
UNITED STATES MINING LAWS,

AND

REGULATIONS THEREUNDER.

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REVIEW OF FEDERAL LEGISLATION ON MINES.

"The motive underlying the earliest congressional legislation touching the public mineral lands was to secure a revenue therefrom. To this end the system of leasing the lead and copper mines was adopted in 1807, with its attendant agencies, accountings, etc. After a trial of nearly forty years, the system was pronounced a failure, and in 1846 the mines were offered for sale, with a preference right in those who had leases or were in the occupation of the mines. When the gold mines of California were discovered, and the varied mineral wealth of the Pacific coast was brought to the attention of Congress, several revenue bills were introduced at different times and earnestly debated; but the notorious failure of the lease system in the Mississippi valley, and the difficulties in the way of securing a revenue otherwise, gave success to the friends of free mining in 1866.

"Except in a few states, the object of congressional legislation since 1866 has been to prevent the disposal of mineral lands to states and railroads, or in large quantities to individuals. Exploration of hidden mines is encouraged, and no efforts are used to compel miners to expend money in securing government title. The mining law of May 10, 1872, is essentially a poor man's law, and has been the source of incalculable wealth to the country, and indirectly of vast revenue to the government.

"I.—RESERVATIONS.

"CONTINENTAL CONGRESS.—The ordinance of the revolutionary Congress of May 20, 1785, reserved 'one-third part of all gold, silver, lead, and copper mines, to be sold or otherwise disposed of as Congress shall hereafter direct'. And in the grant or patent prescribed by the act the wording is, 'excepting and reserving one-third part of all gold, silver, lead, and copper mines within the same for future sale or disposition.' (Public Lands, &c., Part 1, 13, 14; Yale, 325.) This ordinance continued in force until the constitutional Congress in 1789.

"FIRST CONGRESS.—The plan for the disposition of the public lands, reported by Alexander Hamilton in July, 1791, is silent on the subject of mineral lands. (1 American State Papers, 4, 5.)

"LEAD MINES.—In many instances, from 1807, where land was authorized to be sold in particular sections of the country, lead mines were reserved from sale, and by the act of March 3, 1807, the leasing of lead-mines for a period not exceeding five years was authorized, and a grant of land containing a lead mine discovered before the sale was declared to be fraudulent and void. In *United States vs. Gratiot* (14 Pet., 526) the Supreme Court held that Congress has the power to lease as well as to sell the public lands. By the act of March 3, 1849, the powers of the Secretary of the Treasury over lead and other mines were transferred to the head of the Home (Interior) Department, created by that act.

"PRE-EMPTION LAWS.—The tenth section of the general pre-emption law of 1841 excluded from its operation all 'lands on which are situated any *known* salines or mines'. In nearly all the pre-emption acts prior thereto minerals were reserved. In the several pre-emption acts relating to California special care seems to have been taken to prevent the appropriation of mineral lands by settlers. The act of July 23, 1866, to quiet land titles in California, further protected mineral lands in that state. The Oregon donation act also excluded mineral lands from its operation.

"RAILROAD GRANTS.—In the earlier grants to aid railroads mineral lands are not mentioned in terms; a general clause is inserted excepting all lands reserved for any purpose or by any act of Congress. In the renewal of the railroad grants in Alabama, by act of April 10, 1869 (16 Stats., 45), mineral lands are excluded. In the grant in aid of the Iron Mountain and Saint Louis railroad (July 4, 1866, 14 Stats., 83), mineral lands not coal and iron are excepted. In this latter form the mineral lands have, since 1864, been excluded from railroad grants in the mining states and territories.

PRECIOUS METALS.

"The acts of July 1, 1862, and July 2, 1864, which donated nearly 100,000,000 acres to railroad corporations, gave the coal and iron lands within their limits, but excepted other mineral lands from the grants. In the act of July, 1862, the following is the excepting clause: 'Provided, That all mineral lands shall be excepted from the operation of this act; but where the same shall contain timber, the timber thereon is hereby granted to said company.'

"In the act of July 2, 1864, section 4 contains this language: * * * 'And the term "mineral land", wherever the same occurs in this act and the act to which this is an amendment, shall not be construed to include coal and iron land. And any lands granted by this act, or the act to which this is an amendment, shall not defeat or impair any pre-emption, homestead, swamp land, or other lawful claim, nor include any government reservation, or mineral lands, or the improvements of any *bona fide* settler, or (on) any lands returned and denominated as mineral lands, and the timber necessary to support his said improvements as a miner or agriculturist to be ascertained under such rules as have been or may be established by the Commissioner of the General Land-Office, in conformity with the provisions of the pre-emption laws: *Provided*, That the quantity thus exempted by the operation of this act and the act to which this act is an amendment, shall not exceed one hundred and sixty acres for each settler who claims as an agriculturist, and such quantity for each settler who claims as a miner as the said Commissioner may establish by general regulation: *Provided, also*, That the phrase "but where the same shall contain timber, the timber thereon is hereby granted to said company", in the proviso to said section three, shall not apply to the timber growing or being on any land further than ten miles from the center line of any one of said roads or branches mentioned in said act or in this act.'

"STATE GRANTS.—In the earlier congressional grants of land to states minerals were not mentioned in terms. A general exception was made of all reserved lands. In the river-improvement grants in Iowa and Wisconsin there was no reservation of mineral lands, but in the grants to aid the ship canals in Michigan (March 3, 1865; April 10, 1866; and July 3, 1866) mineral lands were excluded.

"The internal improvement, swamp, and educational grants do not mention mineral lands until after 1860, so far as observed. The agricultural college act of July 2, 1862, excluded 'mineral lands'.

"In the acts admitting states to the Union, mineral lands, as a rule, are not particularized. Only in those states notoriously rich in minerals, like California, are the mineral lands noticed prior to 1860.

"II.—TRESPASS.

"Digging for minerals on the public domain prior to the act of July 26, 1866, was a trespass, entitling the government to damages, and was such a waste as could be restrained by an injunction.

"THE ILLINOIS LEAD CASE.—Upon the construction of the fifth section of the act of March 3, 1807 (2 Stats., 448), and the act of June 26, 1834 (4 Stats., 686), the Supreme Court decided the case of Gear, holding the defendant guilty of trespass in mining for lead upon the public land in Illinois, and enjoining him from the commission of waste (3 How., 120).

"GEAR'S CASE.—The case of Gear was affirmed in *Cotton vs. The United States* (11 How., 229), where the principle was extended or applied to an action of trespass for cutting timber upon the public land. As the owner of the land it was the government's right to protect its property in the same manner as an individual would. On these questions the inquirer may consult *United States vs. Schuler* (6 McLean, 28).

"THE NEW ALMADEN QUICKSILVER CASE.—An implied license from the government to mine upon the public land, by reason of its indulgence, if not direct encouragement, was denied in the case of the *United States vs. Parrott*, involving title to the New Almaden mine in California. (See *United States vs. Castellero*, 2 Black's Supreme Court Reports for 1862, wherein this mine was also involved.)

"In *Sparrow vs. Strong* (3 Wallace, 104) the United States Supreme Court recognized the local mining rules.

"III.—FREEDOM AND SALE.

"The act of July 11, 1846 (9 Stats., 36), authorized the sale of the reserved mineral lands in the states of Illinois and Arkansas and the territories of Wisconsin and Iowa, but still excepted the lead-mines from pre-emption. The reserved mineral lands in Missouri had shortly before been offered at sale. This act acknowledged the failure of the lease system. In the following year (1847) the mineral lands in Michigan were offered at sale. The act of September 26, 1850, apparently ended the distinction between mineral and agricultural lands in Michigan and Wisconsin. It enacted that the mineral lands therein 'shall be offered at public sale in the same manner and be subject to the same minimum price and the same rights of pre-emption as other public lands of the United States'.

"The act of July 26, 1866, threw open the mineral lands of the United States to exploration and occupation, and it was thereafter no longer a trespass to dig ore or engage in mining operations on the public domain. The acts amendatory of this liberal law, including the Suro tunnel grant, will be found elsewhere in this volume."

The foregoing is taken from *Copp's United States Mineral Lands* as a fair statement of the status of the mineral lands of the United States prior to the act of July 26, 1866, which opened said lands to exploration, occupation, and purchase to all qualified persons.

Referring to existing legislation for the sale and disposition of the public lands, and excepting from such disposition all mineral lands, it is sufficient to state, without specifying each of said laws, that section 2313, Revised Statutes of the United States, provides that "In all cases lands valuable for minerals shall be reserved from sale except as otherwise expressly directed by law".

In the states of Missouri, Kansas, Minnesota, Michigan, and Wisconsin there is an express direction by law that all lands shall be sold as agricultural lands, but such direction exists nowhere else.

AN ACT for the disposal of coal-lands and of town property in the public domain. (Approved July 1, 1864. U. S. Stat., v. 13, p. 343.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That where any tracts embracing coal-beds or coal-fields, constituting portions of the public domain, and which, as "mines", are excluded from the pre-emption act of eighteen hundred and forty-one, and which, under past legislation, are not liable to ordinary private entry, it shall and may be lawful for the President to cause such tracts, in suitable legal subdivisions, to be offered at public sale to the highest bidder, after public notice of not less than three months, at a minimum price of twenty dollars per acre; and any lands not thus disposed of shall thereafter be liable to private entry at said minimum.

SEC. 2. *And be it further enacted,* That in any case in which parties have already founded, or may hereafter desire to found, a city or town on the public lands, it shall and may be lawful for them to cause to be filed with the recorder for the county in which the same is situated, a plat thereof for not exceeding six hundred and forty acres, describing its exterior boundaries according to the lines of the public surveys, where such surveys have been executed; also giving the name of such city or town, and exhibiting the streets, squares, blocks, lots, and alleys, the size of the same, with measurements and area of each municipal subdivision, the lots in which shall each not exceed four thousand two hundred square feet, with a statement of the extent and general character of the improvements; the said map and statement to be verified under oath by the party acting for and in behalf of the persons proposing to establish such city or town; and within one month after such filing there shall be transmitted to the General Land-Office a verified transcript of such map and statement, accompanied by the testimony of two witnesses that such city or town has been established in good faith; and when the premises are within the limits of an organized land district, a similar map and statement shall be filed with the register and receiver; and, at any time after the filing of such map, statement, and testimony in the General Land-Office, it shall and may be lawful for the President to cause the lots embraced within the limits of such city or town to be offered at public sale to the highest bidder, subject to a minimum of ten dollars for each lot; and such lots as may not be disposed of at public sale shall thereafter be liable to private entry at said minimum, or at such reasonable increase or diminution thereafter as the Secretary of the Interior may order from time to time, after at least three months' notice, in view of the increase or decrease in the value of the municipal property: *Provided,* That any actual settler upon any one lot as aforesaid, and upon any additional lot in which he may have substantial improvements, shall be entitled to prove up and purchase the same as a pre-emption, at said minimum, at any time before the day fixed for the public sale.

