed as directed in sections 19 and 20.

19. Witness Monuments for Destroyed Public Survey Corners.—Whenever a corner of the public survey will be covered by earth or water, or otherwise rendered useless, marked monuments (one on each side of destroyed corner) must be set on each township or section line passing through, or one on each line terminating at, said corner. These monuments must comply with the requirements for witness corners of the Manual of Surveying Instructions issued by the General Land Office, and must be at such distance from the works as to be safe from interference during the construction and operation of the same. If two or more consecutive corners on the same line are destroyed, the monument shall be set as required in the Manual for the nearest corner on that line to be covered.

20. Method of Establishing Witness Monuments.—The line on which such monument is set will be determined by running a random line from the corner to be destroyed to the first existing corner on the line to be marked by the monument, a temporary mark being set on the random line at the distance of the proposed monument. If the random line strikes the corner run to, the monument will be established at the place marked; if the random line passes to one side of the corner, the north and south or east and west distance to it will be measured and the true course calculated. The proper correction of the temporary mark will then be computed and a permanent monument set in the proper place. The field notes for the surveys establishing the monuments must be in duplicate and separate from those of the canal or reservoir, and must be certified by the surveyor under oath. They must comply with the form of field notes prescribed in the Manual of Survey Instructions issued by the General Land Office.

When application is made for a canal or reservoir which is constructed and in operation, the method to be adopted in setting the monuments must be governed by the special features of each case and left to the judgment of the surveyor. No field notes will be accepted unless the lines on which the monuments are set conform to the lines shown by the field notes of the survey as made originally under the direction of this office, and unless the notes are in such form that the computation can be verified and the lines retraced on the ground.

21. Affidavit and Certificate Required.—The engineer's affidavit and applicant's certificate must both designate by termini (as in sections 12 to 17, inclusive) and length each canal, ditch, or lateral, and by initial point and area each reservoir shown on a map, for which right of way is asked. This affidavit and this certificate (changed where necessary when an application is made by an individual or association of individuals) must be written on the map in duplicate. Applicants under the Act of March 3, 1891, must include in the certificate (Form 4) the statement: "And I further certify that the right of way herein described is desired for the main purpose of irrigation." (See Forms 3 and 4, pages 25 and 26.) No changes or additions are allowable in the substance

of these forms, except when the facts differ from those assumed therein.

22. Notation on Maps and Records.—When maps are filed, the Register will note on each the name of the land office and the date of filing over his written signature. Notations will also be made on the records of the local land office, as to each unpatented tract affected, that application for right of way for a canal (or reservoir) is pending, giving date of filing and name of applicant. The Register will certify on each map, over his written signature, that unpatented land is affected by the proposed right of way. The maps and field notes in duplicate, and any other papers filed in connection with the application, will then be promptly transmitted to the General Land Office with report that the required notations have been made on the records of the local land office. Any valid right existing at the date of the filing of the right of way application will not be affected by the filing or approval thereof. (See sec. 4.) If no unpatented land is involved in the application, the local officers will reject it, allowing the usual right of appeal.

Upon the approval of a map of location by the Secretary of the Interior, the duplicate copy will be sent to the local officers, who will mark upon the township plats the lines of the canals, ditches, or reservoirs, as laid down on the map. They will also note the approval in ink, on the tract book, opposite each tract marked as required above and report to the General Land Office that notations have been made and the applicant notified of approval.

23. Evidence of Construction.—When the canal, ditch, or reservoir is constructed, an affidavit of the engineer and certificate of the applicant (Forms 5 and 6) must be filed in the local office, in duplicate, for transmission to the General Land Office. No new map will be required, unless there are deviations from the right of way previously approved, either before or after construction, when there must be filed new maps and field notes in full, as herein provided, bearing proper forms, changed to agree with the facts in the case. The map must show clearly the portions amended or bear a statement describing them, and the location must be described in the forms as the amended survey and the amended definite location. In such cases the applicant must file a relinquishment, under seal, of all rights under the former approval as to the portions amended, said relinquishment to take effect when the map of amended definite location is approved by the Secretary of the Interior. If the canal or reservoir has been constructed on the location originally approved, and is to be used until the canal or reservoir on the amended location is ready for use, the relinquishment may be made to take effect upon the completion of the canal or reservoir on the amended location.

24. Right of Way on Segregated Reservoir Sites.—The Act approved February 26, 1897 (29 Stat., 599), entitled "An Act to provide for the use and occupation of reservoir sites reserved," permits the approval of applications under the above Act of 1891 for right of way upon reservoir sites reserved under authority of the Acts of October 2, 1888 (25 Stat., 505, 526), and August 30, 1890 (26 Stat., 371, 391). The text of the Act is as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all reservoir sites reserved

or to be reserved shall be open to use and occupation under the right-of-way act of March third, eighteen hundred and ninety-one. And any State is hereby authorized to improve and occupy such reservoir sites to the same extent as an individual or private corporation, under such rules and regulations as the Secretary of the Interior may prescribe: Provided, That the charges for water coming in whole or part from reservoir sites used or occupied under the provisions of this act shall always be subject to the control and regulation of the respective States and Territories in which such reservoirs are in whole or part situate.

When an application is made under this Act a reference to it should be added to Forms 4 and 6. In other respects the application should be prepared according to the preceding regulations.

OIL PIPE LINES IN COLORADO AND WYOMING.

25. Requirements.—The Act approved May 21, 1896 (29 Stat., 127), entitled "An Act to grant right of way over the public domain for pipe lines in the States of Colorado and Wyoming," is similar in its requirements to the right-of-way Act of March 3, 1891, and the preceding regulations furnish full information as to the preparation of the maps and papers. Applicants will be governed thereby so far as they are applicable.

The text of the Act is as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the right of way through the public lands of the United States situate in the State of Colorado and in the State of Wyoming outside of the boundary lines of the Yellowstone National Park, is hereby granted to any pipe-line company or corporation formed for the purpose of transporting oils, crude or refined, which shall have filed or may hereafter file with the Secretary of the Interior a copy of its articles of incorporation, and due proofs of its organization under the same, to the extent of the ground occupied by said pipe line and twenty-five feet on each side of the center of line of the same; also the right to take from the public lands adjacent to the line of said pipe line material, earth, and stone necessary for the construction of said pipe line.

Sec. 2. That any company or corporation desiring to secure the benefits of this act shall within twelve months after the location of ten miles of the pipe line if the same be upon surveyed lands; and if the same be upon unsurveyed lands, within twelve months after the survey thereof by the United States, file with the register of the land office for the district where such land is located a map of its line, and upon the approval thereof by the Secretary of the Interior the same shall be noted upon the plats in said office, and thereafter all such lands over which such right of way shall pass shall be disposed of subject to such right of way.

Sec. 3. That if any section of said pipe line shall not be completed within five years after the location of said section the right herein granted shall be forfeited, as to any incomplete section of said pipe line, to the extent that the same is not completed at the date of the forfeiture.

Sec. 4. That nothing in this act shall authorize the use of such right of way except for the pipe line, and then only so far as may be necessary for its construction, maintenance, and care.

RESERVOIRS FOR WATERING STOCK.

26. General Provisions.—The Act approved January 13, 1897 (29 Stat., 484), entitled "An Act providing for the location and purchase of public lands for reservoir sites," is as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person, live-stock company, or transportation corporation engaged in breeding, grazing, driving, or transporting live stock may construct reservoirs upon unoccupied public lands of the United States, not mineral or otherwise reserved, for the purpose of furnishing water to such live stock, and shall have control of such reservoir,

under regulations prescribed by the Secretary of the Interior, and the lands upon which the same is constructed, not exceeding one hundred and sixty acres, so long as such reservoir is maintained and water kept therein for such purposes: Provided, That such reservoir shall not be fenced and shall be open to the free use of any person desiring to water animals of any kind.

Sec. 2. That any person, live-stock company, or corporation desiring to avail themselves of the provisions of this act shall file a declaratory statement in the United States land office in the district where the land is situated, which statement shall describe the land where such reservoir is to be or has been constructed; shall state what business such corporation is engaged in; specify the capacity of the reservoir in gallons, and whether such company, person, or corporation has filed upon other reservoir sites within the same county; and if so, how many.

Sec. 3. That at any time after the completion of such reservoir or reservoirs which, if not completed at the date of the passage of this act, shall be constructed and completed within two years after filing such declaratory statement, such person, company, or corporation shall have the same accurately surveyed, as hereinafter provided, and shall file in the United States land office in the district in which such reservoir is located a map or plat showing the location of such reservoir, which map or plat shall be transmitted by the register and receiver of said United States land office to the Secretary of the Interior and approved by him, and thereafter such land shall be reserved from sale by the Secretary of the Interior so long as such reservoir is kept in repair and water kept therein.

Sec. 4. That Congress may at any time amend, alter, or repeal this act.

27. No Lands Sold.—Although the title indicates that lands are to be sold for reservoir sites, the Act does not provide for the sale of any lands, and therefore no lands can be sold under its provisions. The Act, however, directs the Secretary of the Interior to reserve the lands from sale after the approval of the map showing the location of the reservoir. Homestead entries are allowed for lands embraced in reservoir declaratory statements, prior to the completion of the reservoir and the approval of the map, subject, however, to cancellation if the reservoir is completed within the time specified by the Act.

28. Declaratory Statement.—Any person, live-stock company, or transportation corporation engaged in breeding, grazing, driving, or transporting live stock, desiring to obtain the benefits of the Act must file a declaratory statement in the United States Land Office in the district in which the land is located.

29. Application by Corporation.—When the applicant is a corporation there should be filed a copy of its articles of incorporation and proofs of its organization, as required in section 8, paragraphs a, b, c, d, e, f, and k of these regulations. If these papers are filed with the first declaratory statement made by the company, a reference thereto by its number will be sufficient in any subsequent application by the company.

The declaratory statement must be made under oath and should be drawn in accordance with Form 9 (page 27), and must contain the following:

(a) The post-office address of the applicant; the name of the county in which the reservoir is to be or has been constructed; the description by the smallest legal subdivision (40-acre tracts or lots) of the land sought to be reserved which under no circumstances must exceed 160 acres; certificate that the land is not occupied or otherwise claimed; certificate that to the best of the applicant's knowledge and belief the land is not mineral or otherwise reserved; statement of the business of the applicant, which statement shall include full and minute information concerning the extent to which

he is engaged in breeding, grazing, driving, or transporting live stock, the number and kinds of such stock, the place where they are being bred or grazed, whether within an inclosure or upon unin-closed lands, and also the points from which and to which they are being driven or transported; description of the land owned or claimed by the applicant in the vicinity of the proposed reservoir and statement of its amount; certificate that no part of the land sought to be reserved is or will be fenced, that all the land will be kept open to the free use of any person desiring to water animals of any kind; and that the lands so sought to be reserved are not, by reason of their proximity to other lands reserved for reservoirs, excluded from reservation by the regulations and rulings of the Land Department.

(b) The location of the reservoir described by the smallest legal subdivisions (40-acre tracts or lots), its area in acres, its capacity in gallons, the source from which water is to be obtained for such reservoir, whether there are any streams or springs within 2 miles of the land sought to be reserved; and if so, where.

(c) The numbers, locations, and areas of all other reservoir sites filed upon by the applicant, especially designating those in the county in which the proposed reservoir is located.

30. Action by the Land Department on Declaratory Statements, and Size, Location, and Number of Reservoir Sites.—When such declaratory statement is filed, the date of filing will be noted thereon over the signature of the officer receiving it, and the statements will be numbered according to order of June 1, 1908. The Register will make the usual notations on the records, in pencil, under the designation of "Reservoir declaratory statement No. —," adding the date of the act. For the filing of such reservoir declaratory statement the local officers will be authorized to charge the usual fees. (Sec. 2238, U. S. Rev. Stat.) The local officers will forward the declaratory statement with the regular monthly returns, with abstracts, in the usual manner. In acting upon these statements the following general rules will be applied:

(a) No reservation will be made for a reservoir of less than 250,000 gallons capacity, and for a reservoir of less than 500,000 gallons capacity not more than 40 acres can be reserved. For a reservoir of 500,000 gallons and less than 1,000,000 gallons capacity not more than 80 acres can be reserved. For a reservoir of 1,000,-000 gallons and less than 1,500,000 gallons capacity not more than 120 acres can be reserved. For a reservoir of 1,500,000 gallons capacity or more 160 acres may be reserved.

(b) Not more than 160 acres shall be reserved for this purpose in any section.

(c) Not more than 160 acres shall be reserved for this purpose in one group of tracts adjoining or cornering upon each other.

(d) A distance of one-half mile must be left between any two groups of tracts which aggregate more than 160 acres.

(e) The local officers will reject any reservoir declaratory statement not in conformity with these rules.

(f) Lands so reserved shall not be fenced, but shall be kept open to the free use of any person desiring to water animals of any kind. If lands so reserved are at any time fenced or otherwise

inclosed, or if they are not kept open to the free use of any person desiring to water animals of any kind, or if the reservoir applicant attempts to use for any other purpose, or if the reservation is not obtained for the bona fide and exclusive purpose of constructing and maintaining a reservoir thereon according to law, the declaratory statement, upon any such mattter being made to appear, will be canceled and all rights thereunder be declared at an end.

(g) Notwithstanding the action of the local officers in accepting any such declaratory statement, the Commissioner of the General Land Office will reject the same if upon considering the matters set forth therein it appears that the declaratory statement is not filed in good faith for the sole purpose of accomplishing what the law authorizes to be done.

31. Construction.—The reservoir must be completed and constructed within two years after the filing of the declaratory statement; otherwise the declaratory statement will be subject to cancellation.

32. Map and Field Notes of Constructed Reservoir.—After the construction and completion of the reservoir the applicant shall have the same accurately surveyed and mapped, in accordance with the instructions of sections 10 to 22, inclusive, so far as they are applicable. The map and field notes, which are not to be prepared in duplicate, must be filed in the proper local office. The map must bear Forms 10 and 11 (p. 116), and the field notes must be sworn to by the surveyor.

33. Notations by Local Land Officers.—When the map, field notes, and other papers have been filed in the local office, the date of filing will be noted thereon and the proper notations will be made on the local office records, as in the case of the declaratory statement. Local officers will then promptly forward the maps and papers to the General Land Office.

34. Approval.—The map and papers will be examined in the General Land Office to determine whether they comply with the law and the regulations, and whether the amount of land desired is warranted by the showing made in the application. If found satisfactory they will be submitted to the Secretary of the Interior, and upon approval the lands shown to be necessary for the proper use and enjoyment of the reservoir will be reserved from other disposition so long as the reservoir is maintained and water kept therein for the purposes named in the Act. Upon the receipt of notice of such reservation from the General Land Office the local officers will make the proper notations on their records and report the making thereof promptly to the General Land Office.

35. Annual Proof of Maintenance.—In order that this reservation shall be continued it is necessary that the reservoir "shall be kept in repair and water kept therein." For this reason the owner of the reservoir will be required during the month of January of each year to file in the local office an affidavit to the effect that the reservoir has been kept in repair and water kept therein during the preceding year, and that all the provisions of the Act have been complied with. Form 12 (p. 29) will be used for this affidavit. Upon failure to file such affidavit steps will be taken looking to the revocation of the reservation of the lands.

36. Reservoir on Unsurveyed Land.—If the reservoir is located on unsurveyed land, the declaratory statement may be filed, the lands being described as closely as practicable.

The widely different conditions to be considered in the operations proposed by the applicants make it impossible to formulate regulations that will furnish the data necessary in all cases. Additional information will be called for whenever necessary for the proper consideration of any particular case.

TELEGRAPH AND TELEPHONE LINES, ELECTRICAL PLANTS, CANALS, AND RESERVOIRS.

37. General Statement.—The Act of February 15, 1901 (31 Stat., 790), entitled "An Act relating to rights of way through certain parks, reservations, and other public lands," is as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and hereby is, authorized and empowered, under general regulations to be fixed by him, to permit the use of rights of way through the public lands, forest and other reservations of the United States, and the Yosemite, Sequoia, and General Grant national parks, California, for electrical plants, poles, and lines for the generation and distribution of electrical power, and for telephone and telegraph purposes, and for canals, ditches, pipes and pipe lines, flumes, tunnels, or other water conduits, and for water plants, dams, and reservoirs used to promote irrigation or mining or quarrying, or the manufacturing or cutting of timber or lumber, or the supplying of water for domestic, public, or any other beneficial uses to the extent of the ground occupied by such canals, ditches, flumes, tunnels, reservoirs, or other water conduits or water plants, or electrical or other works permitted hereunder, and not to exceed fifty feet on each side of the marginal limits thereof, or not to exceed fifty feet on each side of the center line of such pipes and pipe lines, electrical, telegraph, and telephone lines and poles, by any citizen, association, or corporation of the United States, where it is intended by such to exercise the use permitted hereunder or any one or more of the purposes herein named: Provided, That such permits shall be allowed within or through any of said parks or any forest, military, Indian, or other reservation only upon the approval of the chief officer of the Department under whose observation such park or reservation falls and upon a finding by him that the same is not incompatible with the public interest: Provided further, That all permits given hereunder for telegraph and telephone purposes shall be subject to the provision of title sixty-five of the Revised Statutes of the United States, and amendments thereto, regulating rights of way for telegraph companies over the public domain: And provided further, That any permission given by the Secretary of the Interior under the provisions of this act may be revoked by him or his successor in his discretion, and shall not be held to confer any right, or easement, or interest in, to, or over any public land, reservation or park.

