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Thus one effect of PLO 757 and DO 2665 was to substitute easements for the withdrawals made in PLO 601 as to local and feeder roads.

The State's claim to the full 50 feet, from the center line, of Rabbit Creek Road is in all relevant respects identical to the claim that it successfully asserted in *State, Department of Highways v. Green*, 586 P.2d 595 (Alaska 1978). In *Green*, as in the Peases' claim, the patents were issued by the United States under the Small Tract Act and contained blanket roadway easements under 48 U.S.C. § 321d as well as specific 33 foot easements. The local road in question in both cases was built before DO 2665 was promulgated, and the lease as well as the patent was issued after promulgation of DO 2665. We held in *Green* that DO 2665 was issued pursuant to 48 U.S.C. § 321a, as distinct from 48 U.S.C. § 321d; that DO 2665 was applicable to patents issued under the Small Tract Act; and that the 50 foot right-of-way established by DO 2665 was effective even though only a 33 foot right-of-way was expressed in the patent. 586 P.2d at 600–03.

The superior court reasoned that *Green* was not controlling because of the provisions of the Right-of-Way Act of 1966, ch. 92 S.L.A. 1966.[7] Sections 2 and 3 contain the operative provisions of the Right-of-Way Act of 1966. Section 2 precludes the State from taking "privately owned property by the election or exercise of a reservation to the state acquired under [48 U.S.C. § 321d]," and section 3 provides that the Act shall not be construed to divest the State of "any right-of-way or other interest in real property which was taken by the state, before the effective date of this Act, by the election or exercise of its right to take property through a reservation acquired under [48 U.S.C. § 321d]." The effective date of the Right-of-Way Act of 1966 was April 14, 1966.

not open to appropriation under the public-land laws except as a part of a legal subdivision, if surveyed, or an adjacent area, if unsurveyed, and subject to the pertinent easement.

Id. at 10,749–50.

7. The Right-of-Way Act of 1966 states:

Section 1. PURPOSE. This Act is intended to alleviate the economic hardship and physical and mental distress occasioned by the taking of land, by the State of Alaska, for which no compensation is paid to the persons holding title to the land. This practice has resulted in financial difficulties and the deprivation of peace of mind regarding the security of one's possessions to many citizens of the State of Alaska, and which, if not curtailed by law, will continue to adversely affect citizens of this state. Those persons who hold title to land under a deed or patent which contains a reservation to the state by virtue of the Act of June 30, 1932, ch. 320, sec. 5, as added July 24, 1947, ch. 313, 61 Stat. 418, are subject to the hazard of having the State of Alaska take their property without compensation because all patents or deeds containing the reservation required by that federal Act reserve to the United States, or the state created out of the Territory of Alaska, a right-of-way for roads, roadways, tramways, trails, bridges, and appurtenant structures either constructed or to be constructed. Except for this reservation the State of Alaska, under the Alaska constitution and the constitution of the United States, would be required to pay just compensation for any land taken for a right-of-way. It is declared to be the purpose of this Act to place persons with land so encumbered on a basis of equality with all other property holders in the State of Alaska, thereby preventing the taking of property without payment of just compensation as provided by law, and in the manner provided by law.

Section 2. TAKING OF PROPERTY UNDER RESERVATION VOID. After the effective date of this Act, no agency of the state may take privately-owned property by the election or exercise of a reservation to the state acquired under the Act of June 30, 1932, ch. 320, sec. 5, as added July 24, 1947, ch. 313, 61 Stat. 418, and taking of property after the effective date of this Act by the election or exercise of a reservation to the state under that federal Act is void.

Section 3. PROSPECTIVE APPLICATION. This Act shall not be construed to divest the state of, or to require compensation by the state for, any right-of-way or other interest in real property which was taken by the state, before the effective date of this Act, by the election or exercise of its right to take property through a reservation acquired under the Act of June 30, 1932, ch. 320, sec. 5, as added July 24, 1947, ch. 313, 61 Stat. 418.