SEC. 3. *And be it further enacted,* That when such cities or towns are established upon unsurveyed lands, it shall and may be lawful, after the extension thereto of the public surveys, to adjust the extension limits of the premises according to those lines, where it can be done without interference with rights which may be vested by sale; and patents for all lots so disposed of at public or private sale shall issue as in ordinary cases.

SEC. 4. *And be it further enacted,* That if, within twelve months from the establishment of a city or town, as aforesaid, in the public domain, the parties interested shall refuse or fail to file in the General Land-Office transcript map, with the statement and testimony called for by the provisions of the second section of this act, it shall and may be lawful for the Secretary of the Interior to cause a survey and plat to be made of such city or town, and thereafter the lots in the same shall be disposed of as required by said provisions, with this exception, that they shall each be at an increase of fifty per centum on the aforesaid minimum of ten dollars per lot.

SEC. 5. *And be it further enacted,* That effect shall be given to the foregoing act, according to such regulations as may be prescribed by the Secretary of the Interior. The act entitled "An act for the relief of the citizens of towns upon the lands of the United States, under certain circumstances," approved May twenty-three, anno Domini eighteen hundred and forty-four, and all other acts and part of acts inconsistent with this act, be and the same are hereby repealed.

[Circular.]

Instructions to give effect to the act of Congress, approved July 1, 1864, for the disposal of "coal-lands" and of "town property" in the public domain.

INTERIOR DEPARTMENT, GENERAL LAND-OFFICE,

August 20, 1864.

GENTLEMEN: Annexed is the act of Congress, approved July 1, 1864, for the disposal of "coal-land" and of "town property on the public domain".

It will be observed that the word "mines", as used in the pre-emption act of 1841, is recognized in the first section

of this law as importing any tracts of the public domain embracing "coal-beds or coal-fields", which are to be treated as *mineral lands*, and not subject to ordinary private entry.

2d. That said tracts are to be disposed of at public sale, on not less than three months' public notice, to the highest bidder, in such "suitable legal subdivisions" as the President may direct, at the minimum price of \$20 per acre; all tracts not thus disposed of are thereafter to be liable to private entry at said minimum.

3d. In order that this office may have reliable information as to what lands embrace "coal-beds or coal-fields", it will be your duty to institute proper inquiries, directed to reliable sources, as to the mineral character of the lands in your district; to ascertain what tracts of land come within the meaning of the terms "coal-beds or coal-fields", and make a prompt report of all such lands to this office.

4th. In reference to this matter, special orders will be given to the United States surveyors-general to require their deputy surveyors, in executing the public surveys, carefully to designate in their field notes all localities of coal-beds or coal-fields in the *smallest legal subdivision*; and thereafter to have the same properly delineated on the official township plats returned to the general and district land-offices.

5th. The second section of this act relates to "town property", or the founding of cities or towns on the public domain, and limits the extent of the area of the city or town to 640 acres, to be laid off into lots, and which, after filing in the General Land-Office the transcript, statement, and testimony required by the act, are to be offered at public sale, to the highest bidder, at a minimum of \$10 for each lot. Lots not thus disposed of are made thereafter liable to private entry at said minimum, or at such reasonable price as the Secretary of the Interior may order from time to time, as the municipal property may increase or decrease, after at least three months' notice.

A privilege, however, is granted to any *actual settler* upon any *one* lot of pre-empting that, and any additional lot on which he may have "substantial improvements", at said minimum, at any time before the day fixed for the public sale.

There are, however, certain preliminary conditions to be complied with, in order to the enjoyment of the privileges granted in this section.

Parties who have already founded, or may hereafter found, a city or town are required—

6th. To file with the recorder of the county in which the town or city is situate a plat thereof, not exceeding 640 acres, describing its exterior boundaries according to the lines of the public surveys, where such surveys have been executed.

7th. Also the plat or map of such city or town must exhibit the name of the city or town, the streets, squares, blocks, lots, and alleys; the size of the same, with measurements and area of each municipal subdivision, the lots in which shall each not exceed 4,200 square feet, with a statement of the extent and general character of improvements.

8th. Further, the said map and statement to be verified by oath by the party acting for and in the behalf of the founders of the city or town.

9th. Within one month after filing the map or plat with the recorder of the county, a verified copy of said map and statement is to be sent to the General Land-Office, accompanied by the testimony of two witnesses, that such city or town has been established in good faith.

10th. When the city or town is within the limits of an organized land district, a similar copy of the map and statement must be filed with the register and receiver.

11th. The third section provides for cities or towns founded on *unsurveyed* lands, and directs that it may be lawful to adjust the exterior limits of the premises with the lines of the public surveys, where it can be done without impairing the rights of others. Patents are to issue for all lots sold under the provisions of this act, as in ordinary cases.

12th. Section 4 authorizes the Secretary of the Interior, in case the parties interested shall fail or refuse, within twelve months of the founding of a city or town on the public domain, to file in the General Land-Office a copy of the map, with the statement and testimony called for by the second section, to cause a survey and plat to be made of the said city or town, and thereafter the lots to be sold as provided, at an increase of 50 per cent. on the minimum price of \$10 per lot.

13th. The fifth section repeals the act for the relief of the citizens of towns on the public lands, approved 23d May, 1844, and all other acts or parts of acts inconsistent with this act.

You are requested to acknowledge the receipt of this circular.

Very respectfully,

JOS. S. WILSON,
Acting Commissioner.

REGISTERS AND RECEIVERS,
United States Land-Offices.

AN ACT supplemental to the act approved first July, eighteen hundred and sixty-four, "for the disposal of coal-lands and of town property in the public domain." (Approved March 3, 1865. U. S. Stats., v. 13, p. 529.)

SECTION 1. That in the case of any citizen of the United States who, at the passage of this act, may be in the business of *bona fide* actual coal mining on the public lands, except on lands reserved by the President of the

United States for public uses, for purposes of commerce, such citizen, upon making proof satisfactory to the register and receiver to that effect, shall have the right to enter, according to legal subdivisions, a quantity of land not exceeding one hundred and sixty acres, to embrace his improvements and mining premises at the minimum price of twenty dollars per acre, fixed in the coal and town property act of first July, eighteen hundred and sixty-four: *Provided*, That where the mining improvements and premises are on land surveyed at the passage of this act, a sworn declaratory statement descriptive of the tract and premises, showing also the extent and character of the improvements, shall be filed within six months from the date of this act; and proof and payment shall be made within one year from the date of such filing; but where such mining premises may be on lands hereafter to be surveyed, such declaratory statement shall be filed within three months from the return to the district land-office of the official township plat, and proof and payment shall be made within one year from the date of such filing.

SEC. 2. That in the case of any city or town which, at the passage of this act, may be existing on the public lands, in which the lots therein may be variant as to size from the limitation fixed in the said act of first July, eighteen hundred and sixty-four, and in which the lots and buildings as municipal improvements shall cover an area greater than six hundred and forty acres, such variance as to size of lots or excess in area shall prove no bar to such city or town claim, under said act of first July, eighteen hundred and sixty-four, effect to be given to this act according to such regulations as may be prescribed by the Secretary of the Interior: *Provided*, That the minimum price of each said lots in any such town or city, which may contain a greater number of square feet than the maximum named in the act to which this is an amendment, shall be increased to such reasonable amount as the Secretary of the Interior may by rule establish: *Provided further*, That where mineral veins are possessed, which possession is recognized by local authority, and to the extent so possessed and recognized, the title to town lots to be acquired shall be subject to such recognized possession and the necessary use thereof: *Provided, however*, That nothing contained herein shall be so construed as to recognize any color of title in possessors for mining purposes as against the government of the United States.

Circular in relation to the supplemental act, approved March 3, 1865, for the disposal of coal-lands and town property on the public domain. (Vol. 2, Lester's Land Laws, Regulations, and Decisions, page 306.)

DEPARTMENT OF THE INTERIOR, GENERAL LAND-OFFICE,

April 26, 1865.

TO REGISTERS AND RECEIVERS:

The act of Congress of 3d March, 1865, copy hereto appended, *supplementary* to the act of July 1, 1864, "for the disposal of coal-lands and of town property in the public domain," is to enable citizens of the United States who, at the date of the "act, may be in the business of *bona fide* actual coal mining on the public lands, for the purpose of commerce", to enter 160 acres, or less quantity, in legal subdivisions, including their improvements and mining premises, at the premium price of \$20 per acre. The law, however, expressly *excludes* from its provisions any lands "reserved by the President of the United States for public uses".

The privilege granted is not a general one, but restricted to a single entry by a designated class of individuals, viz, such as are citizens, and who, on the 3d March, 1865, the date of the act, were actually engaged for "*purposes of commerce*" in "the business of *bona fide* actual coal mining". All persons not so occupied at that date are excluded from the enjoyment of the privilege.

1st. Testimony should be produced satisfactory to the register and receiver, showing the party to be a citizen of the United States, and that, at date of the act, he was engaged "in the business of *bona fide* actual coal mining on the public lands", and "*for the purposes of commerce*".

The facts must be stated in detail, both as to the nature and extent of the coal mining, the period in which the business has been conducted, and in regard to the coal being made by the party an article of commerce, so that a correct judgment may be formed from these facts as to whether the case comes within the purview of the statute. When the proof is clear and conclusive, the register and receiver are authorized to permit the entry, according to "legal subdivisions", in compact form, and so as not to exceed 160 acres.

2d. Where the mining improvements and premises are on land *surveyed* "at the passage of this act", it is required that a sworn declaratory statement descriptive of the tract and premises, and also of the extent and character of the improvements, *be filed* within *six months* from the date of the act, and that proof and payment must be made within *one year* from the date of such filing.

3d. If the mining premises be on land which may be *surveyed after* the passage of said act, then the declaratory statement shall be filed within *three months* from the return of the plat to the district land-office, and proof and payment must be made within *one year* from the date of such filing.

4th. [*Town lots.*] The second section of the act relates to any city or town existing on the public lands at the date of the act, and modifies the limitation as to the extent of the areas of the town claim and town lots imposed by the act of 1st July, 1864.

The act of July 1, 1864, limits the town claim to 640 acres, and the town lots to 4,200 feet each; but—

5th. This supplemental act embraces interests "in which the lots and buildings, as municipal improvements,

shall cover an area greater than" 640 acres, and removes the limitation in regard to subsisting cases by declaring that any city or town existing on 3d March, 1865, shall not be debarred entry because of such excess of area over, or of variance from, the size of the town claim or town lots as limited by the act of 1st July, 1864; that, for the excess of square feet contained in said lots beyond the *maximum* named in the act to which this is amendatory, the *minimum* price of each lot shall be increased to such reasonable amount as the Secretary may establish.