This Act, in general terms, authorizes the Secretary of the Interior, under regulations to be fixed by him, to grant permission to use rights of way through the public lands, forest and other reservations of the United States, and the Yosemite, Sequoia, and General Grant national parks in California, for every purpose contemplated by Acts of January 21, 1895 (28 Stat., 635), May 14, 1896 (29 Stat., 120), and section 1 of the Act of May 11, 1898 (30 Stat., 404), and for other purposes additional thereto, except for tramroads, the provisions relating to tramroads, contained in the Act of 1895 and in section 1 of the Act of 1898, aforesaid, remaining unmodified and not being in any manner extended.

Although this Act does not expressly repeal any provision of law relating to the granting of permission to use rights of way contained in the Acts referred to, yet in view of the general scope

and purpose of the Act, and of the fact that Congress has, with the exception above noted, embodied therein the main features of the former Acts relative to the granting of a mere permission or license for such use, it is evident that, for purposes of administration, the later Act should control in so far as it pertains to the granting of permission to use rights of way for purposes therein specified. Accordingly all applications for permission to use rights of way for the purposes specified in this Act must be submitted thereunder. Where, however, it is sought to acquire a right of way for the main purpose of irrigation, as contemplated by sections 18 to 21 of the Act of March 3, 1891 (26 Stat., 1095), and section 2 of the Act of May 11, 1898, supra, the application must be submitted in accordance with the regulations issued under said Acts. (See pp. 4 to 14, inclusive.)

Application for permission to use the desired right of way through the public lands and parks designated in the Act must be filed and permission must be granted, as herein provided, before any rights can be claimed thereunder.

38. Nature of Grant.—It is to be specially noted that this Act does not make a grant in the nature of an easement but authorizes a mere permit in the nature of a license, which permit may be revoked by the Secretary, or his successor, at any time in his discretion. Further it gives no right whatever to take from public lands, reservations, or parks adjacent to the right of way any materials, earth or stone, for construction or other purposes.

43. National Parks.—Whenever a right of way is through any of the national parks designated in the Act, the applicant must show to the satisfaction of the Department that the location and use of the right of way for the purposes contemplated will not interfere with the uses and purposes for which the park was originally dedicated, and will not result in damage or injury to the natural conditions of property or scenery existing therein. The applicant must also file the stipulations and bond required by section 6, but, in case of a telephone line, substitute the following: "That upon completion of the telephone lines they shall be subject to the free use of the park officers for all purposes incident to the administration of the park," for stipulation (e) under said section 6.

Whenever right of way within a park is desired for operations in connection with mining, quarrying, cutting timber, or manufacturing lumber, a satisfactory showing must be made of the applicant's right to engage in such operations within the park. If the application and the showing made in support thereof is satisfactory, the Secretary of the Interior will give the required permission in such form as may be deemed proper, according to the features of each case; and any permission granted hereunder is also subject to such further and future regulations as may be adopted by the Department. Amended Circular No. 108, May 7, 1912.

39. Applications for Right of Way Through National Forests.—By section 1 of the Act of February 1, 1905 (33 Stat., 628), it is provided:

> That the Secretary of the Department of Agriculture shall, from and after the passage of this act, execute or cause to be executed all laws affecting public lands heretofore or hereafter reserved under the provisions of section twenty-four of the act entitled "An act to repeal the timber-culture laws, and

for other purposes," approved March third, eighteen hundred and ninety-one, and acts supplemental to and amendatory thereof, after such lands have been so reserved, excepting such laws as affect the surveying, prospecting, locating, appropriating, entering, relinquishing, reconveying, certifying, or patenting of any such lands.

Under this provision it has been determined that the Department of Agriculture is invested with jurisdiction to pass upon all applications under any law of the United States providing for the granting of a permission to occupy and use lands in a national forest, provided this occupation or use is temporary, and will in no wise affect the fee or cloud the title of the United States should the reserve be discontinued.

Therefore, when it is desired to obtain permission to use a right of way over public lands wholly within a national forest, an application should be prepared in accordance with the instructions issued by the Department of Agriculture, and the same filed with the officer in charge of such national forest.

In case the application involves rights and privileges upon public lands partly within and partly without a national forest, separate applications must be prepared, and the one affecting lands within the national forest filed with the forest officer and the other filed in the local land office.

40. Applications for Right of Way Through Land Outside of National Forests.—Where permission to use a right of way over lands wholly outside of national forests is desired, the application must be prepared and filed in accordance with sections 4 to 22, inclusive, appropriate changes being made in the prescribed forms so as to specify and relate to the Act under which the application is made.

An affidavit by the applicant that he is a citizen of the United States must accompany the application. If the applicant is an association of citizens, each member must make affidavit of citizenship, and a complete list of the members must be given in an affidavit by one of them. If he is not a native-born citizen he must file the usual proofs of naturalization. The applicant must also set forth in the affidavit the purposes for which the right of way is to be used, and must show that he in good faith intends to utilize the same for such purposes.

41. Buildings to Be Platted on Map in Main Drawing and in Separate Drawing.—When application is made for right of way for electrical or water plants, the location and extent of ground proposed to be occupied by buildings or other structures necessary to be used in connection therewith must be clearly designated on the map and described in the field notes and forms (7 and 8, p. 27) by reference to course and distance from a corner of the public survey. In addition to being shown in connection with the main drawing, the buildings or other structures must be platted on the map in a separate drawing on a scale sufficiently large to show clearly their dimensions and relative positions. When two or more of such proposed structures are to be located near each other, it will be sufficient to give the reference to a corner of the public survey for one of them, provided all the others are connected therewith by course and distance shown on the map. The applicant must also file an affidavit setting forth the dimensions and proposed use of each of

the structures, and must show definitely that each one is necessary for a proper use of the right of way for the purposes contemplated in the Act.

42. Unsurveyed Lands.—Permission may be given under this Act (February 15, 1901) for rights of way upon unsurveyed lands, maps to be prepared in accordance with the requirements of this circular.

43. See Addenda, page 191.

44. Indian Reservations.—Applications for right of way under this Act, all of which is located upon land within an Indian reservation, must be filed with the Commissioner of Indian Affairs. Applications for right of way affecting lands within and without Indian reservations must be filed in the local land office for forwarding to the Commissioner of the General Land Office. Before such applications are transmitted to the Department they will be submitted by the Commissioner of the General Land Office to the Commissioner of Indian Affairs for such action and recommendation as that officer may deem proper in so far as the same pertains to such Indian reservation. Applicants will be required to furnish, in triplicate, so much of the map and field notes as relate to that portion of the right of way within an Indian reservation; and if the application is subsequently granted, one copy of such portion of the map and field notes as pertains to such reservation will be placed on file in the Indian Office. In this connection, attention is directed to the provisions of section 3 of the Act of March 3, 1901 (31 Stat., 1083), which authorizes the granting of permanent rights of way, in the nature of easements, for telegraph and telephone purposes only, through Indian reservations and other Indian lands, upon payment of proper compensation for the benefit of the Indians interested therein. The provisions of the Act of March 3, 1901, and the nature and character of the rights authorized to be secured thereunder differ materially from the provisions of the Act on which these regulations are based and the rights authorized to be conferred thereunder. Applicants, therefore, desiring to secure permanent rights of way through Indian reservations or other Indian lands for telegraph and telephone purposes will be required to submit their applications therefor under the Act of March 3, 1901, supra, in accordance with the then current regulations issued thereunder. (For existing regulations under said Act, see regulations approved March 26, 1901.)

45. Notations and Procedure.—Upon the filing of an application under this act, the Register will note the same in pencil on the tract books, opposite the tracts traversed, giving date of filing and name of applicant, and also indorse on each map, over his written signature, the date of filing. If it appears that no portion of the public lands or parks designated in the Act would be affected by the approval of such maps, they will be returned to the applicant with notice of that fact. If vacant public land or lands in any park so designated are affected by the proposed right of way, the Register will so certify on the map and duplicate over his signature, and will promptly transmit the same to the General Land Office with report that the required notations have been made.

When permission to use the right of way applied for is given by the Secretary of the Interior, a copy of the original map will be

sent to the local officers, who will mark upon the township plats the line of the right of way and will note in pencil, opposite each tract of public land affected, that such permission has been given, the date thereof, and a reference to the Act.

TRAMROADS.

46. Rights of Ways for Tramroads.—The Secretary of the Interior is authorized to permit the use of rights of way for tramroads through the public lands of the United States, not within the limits of any park, national forest, or military or Indian reservation under the provisions of the Act of Congress of January 21, 1895 (28 Stat., 635), as amended by section 1 of the Act of May 11, 1898 (30 Stat., 404). The Act of January 21, 1895, entitled "An Act to permit the use of the right of way through the public lands for tramroads, canals, and reservoirs, and for other purposes," is as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and hereby is, authorized and empowered, under general regulations to be fixed by him, to permit the use of the right of way through the public lands of the United States, not within the limits of any park, forest, military, or Indian reservation, for tramroads, canals, or reservoirs to the extent of the ground occupied by the water of the canals and reservoirs and fifty feet on each side of the marginal limits thereof; or fifty feet on each side of the center line of the tramroad, by any citizen or any association of citizens of the United States engaged in the business of mining or quarrying or of cutting timber and manufacturing lumber.

This Act was amended by section 1 of the Act of May 11, 1898, supra, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act entitled "An act to permit the use of the right of way through the public lands for tramroads, canals, and reservoirs, and for other purposes," approved January twenty-first, eighteen hundred and ninety-five, be, and the same is hereby, amended by adding thereto the following:

"That the Secretary of the Interior be, and hereby is, authorized and empowered, under general regulations to be fixed by him, to permit the use of right of way upon the public lands of the United States, not within limits of any park, forest, military, or Indian reservations, for tramways, canals, or reservoirs, to the extent of the ground occupied by the water of the canals and reservoirs, and fifty feet on each side of the marginal limits thereof, or fifty feet on each side of the center line of the tramroad, by any citizen or association of citizens of the United States, for the purposes of furnishing water for domestic, public, and other beneficial uses."

Applications for permission to use rights of way for tramroads should be prepared and filed in accordance with the regulations hereinbefore prescribed relative to presentation of applications for rights of way under the Act of February 15, 1901, and the then current regulations issued under the general railroad right-of-way Act of March 3, 1875 (for existing regulations under the latter Act see 32 L. D., 481), the prescribed forms in such regulations being so modified as to specify and relate to the Acts under which the application is made. It is to be specially noted that the Acts relating to tramroads do not authorize the granting of permission to use rights of way for such purpose within the limits of any park, national forest, or military or Indian reservation, and it is to be further noted that permission to use rights of way for tramroads over public lands, when granted, only confers a right in the nature of a

license and is subject to all the conditions and limitations hereinbefore stated in section 43 of these regulations.

RIGHT OF WAY THROUGH NATIONAL FORESTS FOR DAMS, RESERVOIRS, WATER PLANTS, DITCHES, FLUMES, PIPES, TUNNELS, AND CANALS FOR MUNICIPAL OR MINING PURPOSES.

47. General Statement.—Section 4, of the Act of Congress approved February 1, 1905 (33 Stat., 628), reads as follows:

> Sec. 4. That rights of way for the construction and maintenance of dams, reservoirs, water plants, ditches, flumes, pipes, tunnels, and canals, within and across the forest reserves of the United States, are hereby granted to citizens and corporations of the United States for municipal or mining purposes of the milling and reduction of ores, during the period of their beneficial use, under such rules and regulations as may be prescribed by the Secretary of the Interior, and subject to the laws of the State or Territory in which said reserves are respectively situated.

This act grants rights of way through national forests to citizens and corporations of the United States for the objects therein specified, during the period of their beneficial use, under rules and regulations to be prescribed by the Secretary of the Interior, and subject to the laws of the State or Territory in which said forests are situated.

All applications for the right of way for the purposes set forth in said Act must be submitted in accordance herewith.

No construction will be allowed in national forests until an application for right of way has been regularly filed in accordance with these regulations and has been approved by the Secretary of the Interior, or unless permission has been specifically given.

48. Nature of Grant.—The right granted is not in the nature of a grant of lands, but is a base or qualified fee, giving the possession and right of use of the land for the purposes contemplated by the Act, during the period of the beneficial use. When the use ceases the right terminates, and thereupon proper steps will be taken to revoke the grant.

No right whatever is given to take any material, earth, or stone for construction or other purposes, nor is any right given to use any land outside of what is actually necessary for the construction and maintenance of the works.

49. Preparation and Applications.—Applications for right of way under this Act should be made in the form of a map and field notes, in duplicate, and must be filed in the local land office for the district in which the land traversed by the right of way is situated; if the land is in more than one district, duplicate maps and field notes need be filed in only one district and single sets in the others. The maps, field notes, evidence of water rights, etc., and, when the applicant is a corporation, the articles of incorporation and proofs of organization must be prepared and filed in accordance with sections 7 to 21, inclusive, appropriate changes being made in the prescribed forms so as to specify and relate to the Act under which the application is made.

An affidavit by the applicant that he is a citizen of the United States must accompany the application. If the applicant is an association of citizens, each member must make affidavit of citizenship, and a complete list of the members must be given in an affidavit of one of them. A copy of their articles of association must also be

furnished, or if there be none, the fact must be stated over the signature of each member of the association.

If the applicant is not a native-born citizen, he must file the usual proof of naturalization. The applicant must set forth in the affidavit the purposes for which the right of way is desired.

50. Water-Plant Structures.—When application is made for right of way for water plants, the location and extent of ground proposed to be occupied by buildings, or other structures necessary to be used in connection therewith, must be clearly designated on the map and described in the field notes and forms (7 and 8, p. 27) by reference to course and distance from a corner of the public survey. In addition to being shown in connection with the main drawing, the buildings or other structures must be platted on the map in a separate drawing on a scale sufficiently large to show clearly their dimensions and relative positions. When two or more of such structures are to be located near each other, it will be sufficient to give the reference to a corner of the public survey for one of them, provided all others are connected therewith by course and distance shown on the map.

The applicant must also file an affidavit setting forth the dimensions and proposed use of each of the structures, and must show definitely that each is necessary to a proper enjoyment of the right of way granted by the Act.

51. Stipulation and Bond.—The applicant must enter into such stipulation and execute such bond as the Forest Service may require for the protection of the national forest.

52. Notation by Register.—Upon the filing of an application under this Act, the register will note the same in pencil on the tract books, opposite the tracts traversed, giving date of filing and name of applicant, and also indorse on each map over his written signature the name of the land office and the date of filing.

If it appears that no portion of the public lands in a national forest would be affected by the approval of such maps, they will be returned to the applicant with notice of that fact. If unpatented lands are affected by the proposed right of way, the Register will so certify on the map and duplicate, over his signature, and will promptly transmit the same to the General Land Office, with report that the required notations have been made.

Upon the approval of a map of location by the Secretary of the Interior, the duplicate copy will be sent to the local officers, who will mark upon the township plats the lines of the right of way as laid down on the map. They will also note the approval in ink on the tract books, opposite each legal subdivision affected, with a reference to the Act mentioned on the map.

53. Right of Way Through Unsurveyed Land.—Maps showing reservoirs, canals, water plants, etc., wholly upon unsurveyed lands will be received and placed on file in the General Land Office and the local land office of the district in which the same is located, for general information, and the date of filing will be noted thereon.

Fred Dennett,
Commissioner.

Approved June 6, 1908.

Frank Pierce,
Acting Secretary.

[Circular No. 5.]

ADDENDA TO RIGHT-OF-WAY REGULATIONS.

Application for Easements for Power-Transmission Lines, etc.

Department of the Interior,
Washington, April 14, 1911.

The Commissioner of the General Land Office.