Section 4. SHORT TITLE. This Act may be cited as the Right-Of-Way Act of 1966.

Section 5. EFFECTIVE DATE. This Act takes effect on the day after its passage and approval or on the day it becomes law without such approval.

[1] The court erred in applying the Right-of-Way Act of 1966 to the Pease case. It is applicable only to interests taken by the State under a blanket reservation created pursuant to 48 U.S.C. § 321d. We held in *Green* that easements established by DO 2665 were established under the authority of section 321a, not section 321d.[8] *Green*, 586 P.2d at 600 n. 17. Further, we held in *State, Department of Highways v. Crosby*, 410 P.2d 724 (Alaska 1966) that § 321d did not apply at all to patents issued under the Small Tract Act. *Id.* at 728.

[2] The superior court also concluded in its Memorandum of Decision that the easement which otherwise would have been created under DO 2665 on Rabbit Creek Road did not come into being "until the right-of-way was staked by the terms of DO 2665." This statement refers to subsection 3(c) of DO 2665, which provides:

> The reservation mentioned in paragraph (a) and the rights-of-way or easements mentioned in paragraph (b) will attach as to all new construction involving public roads in Alaska when the survey stakes have been set on the ground and notices have been posted at appropriate points along the route of the new construction specifying the type and width of the roads.[9]

The superior court's conclusion that the staking requirement of section 3(c) was applicable to Rabbit Creek Road is erroneous. Section 3(c) by its express terms only applies to new construction. Rabbit Creek Road was an existing road when the order was promulgated. As to existing roads, subsection 3(b) of the order establishes a 50 foot easement in the present, rather than the future, tense and contains no call for additional action in order to fix the easement. It states:

> A right-of-way or easement for highway purposes covering the lands embraced in the . . . local roads equal in extent to the width of such roads as established in section 2 of this order, *is hereby established* for such roads over and across the public lands.

16 Fed.Reg. 10,752 (1951) (emphasis added). Subsection (3) of section 2 of DO 2665 set the width of local roads at 50 feet on each side of the center line. Thus, these two sections of DO 2665 established a 50 foot easement for Rabbit Creek Road.

8. A memorandum from the Chief Counsel of the Bureau of Land Management to the Director of the Bureau, dated February 7, 1951, explains well the extent of the authority granted to the Secretary of the Interior under § 321a. The memorandum states in part:

> Prior to the issuance of Public Land Order No. 601 . . . , nearly all public roads in Alaska were protected only by easements. Right-of-way easements were acquired under section 2477 of the Revised Statutes (43 U.S.C. sec. 932) by the construction of roads. This section granted a right-of-way for the construction of highways over public lands not reserved for public uses.
>
> Section 2 of the Act of January 27, 1905 (33 Stat. 616), incorporated with amendments into 48 U.S.C. secs. 321–323, established a Board of Road Commissioners in the then Territory of Alaska to function under the jurisdiction of the Secretary of War. This section provided:
>
> "Sec. 2. * * * The said board shall have the power, and it shall be their duty, upon their own motion or upon petition, to locate, lay out, construct, and maintain wagon roads and pack trails * * *. The said board shall prepare maps, plans, and specifications of every road or trail they may locate and lay out, * * *."
>
> Section 3 of the Act of August 24, 1912 (37 Stat. 512, 48 U.S.C. secs. 23 and 24), under which Alaska was organized as a Territory, provided that the authority of the legislature of the Territory should not extend to certain statutes of the United States including the Act of January 27, 1905, *supra*, and the several acts amendatory thereof.
>
> Section 2 of the Act of June 30, 1932 (47 Stat. 446, 48 U.S.C. sec. 321a), provides:
>
> "Sec. 2. The Secretary of the Interior shall execute or cause to be executed all laws pertaining to the construction and maintenance of roads and trails and other works in Alaska heretofore administered by said board of road commissioners under the direction of the Secretary of War; * * *."
>
> The authority of the Secretary of the Interior conferred by the above-cited acts to "locate, lay out, construct and maintain" public roads in Alaska clearly implies the right to fix the width of the roads. This width is not fixed by any statute.