6th. In the second section of this supplemental act it is provided that parties having a *possessory* right to *mineral veins*, "which possession is recognized by local authority," are to be protected therein; and titles to be acquired to town lots under this act are made subject to "such recognized possession and the necessary use thereof"; yet with an *express saving of the paramount title* of the United States.

7th. The act of 1st July, 1864, relating to town property, is only modified as regards the *extent* of the town claim and the *size* of town lots, and by it you will be governed when not in conflict with this supplemental act. Hence it will be necessary for the citizens of the town or city existing at the date of the supplementary act—

First. To file with the recorder of the county in which the town or city is situate a plat thereof, describing its exterior boundaries, and according to the lines of the public surveys where such surveys have been executed.

Second. Also the plat or map of such city or town must exhibit the name of the city or town, the streets, squares, blocks, lots, and alleys, the *size* of the same, *with actual measurements* and area of each municipal division, and a statement of the extent and general character of improvements.

Third. Further, the said map and statement to be verified by oath of the party acting for and on behalf of the city or town; and,

Fourth. Within one month after filing the map or plat with the recorder of the county a verified copy of said map and statement must be sent to the Commissioner of the General Land-Office, with the testimony of two witnesses that such a town is a *bona fide* one, established and existing at the date of this act.

Fifth. Where the city or town is within the limits of an organized land district a similar copy of the map and statement must be filed with the register and receiver thereof.

Sixth. When the city or town is founded on *unsurveyed* lands, the exterior lines of the same must be distinctly marked and established, so that when the lines of the public surveys shall hereafter be run they may be properly closed thereon; and yet it may be lawful to adjust the exterior limits of the premises with the lines of the public surveys, when it can be done without impairing the rights of others.

Seventh. Patents are to issue for all lots sold under the provisions of this act.

Eighth. By the second section of the act of 1st July, 1864, after the transcript and statement have been filed in the General Land-Office, the lots are to be offered at public sale to the highest bidder at a *minimum* of \$10 per lot; but, by the supplemental act, when the *area of each lot* exceeds the *maximum* of 4,200 square feet the *minimum price* of each lot shall be increased to such reasonable amount as the Secretary of the Interior may establish. A privilege, however, is granted to any actual settler upon any *one* lot of pre-empting that, and any additional lot on which he may have "substantial improvements", at said *minimum* or increased price, at any time before the day fixed for the public sale.

Very respectfully,

J. M. EDMUNDS,
Commissioner.

Approved:

JAS. HARLAN,
Secretary of the Interior.

Supplemental instructions under coal and town property act of July 1, 1864, and March 3, 1865.

DEPARTMENT OF THE INTERIOR, GENERAL LAND-OFFICE,
October 20, 1865.

TO REGISTERS AND RECEIVERS, UNITED STATES LAND-OFFICES:

Referring to the circulars from this office, bearing date August 20, 1864, and April 26, 1865, in relation to the act of Congress approved July 1, 1864, and the amendatory law of March 3, 1865, relating to "coal-land and town property" on the public domain, I now herewith append, for your information and government in the matter therein specified, the ruling of the Hon. James Harlan, Secretary of the Interior, under date of October 16, 1865:

In accordance with the authority vested in me by the acts of Congress approved July 1, 1864, and March 3, 1865, I hereby prescribe the following regulations for the disposal of coal-lands and town property in the public domain:

The minimum price of each lot in a town surveyed before the above-named act of July 1, 1864, took effect, containing over 4,200 square feet and not more than 8,400 square feet, shall be \$15; of each lot containing over 8,400 square feet and not more than 12,600 square feet the minimum price shall be \$18; of each lot containing over 12,600 square feet and not more than 16,800 square feet the minimum price shall be \$20; and for larger lots the price shall be increased \$2 for every additional 4,200 square feet.

In the case of out-lots in any such village, town, or city, the minimum price of such out-lots shall be \$10; of such out-lots containing more than one acre the minimum price shall be \$10 for the first acre, and \$5 for each additional acre in such lot.

J. M. EDMUNDS,
Commissioner.

AN ACT granting to A. Sutro the right of way, and granting other privileges to aid in the construction of a draining and exploring tunnel to the Comstock lode, in the state of Nevada. (Approved July 25, 1866. U. S. Stats., v. 14, p. 242.)

SECTION 1. That, for the purpose of the construction of a deep draining and exploring tunnel to and beyond the "Comstock lode", so-called, in the state of Nevada, the right of way is hereby granted to A. Sutro, his heirs and assigns, to run, construct, and excavate a mining, draining, and exploring tunnel; also to sink mining, working, or air shafts along the line or course of said tunnel, and connecting with the same at any point which may hereafter be selected by the grantee herein, his heirs or assigns. The said tunnel shall be at least eight feet high and eight feet wide, and shall commence at some point to be selected by the grantee herein, his heirs or assigns, at the hills near Carson river, and within the boundaries of Lyon county, and extending from said initial point in a westerly direction seven miles, more or less, to and beyond said Comstock lode, and the said right of way shall extend northerly and southerly on the course of said lode, either within the same or east or west of the same, and also on or along any other lode which may be discovered or developed by the said tunnel.

SEC. 2. *And be it further enacted*, That the right is hereby granted to the said A. Sutro, his heirs and assigns, to purchase, at one dollar and twenty-five cents per acre, a sufficient amount of public land near the mouth of said tunnel for the use of the same, not exceeding two sections, and such land shall not be mineral land or in the *bona fide* possession of other persons who claim under any law of Congress at the time of the passage of this act, and all minerals existing or which shall be discovered therein are excepted from this grant; that upon filing a plat of said land the Secretary of the Interior shall withdraw the same from sale, and upon payment for the same a patent shall issue; and the said A. Sutro, his heirs and assigns, are hereby granted the right to purchase, at five dollars per acre, such mineral veins and lodes within two thousand feet on each side of said tunnel as shall be cut, discovered, or developed by running and constructing the same through its entire extent, with all the dips, spurs, and angles of such lodes, subject, however, to the provisions of this act and to such legislation as Congress may hereafter provide: *Provided*, That the Comstock lode, with its dips, spurs, and angles, is excepted from this grant, and all other lodes, with their dips, spurs, and angles, located within the said two thousand feet, and which are or may be, at the passage of this act, in the actual *bona fide* possession of other persons, are hereby excepted from such grant; and the lodes herein excepted, other than the Comstock lode, shall be withheld from sale by the United States, and if such lodes shall be abandoned or not worked, possessed, and held in conformity to existing mining rules, or such regulations as have been or may be prescribed by the legislature of Nevada, they shall become subject to such right of purchase by the grantee herein, his heirs or assigns.

SEC. 3. *And be it further enacted*, That all persons, companies, or corporations owning claims or mines on said Comstock lode, or any other lode drained, benefited, or developed by said tunnel, shall hold their claims subject to the condition (which shall be expressed in any grant they may hereafter obtain from the United States) that they shall contribute and pay to the owners of said tunnel the same rate of charges for drainage, or other benefits derived from said tunnel or its branches, as have been or may hereafter be named in agreement between such owners and the companies representing a majority of the estimated value of said Comstock lode at the time of the passage of this act.

CHAP. COLXII.

AN ACT granting the right of way to ditch and canal owners over the public lands, and for other purposes. (Approved July 26, 1866. U. S. Stats., v. 14, p. 251.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the mineral lands of the public domain, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and occupation by all citizens of the United States, and those who have declared their intention to become citizens, subject to such regulations as may be prescribed by law, and subject also to the local customs or rules of miners in the several mining districts, so far as the same may not be in conflict with the laws of the United States.

SEC. 2. *And be it further enacted*, That whenever any person, or association of persons, claim a vein or lode of quartz, or other rock in place, bearing gold, silver, cinnabar, or copper, having previously occupied and improved the same according to the local custom or rules of miners in the district where the same is situated, and having expended in actual labor and improvements thereon an amount of not less than one thousand dollars, and in regard to whose possession there is no controversy or opposing claim, it shall and may be lawful for said claimant, or association of claimants, to file in the local land-office a diagram of the same, so extended, laterally or otherwise, as to conform to the local laws, customs, and rules of miners, and to enter such tract and receive a patent therefor, granting such mine, together with the right to follow such vein or lode, with its dips, angles, and variations, to any depth, although it may enter the land adjoining, which land adjoining shall be sold subject to this condition.

SEC. 3. *And be it further enacted*, That upon the filing of the diagram as provided in the second section of this act, and posting the same in a conspicuous place on the claim, together with a notice of intention to apply for a patent, the register of the land-office shall publish a notice of the same in a newspaper published nearest to the

location of said claim, and shall also post such notice in his office for the period of ninety days; and after the expiration of said period, if no adverse claim shall have been filed, it shall be the duty of the surveyor-general, upon application of the party, to survey the premises and make a plat thereof, indorsed with his approval, designating the number and description of the location, the value of the labor and improvements, and the character of the vein exposed; and upon the payment to the proper officer of five dollars per acre, together with the cost of such survey, plat, and notice, and giving satisfactory evidence that said diagram and notice have been posted on the claim during said period of ninety days, the register of the land-office shall transmit to the General Land-Office said plat, survey, and description, and a patent shall issue for the same thereupon. But said plat, survey, or description shall in no case cover more than one vein or lode, and no patent shall issue for more than one vein or lode, which shall be expressed in the patent issued.

SEC. 4. *And be it further enacted*, That when such location and entry of a mine shall be upon unsurveyed lands, it shall and may be lawful, after the extension thereto of the public surveys, to adjust the surveys to the limits of the premises according to the location and possession and plat aforesaid; and the surveyor-general may, in extending the surveys, vary the same from a rectangular form to suit the circumstances of the country and the local rules, laws, and customs of miners: *Provided*, That no location hereafter made shall exceed two hundred feet in length along the vein for each locator, with an additional claim for discovery to the discoverer of the lode, with the right to follow such vein to any depth, with all its dips, variations, and angles, together with a reasonable quantity of surface for the convenient working of the same, as fixed by local rules: *And provided further*, That no person may make more than one location on the same lode, and not more than three thousand feet shall be taken in any one claim by any association of persons.

SEC. 5. *And be it further enacted*, That, as a further condition of sale, in the absence of necessary legislation by Congress, the local legislature of any state or territory may provide rules for working mines involving easements, drainage, and other necessary means to their complete development; and those conditions shall be fully expressed in the patent.

SEC. 6. *And be it further enacted*, That whenever any adverse claimants to any mine, located and claimed as aforesaid, shall appear before the approval of the survey, as provided in the third section of this act, all proceedings shall be stayed until final settlement and adjudication, in the courts of competent jurisdiction, of the rights of possession to such claim, when a patent may issue as in other cases.

SEC. 7. *And be it further enacted*, That the President of the United States be, and is hereby, authorized to establish additional land districts, and to appoint the necessary officers under existing laws, wherever he may deem the same necessary for the public convenience in executing the provisions of this act.