Sir: Your attention is called to that part of the Act of March 4, 1911 (Public, No. 478), which reads as follows:

> That the head of the department having jurisdiction over the lands be, and he hereby is, authorized and empowered, under general regulations to be fixed by him, to grant an easement for rights of way, for a period not exceeding fifty years from the date of the issuance of such grant, over, across, and upon the public lands, national forests, and reservations of the United States for electrical poles and lines for the transmission and distribution of electrical power, and for poles and lines for telephone and telegraph purposes, to the extent of twenty feet on each side of the center line of such electrical, telephone and telegraph lines and poles, to any citizen, association, or corporation of the United States, where it is intended by such to exercise the right of way herein granted for any one or more of the purposes herein named: Provided, That such right of way shall be allowed within or through any national park, national forest, military, Indian, or any other reservation only upon the approval of the chief officer of the department under whose supervision or control such reservation falls, and upon a finding by him that the same is not incompatible with the public interest: Provided, That all or any part of such right of way may be forfeited and annulled by declaration of the head of the department having jurisdiction over the lands for nonuse for a period of two years or for abandonment.
>
> That any citizen, association, or corporation of the United States to whom there has heretofore been issued a permit for any of the purposes specified herein under any existing law, may obtain the benefit of this act upon the same terms and conditions as shall be required of citizens, associations, or corporations hereafter making application under the provisions of this statute.

It will be observed that this Act, which authorizes the granting of easements for electrical power transmission, and telephone and telegraph lines for stated periods not to exceed 50 years, follows, as closely as is possible in the accomplishment of its purposes, the language of the Act of February 15, 1901 (31 Stat., 790), which authorizes mere revocable permits for such lines, and for other purposes. This Act, therefore, merely authorizes additional or larger grants and does not modify or repeal the Act of 1901, and should be construed and applied in harmony with it.

It is not believed that it would be either advisable or feasible to definitely fix at this time the periods for which the authorized easements should be granted, since it will be wiser and more practical to leave that question to be determined in each particular case from its attendant facts and circumstances at the time the application is presented. Where the application involves transmission and distribution of electrical power a detailed statement of the power plant with which the transmission lines are connected should accompany the application; also a statement as to whether the power plant is located on public or private land, and whether any part of the system affects lands in reservations other than those under the jurisdiction of the Secretary of the Interior.

The regulations issued under the Act of February 15, 1901, in so far as they are applicable, will control in the presentation, con-

sideration, and granting of applications for easements under this Act.

Very respectfully,

Walter L. Fisher,
Secretary.

PIPE LINE—ARKANSAS.

An Act to grant right of way over the public domain in the State of Arkansas for oil or gas pipe lines.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a right of way through the public lands of the United States in the State of Akansas is hereby granted for pipe-line purposes to any citizen of the United States or any company or corporation authorized by its charter to transport oil, crude or refined, or natural gas, which shall have filed or may hereafter file with the Secretary of the Interior a copy of its articles of incorporation, and due proof of organization under the same, to the extent of the ground occupied by the said pipe line and ten feet on each side of the center line of same.

Sec. 2. That any citizen of the United States, company, or corporation desiring to secure the benefits of this Act shall within twelve months after the location of ten miles of the pipe line, if the same be upon surveyed land, and if the same be upon unsurveyed lands within twelve months after the survey thereof by the United States, file with the register of the land office for the district where such land is located a map of its lines, and upon the approval thereof by the Secretary of the Interior, the same shall be noted upon the plats in said office, and thereafter all such land over which such line shall pass shall be disposed of subject to such right of way.

Sec. 3. That nothing in this Act shall authorize the use of such right of way except for the pipe line, and then only so far as may be necessary for its construction, maintenance, and care.

Sec. 4. That if any section of said pipe line shall not be completed within one year after the approval by the Secretary of the Interior of said section, or if any section of said pipe line shall be abandoned or shall not be used for a period of two years, the right of way herein granted as to any uncompleted, abandoned, or unused section of said pipe line shall be forfeited to the extent that the same is not completed or is abandoned or unused at the date of the forfeiture, without further action or declaration on the part of the Government or any proceedings or judgment of any court.

Sec. 5. That if any citizen, company, or corporation taking advantage of the benefits of this Act, shall violate the Act of July second, eighteen hundred and ninety, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" (commonly known as the Sherman anti-trust act), or any amendment thereof, the right of way herein granted shall be forfeited without further action or declaration on the part of the Government or any proceedings or judgment of any court.

Approved April 12, 1910.

FORMS FOR "DUE PROOFS" AND VERIFICATION OF MAPS OF RIGHT OF WAY FOR CANALS, DITCHES, AND RESERVOIRS.

FORM 1.

I, ..., secretary (or president) of the .... Company, do hereby certify that the organization of said company has been completed; that the company is fully authorized to proceed with construction, according to the existing laws of the State (or Territory) of ....., and that the copy of the articles of association (or incorporation) of the company filed in the Department of the Interior is a true and correct copy of the same.

In witness whereof I have hereunto set my name and the corporate seal of the company this ..... day of ....., in the year 19..

[Seal of company.]

....,
..... of the ..... Company.

FORM 2.

I, ..., do certify that I am the president of the .... Company, and that the following is a true list of the officers of the said company, with the full name and official designation of each, to-wit: (Here insert the full name and official designation of each officer.)

In witness whereof I have hereunto set my name and the corporate seal of the company this ..... day of ....., in the year 19..

[Seal of company.]

....,
President of the ..... Company.

FORM 3.

State of ....., County of ....., ss.

...., being duly sworn, says he is the chief engineer of (or the person employed to make the survey by) the .... Company; that the survey of said company's (canals, ditches, and reservoirs), described as follows: (Here describe each canal, ditch, lateral, and reservoir for which right of way is asked, as required by Sec. 21, being a total length of canals, ditches, and laterals of ..... miles, and a total area of reservoirs of ..... acres), was made by him (or under his direction) as chief engineer of the company (or as surveyor employed by the company) and under its authority, commenced on the ..... day of ....., 19.., and ending on the ..... day of ....., 19.., a[and that the survey of the said (canal, ditches, laterals, and reservoirs) accurately represents (a proper grade line for the flow of water, and accurately represents a level line, which is the proposed water line of the said reservoir)], and that such survey is accurately represented upon this map and by the accompanying field notes. a[And no lake or lake bed, stream or stream bed, is used for the said (canals, ditches, laterals, and reservoirs) except as shown on this map.]

....
....

Sworn and subscribed to before me this ..... day of ....., 19..

[Seal.]

....,
Notary Public.

a This clause to be omitted in applications for telephones and telegraph lines.

FORM 4.

I, ..., do hereby certify that I am president of the .... Company; that ...., who subscribed the accompanying affidavit, is the chief engineer of (or was employed to make the survey by) the said company; that the survey of the said (canals, ditches, laterals, and reservoirs) as accurately represented on this map and by the accompanying field notes, was made under authority of the company; that the company is duly authorized by its articles of incorporation to construct the said (canals, ditches, laterals, and reservoirs) upon the location shown upon this map; that the said (canals, ditches, laterals, and reservoirs), as represented on this map and by said field notes, was adopted by the company, by resolution of its board of directors, on the ..... day of ....., 19.., as the definite location of the said (canals, ditches, laterals, and reservoirs) described as follows—(describe as in Form 3)—a[and that no lake or lake bed, stream or stream bed, is used for the said (canals, ditches, laterals, and reservoirs) except as shown on this map]; and that the map has been prepared to be filed for the approval of the Secretary of the Interior, in order that the company may obtain the benefits of b(sections 18 to 21, inclusive, of the Act of Congress approved March 3, 1891, entitled "An Act to repeal timber-culture laws, and for other purposes," and Sec. 2 of the Act approved May 11, 1898); and I further certify that the right of way herein described is desired for the main purpose of irrigation. c

Attest:

....,
President of the ..... Company.

[Seal of company.]

....,
Secretary.

a This clause to be omitted in applications for telephone and telegraph lines.

b Here insert the description of the Act of Congress under which the application is made when filed under some other act than that of 1891 and 1898.

c Or, where filed under other acts than that of 1891 and 1898, state the purposes for which right of way is applied for.

FORM 5.

State of ....., County of ....., ss.

...., being duly sworn, says that he is the chief engineer of (or was employed to construct) the (canals, ditches, laterals, and reservoirs) of the ..... Company; that said (canals, ditches, laterals, and reservoirs) have been constructed under his supervision, as follows: (Describe as required in Sec. 21) a total length of constructed (canals, ditches, and laterals) of ..... miles, and a total area of constructed reservoirs of ..... acres; that construction was commenced on the ..... day of ....., 19.., and completed on the ..... day of ....., 19..; that the constructed (canals, ditches, laterals, and reservoirs), as aforesaid, conform to the map and field notes which received the approval of the Secretary of the Interior on the ..... day of ....., 19..

....,
....

Sworn and subscribed to before me this ..... day of ....., 19..
[Seal.]

....,
Notary Public.

FORM 6.

I, ..., do certify that I am the president of the ..... company; that the (canals, ditches, laterals, and reservoirs) described as follows (describe as in Form 5) were actually constructed as set forth in the accompanying affidavit of ...., chief engineer (or the person employed by the company in the premises), and on the exact location represented on the map and by the field notes approved by the Secretary of the Interior, on the ..... day of ....., 19..; and that the company has in all things complied with the requirements of the Act of Congress d(March 3, 1891, granting right of way for canals, ditches, and reservoirs through the public lands of the United States.)

....,
President of the ..... Company.

[Seal of company.]
Attest:

....,
Secretary.

d Here insert the description of the Act of Congress under which the application is made when filed under some other Act than that of 1891.

FORM 7.

[Under Act February 15, 1901.]

State of ....., County of ....., ss.

...., being duly sworn, says he is the chief engineer of (or the person employed by) the ..... company, under whose supervision the survey was made of the grounds selected by the company for structures for electrical purposes under the Act of Congress approved February 15, 1901, said grounds (here describe as required by Secs. 41 and 50); that the accompanying drawing correctly represents the locations of the said structures; and that in his belief the structures represented are actually and to their entire extent required for the necessary uses contemplated by the said act of February 15, 1901 (31 Stat., 790).

....,
Chief Engineer.

Subscribed and sworn to before me this ..... day of ....., 19..
[Seal.]

....,
Notary Public.

FORM 8.

[Under Act of February 15, 1901.]

I, ..., do hereby certify that I am the president of the ..... company; that the survey of the structures represented on the accompanying drawing was made under authority and by direction of the company, and under the supervision of ....., its chief engineer (or the person employed in the premises), whose affidavit precedes this certificate; that the survey as represented on the accompanying drawing actually represents the structures

required (here describe as required by Secs. 41 and 50) for electrical purposes, under the Act of Congress approved February 15, 1901; and that the company, by resolution of its board of directors, passed on the ..... day of ....., 19.., directed the proper officers to present the said drawing for the approval of the Secretary of the Interior in order that the company may obtain the use of the grounds required for said structures, under the provisions of said act approved February 15, 1901 (31 Stat., 790).

....,
President of the ..... Company.

[Seal of the company.]
Attest:

....,
Secretary.

FORM 9.

Reservoir declaratory statement.
[Under Act of Jan. 13, 1897 (29 Stat., 484).]

Land Office at .....,
Res. D. S., No. ...., 19..

I, ..., of ....., do hereby certify that I am president of the ..... company, and on behalf of said company, and under its authority, do hereby apply for the reservation of land in ..... County, State of ....., for the construction and use of a reservoir for furnishing water for live stock under the provisions of the Act of January 13, 1897 (29 Stat., 484). The location of said reservoir and of the land necessary for its use, is as follows: ..... of section ..... in township ...., of range .... M., containing ..... acres.

I hereby certify that to the best of my knowledge and belief the said land is not occupied or otherwise claimed, is not mineral or otherwise reserved, and that the said reservoir is to be used in connection with the business of the applicant of .....

The land owned or claimed by the applicant within the vicinity of the said reservoir (within three miles) is as follows: .....

I further certify that no part of the land to be reserved under this application is or will be fenced; that the same shall be kept open to the free use of any person desiring to water animals of any kind; that the land will not be used for any purpose except the watering of stock, and that the land is not, by reason of its proximity to other lands reserved for reservoirs, excluded from reservation by the regulations and rulings of the Land Department.

The water of said reservoir will cover an area of ..... acres, in ..... of section .... in township ...., of range .... of said lands; the capacity of the reservoir will be ..... gallons, and the dam will be ..... feet high. The source of the water for said reservoir is ..... and there are no streams or springs within two miles of the land to be reserved except as follows: .....

The applicant has filed no other declaratory statements under this act except as follows:

No. ...., ... land office, area to be reserved ..... acres.
No. ...., ... land office, area to be reserved ..... acres.
No. ...., ... land office, area to be reserved ..... acres.
No. ...., ... land office, area to be reserved ..... acres.
No. ...., ... land office, area to be reserved ..... acres.
No. ...., ... land office, area to be reserved ..... acres.
No. ...., ... land office, area to be reserved ..... acres.
No. ...., ... land office, area to be reserved ..... acres.
No. ...., ... land office, area to be reserved ..... acres.
No. ...., ... land office, area to be reserved ..... acres.
Total, ... acres, of which Nos. ..... are located in said county.

And I further certify that it is the bona fide purpose and intention of this applicant to construct and complete said reservoir and maintain the same in accordance with the provisions of said Act of Congress and such regulations as are or may be prescribed thereunder.

[Seal of company.] ....
Attest:

....,
Secretary.

State of ....., County of ....., ss.

...., being duly sworn, deposes and says that the statements herein made are true to the best of his knowledge and belief.

....

Sworn to and subscribed before me this ..... day of ....., in the year 19..

[Seal.]

....,
Notary Public.

Note.—When the applicant is a corporation the form should be executed by its president, under its seal, and attested by its secretary. When the applicant is not a corporation or an association of individuals, strike out the words in italics.

Land Office at .....,
...., 19..

I, ..., register of the land office, do hereby certify that the foregoing application is for the reservation of lands subject thereto under the provisions of the Act of January 13, 1897; that there is no prior valid adverse right to the same; and that the land is not, by reason of its proximity to other lands reserved for reservoirs, excluded from reservation by the regulations and rulings of the Land Department.

Fees, $.... paid.

....,
Register.

The description of the business of the applicant should include "a full and minute statement of the extent to which he is engaged in breeding, grazing, driving, or transporting live stock, giving the number and kinds of such stock, the place where they are being bred or grazed, and whether within an inclosure or upon uninclosed lands, and also from where and to where they are being driven or transported." Circular June 23, 1899.

FORM 10.

State of ....., County of ....., ss.

...., being duly sworn, says that he is the person who was employed to make the survey of a reservoir covering an area of ..... acres, the initial point of the survey being ..... (here describe as required by Sec. 21); said reservoir having been constructed upon the ..... quarter of the ..... quarter of section ...., township ...., range ...., ... principal meridian, as proposed by reservoir declaratory statement No. ...., which was filed in the local land office at ....., under the provisions of the act of January 13, 1897 (29 Stat., 484); that the said survey was made on the ..... day of ....., 19..; that the dam and all necessary works have been constructed in a substantial manner; that the reservoir has a capacity of ..... gallons, and at the time of said survey contained ..... gallons of water.

....

Sworn and subscribed to before me this ..... day of ....., 19..

[Seal.]

.....,
Notary Public.

FORM 11.

I, ..., do certify that I am the president of the ..... company which filed (or that I am the person who filed) reservoir declaratory statement No. ...., in the local land office at .....; that the reservoir proposed has been constructed upon the ..... quarter of the ..... quarter of section ...., township ...., range ...., ... principal meridian, covering an area of ..... acres, the initial point of the survey being ..... (describe as in Form 10); that the dam and all necessary works have been constructed in a substantial manner in good faith in order that the reservoir may be used and maintained for the purposes, and in the manner prescribed by the said Act of January 13, 1897 (29 Stat., 484), the provisions of which have been and will be complied with in all respects.

[Seal of company.]

....,
President of the Company.

Attest:

....,
Secretary.

FORM 12.

State of ....., County of ....., ss.

...., being duly sworn, deposes and says that he is the president of the ..... company which filed (or that he is the person who filed) reservoir declaratory statement No. ...., in the local land office at .....; that the reservoir constructed in pursuance thereof, as heretofore certified, has been kept in repair; that water has been kept therein to the extent of not less than ..... gallons during the entire calendar year of 19..; that neither the reservoir nor any part of the land reserved for use in connection therewith is or has been fenced during said years, and that the said company has in all things complied with the provisions of the Act of January 13, 1897 (29 State., 484).

....,
President of ..... Company.

Sworn and subscribed to before me this ..... day of ....., 19..

[Seal.]

....,
Notary Public.

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11. Publication fees.
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1. Circular of June 27, 1887 (5 L. D., 708), paragraph 13.
2. Act of Congress of Mar. 11, 1902 (32 Stat., 63), giving implied statutory sanction to above-quoted circular requirement.
3. Circular of Nov. 30, 1908 (37 L. D., 312), paragraphs 20 and 21, repeating requirement of publication.