9. 16 Fed.Reg. 10,752 (1951). For the full text of DO 2665, *see* note 5 *supra*.

ment to the Seward Highway is erroneous. The Seward Highway was not new construction in 1949, when PLO 601 was promulgated, or in 1951, when DO 2665 was promulgated. It had a fixed location and the boundaries of its right-of-way were ascertainable by referring to the applicable PLO and measuring from its center line.

In addition, the 100 foot right-of-way first created by PLO 601 does not depend for its existence on the reservation placed in the patent under section 321d. PLO 601 was issued pursuant to Executive Order 9337, 8 Fed.Reg. 5516 (1943), under which the President of the United States delegated his authority to the Secretary of the Interior under 43 U.S.C. § 141, ch. 421, § 1, 36 Stat. 847 (1910), *repealed by* Pub.L. No. 94–579, Title VII, § 704(a) (1976), authorizing withdrawal of public lands in Alaska for specified public purposes.[15] As previously noted, the Right-of-Way Act of 1966 applies only to rights-of-way acquired under section 321d reservations.

[5] For the above reasons the second paragraph of the judgment as it relates to the Boysen property must be reversed. The preceding discussion also requires, as did our discussion in part I concerning the Peases' property, reversal of the first paragraph of the judgment. We do not reach the question whether a full 150 foot easement became fixed across the Boysen property by operation of the section 321d patent reservation and promulgation of PLO 757, and thus may be unaffected by the Right-of-Way Act of 1966. This question was not specifically addressed by the superior court nor is it presented in the briefs before us.

III

THE CROSS–APPEAL AS TO THE HANSEN PROPERTY

The patent for the Hansen parcel was issued to Hansen's predecessor-in-interest on June 1, 1950, under the Homestead Act. The homestead entry was made on January 23, 1945, before the promulgation of any of the land orders previously discussed, and before passage of 48 U.S.C. § 321d. The patent to the Hansen property does not contain a section 321d reservation.

The PLO 601 withdrawal was expressly subject to "valid existing rights." 14 Fed. Reg. 5048 (1949). Homestead entries have been held to give rise to valid existing rights,[16] although those rights may not in all cases take priority over intervening government acts.[17] Here, however, there is no doubt of the intention to except prior homestead entries from PLO 601. As we have noted, PLO 601 was promulgated pursuant to 43 U.S.C. § 141. 43 U.S.C. § 142 states that "there shall be excepted from the force and effect of any withdrawal made under the provisions of . . . section 141 . . . all lands which are, on the date of such withdrawal, embraced in any lawful homestead . . . entry . . . ." Since entry was in 1945, and the first withdrawal occurred in 1949, Hansen's predecessor-in-interest, as an entryman, had rights superior to the withdrawals.

[6] Section 321d has no effect on the Hansen property. The mandatory reservation required by this statute was limited to "patents for lands *hereafter* taken up, entered, or located in the Territory of Alaska, . . ." (emphasis added). Since the Hansen land was entered in 1945, it was not "hereafter" entered and thus was excluded from the operation of that statute. This is consistent with the absence of the section 321d reservation in the Hansen patent, and also consistent with its presence in the patents to the other two parcels of land involved in this appeal where entry occurred after July

15. The State and the plaintiffs have agreed that PLO 601 is based on Executive Order 9337 which, "in turn, rests on" 43 U.S.C. § 141. We thus have no occasion to consider whether Executive Order 9337 delegated authority to make withdrawals in addition to those authorized by 43 U.S.C. § 141.