SEC. 8. *And be it further enacted*, That the right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted.

SEC. 9. *And be it further enacted*, That whenever, by priority of possession, rights to the use of water for mining, agricultural, manufacturing, or other purposes, have vested and accrued and the same are recognized and acknowledged by the local customs, laws, and the decisions of courts, the possessors and owners of such vested rights shall be maintained and protected in the same; and the right of way for the construction of ditches and canals for the purposes aforesaid is hereby acknowledged and confirmed: *Provided, however*, That whenever, after the passage of this act, any person or persons shall, in the construction of any ditch or canal, injure or damage 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. 10. *And be it further enacted*, That wherever, prior to the passage of this act, upon the lands heretofore designated as mineral lands, which have been excluded from survey and sale, there have been homesteads made by citizens of the United States, or persons who have declared their intention to become citizens, which homesteads have been made, improved, and used for agricultural purposes, and upon which there have been no valuable mines of gold, silver, cinnabar, or copper discovered, and which are properly agricultural lands, the said settlers or owners of such homesteads shall have a right of pre-emption thereto, and shall be entitled to purchase the same at the price of one dollar and twenty-five cents per acre, and in quantity not to exceed one hundred and sixty acres; or said parties may avail themselves of the provisions of the act of Congress, approved May twenty, eighteen hundred and sixty-two, entitled "An act to secure homesteads to actual settlers on the public domain", and acts amendatory thereof.

SEC. 11. *And be it further enacted*, That, upon the survey of the lands aforesaid, the Secretary of the Interior may designate and set apart such portions of the said lands as are clearly agricultural lands, which lands shall thereafter be subject to pre-emption and sale as other public lands of the United States, and subject to all the laws and regulations applicable to the same.

CHAP. COXXXV.

AN ACT to amend "An act granting the right of way to ditch and canal owners over the public lands, and for other purposes." (Approved July 9, 1870. U. S. Stats., v. 16, p. 217.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act granting the right of way to ditch and canal owners over the public lands, and for other purposes, approved July twenty-six, eighteen hundred and sixty-six, be, and the same is hereby, amended by adding thereto the following additional sections, numbered twelve, thirteen, fourteen, fifteen, sixteen, and seventeen, respectively, which shall hereafter constitute and form a part of the aforesaid act:

SEC. 12. *And be it further enacted,* That claims, usually called "placers", including all forms of deposit, excepting veins of quartz, or other rock in place, shall be subject to entry and patent under this act, under like circumstances and conditions, and upon similar proceedings, as are provided for vein or lode-claims: *Provided,* That, where the lands have been previously surveyed by the United States, the entry in its exterior limits shall conform to the legal subdivisions of the public lands, no further survey or plat in such case being required, and the lands may be paid for at the rate of two dollars and fifty cents per acre: *Provided further,* That legal subdivisions of forty acres may be subdivided into ten-acre tracts; and that two or more persons, or associations of persons, having contiguous claims of any size, although such claims may be less than ten acres each, may make joint entry thereof: *And provided further,* That no location of a placer-claim, hereafter made, shall exceed one hundred and sixty acres for any one person or association of persons, which location shall conform to the United States surveys; and nothing in this section contained shall defeat or impair any *bona-fide* pre-emption or homestead claim upon agricultural lands, or authorize the sale of the improvements of any *bona-fide* settler to any purchaser.

SEC. 13. *And be it further enacted,* That where said person or association, they and their grantors, shall have held and worked their said claims for a period equal to the time prescribed by the statute of limitations for mining-claims of the state or territory where the same may be situated, evidence of such possession and working of the claims for such period shall be sufficient to establish a right to a patent thereto under this act, in the absence of any adverse claim: *Provided, however,* That nothing in this act shall be deemed to impair any lien which may have attached in any way whatever to any mining-claim or property thereto attached prior to the issuance of a patent.

SEC. 14. *And be it further enacted,* That all *ex-parte* affidavits required to be made under this act, or the act of which it is amendatory, may be verified before any officer authorized to administer oaths within the land district where the claims may be situated.

SEC. 15. *And be it further enacted,* That registers and receivers shall receive the same fees for services under this act as are provided by law for like services under other acts of Congress; and that effect shall be given to the foregoing act according to such regulations as may be prescribed by the Commissioner of the General Land-Office.

SEC. 16. *And be it further enacted,* That so much of the act of March third, eighteen hundred and fifty-three, entitled "An act to provide for the survey of the public lands in California, the granting of pre-emption rights, and for other purposes", as provides that none other than township lines shall be surveyed where the lands are mineral, is hereby repealed. And the public surveys are hereby extended over all such lands: *Provided,* That all subdividing of surveyed lands into lots less than one hundred and sixty acres may be done by county and local surveyors at the expense of the claimants: *And provided further,* That nothing herein contained shall require the survey of waste or useless lands.

SEC. 17. *And be it further enacted,* That none of the rights conferred by sections five, eight, and nine of the act to which this act is amendatory shall be abrogated by this act, and the same are hereby extended to all public lands affected by this act; and all patents granted, or pre-emption or homesteads allowed, shall be subject to any vested and accrued water rights, or rights to ditches and reservoirs used in connection with such water rights as may have been acquired under or recognized by the ninth section of the act of which this act is amendatory. But nothing in this act shall be construed to repeal, impair, or in any way affect the provisions of the "Act granting to A. Sutro the right of way and other privileges to aid in the construction of a draining and exploring tunnel to the Comstock lode, in the state of Nevada", approved July twenty-fifth, eighteen hundred and sixty-six.

AN ACT to promote the development of the mining resources of the United States. (Approved May 10, 1872. U. S. Stats., v. 17, p. 91.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States and those who have declared their intention to become such, under regulations prescribed by law, and according to the local customs or rules of miners in the several mining districts, so far as the same are applicable and not inconsistent with the laws of the United States.

SEC. 2. That mining-claims upon veins or lodes of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits heretofore located, shall be governed as to length along the vein or

lode by the customs, regulations, and laws in force at the date of their location. A mining-claim located after the passage of this act, whether located by one or more persons, may equal, but shall not exceed, one thousand five hundred feet in length along the vein or lode; but no location of a mining-claim shall be made until the discovery of the vein or lode within the limits of the claim located. No claim shall extend more than three hundred feet on each side of the middle of the vein at the surface, nor shall any claim be limited by any mining regulation to less than twenty-five feet on each side of the middle of the vein at the surface, except where adverse rights existing at the passage of this act shall render such limitation necessary. The end-lines of each claim shall be parallel to each other.

SEC. 3. That the locators of all mining locations heretofore made, or which shall hereafter be made, on any mineral vein, lode, or ledge, situated on the public domain, their heirs and assigns, where no adverse claim exists at the passage of this act, so long as they comply with the laws of the United States, and the state, territorial, and local regulations not in conflict with said laws of the United States governing their possessory title, shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations, and of all veins, lodes, and ledges throughout their entire depth, the top or apex of which lies inside of such surface-lines extended downward vertically, although such veins, lodes, or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side-lines of said surface locations: *Provided*, That their right of possession to such outside parts of such veins or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward as aforesaid, through the end-lines of their locations, so continued in their own direction that such planes will intersect such exterior parts of said veins or ledges: *And provided further*, That nothing in this section shall authorize the locator or possessor of a vein or lode which extends, in its downward course, beyond the vertical lines of his claim to enter upon the surface of a claim owned or possessed by another.

SEC. 4. That where a tunnel is run for the development of a vein or lode, or for the discovery of mines, the owners of such tunnel shall have the right of possession of all veins or lodes within three thousand feet from the face of such tunnel on the line thereof, not previously known to exist, discovered in such tunnel, to the same extent as if discovered from the surface; and locations on the line of such tunnel of veins or lodes not appearing on the surface, made by other parties after the commencement of the tunnel, and while the same is being prosecuted with reasonable diligence, shall be invalid; but failure to prosecute the work on the tunnel for six months shall be considered as an abandonment of the right to all undiscovered veins on the line of said tunnel.

SEC. 5. That the miners of each mining district may make rules and regulations not in conflict with the laws of the United States, or with the laws of the state or territory in which the district is situated, governing the location manner of recording, amount of work necessary to hold possession of a mining-claim, subject to the following requirements: The location must be distinctly marked on the ground so that its boundaries can be readily traced. All records of mining-claims hereafter made shall contain the name or names of the locators, the date of the location, and such a description of the claim or claims located by reference to some natural object or permanent monument as will identify the claim. On each claim located after the passage of this act, and until a patent shall have been issued therefor, not less than one hundred dollars' worth of labor shall be performed or improvements made during each year. On all claims located prior to the passage of this act, ten dollars' worth of labor shall be performed or improvements made each year for each one hundred feet in length along the vein until a patent shall have been issued therefor; but, where such claims are held in common, such expenditure may be made upon any one claim; and, upon a failure to comply with these conditions, the claim or mine upon which such failure occurred shall be open to relocation in the same manner as if no location of the same had ever been made: *Provided*, That the original locators, their heirs, assigns, or legal representatives have not resumed work upon the claim after such failure and before such location. Upon the failure of any one of several co-owners to contribute his proportion of the expenditures required by this act, the co-owners who have performed the labor or made the improvements may, at the expiration of the year, give such delinquent co-owner personal notice in writing or notice by publication in the newspaper published nearest the claim, for at least once a week for ninety days, and if, at the expiration of ninety days after such notice in writing or by publication, such delinquent should fail or refuse to contribute his proportion to comply with this act, his interest in the claim shall become the property of his co-owners who have made the required expenditures.

SEC. 6. That a patent for any land claimed and located for valuable deposits may be obtained in the following manner: Any person, association, or corporation authorized to locate a claim under this act, having claimed and located a piece of land for such purposes, who has or have complied with the terms of this act, may file in the proper land-office an application for a patent, under oath, showing such compliance, together with a plat and field-notes of the claim or claims in common, made by or under the direction of the United States surveyor-general, showing accurately the boundaries of the claim or claims, which shall be distinctly marked by monuments on the ground, and shall post a copy of such plat, together with a notice of such application for a patent, in a conspicuous place on the land embraced in such plat previous to the filing of the application for a patent, and shall file an affidavit of at least two persons that such notice has been duly posted as aforesaid, and shall file a copy of said notice in such land-office, and shall thereupon be entitled to a patent for said land, in the manner following: The

register of the land-office, upon the filing of such application, plat, field-notes, notices, and affidavits, shall publish a notice that such application has been made, for the period of sixty days, in a newspaper to be by him designated as published nearest to said claim; and he shall also post such notice in his office for the same period. The claimant, at the time of filing this application, or at any time thereafter within the sixty days of publication, shall file with the register a certificate of the United States surveyor-general that five hundred dollars' worth of labor has been expended or improvements made upon the claim by himself or grantors; that the plat is correct, with such further description by such reference to natural objects or permanent monuments as shall identify the claim, and furnish an accurate description, to be incorporated in the patent. At the expiration of the sixty days of publication, the claimant shall file his affidavit showing that the plat and notice have been posted in a conspicuous place on the claim during said period of publication. If no adverse claim shall have been filed with the register and the receiver of the proper land-office at the expiration of the sixty days of publication, it shall be assumed that the applicant is entitled to a patent, upon the payment to the proper officer of five dollars per acre, and that no adverse claim exists; and thereafter no objection from third parties to the issuance of a patent shall be heard, except it be shown that the applicant has failed to comply with this act.