Timber and Stone Cash Entries.

1. Act of Congress of June 3, 1878 (20 Stat., 89), section 3.
2. Circular of Nov. 30, 1908 (37 L. D., 289), paragraph 25, expressing the requirement imposed by section 3 of the above-mentioned act.

Carey Act Selections.

1. Act of Congress of Aug. 18, 1894 (28 Stat., 372, 422), commonly known as "the Carey Act." (Section 2.)
2. Circular of Apr. 9, 1909, renewing and repeating provisions of previous circulars (paragraph 15).

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1. Circular of Apr. 25, 1907 (35 L. D., 537), paragraphs 9, 10 and 11.

Isolated Tracts of Public Lands.

1. Section 2455, U. S. Revised Statutes, as amended by the Act of Congress of June 27, 1906 (34 Stat., 517).
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1. Circular of Feb. 21, 1908 (36 L. D., 278), paragraphs 2 and 3.

Mineral Lands and Mining Resources.

1. Section 2325, U. S. Revised Statutes.
2. Mining regulations of Mar. 29, 1909 (37 L. D., 728), rules 45, 46 and 47.

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1. Section 2325, U. S. Revised Statutes. (See said section quoted above.)
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1. Act of Congress of April 21, 1904 (33 Stat., 211).
2. Circular of March 3, 1909 (37 L. D., 537), paragraphs 11 and 12.

Alaskan Coal Lands.

1. Act of Congress of Apr. 28, 1904 (33 Stat., 525), section 2.
2. Circular of July 18, 1904 (33 L. D., 114).

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

2. Commutation proof can not be made on homestead entries allowed under the Act of April 28, 1904 (33 Stat., 547), known as the Kinkaid Act; entries under the Reclamation Act of June 17, 1902 (32 Stat., 388); entries under the Enlarged Homestead Act (post, par. 46 et seq.); entries allowed for coal lands under the Act of June 22, 1910 (36 Stat., 583), so long as the land is withdrawn or classified as coal; additional entries allowed under the Act of April 28, 1904 (33 Stat., 527, Appendix No. 4); second entries allowed under the Act of June 5, 1900 (31 Stat., 267, Appendix No. 5); or second entries alllowed under the Act of May 22, 1902

(32 Stat., 203, Appendix No. 5), when the former entry was commuted.

An exception to prohibition of commutation proof in cases where entry is made subject to the Act of June 22, 1910, and that is where the settler initiated his entry, selection or location in good faith prior to the passage of the Act. See law and circular of instructions thereunder, page 480.

3. Where there has been, immediately prior to the application to submit proof on a homestead entry, or immediately prior to the submission of proof, at least 14 months' actual and substantially continuous residence, accompanied by improvement and cultivation, the entryman, or his widow or heirs, may obtain patent by proving such residence, improvement, and cultivation, and paying the cost of such proof, the land office fees, and the price of the land, which is $1.25 per acre outside the limits of railroad grants and $2.50 per acre for lands within the granted limits, except as to certain lands which were opened under statutes requiring payment of a price different from that here mentioned. (See circular of Oct. 18, 1907, Appendix No. 14.)

NOTICE OF INTENTION TO MAKE PROOF.

4. Persons desiring to submit commutation or other final proof in homestead and desert land cases are required to present a written notice of intention to make final proof to the Register and Receiver of the land office for the district in which the land is situated. This notice must be plainly written. It must contain a statement showing the number and date of entry, with correct description of the land involved, the character of proof the claimant wishes to submit, and the names of four disinterested witnesses, with their postoffice addresses. The christian names of the witnesses must be given in full, for example—John J. Smith. Do not abbreviate nor give the initial of the christian name. An improper application to submit final proof creates much unnecessary work on the part of the officers, and becomes a source of annoyance to the entryman, always resulting in delay. We present herewith application to submit proof made on approved form.

4-348.

NOTICE OF INTENTION TO MAKE PROOF.

DEPARTMENT OF THE INTERIOR.

U. S. Land Office at .....

....., 19....

I, ..., of ....., who, on ....., 19...., made .....,
(Kind of application or entry.)
No. ....., for .....Section ....., Township ....., Range ....., ...Meridian, hereby give notice of my intention to make final ..... proof, to establish my claim to the land above
(If homestead, insert "five year" or "commutation," as case may be.)
described, before ....., at ....., on the .....
(Name of officer.)
day of ....., 19...., by two of the following witnesses:

....., of .....

....., of .....

....., of .....

....., of .....

.....
(Signature of claimant.)

....., 19....

Notice of the above intention to make proof will be published in the .....
(Name of newspaper.) (Place of publication.)
for a period of ..... consecutive ....., which I hereby designate as the newspaper published nearest the land above described.

.....
Register.

The date of making proof and the name of the paper in which the notice is to be published must be left blank. The date will be fixed and the newspaper designated by the Register of the Land Office.

Upon the filing of the notice of intention to make final proof, notices of the same are made in triplicate. One of these notices is posted in the Land Office, one going to the chief of field division for the district, and the other to the newspaper designated by the Register to publish the same. Publication is made for six weeks prior to date set for the taking of proof. Publication fee must be paid by the entryman. The charge may vary in homestead cases in different localities. In the Mountain States the fee of the publisher is $8 and this is considered a very reasonable charge.

Of the four witnesses named by claimant, he must produce two to give testimony in support of his entry. The testimony of witnesses and claimant must be taken separately and without the hearing of each other. Officers failing to follow this practice are violating the regulations of the Department in such cases.

The claimant is required to pay the charges of making the papers in connection with final proofs where the same are not taken before the Register and Receiver of the Land Office. For schedule of legal charges see 441. Whether the testimony is taken before the Register or Receiver or other officers, the Register and Receiver are allowed to charge the legal rate for examination of testimony in homestead final proof cases. The cost of examination of proof varies according to the State and number of words involved, ranging from 75 cents to $3.

Final proofs are passed on by the Register and Receiver as soon as possible consistent with public business. Payment of either the price of the land under commutation, or final commissions, will not be accepted till the proof has been examined and found satisfactory. If the proof is found satisfactory, the same will be passed, otherwise it will be rejected. Due notice of which will be sent the claimant. In case the proof is approved, the claimant will be given a reasonable opportunity to make payment, usually from ten to thirty days. If the claimant fails to make the payment within the time allowed when called for, the proof will be rejected, and a new proof will be required.

Should the claimant fail to appear before the officer designated to take the proof at the time set, or within ten days thereafter, his application will be rejected. Taking of proof may be continued under certain circumstances.

IMPORTANT TO KNOW.

It is important to know the date the claimant established his residence; the date he completed his house and established his residence therein, and the character and extent and value of his

improvements, and the amount of land cultivated and crops produced.

The questions submitted to claimant and witnesses are substantially the same. All absences of the entryman must be noted. In view of so many inquiries for information as to what the claimant and his witnesses must know of their own knowledge when giving evidence in final proofs in homestead cases, we give herewith the information required on claimant in such cases, as is disclosed by the questions contained in approved form of deposition of claimant.

4—369.

Form approved by the Secretary of the Interior, November 23, 1908.

DEPARTMENT OF THE INTERIOR.

HOMESTEAD ENTRY.

U. S. Land Office ....., No. .....
Receipt No. .....

FINAL PROOF.
TESTIMONY OF CLAIMANT.

Question 1. What is your full name, age, and post-office address?

Answer .....

Question 2. Are you a native-born citizen of the United States, and if so, in what State or Territory were you born? (If foreign born, see Note 1.)

Answer .....

Question 3. Are you the same person who made Homestead Entry No. ....., at the .....Land Office on the ..... day of ..... 19...., for the ....., Section ....., Township ....., Range ....., ... Meridian?

Answer .....

Question 4. (a) Are you married or single?

Answer .....

(b) If married, of whom does your family consist?

Answer .....

(c) If a married woman, state whether your husband now has an unperfected homestead entry, and during what time he has resided on this land with you?

Answer .....

Question 5. (a) When did you first establish actual residence upon this land?

Answer .....

(b) When was your house built on this land?

Answer .....

(c) Have either you or your family ever been absent from the homestead

Answer .....

since establishing residence?

(d) If there has been such absence give the dates covered by each absence; and as to each absence state whether you, your family, or both, were thus absent and the reason for each such absence?

Answer .....

Question 6. Describe the land embraced in above entry by legal subdivisions, showing fully the character of same, and kind and amount of timber, if any.

Answer .....

Subdivision.	Acres Cultivable.	Acres Timbered.	Feet Timber.
.....	.....	.....	.....

Question 7. State by subdivisions the number of acres cultivated, kind of crop planted, and amount harvested, each year. How many acres of the claim are now cleared, or broken, and under cultivation? If used for grazing only, state number and kind of stock grazed each year and by whom owned.

Answer .....

Question 8. Describe fully and in detail the amount and kind of improvements on each subdivision. State total value of improvements on the claim.

Answer .....

Subdivision. Character of Improvements.

.....

Question 9. Is your present claim within the limits of an incorporated town or selected site of a city or town, or used in any way for trade or business?

Answer .....

Question 10. Are there any indications of coal, salines, or minerals of any kind on the land? If so, describe what they are.

Answer .....

Question 11. Have you ever made any other homestead entry? If so, describe the same.

Answer .....

Have you sold, conveyed, or agreed to sell or convey any portion of the land; if so, to whom and for what purpose?

Answer .....

Question 13. Have you optioned, mortgaged, or agreed to option or mortgage, or convey this land, or any part thereof; if so, when, to whom, and for what purpose and in what amount?

Answer .....

Question 14. Have you any personal property of any kind elsewhere than on this claim? If so, describe the same, and state where the same is kept.

Answer .....

Question 15. Describe by legal subdivisions, or by number, kind of entry, and office where made, any other entry or filing (not mineral) made by you since August 30, 1896.

Answer .....

.....

(Sign plainly, with full Christian name.)

Note 1.—If applicant is alien born, he should state the fact and file evidence of citizenship in due form, either a certificate of his own naturalization in a court of competent jurisdiction, or, if claiming to be a citizen by virtue of his father's naturalization and his own minority and residence in the United States at the date thereof, or, if a married woman claiming citizenship by virtue of her husband's nativity or naturalization, then record evidence of the naturalization of the father, or husband, or an affidavit as to the nativity of the latter.

Note 2.—The officer before whom the proof is made will see that all answers are complete and responsive to the questions.

Note 3.—The officer before whom the deposition is taken should call the attention of the witness to section 5392 of the Revised Statutes (over), and state to him it is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law.

I Hereby Certify that the deponent was examined separately and apart from the other witnesses in the case; that the foregoing deposition was read to or by deponent in my presence before deponent affixed signature thereto; that deponent is to me personally known (or has been satisfactorily identified before me by .....); that I verily believe deponent to be the

(Give full name and post-office address.)

identical person hereinbefore described, and that said deposition was duly subscribed and sworn to before me at my office, in .....,

(Town, county, and State.)

within the .....land district, this ..... day of ....., 19....

.....

(Official designation of officer.)

FINAL AFFIDAVIT REQUIRED OF HOMESTEAD CLAIMANTS.

I, ..., having made a Homestead Entry of the..... ....., Section ....., Township ....., Range ....., ...Meridian, subject to entry at ....., under section No. 2289 of the Revised Statutes of the United States, do now apply to perfect my claim thereto by virtue of section No. .... of the Revised Statutes of the United States; and for that purpose do solemnly ..... that I am a.....

(Native-born or naturalized.)

citizen of the United States; that I have made actual settlement upon and have cultivated and resided upon said land since the ..... day of ..... 19...., to the present time; that no part of said land has been alienated, except as provided in section 2288 of the Revised Statutes; but that I am the sole bona fide owner as an actual settler; that I

will bear true allegiance to the Government of the United States; and, further, that I have not heretofore perfected or abandoned an entry made under the homestead laws of the United States, except .....

.....

(Sign plainly with full Christian name.)

Note.—Every person swearing falsely to the above affidavit will be punished as provided by law for such offense. (See Sec. 5392, R. S., below.)

I Hereby Certify that the foregoing affidavit was read to or by affiant in my presence before affiant affixed signature thereto; that affiant is to me personally known (or has been satisfactorily identified before me by .....

(Give full name and post-office address.)

that I verily believe affiant to be a credible person and the identical person hereinbefore described, and that said affidavit was duly subscribed and sworn to before me, at my office, in .....

(Town.)

....., this .....day

(County and State.)

of ....., 19....

.....

(Official designation of officer.)

REVISED STATUTES OF THE UNITED STATES. Title LXX.—CRIMES.—Chap. 4.

Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years; and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750.)

Note.—In addition to the above penalty, every person who knowingly or willfully in anywise procures the making or presentation of any false or fraudulent affidavit pertaining to any matter within the jurisdiction of the Secretary of the Interior may be punished by fine or imprisonment.

REVISED STATUTES.

For Sec. 2301, relative to payment and price of land, see page 529.

RULES TO BE OBSERVED IN PASSING ON FINAL PROOFS.

[Circular.]

Department of the Interior,
General Land Office,
Washington, D. C., May 9,1906.

Circular of July 17, 1889 (L. D., 123), is hereby revoked and the following rules substituted therefor, viz.:

1. Final proofs in all cases where the same are required by the general land laws or regulations of the Department, must be taken in accordance with the published notice; provided, however, that such testimony may be taken within ten days following the time advertised in cases where accident or unavoidable delays have prevented the applicant or his witnesses from making such proof on the day specified. Section 7 of the Act of March 2, 1889 (25 Stat., 854).

2. Where final proof or any part thereof has not been taken on the day advertised, or within ten days thereafter under the exceptions and as required in Rule 1, you will direct new advertisement to be made; and if no protest or objection is then filed the proof theretofore submitted, if in compliance with the law in other respects, may be accepted.

3. If the testimony of either claimant or witness is taken at a different place than that advertised the Commissioner may, if in his opinion same is required, cause new advertisement for the proof to be taken at such place as he may deem advisable, or if in his opinion new advertisement is unnecessary, and no protest or objection has been filed the proof theretofore submitted, if regular in all other respects, may be accepted without further testimony.

4. When a witness not named in the advertisement is substituted for an

advertised witness, unless two of the advertised witnesses testify, require new advertisements of the names of the witnesses who do testify at such time and place as you may direct; and if no protest or objection is then filed, the proof theretofore submitted, if satisfactory in all other respects, may be accepted.

5. Where final proof is taken before an office not named in the advertisement, it may be accepted if otherwise sufficient, provided the proof is taken at the time and place designated in the printed notice, or within ten days thereafter under the exceptions provided in Rule 1; and provided further, that both the officer advertised to take such proof and the officer taking same shall officially certify that no protest was at any time filed before him against the claimant's entry.

6. Evidence of declaration of intention to become a citizen of the United States or other evidence necessary to establish citizenship of foreign-born applicants should be received only when under the hand and seal of the proper officer of the court in which such papers appear of record. However, where it is shown that the judicial record has been lost or destroyed, proof of citizenship in such cases may be established under the rules governing the introduction of secondary evidence.

7. When proof is made before the register or receiver and the final certificate does not bear the date of proof, the register must indorse on the back of the final certificate of entry, at the time of its issuance, a brief statement of the reason for the delay in issuance of final papers, the indorsement to be in each instance signed by the register. If the delay was caused by failure of applicant to tender the money or other consideration at the time of making proof, additional evidence must be furnished showing that the claimant had not, at date of certificate, transferred the land, which evidence may consist of his affidavit taken before some officer authorized to administer oaths. In cases where it appears that the delay in issuance of final papers was not the fault of the claimant, the proofs being otherwise regular, the Commissioner of the General Land Office may in his discretion pass same to patent.

8. When proof is made before any officer other than the register or receiver a reasonable time will be allowed for the transmission of papers to the local office, and if a longer interval is shown between date of proof and date of certificate, if the proof is otherwise sufficient and the record contains no reason for the delay, the register will indorse upon the back of the final certificate the statement required by Rule 7; and if such delay was the fault of the claimant, require the additional evidence prescribed by Rule 7.

9. Where final proof has been accepted by the local officers prior to promulgation of this circular, if in other respects satisfactory except as to delay in issuance of final papers as required by Rule 7, the Commissioner of the General Land Office may, if in his opinion the facts and circumstances so warrant, pass the cases to patent in the absence of other objection.

W. A. Richards, Commissioner.

Approved:

E. A. Hitchcock, Secretary.

HOMESTEAD—COMMUTATION—SECTIONS 9 AND 10, ACT MAY 29, 1908.

[Circular.]

Department of the Interior,
General Land Office,
Washington, D. C., June 13, 1908.

Registers and Receivers, United States Land Offices.

