McCrimmon's timber culture application, having been rejected by final decision of the Department, under the rulings then in force, can not now be reinstated with a view to its allowance under a changed construction of the law, and as the timber culture law has been repealed, and intervening rights have attached to this land, he can not be allowed to file a new timber culture application therefor. His application for reinstatement is accordingly denied.

If, as alleged by the mayor and city council of North Yakima, this land was settled upon and occupied by townsite settlers on February 6, 1891, when Needham filed his homestead application therefor, it was not subject to entry under the homestead law.

You will therefore instruct the local officers to appoint a day for hearing upon the question as to the status of the land at the time when Needham filed his application, and notify the parties in interest thereof.

RIGHT OF WAY—HIGHWAY—SECTION 2477, R. S.

DOUGLAS COUNTY, WASHINGTON.

It was not intended by section 2477 of the Revised Statutes to grant a right of way for highways over public lands in advance of an apparent necessity therefor.

Secretary Bliss to the Commissioner of the General Land Office, March 31, 1898.
(W. V. D.)

With their letter of April 16, 1897, the local officers at Waterville, Washington, transmitted to your office a certified copy of an order of the board of county commissioners of Douglas County, Washington, purporting to be an acceptance of rights of way claimed to be granted by section 2477 of the Revised Statutes, and asking that the right of way so granted and accepted be made a matter of reservation in all subsequent patents issued for lands affected thereby.

Your office considered the matter, on April 28, 1897, and held that the statute does not authorize the exclusion of such right of way from patents issued for lands subject to such an easement. The county commissioners have appealed to the Department.

Section 2477 of the Revised Statutes is as follows:

The right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted.

Claiming to act under authority of the laws of the State of Washington, the board of county commissioners of Douglas county, in that State, passed the following order:

BE IT REMEMBERED: That, on the 6th day of April A. D. 1897, at a regular meeting of the board of county commissioners of Douglas county, State of Washington, said meeting being duly held and all members of said board being present, on motion, it was ordered that the right of way for the construction of highways over public lands, as granted by act of Congress (Section 2477 Revised Statutes), be

accepted, and the same is hereby accepted, as far as said grant relates to said Douglas county, that is to say to the extent of thirty feet (30) on each side of all sections lines in said county; it is hereby declared that all sections lines in said county shall be, and the same are hereby declared to be, the center lines of highways and public roads in said county, wherever said section lines are bounded by public lands, and said highways are hereby declared to be sixty feet (60) in width; wherever any such section line shall be found to lie between public land on one side and private land on the other, such highway shall be sixty feet in width, and be wholly on such public land and bounded on one side by such section line.

It is further ordered that E. K. Pendergast, prosecuting attorney, for said county and state, file a certified copy of this order in the United States Land Office at Waterville, Washington, and take all necessary steps to have the Hon. Commissioner of the General Land Office exclude such easement and right of way from all patents issued for lands in said county, which shall be claimed or settled upon subsequent to the date hereof.

Dated this 6th day of April A. D., 1897.

It is urged on appeal that it is the duty of the land department of the government to execute this statute, that it authorizes the exclusion of the right of way thereby granted from patents issued for lands to which an easement may have attached by virtue thereof, and that the propriety of such action is manifest.

The declaration by the board of county commissioners, that highways shall be extended along all section lines designated by the public surveys in said county sixty feet in width, that where the section lines are bounded on both sides by public lands, such section lines shall be the center of the highway, and that where any such section line shall be found to lie between public land on one side and private land on the other, the highway shall be wholly on such public land and bounded on one side by such section line, embodies the manifestation of a marked and novel liberality on the part of the county authorities in dealing with the public land.

There is no showing of either a present or a future necessity for these roads or that any of them have been actually constructed, or that their construction and maintenance is practicable. Whatever may be the scope of the statute under consideration it certainly was not intended to grant a right of way over public lands in advance of an apparent necessity therefor, or on the mere suggestion that at some future time such roads may be needed.

If public highways have been, or shall hereafter be, established across any part of the public domain, in pursuance of law, that fact will be shown by local public records of which all must take notice, and the subsequent sale or disposition by the United States of the lands over which such highways are established will not interfere with the authorized use thereof, because those acquiring such lands will take them subject to any easement existing by authority of law.

The decision appealed from is affirmed.