SEC. 7. That, where an adverse claim shall be filed during the period of publication, it shall be upon oath of the person or persons making the same, and shall show the nature, boundaries, and extent of such adverse claim, and all proceedings, except the publication of notice and making and filing of the affidavit thereof, shall be stayed until the controversy shall have been settled or decided by a court of competent jurisdiction, or the adverse claim waived. It shall be the duty of the adverse claimant, within thirty days after filing his claim, to commence proceedings in a court of competent jurisdiction, to determine the question of the right of possession, and prosecute the same with reasonable diligence to final judgment; and a failure so to do shall be a waiver of his adverse claim. After such judgment shall have been rendered, the party entitled to the possession of the claim, or any portion thereof, may, without giving further notice, file a certified copy of the judgment-roll with the register of the land-office, together with the certificate of the surveyor-general that the requisite amount of labor has been expended, or improvements made thereon, and the description required in other cases, and shall pay to the receiver five dollars per acre for his claim, together with the proper fees, whereupon the whole proceedings and the judgment-roll shall be certified by the register to the Commissioner of the General Land-Office, and a patent shall issue thereon for the claim, or such portion thereof as the applicant shall appear, from the decision of the court, to rightly possess. If it shall appear from the decision of the court, that several parties are entitled to separate and different portions of the claim, each party may pay for his portion of the claim, with the proper fees, and file the certificate and description by the surveyor-general, whereupon the register shall certify the proceedings and judgment-roll to the Commissioner of the General Land-Office, as in the preceding case, and patents shall issue to the several parties according to their respective rights. Proof of citizenship under this act, or the acts of July twenty-sixth, eighteen hundred and sixty-six, and July ninth, eighteen hundred and seventy, in the case of an individual, may consist of his own affidavit thereof, and in case of an association of persons unincorporated of the affidavit of their authorized agent, made on his own knowledge, or upon information and belief, and in case of a corporation organized under the laws of the United States, or of any state or territory of the United States, by the filing of a certified copy of their charter or certificate of incorporation; and nothing herein contained shall be construed to prevent the alienation of the title conveyed by patent for a mining-claim to any person whatever.

SEC. 8. That the description of vein or lode claims, upon surveyed lands, shall designate the location of the claim with reference to the lines of the public surveys, but need not conform therewith; but where a patent shall be issued, as aforesaid, for claims upon unsurveyed lands, the surveyor-general, in extending the surveys, shall adjust the same to the boundaries of such patented claim, according to the plat or description thereof, but so as in no case to interfere with or change the location of any such patented claim.

SEC. 9. That sections one, two, three, four, and six of an act entitled "An act granting the right of way to ditch and canal owners over the public lands, and for other purposes", approved July twenty-sixth, eighteen hundred and sixty-six, are hereby repealed, but such repeal shall not affect existing rights. Applications for patents for mining-claims now pending may be prosecuted to a final decision in the General Land-Office; but in such cases where adverse rights are not affected thereby, patents may issue in pursuance of the provisions of this act; and all patents for mining-claims heretofore issued under the act of July twenty-sixth, eighteen hundred and sixty-six, shall convey all the rights and privileges conferred by this act where no adverse rights exist at the time of the passage of this act.

SEC. 10. That the act entitled "An act to amend an act granting the right of way to ditch and canal owners over the public lands, and for other purposes", approved July ninth, eighteen hundred and seventy, shall be and remain in full force, except as to the proceedings to obtain a patent, which shall be similar to the proceedings prescribed by sections six and seven of this act for obtaining patents to vein or lode claims; but where said placer-claims shall be upon surveyed lands, and conform to legal subdivisions, no further survey or plat shall be required, and all placer-mining claims hereafter located shall conform as near as practicable with the United States system of public-land surveys and the rectangular subdivisions of such surveys, and no such location shall include more than twenty acres for each individual claimant, but where placer-claims cannot be conformed to legal subdivisions, survey

and plat shall be made as on unsurveyed lands: *Provided*, That proceedings now pending may be prosecuted to their final determination under existing laws; but the provisions of this act, when not in conflict with existing laws, shall apply to such cases: *And provided also*, That where, by the segregation of mineral land in any legal subdivision, a quantity of agricultural land less than forty acres remains, said fractional portion of agricultural land may be entered, by any party qualified by law, for homestead or pre-emption purposes.

SEC. 11. That where the same person, association, or corporation is in possession of a placer-claim, and also a vein or lode included within the boundaries thereof, application shall be made for a patent for the placer-claim, with the statement that it includes such vein or lode, and in such case (subject to the provisions of this act and the act entitled "An act to amend an act granting the right of way to ditch and canal owners over the public lands, and for other purposes", approved July ninth, eighteen hundred and seventy) a patent shall issue for the placer-claim, including such vein or lode, upon the payment of five dollars per acre for such vein or lode-claim and twenty-five feet of surface on each side thereof. The remainder of the placer-claim, or any placer-claim not embracing any vein or lode claim, shall be paid for at the rate of two dollars and fifty cents per acre, together with all costs of proceedings; and where a vein or lode, such as is described in the second section of this act, is known to exist within the boundaries of a placer-claim, an application for a patent for such placer-claim, which does not include an application for the vein or lode-claim, shall be construed as a conclusive declaration that the claimant of the placer-claim has no right of possession of the vein or lode-claim; but where the existence of a vein or lode in a placer-claim is not known, a patent for the placer-claim shall convey all valuable mineral and other deposits within the boundaries thereof.

SEC. 12. That the surveyor-general of the United States may appoint in each land district containing mineral lands as many competent surveyors as shall apply for appointment to survey mining-claims. The expenses of the survey of vein or lode-claims, and the survey and subdivision of placer-claims into smaller quantities than one hundred and sixty acres, together with the cost of publication of notices, shall be paid by the applicants, and they shall be at liberty to obtain the same at the most reasonable rates, and they shall also be at liberty to employ any United States deputy surveyor to make the survey. The Commissioner of the General Land-Office shall also have power to establish the maximum charges for surveys and publication of notices under this act; and, in case of excessive charges for publication, he may designate any newspaper published in a land district where mines are situated, for the publication of mining-notices in such district, and fix the rates to be charged by such paper; and, to the end that the Commissioner may be fully informed on the subject, each applicant shall file with the register a sworn statement of all charges and fees paid by said applicant for publication and surveys, together with all fees and money paid the register and the receiver of the land-office, which statement shall be transmitted, with the other papers in the case, to the Commissioner of the General Land-Office. The fees of the register and the receiver shall be five dollars each for filing and acting upon each application for a patent or adverse claim filed, and they shall be allowed the amount fixed by law for reducing testimony to writing, when done in the land-office, such fees and allowances to be paid by the respective parties; and no other fees shall be charged by them in such cases. Nothing in this act shall be construed to enlarge or affect the rights of either party in regard to any property in controversy at the time of the passage of this act, or of the act entitled "An act granting the right of way to ditch and canal owners over the public lands, and for other purposes", approved July twenty-sixth, eighteen hundred and sixty-six, nor shall this act affect any right acquired under said act; and nothing in this act shall be construed to repeal, impair, or in any way affect the provisions of the act entitled "An act granting to A. Sutro the right of way and other privileges to aid in the construction of a draining and exploring tunnel to the Comstock lode, in the state of Nevada", approved July twenty-fifth, eighteen hundred and sixty-six.

SEC. 13. That all affidavits required to be made under this act, or the act of which it is amendatory, may be verified before any officer authorized to administer oaths within the land district where the claims may be situated, and all testimony and proofs may be taken before any such officer, and, when duly certified by the officer taking the same, shall have the same force and effect as if taken before the register and receiver of the land-office. In cases of contest as to the mineral or agricultural character of land, the testimony and proofs may be taken as herein provided, on personal notice of at least ten days to the opposing party; or, if said party cannot be found, then by publication of at least once a week for thirty days in a newspaper, to be designated by the register of the land-office as published nearest to the location of such land; and the register shall require proof that such notice has been given.

SEC. 14. That where two or more veins intersect or cross each other, priority of title shall govern, and such prior location shall be entitled to all ore or mineral contained within the space of intersection: *Provided, however*, That the subsequent location shall have the right of way through said space of intersection for the purposes of the convenient working of the said mine: *And provided also*, That where two or more veins unite, the oldest or prior location shall take the vein below the point of union, including all the space of intersection.

SEC. 15. That where non-mineral land not contiguous to the vein or lode is used or occupied by the proprietor of such vein or lode for mining or milling purposes, such non-adjacent surface-ground may be embraced and included in an application for a patent for such vein or lode, and the same may be patented therewith, subject to the same preliminary requirements as to survey and notice as are applicable under this act to veins or lodes: *Provided*, That no location hereafter made of such non-adjacent land shall exceed five acres, and payment for the same must be made

at the same rate as fixed by this act for the superficies of the lode. The owner of a quartz-mill or reduction-works, not owning a mine in connection therewith, may also receive a patent for his mill-site, as provided in this section.

SEC. 16. That all acts and parts of acts inconsistent herewith are hereby repealed: *Provided*, That nothing contained in this act shall be construed to impair, in any way, rights or interests in mining property acquired under existing laws.

AN ACT to provide for the sale of the lands of the United States containing coal. (Approved March 3, 1873. U. S. Stats., v. 17, p. 607.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person above the age of twenty-one years who is a citizen of the United States, or who has declared his intention to become such, or any association of persons severally qualified as above, shall, upon application to the register of the proper land-office, have the right to enter, by legal subdivisions, any quantity of vacant coal-lands of the United States not otherwise appropriated or reserved by competent authority, not exceeding one hundred and sixty acres to such individual person, or three hundred and twenty acres to such association, upon payment to the receiver of not less than ten dollars per acre for such lands, where the same shall be situated more than fifteen miles from any completed railroad, and not less than twenty dollars per acre for such lands as shall be within fifteen miles of such road.

SEC. 2. That any person or association of persons, severally qualified as above, who have opened and improved, or shall hereafter open and improve, any coal-mine or mines upon the public lands, and shall be in actual possession of the same, shall be entitled to a preference right of entry, under the foregoing provisions, of the mines so opened and improved: *Provided*, That when any association of not less than four persons, severally qualified as in section one of this act, shall have expended not less than five thousand dollars in working and improving any such mine or mines, such association may enter not exceeding six hundred and forty acres, including such mining improvements.