Sirs: Your attention is called to sections 9 and 10 of the Act of Congress approved May 29, 1908 (Public No. 160), which read as follows:

Sec. 9. That no final certificate issued upon proof offered under the commutation provisions of the homestead laws prior to the passing of this Act shall be canceled solely upon the ground of insufficient residence in any case where such proof shows that the entryman had in good faith resided upon and improved the lands covered by his entry for at least eight months within the year immediately preceding the submission of such proof, and in all such cases where the final certificate has been canceled because of insufficient residence such certificate shall, upon application made therefor by the entryman, his heirs or assigns, within one year from the passage of this Act, be reinstated and confirmed if no fraud was practiced by the entryman and no valid adverse rights have attached to the land affected thereby at the date of the filing of such application.

Sec. 10. That no homestead entry made heretofore under the provisions of section 2 of the Act of Congress entitled "An Act for the relief of the Colorado Co-operative Colony, to permit homestead entries in certain cases, and for other purposes," approved June fifth, nineteen hundred, shall be canceled for the reason that the former entry made by the entryman was commuted under the provisions of an Act entitled "An Act relating to the public lands of the United States," approved June fifteenth, eighteen hundred and eighty (Twenty-first Statutes, page two hundred and thirty seven). And all entries heretofore canceled on the ground that an entryman who commuted under the provisions of said Act of June fifteenth, eighteen hundred and eighty, is not entitled to the benefits of the Act of June fifth, nineteen hundred, shall be reinstated upon a showing by the entryman or his heirs, within one year from the approval of this Act, that there were no valid grounds for the cancellation of such entries except that a former entry was perfected under the Act of June fifteenth, eighteen hundred and eighty, in all cases where valid adverse rights have not attached to the lands covered by such second entries since the date of their cancellation.

2. Section 9 requires the acceptance and approval of all homestead commutation proofs upon which final certificates issued prior to May 29, 1908, and have not been canceled, wherein it is shown that the entryman had in good faith actually resided upon and cultivated the land covered by their entries for at least eight months during the twelve months immediately preceding the date on which the proof was offered, if there are no other good reasons to the contrary, and directs the reinstatement of canceled final certificates based upon such proofs in all cases where no fraud was practiced and no valid adverse rights have attached at the date of application for such reinstatement.

3. The residence referred to in this section need not have been continuous, and it is immaterial whether it began within six months after date of the entry, but it must in all cases be bona fide and actual and of such duration as to amount in the aggregate to eight months during the preceding twelve months.

4. In all cases where contests or protests have been initiated, or hearings or investigations ordered, under proofs and certificates affected by Sec. 9, final action on such proof and certificate will await and be controlled by the result of such contests, protests, hearing, or investigation.

5. In all cases where certificates affected by Sec. 9 have not been canceled, they will be considered and acted upon without further action by the entrymen, except in cases where entrymen are called upon to furnish supplemental proof, or to defend against protests or contests.

6. In all cases where certificates affected by Sec. 9 have been canceled because of insufficient residence, the entryman, or his heirs and assigns, must, before May 29, 1909, file with the proper register and receiver his application for reinstatement, specifically setting forth the grounds therefor, and showing that no fraud was practiced in connection with such final certificate. As soon as an application of this kind has been filed, the register and receiver will at once forward it to this office, with their report as to the status of the land affected, and their recommendation as to its allowance. This section does not authorize the reinstatement and approval of rejected final proof upon which no final certificate has issued.

7. Sec. 10 validates all uncanceled entries made prior to May 29, 1908, under Sec. 2, Act of June 5, 1900 (31 Stat., 267), by persons who had purchased under Sec. 2 of the Act of June 15, 1880 (21 Stat., 237), and authorizes the reinstatement of canceled entries of that kind in cases where valid adverse rights have not attached; but this Act will not prevent the cancellation of such entries on any other proper grounds.

8. Entrymen, or their heirs, seeking the reinstatement of canceled entries affected by Sec. 10, must, before May 29, 1909, file with the proper register and receiver a sworn application for such reinstatement, setting forth the fact that no valid adverse rights have attached prior to the presentation of their application. As soon as an application of this kind has been filed, the register and receiver will at once forward it to this office, with their report as to the status of the land affected and their recommendation as to its allowance.

Very respectfully,

S. V. Proudfit,
Acting Commissioner.

Approved:
Frank Pierce, Acting Secretary.

REGULATIONS AS CONTAINED IN CIRCULAR NO. 10 OF THE GENERAL LAND OFFICE.

HOMESTEAD FINAL AND COMMUTATION PROOF.

38. Either final or commutation proof may be made at any time when it can be shown that residence and cultivation have been maintained in good faith for the required length of time, but if final proof is not made within seven years from the date of a homestead entry the entry will be canceled unless some good excuse for the failure to make the proof within the seven years is given with satisfactory final proof as to the required residence and cultivation made after the expiration of the seven years.

39. By Whom Proof May Be Offered.—Final proof must be made by the entrymen themselves, or by their widows, heirs, or devisees, and can not be made by their agents, attorneys in fact, administrators, or executors, except in the cases hereinafter mentioned. In order to submit final five-year proof the entryman, his widow, or the heir or devisee submitting proof must be a citizen of the United States. As a general rule commutation proof may be submitted by one who has declared his or her intention to become a citizen, but on entries made for land in certain reservations opened under special Acts the person submitting commutation proof must be a citizen of the United States.

An entrywoman who marries after making an entry must, in submitting proof, show the citizenship of her husband, as she by her marriage takes his status in respect to citizenship.

(a) If an entryman becomes insane after making his entry and establishing residence, patent will issue to the entryman on proof by his guardian or legal representative that the entryman had complied with the law up to the time his insanity began. In such a case if the entryman is an alien and has not been fully naturalized evidence of his declaration of intention to become a citizen is sufficient.

(b) Where entries have been made for minor orphan children of soldiers and sailors, proof may be offered by their guardian, if any, if the children are still minors at the time the proof should be made.

(c) When an entryman has abandoned the land covered by his entry and deserted his wife, she may make final or commutation proof as his agent, or, if his wife be dead and the entryman has deserted his minor children, they may make the same proof as his agent, and patent will issue in the name of the entryman.

(d) When an entryman dies leaving children, all of whom are minors, and both parents are dead, the executor or administrator of the entryman, or the guardian of the children, may, at any time within two years after the death of the surviving parent, sell the land for the benefit of the children by proper proceedings in the proper local court, and patent will issue to the purchaser; but if the land is not so sold, patent will issue to the minors upon proof of death, heirship, and minority being made by such administrator or guardian.

40. How Proofs May Be Made.—Final or commutation proofs may be made before any of the officers mentioned in paragraph 16 as being authorized to administer oaths to applicants.

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

41. Publication Fees.—Applicants shall hereafter be required to make their own contracts for publishing notice of intention to make proof, and they shall make payment therefor directly to the publishers, the newspaper being designated and the notice prepared by the Register.

42. Duty of Officers Before Whom Proofs Are Made.—On receipt of the notice mentioned in the preceding paragraph, the Register will issue a notice naming the time, place, and officer before whom the proof is to be made and cause the same to be published once a week for five consecutive weeks in a newspaper of established character and general circulation published nearest the land, and also post a copy of the notice in a conspicuous place in his office.

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

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

43. Fees and Commissions.—When a homesteader applies to make entry he must pay in cash to the Receiver a fee of $5 if his entry is for 80 acres or less, or $10 if he enters more than 80 acres. And in addition to this fee he must pay, both at the time he makes entry and final proof, a commission of $1 for each 40-acre tract entered outside of the limits of a railroad grant and $2 for each 40-acre tract entered within such limits. Fees under the Enlarged Homestead Act are the same as above, but the commissions are based

upon the area of the land embraced in the entry (see par. 48). On all final proofs made before either the Register or Receiver, or before any other officer authorized to take proofs, the Register and Receiver are entitled to receive 15 cents for each 100 words reduced to writing, and no proof can be accepted or approved until all fees have been paid.

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

United States commissioners, United States court commissioners, judges, and clerks are not entitled to receive a greater sum than 25 cents for each oath administered by them, except that they are entitled to receive $1 for administering the oath to each entryman and each final proof witness to final proof testimony, which has been reduced to writing by them.

44. The alienation of all or any part of the land embraced in a homestead prior to making proof, except for the public purposes mentioned in section 2288, Revised Statutes (see Appendix No. 1), will prevent the entryman from making satisfactory proof, since he is required to swear that he has not alienated any part of the land except for the purposes mentioned in section 2288, Revised Statutes.

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

Alienation After Proof and Before Patent.—The right of a homestead entryman to patent is not defeated by the alienation of all or a part of the land embraced in his entry after the submission of final proof and prior to patent, provided the proof submitted is satisfactory. Such an alienation is, however, at the risk of the entryman, for if the reviewing officers of the Land Department subsequently find the final proof so unsatisfactory that it must be wholly rejected and new proof required, the entryman can not then truthfully make the nonalienation affidavit required by section 2291, Revised Statutes, and his entry must in consequence be canceled. The purchaser takes no better title than the entryman had, and if the entry is canceled purchaser's title must necessarily fail.

45. Relinquishments.—A homestead entryman, or in case of his death, his statutory successor, as explained in paragraph 22, may file a written relinquishment of his entry, and on the filing of such relinquishment in the local land office the land formerly covered by the entry becomes at once subject to entry by the first qualified applicant.

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 made for the purpose of holding the land for specula-

tion and sale of the relinquishments are illegal and fraudulent. Every effort will be made 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 they must seek their own remedies under local laws against those who by imposing such relinquishments upon them have obtained their money without valuable consideration.

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

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

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

The fact that lands have been designated as subject to entry is not conclusive as to the character of such lands, and should it afterwards develop that the land is not of the character contemplated by the above Acts the designation may be canceled; but where an entry is made in good faith under the provisions of these Acts, such designation will not thereafter be modified to the injury of anyone who, in good faith, has acted upon such designation. Each entryman must furnish affidavit as required by section 2 of the Acts.

48. Compactness—Fees.—Lands entered under the Enlarged Homestead Acts must be in a reasonably compact form and in no event exceed 1½ miles in length.

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

SETTING OF FINAL PROOFS.

When hearings on applications to make final proof have been

set, a notice by postal card, containing the following, will be mailed to the entryman, to-wit:

4—192

DEPARTMENT OF THE INTERIOR,
United States Land Office.

.....
(Place.)
.....
(Date.)

Final proof on your ..... is set before ..... at .....
(Kind of entry.)
on ..... Notice will be published in the .....
(Newspaper.)
.....
Register.

Important Notice.—Persons submitting commutation or final five-year proof are warned against discontinuing their residence upon the homestead before the proof is found satisfactory by the Land Department, as an adverse claim may arise or sufficient of the statutory period of seven years may not remain within which to make the showing required for new proof. Alienation of the land will also defeat the right to submit new proof and will forfeit the entry if proof is finally rejected.

INSTRUCTIONS RELATIVE TO PUBLICATION OF FINAL-PROOF NOTICES AND CONCERNING THE DISCRETIONARY AUTHORITY OF REGISTERS IN THE SELECTION OF NEWSPAPERS FOR THAT PURPOSE.

Department of the Interior,
General Land Office,
Washington, D. C., August 11, 1909.

Registers and Receivers of United States District Land Offices.

Sirs: This office is in daily receipt of complaints from editors and publishers of newspapers to the effect that their publications are not accorded the patronage which should be bestowed upon them, in accordance with the law and regulations governing the publication of notices of intended final proofs on entries of public lands.

The object of the law requiring publication of such notices is to bring to the knowledge and attention of all persons who are or who might be interested in the lands described therein, or who have information concerning the illegality or invalidity of the asserted claims thereto, the fact that it is proposed to establish and perfect such claims, to the end that they may interpose any objection they may have, or communicate information possessed by them to the officers of the Land Department. It is unnecessary to state that this object can not be secured by a notice published in a paper which has no meritorious circulation among the people resident in the locality in which the affected land is situated, and that inattention to or disregard of their duty in this behalf on the part of Registers will result in the total subversion of the law and the defeat of its purpose and intent. To the end, therefore, that you may be fully instructed concerning your official obligation in the premises, and that you may be urged to an alert and diligent performance of the duty which the law imposes upon you, your attention is directed to the several rules now to be stated and which should govern and control you in the discharge of your official obligation:

First. A notice of intended final proof must be published in a newspaper of established character and of general circulation in the vicinity of the land affected thereby, such paper having a fixed and well-known place of publication. No newspaper shall be deemed

a qualified medium of notice unless it shall have been continuously published during an unbroken period of six months immediately preceding the publication of the notice, nor unless it shall have applied for and been granted the privilege of transportation in and by the United States mails at the rate provided by law for second-class matter (secs. 427 to 437, inclusive, Postal Laws and Regulations), a privilege available to all newspapers having a legitimate list of subscribers and a known place of publication.

Second. The notice must in all cases be published in the newspaper which may be printed and issued at a place nearest to the lands which the notice affects. By the word "nearest" as here used it is not intended that geographical proximity shall be measured on an air line drawn between the land and the place of publication, but by the length of the shortest and principally traveled thoroughfare between such places, being the highway ordinarily used and employed for travel by vehicles of any kind. But this qualification shall not be intended as authorizing any manifest perversion of the spirit of the rule, but simply to dispense with any strict rule based on geographical distance.

Third. It is not necessary that the newspaper denominated as the medium of such notice shall be published in the same county as that in which the land lies, or even in the same land district. On the contrary, a newspaper published in an adjoining county, if its place of publication is nearer to the land than that of any other newspaper, must be designated as the agency of publication, if it is also qualified by reason of its general circulation in the vicinity of the affected lands.

Fourth. The law invests Registers with discretion in the selection of newspapers to be the media of notice in such cases as are here referred to, but that discretion is official in character, and not a purely personal and arbitrary power to be exercised without regard for the object of the law by which it is conferred. It follows that a Register's action in the exercise of such discretion is subject to review by this office in any case where it is sufficiently alleged that the discretion has been abused, meaning thereby that it has been exercised in a manner perversive of the object of the law in requiring such notices to be published. This power of review will ordinarily be exercised and made effective in a proper case by holding the final proof to have been preceded by insufficient notice; but it may be resorted to and exercised in any case in which it may be shown that a Register is persistently designating a manifestly inefficient medium of notice, by forbidding the further publication of notices in such a newspaper until it shall have acquired and sufficiently established its possession of the requisite qualifications. In other words, where it has once been determined that a newspaper is not a competent medium of notice, it is within the power of this office to forbid the continued selection of that newspaper as the means of publication without awaiting repeated abuses of discretion on the part of a Register and a determination in each separate instance that the notice was ineffectually published. This course of action will, therefore, be pursued whenever it is shown that a Register is bestowing his patronage upon an alleged newspaper which is not entitled to that character, being merely a private advertising agency or published for some special purpose and not

as a general disseminator of news, or where such paper has no actual bona fide or reasonably meritorious circulation, or is not in fact published at its pretended place of publication, but at some other place.

Fifth. Where a Register acts in the reasonable and not manifestly unfair and improper exercise of his discretion his decision will not be interfered with or disturbed by this office. The Department can not and will not undertake to weigh and nicely calculate the relative efficiency of two or more newspapers published in the same place and alike possessing and enjoying an established character and general circulation; nor will it, as between two papers published at different places, permit any slight and unimportant advantage in the matter of geographical proximity, period of publication, or extent of circulation, possessed by one of such papers over the other, to serve as a sufficient reason for disapproval of the Register's conclusion as to which one of such newspapers should be designated as the means of publication.

Sixth. It is earnestly desired that you shall severally be at all times careful in your observance of and adherence to the rules which have been here stated and prescribed for your governance, to the end that the now numerous and urgent complaints of alleged discrimination, and charges to the effect that the object of the law is not observed in the choice of newspapers for the publication of final-proof notices, may be at least greatly diminished in number, as well as to the further end that such as may be received shall be without foundation of fact or in law.

Seventh. Persons seeking to establish their right to a legal title to any public lands are not authorized to interfere with the discretion of the Register in the choice of a newspaper in which to publish notice of their claims; nor will any designation of a newspaper made by a Register, in the reasonable exercise of that discretion, be disturbed on the ground that the claimant recommended another newspaper. All other conditions being equal, it will be entirely proper to accord favorable consideration to a claimant's nomination of a newspaper, though acceptance of such a nomination will not be enjoined upon you.

Eighth. None of the rules herein stated respecting the designation of the newspaper are intended to apply to, or govern, publication of notice concerning proof proposed to be offered in support of an application for the purchase of lands chiefly valuable for their timber or stone, under the Act of Congress of June 3, 1878 (20 Stats., 89), as extended by the Act of Congress of August 4, 1892 (27 Stats., 348), nor to the purchase of Alaskan coal lands under the Act of Congress of April 28, 1904 (33 Stats., 525). Publication of such notices must be procured by the applicants, in newspapers selected by them, but this privilege does not exempt them from the obligation to select a newspaper published nearest to the lands to which the application relates, and such paper must be in all other respects a competent medium of notice, in accordance with the principles which have been stated. You will give to all applicants under this Act due counsel and instruction concerning the duty imposed upon them in respect of publication of notice, to the end that they may not ignorantly err in the choice of newspapers through which to communicate such notice.