16. *Stockley v. United States*, 260 U.S. 532, 540, 43 S.Ct. 186, 188, 67 L.Ed. 390, 394 (1923); *Korf v. Itten*, 64 Colo. 3, 169 P. 148, 150–51 (1917).

17. *Wilbur v. United States ex rel. Stuart*, 53 F.2d 717, 720 (D.C.Cir.1931).

24, 1947, the date on which section 321d was adopted.

Thus, for reasons different from those articulated by the superior court, the second paragraph of the declaratory judgment is affirmed as to the Hansen parcel.

IV

TRANSAMERICA'S LIABILITY

[7] In count I of the complaint, Transamerica sought a declaration absolving it of liability to the Peases under its title insurance policy. The superior court, following *Hahn v. Alaska Title Guaranty Co.*, 557 P.2d 143 (Alaska 1976), found Transamerica conditionally liable to the Peases for the value of the 17 foot strip arising from DO 2665. In *Hahn* we held that the publication of a public land order, there PLO 601, in the Federal Register imparted constructive notice of the order as to the land it effected. Under the terms of the title policy there involved, the title insurance company was found to be liable. *Id.* at 146. We agree that *Hahn* is squarely controlling.

Transamerica, however, contends that *Hahn* should be overruled. We have considered Transamerica's arguments in support of this position and we are not persuaded that *Hahn* is unsound in any respect. We therefore decline to overrule it. Thus, Transamerica is liable under its policy to the Peases. Paragraph 4 of the declaratory judgment so far as it relates to Transamerica's liability to the Peases is affirmed.

V

CROSS-APPEAL AS TO FIFTH, SIXTH, SEVENTH AND NINTH CLAIMS FOR RELIEF

The plaintiffs claim that the superior court should have granted summary judgment in their favor on their fifth, sixth, seventh and ninth claims for relief. The court made no ruling as to these claims. We review them in accordance with the principle that any ground may be urged on appeal to support a judgment even if it was not accepted by the court in rendering judgment. *Moore v. State*, 553 P.2d 8, 21 (Alaska 1976); *Ransom v. Haner*, 362 P.2d 282, 285 (Alaska 1961).

The fifth and sixth claims are similar because to prevail, a property owner [18] must establish status as a "subsequent innocent purchaser . . . in good faith for a valuable consideration" as that term is used in AS 34.15.290. An innocent purchaser must lack "actual or constructive knowledge" of the conflicting deed or encumbrance that the purchaser seeks to avoid. *Sabo v. Horvath*, 559 P.2d 1038, 1043 (Alaska 1976). *Sabo* held that as between two grantees, a prepatent grantee's deed that was recorded before the patent was issued is a "wild deed" and does not give constructive notice to a post-patent grantee who duly records. *Id.* at 1044.

The question here is whether public land orders, which appear in the Federal Register, impart constructive notice, thus preventing the property owner from claiming innocent purchaser status. We have in part IV of this opinion re-affirmed the holding of *Hahn v. Alaska Title Guarantee Co.*, 557 P.2d 143 (Alaska 1976) that publication of a land order in the Federal Register is constructive notice of the order as that term is used in a title insurance policy. That holding is controlling here.

[8] The distinction between *Sabo* and this appeal is that *Sabo* concerns private deeds and this appeal involves a conflict between a government regulation and a patent. Regulations published in the Federal Register take on the character of law. *Farmer v. Philadelphia Electric Co.*, 329 F.2d 3, 7 (3d Cir.1964); *United States v. Messer Oil Corp.*, 391 F.Supp. 557, 561-62 (W.D.Pa.1975). All persons are presumed to know the contents of the law. *See Ferrell v. Baxter*, 484 P.2d 250, 265 (Alaska 1971). In *United States v. Messer Oil Corp.*, the district court indicated that regu-

18. In this somewhat abstract context the term "property owner" should be considered to be a property owner situated as is the plaintiff Boysen, for Hansen has prevailed on other grounds.