SEC. 3. That all claims under section two of this act must be presented to the register of the proper land district within sixty days after the date of actual possession and the commencement of improvements on the land by the filing of a declaratory statement therefor: *Provided*, That when the township plat is not on file at the date of such improvement, filing must be made within sixty days from the receipt of such plat at the district office: *And provided further*, That where the improvements shall have been made prior to the expiration of three months from the passage of this act, sixty days from the expiration of said three months shall be allowed for the filing of a declaratory statement, and no sale under the provisions of this act shall be allowed until the expiration of six months from the date hereof.

SEC. 4. That this act shall be held to authorize only one entry by the same person or association of persons under its provisions; and no association of persons, any member of which shall have taken the benefit of this act, either as an individual or as a member of any other association, shall enter or hold any other lands under the provisions of this act; and no member of any association which shall have taken the benefit of this act shall enter or hold any other lands under its provisions; and all persons claiming under section two hereof shall be required to prove their respective rights and pay for the lands filed upon within one year from the time prescribed for filing their respective claims; and, upon failure to file the proper notice, or to pay for the land within the required period, the same shall be subject to entry by any other qualified applicant.

SEC. 5. That in case of conflicting claims upon lands where the improvements shall be hereafter commenced, priority of possession and improvement, followed by proper filing and continued good faith, shall determine the preference right to purchase; and also where improvements have already been made at the date of the passage of this act, division of the land claimed may be made, by legal subdivisions, to include, as near as may be, the valuable improvements of the respective parties; and the Commissioner of the General Land-Office shall be, and is hereby, authorized to issue all needful rules and regulations for carrying into effect the provisions of this act.

SEC. 6. That nothing in this act shall be construed to destroy or impair any rights which may have attached prior to its passage, or to authorize the sale of lands valuable for mines of gold, silver, or copper.

[Circular.]

DEPARTMENT OF THE INTERIOR, GENERAL LAND-OFFICE,
Washington, D. C., July 31, 1882.

GENTLEMEN: The following sections of the Revised Statutes provide for the sale of coal-lands of the United States:

TITLE XXXII, CHAP. 6.—MINERAL LANDS AND MINING RESOURCES.

SEC. 2347. Every person above the age of twenty-one years, who is a citizen of the United States, or who has declared his intention to become such, or any association of persons severally qualified as above, shall, upon application to the register of the proper land-office, have the right to enter, by legal subdivisions, any quantity of vacant coal-lands of the United States not otherwise appropriated or reserved by competent authority, not exceeding one hundred and sixty acres to such individual person, or three hundred and twenty acres

to such association, upon payment to the receiver of not less than ten dollars per acre for such lands, where the same shall be situated more than fifteen miles from any completed railroad, and not less than twenty dollars per acre for such lands as shall be within fifteen miles of such road.

SEC. 2348. Any person or association of persons severally qualified, as above provided, who have opened and improved, or shall hereafter open and improve, any coal-mine or mines upon the public lands, and shall be in actual possession of the same, shall be entitled to a preference right of entry, under the preceding section, of the mines so opened and improved: *Provided*, That when any association of not less than four persons, severally qualified as above provided, shall have expended not less than five thousand dollars in working and improving any such mine or mines, such association may enter not exceeding six hundred and forty acres, including such mining improvements.

SEC. 2349. All claims under the preceding section must be presented to the register of the proper land district within sixty days after the date of actual possession and the commencement of improvements on the land, by the filing of a declaratory statement therefor; but when the township plat is not on file at the date of such improvement, filing must be made within sixty days from the receipt of such plat at the district office; and where the improvements shall have been made prior to the expiration of three months from the third day of March, eighteen hundred and seventy-three, sixty days from the expiration of such three months shall be allowed for the filing of a declaratory statement, and no sale under the provisions of this section shall be allowed until the expiration of six months from the third day of March, eighteen hundred and seventy-three.

SEC. 2350. The three preceding sections shall be held to authorize only one entry by the same person or association of persons; and no association of persons, any member of which shall have taken the benefit of such sections, either as an individual or as a member of any other association, shall enter or hold any other lands under the provisions thereof; and no member of any association which shall have taken the benefit of such sections shall enter or hold any other lands under their provisions; and all persons claiming under section twenty-three hundred and forty-eight shall be required to prove their respective rights and pay for the lands filed upon within one year from the time prescribed for filing their respective claims; and upon failure to file the proper notice, or to pay for the land within the required period, the same shall be subject to entry by any other qualified applicant.

SEC. 2351. In case of conflicting claims upon coal-lands where the improvements shall be commenced after the third day of March, eighteen hundred and seventy-three, priority of possession and improvement, followed by proper filing and continued good faith, shall determine the preference right to purchase; and also where improvements have already been made prior to the third day of March, eighteen hundred and seventy-three, division of the land claimed may be made, by legal subdivisions, to include, as near as may be, the valuable improvements of the respective parties. The Commissioner of the General Land-Office is authorized to issue all needful rules and regulations for carrying into effect the provisions of this and the four preceding sections.

SEC. 2352. Nothing in the five preceding sections shall be construed to destroy or impair any rights which may have attached prior to the third day of March, eighteen hundred and seventy-three, or to authorize the sale of lands valuable for mines of gold, silver, or copper.

RULES AND REGULATIONS.

Under the authority conferred by said section 2351, the following rules and regulations are issued for carrying into effect the provisions of said law.

1. The sale of coal-lands is provided for—

By ordinary *private entry* under section 2347.

By granting a *preference right* of purchase, based on priority of possession and improvement, under section 2348.

2. The land entered under either section must be *by legal subdivisions*, as made by the regular United States survey. Entry is confined to surveyed lands; to such as are vacant, not otherwise appropriated, reserved by competent authority, or containing valuable minerals other than coal.

3. Individuals and associations may purchase. If an individual, he must be twenty-one years of age and a citizen of the United States, or have declared his intention to become such citizen.

4. If an association of persons, each person must be qualified as above.

5. A person is not disqualified by the ownership of any quantity of other land, nor by having removed from his own land in the same state or territory.

6. Any individual may enter, by legal subdivisions, as aforesaid, any area not exceeding 160 acres.

7. Any association may enter not to exceed 320 acres.

8. Any association of not less than four persons, duly qualified, who shall have expended not less than \$5,000 in working and improving any coal-mine or mines, may enter, under section 2348, not exceeding 640 acres, including such mining improvements.

9. One person can have the benefit of one entry or filing *only*. He is disqualified by having made such entry or filing alone, or as a member of an association. No entry can be allowed an association which has in it a single person thus disqualified, as the law prohibits the entry or holding of more than one claim either by an individual or an association.

10. Lands that are sufficiently valuable for gold, silver, or copper to prevent their entry as agricultural lands cannot be entered as coal-lands, and you will not allow any entry to be made, under the above-named provisions of law, of lands valuable for their deposits of said minerals.

11. The present rules relative to "hearings to establish the character of lands", contained in General Land-Office regulations of October 31, 1881, issued under the mining laws, will, as far as applicable, govern your action in determining the character of lands sought to be entered as coal-land.

12. The price per acre is \$10 where the land is situated *more* that 15 miles from any completed railroad, and

\$20 per acre where the land is *within* 15 miles of such road. The price of the land, however, must be determined by its distance from a completed railroad at the date of payment and entry, irrespective of the preference right of entry.

13. When application is made to purchase coal-land at the rate of \$10 per acre you will, in all cases, require satisfactory proof that the land applied for is, at date of entry, situated more than 15 miles from any completed railroad. This proof may consist of the affidavit of the applicant, or that of his duly-authorized agent, corroborated by the affidavit of some disinterested credible party showing personal knowledge of the facts.

14. Where the land lies *partly within* 15 miles of such road and in *part outside* such limit, the *maximum* price must be paid for all legal subdivisions, the greater part of which lies within 15 miles of such road.

15. The term "completed railroad" is held to mean one which is actually constructed on the face of the earth; and lands within 15 miles of any point of a railroad so constructed will be held and disposed of at \$20 per acre.

16. Any duly-qualified person or association must be preferred as purchasers of those public lands on which they have opened and improved, or shall open and improve, any coal-mine or mines, and which they shall have in actual possession.

17. Possession by agent is recognized as the possession of the principal. The clearest proof on the point of agency must, however, be required in every case, and a clearly-defined possession must be established.

18. The *opening and improving* of a coal-mine, in order to confer a preference right of purchase, must not be considered as a mere matter of form; the labor expended and improvements made must be such as to clearly indicate the good faith of the claimant.

19. These lands are intended to be sold, where there are adverse claimants therefor, to a party, who, by substantial improvements, actual possession, and a reasonable industry, shows an intention to continue his development of the mines, in preference to those who would purchase for speculative purposes only. With this view you will require such proof of compliance with the law, when lands are applied for under section 2348 by adverse claimants, as the circumstances of each case may justify.

20. In conflicts, where improvements have been, or shall hereafter be, commenced, priority of possession and improvement shall govern the award when the law has been fully complied with by each party. A mere possession, however, without satisfactory improvements, will not secure the tract to the first occupant when a subsequent claimant shows his full compliance with the law.

21. After an entry has been allowed to one party, you will make no investigation concerning it at the instance of any person except on instructions from this office. You will, however, receive all affidavits concerning such case, and forward the same to this office, accompanied by a statement of the facts as shown by your records.

22. Prior to entry it is competent for you to order an investigation, on sufficient grounds, set forth under oath of a party in interest and substantiated by the affidavits of disinterested and credible witnesses.

MANNER OF OBTAINING TITLE.

23. When title is sought by *private entry*, the party will himself make oath to the following application, which must be presented to the register:

I, _____, hereby apply, under the provisions of the Revised Statutes of the United States relating to the sale of coal-lands of the United States, to purchase the _____ quarter of section _____, in township _____, of range _____, in the district of lands subject to sale at the land-office at _____, and containing _____ acres; and I solemnly swear that no portion of said tract is in the possession of any other party; that I am twenty-one years of age, a citizen of the United States (or have declared my intention to become a citizen of the United States), and have never held nor purchased lands under said act, either as an individual or as a member of an association; and I do further swear that I am well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that my knowledge of said land is such as to enable me to testify understandingly with regard thereto; that said land contains large deposits of coal, and is chiefly valuable therefor; 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, or copper, and that there is not within the limits of said land, to my knowledge, any valuable deposit of gold, silver, or copper. So help me God.

24. Thereupon the register, if the tract is vacant, will so certify to the receiver, stating the price, and the applicant, or his duly-authorized agent, must then pay the amount of purchase money.