Ninth. No appeal will lie from the action of the Register in refusing to name any particular newspaper as an agency for the publication of notices concerning claims to public lands. But any editor or proprietor of a newspaper who believes and desires to charge that a notice of proof in support of any claim to public land has been published in a paper disqualified by the rules and principles herein stated, to serve as the medium of such notice, may file in the district land office from which such notice emanated a written and verified protest against the acceptance of the proof submitted in accordance with such notice. Such protest should set forth all material and essential facts within the knowledge of the protestant, or of which he has reliable information and which he believes to be true, and which, if duly established by proof, would require a determination that the newspaper in which the notice was published was and is not a reputable and established publication, printed, in good faith, for the diffusion of local and general news; or that it is and was not the paper published nearest to the land affected by said notice, and that there is another newspaper published at a place nearer to said lands, equally well qualified in all respects to convey notice of the claim thereto asserted; or any other cause of disqualification expressed and defined in and by the foregoing several rules.

Tenth. Any such protest must be accompanied by copies of at least three successive editions of the paper against whose efficiency as a means of notice the protest is directed, and by as many like copies of the paper published by protestant, and alleged to have been a more efficient agency of notice than was the paper actually chosen. It should, in addition to other facts hereby made essential, disclose the relative number of actual paying subscribers supporting the said two newspapers; the number of papers actually distributed in the county in which said papers are published and in the county in which the land is situated; and the number of papers mailed to bona fide subscribers at the postoffice nearest to the land to which such notice relates. It should state the length of time during which each of said newspapers has been actually and continuously published, immediately preceding the date of the protest; and, if either of said papers has been denied, or has never applied for, entry as second-class matter in the postoffice at the place of publication, that fact should be stated.

Eleventh. Where any protest has been filed in the manner herein prescribed it shall be the duty of the Register and Receiver to immediately consider same and to proceed thereon as in other cases of protests against final proofs. If they should conclude that the facts stated in the protest are insufficient to warrant an order for a hearing, they will render decision to that effect and duly notify the protestant thereof, at the same time advising him of his right to prosecute an appeal to this office, in the manner and within the time prescribed by the rules of practice. After the expiration of the period during which an appeal may be prosecuted, they will, if no such appeal be filed, forward the protest and accompanying exhibits to this office, with their decision thereon, as in cases of unappealed contests, together with a separate report by the Register concerning the facts within his knowledge and bear-

ing, in a material manner, on the merits of the question presented by the protest.

Twelfth. In all cases where no appeal is prosecuted from a decision by the Register and Receiver dismissing a protest, that decision will be considered final as to the facts; and acquiescence therein by this office will be refused only when it is manifest that it was error to determine that no proper ground of protest was sufficiently alleged.

Thirteenth. The law imposes upon Registers the duty of procuring the publication of proper final-proof notices, and charges the claimant with no obligation in that behalf, except that he shall bear and pay the cost of such publication. Registers should accordingly exercise the utmost care in the examination of such notices and in the comparison thereof with the records of their offices, to the end that they may not go to the printer containing any erroneous description of the entered land, or designating an officer not authorized to receive the proof, or that they shall not be for any other reason insufficient. It is equally important that a notice correct in all of these particulars shall not be published in a newspaper manifestly disqualified as a means of publication and clearly incapable of bringing the notice to the attention of the people dwelling in the vicinity of the lands to which it relates.

Neglect of duty above defined, resulting in a requirement of republication, should not visit its penalty upon the claimant. In all such cases, therefore, the Register by whom the publication was procured will be required to effect the necessary republication at his own proper expense. If an error is committed by the printer of the paper in which the notice appears, the Register may require such printer to correct his error by publishing the notice anew for the necessary length of time, and for his refusal to do so may decline to designate his said paper as an agency of notice in cases thereafter arising.

LAWS AND REGULATIONS.

For your more complete instruction concerning the subject-matter of these rules, and as a means of affording a ready and convenient reference to the several laws and regulations providing for and requiring publication of notice in relation to entries of and claims to public lands, those laws and regulations are here assembled. A careful examination thereof will familiarize you with the language in which they express their requirements and indicate to you their evident purpose.

Homestead and preemption entries.

(1) Act of Congress of March 3, 1879 (20 Stat., 472).

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That before final proof shall be submitted by any person claiming to enter agricultural lands under the laws providing for preemption or homestead entries, such person shall file with the register of the proper land office a notice of his or her intention to make such proof, stating therein the description of the lands to be entered, and the names of the witnesses by whom the necessary facts will be established.

Upon the filing of such notice, the register shall publish a notice that such application has been made, once a week for the period of thirty days, in a newspaper to be by him designated as published nearest to such land, and he shall also post such notice in some conspicuous place in his office for

the same period. Such notice shall contain the names of the witnesses as stated in the application. At the expiration of said period of thirty days, the claimant shall be entitled to make proof in the manner heretofore provided by law. The Secretary of the Interior shall make all necessary rules for giving effect to the foregoing provisions.

(2) Circular of April 10, 1909, paragraphs 40, 41, and 42, continuing in force the principle of a requirement announced by earlier circulars.

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

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

41. Publication fees.—Applicants shall hereafter be required to make their own contracts for publishing notice of intention to make proof, and they shall make payment therefor directly to the publisher, the newspaper being designated and the notice prepared by the register.

42. Duty of officers before whom proofs are made.—On receipt of the notice mentioned in the preceding paragraph, the register will issue a notice naming the time, place, and officer before whom the proof is to be made and cause the same to be published once a week for five consecutive weeks in a newspaper of established character and general circulation published nearest the land, and also post a copy of the notice in a conspicuous place in his office. * * *

Desert-land entries.

(1) Circular of June 27, 1887 (5 L. D., 708), paragraph 13.

13. Before final proof shall hereafter be submitted by any person claiming to enter lands under the desert-land act, such person will be required to file a notice of intention to make such proof, which shall be published in the same manner as required in homestead and preemption cases.

(2) Act of Congress of March 11, 1902 (32 Stat., 63), giving implied statutory sanction to above-quoted circular requirement.

That hereafter all affidavits, proofs, and oaths of any kind whatsoever required to be made by applicants and entrymen under the homestead, preemption, timber-culture, desert-land, and timber and stone acts, may, in addition to those now authorized to take such affidavits, proofs, and oaths, be made before any United States commissioner or commissioner of the court exercising federal jurisdiction in the Territory or before the judge or clerk of any court of record in the land district in which the lands are situated: Provided, That in case the affidavits, proofs, and oaths hereinbefore mentioned be taken out of the county in which the land is located the applicant must show by affidavit, satisfactory to the Commissioner of the General Land Office, that it was taken before the nearest or most accessible officer qualified to take said affidavits, proofs, and oaths in the land districts in which the lands applied for are located; but such showing by affidavit need not be made in making final proof, if the proof be taken in the town or city where the newspaper is published in which the final proof notice is printed. * * *

(3) Circular of November 30, 1908 (37 L. D., 312), paragraphs 20 and 21, repeating requirement of publication.

20. The entryman, or his assignee, if the entry has been assigned, is ordinarily allowed four years from the date of the entry in which to complete the reclamation of the land, and he is entitled to make final proof and receive patent as soon as he has expended the sum of $3 an acre in improving and reclaiming the land, and has reclaimed all of the irrigable land embraced in his entry, and has actually cultivated one-eighth of the entire area of the land entered. When an entryman has reclaimed the land and is ready to make final proof he should apply to the register and receiver for a notice of intention to make such proof. This notice must contain a complete description of the land and must describe the entry by giving the number thereof and the name of the entryman. If the proof is made by an assignee, his name as well as that of the original entryman should be stated. It must also show when, where, and before whom the proof is to be made. Four wit-

nesses may be named in this notice, two of whom must be used in making the proof.

21. This notice must be published once a week for five successive weeks in a newspaper of established character and general circulation published nearest the land, and it must also be posted in a conspicuous place in the local land office for the same period of time. The date fixed for the taking of the proof must be at least thirty days after the date of first publication. Proof of publication must be made by the affidavit of the publisher of the newspaper or by some one authorized to act for him. The register will certify to the posting of the notice in the local office.

Timber and stone cash entries.

(1) Act of Congress of June 3, 1878 (20 Stat., 89), Sec. 3.

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

(2) Circular of November 30, 1908 (37 L. D., 289), paragraph 25, expressing the requirement imposed by Sec. 3 of the above-mentioned Act.

(Note.—It will be observed that an applicant for the purchase of lands chiefly valuable for timber and stone is required to procure publication of notice of his application in a newspaper published nearest to the lands which he seeks to purchase. In such cases the register does not designate the newspaper; but it is the duty of the register and receiver, nevertheless, to enforce the requirement that such a notice shall be published in the paper nearest to the land, and they will reject any proof which is not preceded by notice published in the papers so qualified.)

25. After the appraisement or reappraisement and deposit of purchase money and fee have been made the register will fix a time and place for the offering of final proof, and name the officer before whom it shall be offered, and post a notice thereof in the land office and deliver a copy of the notice to the applicant, to be by him and at his expense published in the newspaper of accredited standing and general circulation published nearest the land applied for. This notice must be continuously published in the paper for sixty days prior to the date named therein as the day upon which final proof must be offered.

Carey act selections.

(1) Act of Congress of August 18, 1894 (28 Stat., 372, 422), commonly known as the "Carey Act." (Sec. 2.)

* * * As fast as any State may furnish satisfactory proof, according to such rules and regulations as may be prescribed by the Secretary of the Interior, that any of said lands are irrigated, reclaimed, and occupied by actual settlers, patents shall be issued to the State or its assigns for said lands so reclaimed and settled: Provided, That said States shall not sell or dispose of more than one hundred and sixty acres of said lands to any one person,

and any surplus of money derived by any State from the sale of said lands in excess of the cost of their reclamation, shall be held as a trust fund for and be applied to the reclamation of other desert lands in such State. That to enable the Secretary of the Interior to examine any of the lands that may be selected under the provisions of this section, there is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, one thousand dollars.

(2) Circular of April 9, 1909, renewing and repeating provisions of previous circulars (paragraph 15).

15. When said list is filed in the local land office, there shall also be filed by the State a notice, in duplicate, prepared for the signature of the register and receiver, describing the land by sections, and portions of sections, where less than a section is designated (Form 8, p. 15). This notice shall be published at the expense of the State once a week in each of nine consecutive weeks, in a newspaper of established character and general circulation, to be designated by the register as published nearest the land. One copy of said notice shall be posted in a conspicuous place in the local office for at least sixty days during the period of publication.

Grants to States and Territories for educational purposes.

(1) Circular of April 25, 1907 (35 L. D., 537), paragraphs 9, 10, and 11.

9. Notice of selection of all lands must be given by publication once a week for five successive weeks in a newspaper of general circulation in the county where the lands are located, the paper to be designated by the register.

10. Notice for publication will be prepared by the register at the time of the acceptance of the selections, and will be transmitted by registered mail to the proper State or Territorial official for publication in the paper or papers designated, and a copy of such notice shall also be posted by the register in a conspicuous place in his office, and remain so posted until the expiration of time allowed for the submission of proof of publication.

To save expense, the register may embrace two or more lists in one publication when it can be done consistently with the requirement of publication in a newspaper of general circulation in the county where the land is situated.

The published notice will embrace only the selected lands described by the largest legal subdivisions embraced in the separate lists, care being taken to avoid repetition of numbers of sections, townships, and ranges.

11. Proof of publication will be the affidavit of the publisher or foreman of the newspaper employed, that the notice (a copy of which must be annexed to the affidavit) was published in said newspaper once a week for five successive weeks. Such affidavit must show that the notice was published in the regular and entire issue of the paper, and was published in the newspaper proper and not in a supplement.

The proof of publication of notice must be filed with the register within ninety days after receipt of notice for publication, and will be forwarded by the register to the General Land Office with a report as to whether protest or contest has been filed against any selection, and if protest or contest is filed, the same shall accompany the report. Failure by the State or Territory to furnish proof of publication within the time limited will be cause for the rejection of the selection, upon report of such failure by the register, accompanied with evidence of service of notice prescribed in Rule 10. * * *

Isolated tracts of public lands.

(1) Section 2455, U. S. Revised Statutes, as amended by the Act of Congress of June 27, 1906 (34 Stat., 517) again amended. (See Isolated Tracts.)

(2) Circular of July 18, 1906 (35 L. D., 44), paragraph 7.

7. When lands are ordered to be exposed at public sale, the register and receiver will cause a notice to be published once a week for five consecutive weeks (or for thirty consecutive days if a daily paper), immediately preceding date of sale, in a newspaper to be designated by the register as published nearest the land described in the application, using the form hereinafter given. The register will also cause a similar notice to be posted in the local land office, such notice to remain so posted during the entire period of publication. The applicant must furnish proof that publication was duly made.

Scrip, military bounty land warrants, soldiers' additional homestead entries, forest reserve and other lieu selections and locations.

(1) Circular of February 21, 1908 (36 L. D., 278), paragraphs 2 and 3.

2. You will require the locator or selector, within twenty days from the filing of his location or selection, to begin publication of notice thereof, at

his own expense, in a newspaper to be designated by the register as of general circulation in the vicinity of the land, and to be the nearest thereto. Such publication must cover a period of thirty days, during which time a similar notice of the location or selection must be posted in the local land office and upon the lands included in the location or selection, and upon each and every noncontiguous tract thereof.

3. The notice must describe the land located or selected, give the date of location or selection, and state that the purpose thereof is to allow all persons claiming the land adversely, or desiring to show it to be mineral in character, an opportunity to file objection to such location or selection with the local officers for the land district in which the land is situate, and to establish their interest therein, or the mineral character thereof.

Mineral lands and mining resources.

(1) Soction 2325, U. S. Revised Statutes. (See page 575.)

(2) Mining Regulations of March 29, 1909 (37 L. D., 728), rules 45, 46, and 47.

45. 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.

46. 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.

47. 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.

Coal lands.

(1) Section 2325 U. S. Revised Statutes. (See said section quoted above.)

(2) Circular of April 12, 1907 (35 L. D., 665), reprinted July 11, 1908, paragraphs 17 and 18.

17. Upon the filing of an application to purchase coal lands under the provisions of paragraphs 10 or 14, the applicant will be required, at his own expense, to publish a notice of said application in a newspaper nearest the lands, to be designated by the register, for a period of thirty days, during which time a similar notice must be posted in the local land office and in a conspicuous place on the land. The notice should describe the land applied for and state that the purpose thereof is to allow all persons claiming the land applied for, or desiring to show that the applicant's coal entry should not be allowed for any reason, an opportunity to file objections with the local land officers.

Publication must be made sufficiently in advance to permit entry within the year specified by the statute.

18. After the thirty days' period of newspaper publication has expired, the claimant will furnish from the office of publication a sworn statement (including an attached copy of the published notice) that the notice was published for the required period, giving the first and last date of such publication, and his own affidavit, or that of some credible person having personal knowledge of the fact, showing that the notice aforesaid remained conspicuously posted upon the land sought to be patented during said thirty days' publication, giving the dates. The register shall certify to the fact that the notice was posted in his office for the full period of thirty days, the certificate to state distinctly when such posting was done and how long continued, giving the dates. In no case shall entry be allowed until the proofs specified have been filed. * * *

Exchange of public lands for lands in private ownership within the limits of any Indian reservation created by executive order.

(1) Act of Congress of April 21, 1904 (33 Stat., 211).

That any private land over which an Indian reservation has been extended by executive order, may be exchanged at the discretion of the Secretary of the Interior and at the expense of the owner thereof, and under such rules and regulations as may be prescribed by the Secretary of the Interior, for vacant, nonmineral, nontimbered, surveyed public lands of equal area and value and situated in the same State or Territory.

(2) Circular of March 3, 1909 (37 L. D., 537), paragraphs 11 and 12.

11. In all cases you will require the applicant, within twenty days from the filing of his application, to begin publication of notice thereof at his own expense in a newspaper to be designated by the register as of general circulation in the vicinity of the land and published nearest thereto. Such publication must cover a period of thirty days, during which time a similar notice of the application must be posted in the local land office and upon each and every noncontiguous tract included in the application.

12. The notice should describe the land applied for and give the date of application, and state that the purpose thereof is to allow all persons claiming the land under the mining or other laws, desiring to show it to be mineral in character or adversely occupied, an opportunity to file objection to such application with the local officers of the land district in which the land is situated and to establish their interest therein or the mineral character thereof.

Alaskan coal lands.

(1) Act of Congress of April 28, 1904 (33 Stat., 525), Sec. 2. (See page 289.)

(2) Circular of July 18, 1904 (33 L. D., 114).

Upon the presentation of an application for patent, as provided by Sec. 2, if no reason appears for rejecting the application, the same will be received by the register and receiver and the claimant required to publish a notice of such application for the period of sixty days in a newspaper in the district of Alaska published nearest the location of the particular lands, and the register 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 61 consecutive issues. In both cases the first day of issue must be excluded in estimating the period of sixty days.

The notice 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, if there is one, and fix the boundaries of the claim by courses and distances.

Very respectfully, S. V. Proudfit,
Acting Commissioner.

Approved August 11, 1909.
Jesse E. Wilson, Acting Secretary.

NOTATION OF RIGHTS OF WAY ON ENTRY PAPERS.

Instructions.

Department of the Interior,
General Land Office,
Washington, February 2, 1912.

Registers and Receivers, United States Land Offices.

Sirs: Some misapprehension having arisen as to the proper construction of departmental circulars of November 3, 1909 (38 L. D., 284), and January 19, 1910 (38 L. D., 399), governing notation of rights of way on entry papers, you are now instructed that such notations should be made only where your records show that the land involved, or some part of it, is covered by an approved application for right of way. In this connection attention is directed to the decision of the United States Supreme Court in the case of Minneapolis, St. Paul & Sault Sainte Marie Railway Company v. Doughty (208 U. S., 251). Applicants to enter public lands that are affected by a mere pending application for right of way, should be verbally informed thereof, and given all necessary information as to the character and extent of the project embraced by the right-of-way application; and, further, that they must take the land

subject to whatever right may have attached thereto under the right-of-way application, and at the full area of the subdivisions entered, irrespective of the questions of priority or damages, these being questions for the courts to determine.

Very respectfully,

Fred Dennett,
Commissioner.

Approved:
Samuel Adams,
First Assistant Secretary.

DIGEST OF DECISIONS OF THE DEPARTMENT ON COMMUTATION AND FINAL PROOFS IN HOMESTEAD CASES.

Notice:

Final proof submitted on indefinite notice must be republished. Kemp's case, 9 L. D., 439.

Lands must be correctly described or republication will be ordered.

Adams' case, 6 L. D., 705.

Ulrich Fuchser, 7 L. D., 467.

Clark's case, 7 L. D., 485.

Sarah J. Tate, 10 L. D., 469.

Names of witnesses should be properly given and must be correctly printed. Mistakes arising in such matters will call for republication.

Amos E. Smith, 8 L. D., 24.

Cultivation:

Where commutation proofs fail to disclose requirements of law as regards residence and cultivation new proof may be submitted at any time within the lifetime of the entry where no adverse claim intervenes.

Vandevoort's case, 7 L. D., 86.

Every fact necessary and essential to entitle claimant to make final proof must appear affirmatively from the proof.

U. S. v. Skahen, 6 L. D., 120.

Parks' case, 6 L. D., 549.

Garlics' case, 6 L. D., 310.

"Mere pretense of cultivation does not satisfy the requirements of the homestead law. A proof which fails to show bona fide compliance with the law in the matter of cultivation must be rejected."

Ingelev J. Clomset, 36 L. D., 255.

"Boxing and chipping trees for turpentine on unperfected homestead entries constitutes trespass and cannot in any sense be considered as cultivation within the spirit of the homestead law."

Robert L. McKenzie, 36 L. D., 302.

"Using the land for the raising of hogs is an agricultural use, and where the land is better adapted to that use than tillage of the soil, meets the requirements of the homestead law with respect to cultivation."

For cultivation required under the Enlarged Homestead Act and under the Three Year Homestead Act, see title, "Enlarged Homestead" and "Three Year Homestead."

Residence:

"Temporary absences of a homestead entryman from his claim, when necessary to procure a livelihood, may be excused, where it clearly appears that actual residence is being maintained in good faith; but failure to maintain residence cannot be excused on the ground that the entryman cannot make a living on the land."

Smith v. Hustead, 35 L. D., 376.

Leave of absence does not cure defect in residence not established at the time leave was granted.

Matics v. Gillidett, 35 L. D., 353.

Extension of time in which to establish residence cannot be granted.

Cummings v. Clark, 35 L. D., 373.

"An extension of time beyond the six-month period accorded by statute within which to establish residence upon a homestead claim will not be allowed on the ground of climatic conditions unless it appear that the same conditions also prevailed and prevented the establishment of residence during that period."

Vening v. Colwell, 35 L. D., 356.

"Under the provisions of the Act of March 3, 1881, the Commissioner of the General Land Office may, in his discretion, allow a homestead entryman

twelve months from the date of his entry within which to commence residence upon the land, where it is satisfactorily shown that on account of climatic conditions it is impossible to commence residence within six months; but in such cases the entryman may be credited with constructive residence for a period of six months only, and actual residence for the remainder of the said period of five years must be made and shown as in ordinary homestead cases."

Allen Clark, 35 L. D., 317.

"Two periods of bona fide residence, separated by leave of absence regularly procured, without fraud, may be added together to make up the necessary fourteen months as a basis for commutation." This opinion modified the one in the case of Esberne K. Muller, 39 L. D., 72.

Sherman Shouse, L. D., 456.

"Credit for residence will not be allowed during the time the land is not subject to entry by the person maintaining residence."

39 L. D., 230.

"A homestead entryman is entitled to the exclusive possession and enjoyment of the lands embraced in his entry, and where he in good faith builds his house upon the land with a view to establishing residence and complying with the law, but is prevented by the threats of a rival claimant from establishing residence on the particular portion of the land selected by him for that purpose, it is not incumbent upon him to establish his residence upon another portion of the land, and he will not be held in default for failure to do so."

Cannon v. Johnson, 34 D. D., 348.

"An entryman's absences from the land covered by his entry are excusable when due to duress arising from threats of personal violence of such character as to lead the entryman to believe that he could not remain on the land except at the risk of his life."

Vaughn et al. v. Gammen, 27 L. D., 438.

Official employment will not excuse failure to establish residence, and cultivation and improvements must be continued.

Dalquist, 34 L. D., 396.

Commutation proof upon an entry made prior to November 1, 1907, submitted immediately after the expiration of the fourteen months from date of entry showing that residence was not established until just before the expiration of six months and that the entryman was absent an intermediate period of two months during the requisite eight months will not be accepted as sufficient.

Mary E. Elson, 38 L. D., 541.

A second homestead entry made under the Act of April 28, 1904, which forbids commutation of entries made thereunder, may be perfected under the Act of February 8, 1908, which permits commutation.

William R. Burkholder, 37 L. D., 660.

A homestead entry made with no intention of establishing a permanent bona fide home upon the land, but merely with a view to submitting a showing sufficient to support commutation must be canceled, notwithstanding the proof offered shows full technical compliance with respect to inhabitancy of the land for the period ordinarily required in commutation cases.

Gilbert Satrang, 37 L. D., 683.

A contract made by a homesteader through which he secures the cultivation of the land by a party who lives on the land with him for such purpose, and is paid for such service out of the crops so raised, is not inconsistent with the maintenance of residence.

Hary v. Gaumnitz, 22 L. D., 298.

The validity of residence is not affected by the fact that the wife refuses to live on the land.

Scott v. Carpenter, 17 L. D., 337.

The fact that the homesteader's wife does not reside with him on the land covered by his entry but lives apart from him, and at her former place of residence, does not prevent him from establishing and maintaining the requisite residence on his homestead claim.

Munson v. Cushing, 21 L. D., 113.

Occupation of land through a tenant is not the maintenance or establishment of residence requisite under the public land law.

Fleming v. Thompson, 17 L. D., 561.

Residence is not acquired by going upon and visiting the land solely for the purpose of complying with the letter of the law. The acts of going upon

the land, and the occupancy thereof must concur with the intent to make it a permanent home to the exclusion of one elsewhere.

Ferslot v. Crary, 26 L. D., 165.

Mistakes such as location of the land outside of the claim or location of the house upon the land, or that the improvements are within the enclosure of another do not impeach the good faith of the entryman.

"A husband and wife, living as one family, cannot maintain separate residences at the same time and in the same house, so that each by virtue of said residence may perfect an entry under the homestead law."

L. A. Tavener, 9 L. D., 426.

"Husband and wife, while living together in such relation, cannot maintain separate residences at the same time in a house built across the line between two settlement claims, so that each can secure a claim by virtue of such residence."

Thomas E. Henderson, 10 L. D., 566.

John O. and Minerva C. Garner, 11 L. D., 207.

Stella G. Robinson, 12 L. D., 443.

William A. Parker, 13 L. D., 734.

The failure of a homesteader to maintain residence will be excused, where by intimidation and armed violence he is driven from the land and by such means prevented from return thereof.

Reed v. Heirs of Plummer, 12 L. D., 512.

The continuity of a homesteader's residence is not affected by temporary absence resulting from illness and the necessity of earning money for the maintenance of the claim and personal support.

28 L. D., 503.

Engagement in public service will not be construed into an abandonment so long as such efforts are made to maintain improvements as manifest good faith.

Tomlinson v. Soderlund, 21 L. D., 155.

"In the case of a homesteader who holds an appointment as postmaster, the Department will not, in passing upon the compliance with law in the matter of residence, undertake to determine whether such residence is compatible with the statutory requirement that 'every postmaster shall reside within the delivery of the office to which he is appointed.'" Overruling Hansbrugh case, 5 L. D., 155.

For regulations concerning residence of postmasters and other officials holding public office see page 44, title "Leave of Absence."

JUDICIAL RESTRAINT:

A plea of "judicial restraint" will not be accepted as a sufficient defence, a charge of non-compliance with the law in the matter of residence and cultivation if the homesteader has not established residence and otherwise complied with the law prior to the time when he was placed under such restraint.

Judicial restraint such as conviction and sentence to the penitentiary for life will excuse residence from the land.

Anderson v. Anderson, 5 L. D., 6.

"A charge that the settler has changed his residence is not sustained by evidence which shows that the alleged absence was the result of judicial compulsion."

Cane et al. v. Devine, 7 L. D., 532.

See also Bohall v. Dilla, 114 U. S., 49.

"After residence is once established the continuity thereof is not broken by absence from the land caused by judicial restraint."

10 L. D., 551.

A homestead entry canceled for failure to make final proof within the statutory period, such failure being due to the entryman's arrest and conviction on a criminal charge, cannot be reinstated in the presence of an intervening adverse claim.

Ayers v. Brownlee, 15 L. D., 550.

A charge of abandonment resulting from judicial restraint must result in dismissal of contest.

Readhead v. Hauenstine, 15 L. D., 554.

Absence in prison under judicial restraint will not be considered residence toward making up the period of eight months required by Sec. 9 of the Act of May 29, 1908.

E. N. McGlothian, 36 L. D., 502.

"The distinction between commutation and final proof in relation to the element of time within which full compliance with law may be shown demands a higher proof of good faith on the part of an entryman who elects to complete his entry and acquire title within the limited period allowed by commutation than is required in the case of ordinary proof after five years' compliance with the law."

"A homestead entryman by his election to commute assumes the burden of showing full compliance with law in the matters of residence, improvement, and cultivation, and the proof will not be accepted by the land department unless it shows the substantially continuous presence of the claimant upon the land for the required period."

See case of Fred Lidgett, 35 L. D., 371.

Under instructions from the Department dated September 24, 1910 (39 L. D., 230), it was held that (syllabus):

"Credit for residence will not be allowed during the time the land is not subject to entry by the person maintaining residence."

The above instructions were modified by the Department under date of May 17, 1911, in the ex parte homestead case of Martha Sullivan, formerly Martha Feigum (unpublished), Lemmon series 020673, wherein it was held that the instructions of September 24, 1910, should not be considered retroactive so as to defeat proof which was offered and accepted in accordance with the practice theretofore prevailing.

The instructions in question were further modified by the Department under date of August 7, 1911, in a letter to this office, wherein it is held that a contestant who established his residence and also filed his contest prior to September 24, 1910, and maintained his residence, may receive credit for the time he resided upon the land before the cancellation of the entry which he contested.

You will exercise care in adjudicating claims that are governed by the above instructions.

The foregoing is from circular No. 47, dated August 21, 1911.

Every fact necessary and essential to entitle claimant to make final proof must appear affirmatively from the proof.

U. S. v. Skahen, 6 L. D., 120.

Parks' case, 6 L. D., 549.

Garlics' case, 6 L. D., 310.

IMPROVEMENTS:

The Land Department has no jurisdiction over disputes between settlers concerning their claims against each other on account of alleged improvements.

See case of Winn v. Saunders et al., 20 L. D., 3.

Rights as to the ownership or possession of improvements placed on public lands without authority of law, are not determined by a judgment of the Department sustaining the validity of an entry of said land.

Wheeler v. Rogers, 28 L. D., 250.

The words "cultivation" and "improvement" used synonymously by the Department in considering cash entries.

Adelphi Allen, 6 L. D., 420.

CONTESTS.

1. Grounds of contest.
2. Contestant.
3. Homestead Entries.
4. Desert Entries.
5. Reclamation Homesteads.
6. Three-Year Homestead.
7. Preference Right of Entry.
8. Rules of Practice.
9. Relinquishments.

1. Contests may be initiated against an entry for any cause which affects the validity of the same. It may be brought upon

any ground which would disclose the disqualification of the entryman. It is impossible to give the grounds of contests in detail. The most prolific ground of contest is that of failure to establish and maintain residence on the land as required by law; failure to improve and cultivate the same as required by law, and abandonment for a period of more than six months.

2. Contestant (See Rules of Practice.)

3. Homestead Entries. (See paragraph 1. See Homestead Entries, Proofs, Reclamation, and Rules of Practice.)

4. Desert entries may be contested for failure to comply with the law applicable to the same, or failure to make annual or final proof within the time allowed by law, or for any cause which would affect the validity of the entry, or disqualify the entryman.

5. Reclamation Homesteads. (See Reclamation of Arid Lands.)

6. Three-Year Homestead Law. This law is a new one, and while the law in force regarding contests against this entry so far as they may be applicable will control, yet doubtless many new questions will arise affecting the right to perfect the same. We have compiled all regulations and instructions so far issued, and they will be found by consulting the title "Three-Year Homestead Law."

7. Preference Right of Entry. (See also Rules of Practice.)

[Circular.]

REGULATIONS.

Department of the Interior,
General Land Office,
Washington, D. C., September 15, 1910.

Registers and Receivers,
United States Land Offices.

Gentlemen: In accordance with departmental instructions contained in the decisions in the cases of Crook v. Carroll (37 L. D., 513), James v. Stanley (37 L. D., 560), and William J. Stock v. Oscar E. Herman and James Gibson (39 L. D., —), the following regulations are issued for your guidance:

(a) 1. In order to entitle a contestant to the preference right of entry conferred by Sec. 2 of the Act of May 14, 1880 (21 Stat., 140), it must appear not only that he has contested the entry and paid the land office fees in that behalf, but that he has actually procured the cancellation of the entry.

(b) 2. Where a good and sufficient affidavit of contest has been filed against an entry and no notice of contest has issued on such affidavit, or, if issued, there is no evidence of service of such notice upon the contestee, if the entry under attack should be relinquished, you will, as heretofore, immediately note the cancellation of the entry upon the records of your office. In such cases for purposes of administration a presumption will obtain that the contest induced the relinquishment and no other entry of the land will be allowed until the following proceedings are had. If the relinquishment is filed by a person other than the contestant, you will at once notify the contestant thereof that he may take appropriate steps to make the entry if desired. To that end you will suspend all applications filed by others than the contestant within the period awarded successful contestants to make entry; should the contestant during this period present application, in the absence of other intervening application, his entry will at once be allowed, but if an intermediate application has been filed by another, you will at once notify such intervening applicant of the claimed rights of the contestant and that it will be necessary for him, the intervening claimant, to show, if he desires, that the relinquishment was not the result of the contest, and that in the event he, within twenty days from the receipt of such notice, apply for a hearing for that purpose, the same will be ordered with at least thirty days' notice to all interested parties, otherwise the intermediate application will be rejected and contestant's application allowed. At said hearing it shall be competent for the contestant to show that the former entryman or some one in privity with him in

the sale or purchase of the relinquishment had knowledge of the filing of the affidavit of contest, in rebuttal of any showing made by the applicant. If it satisfactorily appear from the testimony that the relinquishment was not the result of the contest, the intermediate applicant will prevail, otherwise the application of contestant will be allowed as in the exercise of a preference right.

(c) 3. Where it appears of record that the defendant has been served with notice of contest personally or by publication, it will be conclusively presumed as a matter of law and fact that the relinquishment was the result of the contest and the contestant will be awarded the preference right of entry without necessity for a hearing.