25. The receiver will then issue to the purchaser a duplicate receipt, and at the close of the month the register and receiver will make returns of the sales to the General Land-Office, from whence, when the proceedings are found regular, a patent or complete title will be issued; and on surrender of the duplicate receipt such patent will be delivered, at the option of the patentee, either by the Commissioner at Washington or by the register at the district land-office.

26. This disposition at private entry will be subject to any valid prior adverse right which may have attached to the same land, and which is protected by section 2348.

27. *Second.* When the application to purchase is based on a priority of possession, etc., as provided for in section 2348, the claimant must, when the township plat is on file in your office, file his declaratory statement for the tract claimed sixty days from and after the first day of his actual possession and improvement. Sixty days, exclusive of the first day of possession, etc., must be allowed.

28. The declaratory statement must be substantially as follows, to wit:

I, _____, do solemnly swear that I am _____ years of age and a citizen of the United States (or have declared my intention to become a citizen of the United States); that I never have, either as an individual or as a member of an association, held or purchased any coal-lands under the provisions of the Revised Statutes of the United States relating to the sale of coal-lands of the United States; and I do hereby declare my intention to purchase, under the provisions aforesaid, the _____ quarter of section _____, in township _____, of range _____, of lands subject to sale at the district land-office at _____; and that I came into possession of said tract on the _____ day of _____, A. D. 18____, and have ever since remained in actual possession continuously; that I have located and opened a valuable mine of coal thereon; and have expended in labor and improvements on said mine the sum of _____ dollars, the labor and improvements being as follows [here describe the nature and character of the improvements]; and I do furthermore solemnly swear that I am well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that my knowledge of said land is such as to enable me to testify understandingly with regard thereto; 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, or copper, and that there is not, within the limits of said land, to my knowledge, any valuable deposit of gold, silver, or copper. So help me God.

29. When the township plat is not on file at date of claimant's first possession, the declaratory statement must be filed within sixty days from the filing of such plat in your office.

30. One year from and after the expiration of the period allowed for filing the declaratory statement is given within which to make proof and payment; but you will allow no party to make final proof and payment except on notice to all others who appear on your records as claimants to the same tract.

31. A party who otherwise complies with the law may enter *after* the expiration of said year, *provided* no valid adverse right shall have intervened. He postpones his entry beyond said year at his own risk, and the government cannot thereafter protect him against another who complies with the law, and the value of his improvements can have no weight in his favor.

32. Each claimant, at the time of actual purchase, must make affidavit as follows:

I, _____, claiming, under the provisions of the Revised Statutes of the United States relating to the sale of coal-lands of the United States, the right to purchase the _____ quarter of section _____, in township _____, of range _____, subject to sale at _____, do solemnly swear that I have never had the right of purchase under the aforesaid provisions of law, either as an individual or as a member of an association, and that I have never held any other lands under its provisions; I further swear that I have expended, in developing coal-mines on said tract, in labor and improvements, the sum of _____ dollars, the nature of such improvements being as follows: _____; that I am now in the actual possession of said mines, and make the entry for my own use and benefit, and not directly or indirectly for the use and benefit of any other party; and I do furthermore swear that I am well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that my knowledge of said land is such as to enable me to testify understandingly with regard thereto; that the same is chiefly valuable for coal; 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, or copper, and that there is not within the limits of said land, to my knowledge, any valuable deposit of gold, silver, or copper. So help me God.

33. The application, declaratory statement, and the affidavit required at the time of actual purchase, the forms of which are given above under paragraphs 23, 28, and 32, may be sworn to before any officer authorized by law to administer oaths, but the authority of such officer must be properly shown.

34. Any party duly qualified under the law, *after* swearing to his application or declaratory statement, may, by a sufficient power of attorney, duly executed under the laws of the state or territory in which such party may then be residing, empower an agent to file with the register of the proper land-office the application, declaratory statement, or affidavit required at the time of actual purchase, and also authorize him to make payment for and entry of the land in the name of such qualified party; and when such power of attorney shall have been filed in your office you will permit such agent to act thereunder as above indicated.

35. Where a claimant shows by affidavit that he is not personally acquainted with the character of the land, his duly-authorized agent, who possesses such knowledge, may make the required affidavit as to its character; but, whether this affidavit is made by principal or agent, it must be corroborated by the affidavits of two disinterested and credible witnesses having knowledge of its character.

36. Nothing in these regulations shall be so construed as to prevent a party from proving his citizenship or age, or establishing the status of the land sought to be entered, in accordance with ordinary rules of evidence; and any proof regularly introduced for that purpose that would be competent in a court or before a commissioner charged with the ascertainment of facts may be considered.

37. Assignments of the right to purchase will be recognized when properly executed. Proof and payment must be made, however, within the prescribed period, which dates from the first day of the possession of the assigner who initiated the claim.

38. The "Rules of Practice" in cases before the United States district land-offices, the General Land-Office, and the Department of the Interior, approved December 20, 1880, will, as far as applicable, govern all cases and proceedings arising under the sections of the Revised Statutes above quoted providing for the sale of coal-lands of the United States.

39. You will report at the close of each month as "sales of coal-lands" all filings and entries in separate abstracts, commencing with number *one*, and thereafter proceeding consecutively in the order of their reception.

Where a series of numbers has already been commenced by sale of coal-lands, you will continue the same without change.

N. C. McFARLAND,
Commissioner.

TO REGISTERS AND RECEIVERS.

DEPARTMENT OF INTERIOR, *July 31, 1882.*

Approved :

H. M. TELLER,
Secretary.

TITLE XXXII, CHAP. 6. (U. S. Rev. Stats., p. 425.)

SECTION 2318. In all cases lands valuable for minerals shall be reserved from sale, except as otherwise expressly directed by law.

SEC. 2319. All valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States and those who have declared their intention to become such, under regulations prescribed by law, and according to the local customs or rules of miners in the several mining districts, so far as the same are applicable and not inconsistent with the laws of the United States.

SEC. 2320. Mining-claims upon veins or lodes of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, heretofore located, shall be governed as to length along the vein or lode by the customs, regulations, and laws in force at the date of their location. A mining-claim located after the tenth day of May, eighteen hundred and seventy-two, whether located by one or more persons, may equal, but shall not exceed, one thousand five hundred feet in length along the vein or lode; but no location of a mining-claim shall be made until the discovery of the vein or lode within the limits of the claim located. No claim shall extend more than three hundred feet on each side of the middle of the vein at the surface, nor shall any claim be limited by any mining regulation to less than twenty-five feet on each side of the middle of the vein at the surface, except where adverse rights, existing on the tenth day of May, eighteen hundred and seventy-two, render such limitation necessary. The end-lines of each claim shall be parallel to each other.

SEC. 2321. Proof of citizenship, under this chapter, may consist, in the case of an individual, of his own affidavit thereof; in the case of an association of persons unincorporated, of the affidavit of their authorized agent, made on his own knowledge, or upon information and belief; and in the case of a corporation organized under the laws of the United States, or of any state or territory thereof, by the filing of a certified copy of their charter or certificate of incorporation.

SEC. 2322. The locators of all mining locations heretofore made, or which shall hereafter be made, on any mineral vein, lode, or ledge, situated on the public domain, their heirs and assigns, where no adverse claim exists on the tenth day of May, eighteen hundred and seventy-two, so long as they comply with the laws of the United States, and with state, territorial, and local regulations not in conflict with the laws of the United States governing their possessory title, shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations, and of all veins, lodes, and ledges throughout their entire depth, the top or apex of which lies inside of such surface-lines extended downward vertically, although such veins, lodes, or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side-lines of such surface locations. But their right of possession to such outside parts of such veins or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward, as above described, through the end-lines of their locations, so continued in their own direction that such planes will intersect such exterior parts of such veins or ledges. And nothing in this section shall authorize the locator or possessor of a vein or lode which extends in its downward course beyond the vertical lines of his claim to enter upon the surface of a claim owned or possessed by another.

SEC. 2323. Where a tunnel is run for the development of a vein or lode, or for the discovery of mines, the owners of such tunnel shall have the right of possession of all veins or lodes within three thousand feet from the face of such tunnel on the line thereof, not previously known to exist, discovered in such tunnel, to the same extent as if discovered from the surface; and locations on the line of such tunnel of veins or lodes not appearing on the surface made by other parties after the commencement of the tunnel, and while the same is being prosecuted with reasonable diligence, shall be invalid; but failure to prosecute the work on the tunnel for six months shall be considered as an abandonment of the right to all undiscovered veins on the line of such tunnel.

SEC. 2324. The miners of each mining district may make regulations not in conflict with the laws of the United States, or with the laws of the state or territory in which the district is situated, governing the location, manner of recording, amount of work necessary to hold possession of a mining-claim, subject to the following requirements: The location must be distinctly marked on the ground so that its boundaries can be readily traced. All records of

mining-claims hereafter made shall contain the name or names of the locators, the date of the location, and such a description of the claim or claims located by reference to some natural object or permanent monument as will identify the claim. On each claim located after the tenth day of May, eighteen hundred and seventy-two, and until a patent has been issued therefor, not less than one hundred dollars' worth of labor shall be performed or improvements made during each year. On all claims located prior to the tenth day of May, eighteen hundred and seventy-two, ten dollars' worth of labor shall be performed or improvements made by the tenth day of June, eighteen hundred and seventy-four, and each year thereafter for each one hundred feet in length along the vein until a patent has been issued therefor; but where such claims are held in common such expenditure may be made upon any one claim; and upon a failure to comply with these conditions the claim or mine upon which such failure occurred shall be open to relocation in the same manner as if no location of the same had ever been made, provided that the original locators, their heirs, assigns, or legal representatives, have not resumed work upon the claim after failure and before such location. Upon the failure of any one of several co-owners to contribute his proportion of the expenditures required hereby, the co-owners who have performed the labor or made the improvements may, at the expiration of the year, give such delinquent co-owner personal notice in writing, or notice by publication in the newspaper published nearest the claim, for at least once a week for ninety days, and if, at the expiration of ninety days after such notice in writing or by publication, such delinquent should fail or refuse to contribute his proportion of the expenditure required by this section, his interest in the claim shall become the property of his co-owners who have made the required expenditures.