(d) 4. Where, prior to hearing in a contest, a junior contest is filed, alleging a valid ground for the cancellation of the entry and, in addition thereto, the collusive nature of the prior contest, the junior contestant may, if the entryman has been served with notice of the prior contest, intervene at the hearing and submit testimony in support of his charges. Should the junior contestant elect to offer testimony in support of his charge of collusion only, he will not gain a preference right of entry, if such charge be established. If, at the time of the filing of the junior contest, notice is not issued on the prior contest, you will issue such notice and at the same time notice on the junior contest; the latter notice must recite all the charges contained in the affidavit and state, in addition, that the junior contestant will be allowed to appear at the time set for taking testimony in the prior contest and offer evidence in support of his charges. The junior contestant will be required to serve notice on both the prior contestant and the entryman.

(e) 5. If, before the case proceeds to a hearing, the entryman's relinquishment be filed, both contestants must be notified of the cancellation of the entry and of their right to apply to enter the land within thirty days after the receipt of such notice. Should both apply within such period, you will set a day for hearing, of which each shall have at least thirty days' notice, at which the junior contestant will be allowed to prove his charge of collusion and so defeat the claimed preference right of the prior contestant. An application to enter by a party other than either of the contestants, presented within the preference right period, must be suspended to await the action of the contestants in asserting their preference rights.

(f) 6. Where a junior contest charging collusion is not filed until after the prior contest has proceeded to a hearing, it will be suspended, pending the closing of the latter case, and must wholly fail if the entry be canceled as the result of the prior contest. This, however, will not prevent the junior contestant from attacking the application of the successful contestant to make entry, upon the ground of collusion or for any other valid cause, should the latter attempt to exercise the preferred right of entry, nor, should the prior contest result in favor of the entryman, will the junior contestant be precluded from prosecuting his case if his affidavit, in addition to the charge of collusion, states a sufficient ground for the cancellation of the entry other than the charge involved in the trial of the prior contest.

(g) 7. These regulations are in lieu of departmental regulations of June 1, 1909 (38 L. D., 23).

Respectfully,

Fred Dennett,
Commissioner.

September 15, 1910.

Approved:

Frank Pierce,
Acting Secretary.

8. Rules of Practice. All notice of contest must be prepared by the contestant or his attorney. The Land Office officials will not take the time to prepare notices of contest. There is a regulation of the Department to the effect that the Register and Receiver are not required to make up affidavits of contests. We do not give the circular here because it is impossible to publish all such matters. I desire to give the more important features of the regulations. We must make the work as brief as possible consistent with its purpose, so it may be contained in one volume.

(See Rules of Practice.)

9. Relinquishments. (See Relinquishments.)

UNITED STATES COMMISSIONERS AND OTHER OFFICERS PREPARING PAPERS IN CONNECTION WITH APPLICATIONS AND FINAL PROOFS IN MATTERS INVOLVING PUBLIC LAND.

Suggestions.

We have considered it advisable to give a few suggestions to U. S. Commissioners and others preparing papers in connection with public land. These suggestions are not intended for Registers and Receivers of local land offices. We have compiled a few important laws and departmental regulations under this chapter. It is quite impossible to give them all in detail. What we may suggest will be based upon some law, rule or regulation of the Department, or experience while in the practice.

Care should be exercised to the end that your charges should not be in excess of the fees allowed by law, schedule of which will be found elsewhere. It is a violation of law to impose excess charges, and no doubt persistence in this matter will result in prosecution or removal.

Care should be taken to examine the instruments before delivering the same to the party or sending it to the Land Office to see that the same has been properly signed, the jurats completed, and the seal attached.

The testimony of witnesses and claimant in final proofs must not be taken within the hearing of the other. Attorneys are not permitted to take any part in the examination of a witness making final proof, except in cases of a protest, where the protestant claims the right to question the entryman regarding the truth of his statements relative to his residence.

It has been observed that persons who have been appointed to positions of U. S. Commissioners, Judges and Clerks of Courts and others taking acknowledgments in public land matters, without previous experience, are lost to know just what to do, how to do it, and particularly just what papers to transmit to the Land Office in a given matter. For this reason we have arranged a key which will be found very helpful in such matters.

The index to forms should be consulted to determine the kind of application to prepare. If it is a second entry, special affidavit must accompany the same showing qualification. By consulting the title treating the character of the entry to be made you will find a statement showing what the application should contain. For example:

Suppose you are about to prepare an application for a second homestead entry under the Act of February 3, 1911. You will consult the chapter on Second Homestead Entries. You will find that such application must be corroborated. You will find a reference to form used, either approved, or one which will show a substantial compliance so far as the law may relate. If the application is one under the equitable rule, consult that chapter the same as you did the first, and this will give you the mode of procedure, and will inform you as to what papers must go to the Land Office. Applications of this character not accompanied by the special affidavits will result in a suspension by the Register and Receiver, but

in such event a reasonable length of time is usually allowed in which to file the same.

In all applications for public lands, if the party is not a native born citizen of the United States, evidence of citizenship must accompany the same.

Applications made subject to the Act of June 22, 1910, should contain the following notation:

Application made in accordance with and subject to the provisions and reservations of the Act of June 22, 1910 (36 Stat., 583).

In cases of final proof, and in cases where hearing has been set before some qualified officer within the district, by the Register and Receiver, it is the duty of such officer to transmit the record, together with the fees due the Land Office. There is no obligation on the part of the officer to transmit applications to the Land Office, although this has become the practice. When doing so the proper and necessary fees and commissions or payment money must accompany the application. The officer's duty ends with the acknowledgment.

Money.

Only currency or postoffice money order will be accepted by the Receiver of the District Land Office. Checks and drafts will not be accepted. It is contrary to regulations to do so, and delay will be avoided by following this rule strictly. Applications unaccompanied with the necessary money will be rejected, and the land applied for will not be segregated.

Papers and Arrangement Thereof.

In preparing and transmitting contest records the following rules must be observed:

[Circular No. 48.]

PREPARATION OF TRANSCRIPT OF TESTIMONY.

Department of the Interior,
General Land Office,
Washington, D. C., August 19, 1911.

Registers and Receivers,
United States Land Offices.

Gentlemen: To avoid the transmission here of incomplete records in contest cases, you will prepare, or cause to be prepared, the transcripts of testimony in litigated matters to show—

1. The names of the parties, date and place of hearing, and name of the officer taking the testimony.

2. The appearance made by either party, whether general or special, and, if represented by an attorney or agent, the post-office address of such representative.

3. The names of the various witnesses called and sworn, by whom called, and the name of the attorney or person conducting the examination both in chief and otherwise.

4. If any motions or objections are made they should be fully transcribed, giving the name of the party making the same; and the ruling thereon, if any, should be carefully noted.

5. When either party rests his case, such fact should be noted. Any adjournments in the taking of testimony should also be noted.

6. A complete index should accompany each record.

The contest clerk should be carefully instructed in order that records may show just what proceedings were had at the hearing.

Very respectfully,

Fred Dennett,
Commissioner.

Matters to Observe in Preparing and Transmitting Applications to Land Office.

1. Is the land vacant, and subject to the application about to be presented?

2. Is the land withdrawn for irrigation or reservoir purposes, or is it subject to the Act of June 22, 1910? If subject to the last mentioned Act, was settlement made thereon by applicant prior to such date?

3. If the application is made subject to the Act of June 22, 1910, have the proper notations been noted on the application before transmission? (See suggestions this title.)

4. Has the land been classified?

5. Is the applicant qualified to make entry of the land, and have his qualifications been fully shown?

Having determined the character of application, observe the following items:

(a) Is the applicant a citizen? If not, evidence of citizenship should accompany the application, or it will be suspended for such evidence when it reaches the Land Office.

(b) How much money should accompany the application? Consult table of fees and commissions for the State in which land is located. Pages — to —.

(c) Money order should be obtained in the name of the remitter in favor of ———, Receiver U. S. Land Office at ———, State of ———.

(d) Are special affidavits required? If so, the applicant should make an effort to send them with the papers. When, however, this is impossible because of failure to secure witnesses, or record facts, they should follow within thirty days.

(e) Is the application for lands within a reclamation project under the Act of June 17, 1902? If so, he should present application in accordance with official orders relating to such project. Generally Form 4-007 is used with form of water right A4-021, except in cases of assignment of water right by previous entryman, in which case Form A1-4-021a is used with 4-007.

The above rules should be followed in the following cases:

Applications for Isolated tracts, Timber and Stone, Declaratory Statements, Coal purchase, and in fact all applications for public lands.

Desert Entries.

1. All the above items should be observed, with these added:

2. Is the applicant a citizen of the State in which the land is located? If not, he is disqualified from making desert land entry.

3. Two witnesses must be furnished. (See form 4-274 for information which witness should possess.)

4. Map, plat or diagram showing plan of irrigation should accompany the application. It should be verified. (See form page —.)

5. Twenty-five cents per acre for the land applied for.

Proofs.

We submit a key showing the papers that should accompany final proof papers. It is quite impossible to give every paper necessary, as it frequently occurs when special papers and affidavits

must be furnished. However, speaking generally, we believe that if this key is followed in most cases at least the proof will be complete.

1. Deposition of claimant.
2. Deposition of two witnesses.
3. If naturalized, evidence of citizenship or affidavit that such evidence was furnished at time of filing.
4. Non-alienation affidavit.
5. Affidavit of publisher showing legal publication.
6. If proof not submitted on the day advertised, affidavit stating reasons therefor. Proof must be submitted within 10 days of the day advertised. (See proofs —.)
7. Affidavit correcting spelling names of witnesses, in case any are erroneously spelled, showing the name advertised and the witness to be one and the same person.
8. Special affidavit that may be required by the nature of the proof.
9. While the filing papers are not required, they often serve to aid the Land Office in checking the entries, and the practice seems to be to forward them with the final proof.
10. Reports field division, application to make, will be supplied by the Land Office.
11. Money order for testimony-fees at rate prevailing in district. (See Schedule.)

Desert Proofs.

Yearly: Affidavit of claimant and two witnesses. (See Form —.)

Third Year: Affidavit of claimant and two witnesses as above, with the following added: Map, plat, or diagram, showing the system of irrigation, the character of the reclamation, and the extent thereof. Map must be verified, showing that the plan of irrigation submitted has reclaimed the land from desert to agricultural in character.

Desert Final Proof.

(1) Deposition of applicant.
(2) Deposition of two witnesses.
(3) Map, verified, showing land reclaimed, showing character of land not capable of being irrigated from system of irrigation.
(4) Affidavit of publisher.
(5) Evidence of citizenship.
(6) Evidence showing title to sufficient water supply to permanently irrigate the land.
(7) One dollar per acre for land embraced in entry.

See Water Rights Adjudication.

In isolated tracts, timber and stone, coal, oil, gas, petroleum, mineral, parks and townsites, proofs are made before the Register and Receiver. The papers necessary to accompany the same will be found with the regulations covering each subject.

Contests.

Contests should not be transmitted to the Land Office unless the notices of contests are prepared so that all there is to do will be to have the signature of the Register or Receiver attached.

See Rules of Practice. See Contestant.

In administering an oath to a witness call his attention to the purport of section 5392 of the Revised Statutes, advising him that in the event he should swear or declare or depose falsely in the matter the Government will prosecute him to the full extent of the law.

Don't undertake to couple the position of U. S. Commission with that of a locator, nor undertake to act in the capacity of attorney for anyone in a proceeding which may be pending or which may be set for hearing before you.

Forward papers immediately to the local land office for your district. Be careful that papers are forwarded to the proper office, as neglect in this respect will occasion delay, which may result in a loss of the land applied for.

While the local land office will accommodate you with a few blanks in given cases, you should not ask them to furnish you with supplies. This they are not permitted to do. You should provide yourself with supplies, and they should be in form prescribed by regulations. We have included a list of some of the most important forms deemed necessary for use outside of local land offices. Many of these are approved forms, while others are intended to present a substantial compliance with law concerning which no form has been approved. In using the forms for typewriting purposes, you should be careful to follow the notes, so that all the material matters may appear on the form. These notes have been used so as to avoid a duplication of publication of such matters.

Study official circulars and regulations published herein covering the kind of entry or proof under consideration.

CLAIMS—PRIVATE.

Congress having confirmed and directed a survey of a private land grant, it is not within the province of the Land Department to question its integrity and validity.

If there is a doubt as to the translation of the original title papers relating to a private land grant, the Land Department must be guided by the translation which the Government gave to the Surveyor General and the course of the proceedings leading up to the confirmation of the grant.

Where conflicting land grants have been confirmed by Congress, each without any reference to the other, it is the duty of the Land Department to follow the confirmation of the survey and patent of each grant, leaving to the judicial tribunal the determination of all matters of priority and superiority that originate in the way of conflict where the confirmatory Act provides that the survey of the private land grant "shall conform to and be connected with the public survey of the United States so far as the same can be done consistently with land marks and boundary specifications in the grant" and on account of the absence of public survey in the vicinity of the land it appears to be impracticable to make a survey conform to and be connected with the public surveys, the same will not be required. The cost of survey of private land claims shall be paid by the claimant after the completion of the survey and prior to the issuance of patent.

The Land Company of New Mexico, Limited, et al., 31 L. D. 202.

For further information upon the subject consult Instructions of July 24, 1901, 31 L. D., 45. Also table of Circulars, Instructions, and Regulations. Edgar, Trustee of the Roman Catholic Chruch v. Delback, 31 L. D., 39; 31 L. D., 332; 31 L. D., 344; 31 L. D., 346; 37 L. D., 65; 37 L. D., 285; 37 L. D., 480; 37 L. D., 509; 37 L. D., 536; 32 L. D., 11; 32 L. D., 83; 32 L. D., 286; 32 L. D., 287; 32 L. D., 370; 32 L. D., 492; 34 L. D., 67; 34 L. D. 136; 34 L. D., 144; 34 L. D., 242; 34 L. D., 276; 34 L. D., 506; 35 L. D., 93; 35 L. D., 123; 35 L. D., 258; 35 L. D., 602.

Chap. 212. An Act to amend an Act entitled "An Act to establish a court of private land claims and to provide for the settlement of private land claims in certain States and Territories," approved March third, eighteen hundred and ninety-one, and the Acts amendatory thereto, approved February twenty-first, eighteen hundred and ninety-three, and June twenty-seventh, eighteen hundred and ninety-eight.

Approved February 26, 1909.

60 Congress, Public No. 277, Page 655.

CONFLICTING CLAIMS—ADJUSTMENT.

Regulations under Act of July 1, 1898, 30 Stat., 597, 620, to facilitate the adjustment of conflicting claims to lands within the limits of the grant to the Northern Pacific Railroad Company, approved February 14, 1899, were supplemented with regulations of June 15, 1901, 30 L. D., 620.

ADJOINING FARM HOMESTEADS.

A person possessing the requisite qualifications under the homestead law (not having exhausted his right by previous entry thereunder), owning and residing on land not amounting in quantity to a quarter section, may enter other land lying contiguous to his own to an amount which shall not, with the land already owned by him, exceed in the aggregate 160 acres. For instance, if he has purchased or obtained from the Government (not under the homestead law) or from any other party 40 acres of land, he can, under the provisions of the homestead law, enter 120 acres adjoining; if he is the owner of 80 acres he can enter another 80 acres; if he is the owner of 120 acres he can enter 40 acres additional (Sec. 2289, Rev. Stat.). The party must fulfill the requirements of the homestead law as to residence and cultivation, but will not be required to remove from the land which he originally owned in order to reside upon and cultivate that which he thus acquires under the homestead law, since the whole 160 acres are considered as constituting one farm or body of land, residence of and cultivation of a portion of which is equivalent to residence upon and cultivation of the whole, except that patent for the adjoining homestead will not be issued until five years from date of entry thereof.

Adjoining farm entries under Sec. 2289 of the Revised Statutes are not to be confounded with additional entries under other statutes.

GENERAL COAL-LAND LAWS AND REGULATIONS THEREUNDER.

1. Sale of coal lands.
2. Entry of coal lands.
3. Entry by individuals.
4. Entry by an association.
5. Number of entries allowed one person or association.
6. Information furnished.
7. Preference right of entry.
8. Authority of local officers to order hearing after entry has been allowed.
9. Authority of local officers to order hearing prior to allowance of entry.
10. Application to purchase otherwise than by preference right.
11. Declaratory statement for preservation of preference right of entry.
12. Time allowed for making final proof and payment.
13. Sixty days and one year limitation.
14. Affidavit for purchase in exercise of preference right.
15. Affidavit for purchase and entry by an association.
16. Verification of applications, declaratory statements, and affidavits.
17. Publication of application.
18. Proof of publication.