SEC. 2325. A patent for any land claimed and located for valuable deposits may be obtained in the following manner: Any person, association, or corporation authorized to locate a claim under this chapter, having claimed and located a piece of land for such purposes, who has, or have, complied with the terms of this chapter, may file in the proper land-office an application for a patent, under oath, showing such compliance, together with a plat and field-notes of the claim or claims in common, made by or under the direction of the United States surveyor-general, showing accurately the boundaries of the claim or claims, which shall be distinctly marked by monuments on the ground, and shall post a copy of such plat, together with a notice of such application for a patent, in a conspicuous place on the land embraced in such plat previous to the filing of the application for a patent, and shall file an affidavit of at least two persons that such notice has been duly posted, and shall file a copy of the notice in such land-office, and shall thereupon be entitled to a patent for the land, in the manner following: The register of the land-office, upon the filing of such application, plat, field-notes, notices, and affidavits, shall publish a notice that such application has been made, for the period of sixty days, in a newspaper to be by him designated as published nearest to such claim; and he shall also post such notice in his office for the same period. The claimant at the time of filing this application, or at any time thereafter, within the sixty days of publication, shall file with the register a certificate of the United States surveyor-general that five hundred dollars' worth of labor has been expended or improvements made upon the claim by himself or grantors; that the plat is correct, with such further description by such reference to natural objects or permanent monuments as shall identify the claim, and furnish an accurate description, to be incorporated in the patent. At the expiration of the sixty days of publication the claimant shall file his affidavit, showing that the plat and notice have been posted in a conspicuous place on the claim during such period of publication. If no adverse claim shall have been filed with the register and the receiver of the proper land-office at the expiration to the sixty days of publication, it shall be assumed that the applicant is entitled to a patent, upon the payment to the proper officer of five dollars per acre, and that no adverse claim exists; and thereafter no objection from third parties to the issuance of a patent shall be heard, except it be shown that the applicant has failed to comply with the terms of this chapter.

SEC. 2326. Where an adverse claim is filed during the period of publication, it shall be upon oath of the person or persons making the same, and shall show the nature, boundaries, and extent of such adverse claim, and all proceedings, except the publication of notice and making and filing of the affidavit thereof, shall be stayed until the controversy shall have been settled or decided by a court of competent jurisdiction, or the adverse claim waived. It shall be the duty of the adverse claimant, within thirty days after filing his claim, to commence proceedings in a court of competent jurisdiction, to determine the question of the right of possession, and prosecute the same with reasonable diligence to final judgment; and a failure so to do shall be a waiver of his adverse claim. After such judgment shall have been rendered, the party entitled to the possession of the claim, or any portion thereof, may, without giving further notice, file a certified copy of the judgment-roll with the register of the land-office, together with the certificate of the surveyor-general that the requisite amount of labor has been expended or improvements made thereon, and the description required in other cases, and shall pay to the receiver five dollars per acre for his claim, together with the proper fees, whereupon the whole proceedings and the judgment-roll shall be certified by the register to the Commissioner of the General Land-Office, and a patent shall issue thereon for the claim, or such portion thereof as the applicant shall appear, from the decision of the court, to rightly possess. If it appears from the decision of the court that several parties are entitled to separate and different portions of the claim, each party may pay for his portion of the claim, with the proper fees, and file the certificate and description by the surveyor-general, whereupon the register shall certify the proceedings and judgment-roll to the Commissioner of the General

Land-Office, as in the preceding case, and patents shall issue to the several parties according to their respective rights. Nothing herein contained shall be construed to prevent the alienation of a title conveyed by a patent for a mining-claim to any person whatever.

SEC. 2327. The description of vein or lode-claims upon surveyed lands shall designate the location of the claim with reference to the lines of the public surveys, but need not conform therewith; but where a patent shall be issued for claims upon unsurveyed lands, the surveyor-general, in extending the surveys, shall adjust the same to the boundaries of such patented claim, according to the plat or description thereof, but so as in no case to interfere with or change the location of any such patented claim.

SEC. 2328. Applications for patents for mining-claims under former laws now pending may be prosecuted to a final decision in the General Land-Office; but in such cases, where adverse rights are not affected thereby, patents may issue in pursuance of the provisions of this chapter; and all patents for mining-claims upon veins or lodes heretofore issued shall convey all the rights and privileges conferred by this chapter where no adverse rights existed on the tenth day of May, eighteen hundred and seventy-two.

SEC. 2329. Claims usually called "placers", including all forms of deposit, excepting veins of quartz or other rock in place, shall be subject to entry and patent, under like circumstances and conditions, and upon similar proceedings, as are provided for vein or lode-claims; but where the lands have been previously surveyed by the United States, the entry in its exterior limits shall conform to the legal subdivisions of the public lands.

SEC. 2330. Legal subdivisions of forty acres may be subdivided into ten-acre tracts; and two or more persons, or associations of persons, having contiguous claims of any size, although such claims may be less than ten acres each, may make joint entry thereof; but no location of a placer-claim, made after the ninth day of July, eighteen hundred and seventy, shall exceed one hundred and sixty acres for any one person or association of persons, which location shall conform to the United States surveys; and nothing in this section contained shall defeat or impair any *bona fide* pre-emption or homestead claim upon agricultural lands, or authorize the sale of the improvements of any *bona fide* settler to any purchaser.

SEC. 2331. Where placer-claims are upon surveyed lands, and conform to legal subdivisions, no further survey or plat shall be required, and all placer-mining claims located after the tenth day of May, eighteen hundred and seventy-two, shall conform as near as practicable with the United States system of public-land surveys, and the rectangular subdivisions of such surveys, and no such location shall include more than twenty acres for each individual claimant; but where placer-claims cannot be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands; and where, by the segregation of mineral lands in any legal subdivision, a quantity of agricultural land less than forty acres remains, such fractional portion of agricultural land may be entered, by any party qualified by law, for homestead or pre-emption purposes.

SEC. 2332. Where such person or association, they and their grantors, have held and worked their claims for a period equal to the time prescribed by the statute of limitations for mining-claims of the state or territory where the same may be situated, evidence of such possession and working of the claims for such period shall be sufficient to establish a right to a patent thereto under this chapter, in the absence of any adverse claim; but nothing in this chapter shall be deemed to impair any lien which may have attached, in any way whatever, to any mining-claim or property thereto attached prior to the issuance of a patent.

SEC. 2333. Where the same person, association, or corporation is in possession of a placer-claim, and also a vein or lode included within the boundaries thereof, application shall be made for a patent for the placer-claim, with the statement that it includes such vein or lode, and in such case a patent shall issue for the placer-claim, subject to the provisions of this chapter, including such vein or lode, upon the payment of five dollars per acre for such vein or lode-claim, and twenty-five feet of surface on each side thereof. The remainder of the placer-claim, or any placer-claim not embracing any vein or lode-claim, shall be paid for at the rate of two dollars and fifty cents per acre, together with all costs of proceedings; and where a vein or lode, such as is described in section twenty-three hundred and twenty, is known to exist within the boundaries of a placer-claim, an application for a patent for such placer-claim which does not include an application for the vein or lode-claim shall be construed as a conclusive declaration that the claimant of the placer-claim has no right of possession of the vein or lode-claim; but where the existence of a vein or lode in a placer-claim is not known, a patent for the placer-claim shall convey all valuable mineral and other deposits within the boundaries thereof.

SEC. 2334. The surveyor-general of the United States may appoint, in each land district containing mineral lands, as many competent surveyors as shall apply for appointment to survey mining-claims. The expenses of the survey of vein or lode-claims, and the survey and subdivision of placer-claims into smaller quantities than one hundred and sixty acres, together with the cost of publication of notices, shall be paid by the applicants, and they shall be at liberty to obtain the same at the most reasonable rates, and they shall also be at liberty to employ any United States deputy surveyor to make the survey. The Commissioner of the General Land-Office shall also have power to establish the maximum charges for surveys and publication of notices under this chapter; and, in case of excessive charges for publication, he may designate any newspaper published in a land district where mines are situated for the publication of mining notices in such district, and fix the rates to be charged by such paper; and,

to the end that the Commissioner may be fully informed on the subject, each applicant shall file with the register a sworn statement of all charges and fees paid by such applicant for publication and surveys, together with all fees and money paid the register and the receiver of the land-office, which statement shall be transmitted, with the other papers in the case, to the Commissioner of the General Land-Office.

SEC. 2335. All affidavits required to be made under this chapter may be verified before any officer authorized to administer oaths within the land district where the claims may be situated, and all testimony and proofs may be taken before any such officer, and, when duly certified by the officer taking the same, shall have the same force and effect as if taken before the register and receiver of the land-office. In cases of contest as to the mineral or agricultural character of the land, the testimony and proofs may be taken, as herein provided, on personal notice of at least ten days to the opposing party; or, if such party cannot be found, then by publication of at least once a week for thirty days in a newspaper, to be designated by the register of the land-office as published nearest to the location of such land; and the register shall require proof that such notice has been given.

SEC. 2336. Where two or more veins intersect or cross each other, priority of title shall govern; and such prior location shall be entitled to all ore or mineral contained within the space of intersection; but the subsequent location shall have the right of way through the space of intersection for the purposes of the convenient working of the mine. And where two or more veins unite, the oldest or prior location shall take the vein below the point of union, including all the space of intersection.

SEC. 2337. Where non-mineral land not contiguous to the vein or lode is used or occupied by the proprietor of such vein or lode for mining or milling purposes, such non-adjacent surface-ground may be embraced and included in an application for a patent for such vein or lode, and the same may be patented therewith, subject to the same preliminary requirements as to survey and notice as are applicable to veins or lodes; but no location hereafter made of such non-adjacent land shall exceed five acres, and payment for the same must be made at the same rate as fixed by this chapter for the superficies of the lode. The owner of a quartz-mill or reduction-works, not owning a mine in connection therewith, may also receive a patent for his mill-site, as provided in this section.

SEC. 2338. As a condition of sale, in the absence of necessary legislation by Congress, the local legislature of any state or territory may provide rules for working mines involving easements, drainage, and other necessary means to their complete development; and those conditions shall be fully expressed in the patent.

SEC. 2339. Whenever, by priority of possession, rights to the use of water for mining, agricultural, manufacturing, or other purposes, have vested and accrued, and the same are recognized and acknowledged by the local customs, laws, and the decisions of courts, the possessors and owners of such vested rights shall be maintained and protected in the same; and the right of way for the construction of ditches and canals for the purposes herein specified is acknowledged and confirmed; but whenever any person, in the construction of any ditch or canal, injures or damages the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage.

SEC. 2340. All patents granted, or pre-emption or homesteads allowed, shall be subject to any vested and accrued water rights, or rights to ditches and reservoirs used in connection with such water rights, as may have been acquired under or recognized by the preceding section.

SEC. 2341. Wherever, upon the lands heretofore designated as mineral lands which have been excluded from survey and sale, there have been homesteads made by citizens of the United States, or persons who have declared their intention to become citizens, which homesteads have been made, improved, and used for agricultural purposes, and upon which there have been no valuable mines of gold, silver, cinnabar, or copper discovered, and which are properly agricultural lands, the settlers or owners of such homesteads shall have a right of pre-emption thereto, and shall be entitled to purchase the same at the price of one dollar and twenty-five cents per acre, and in quantity not to exceed one hundred and sixty acres; or they may avail themselves of the provisions of chapter five of this title, relating to "HOMESTEADS".

SEC. 2342. Upon the survey of the lands described in the preceding section, the Secretary of the Interior may designate and set apart such portions of the same as are clearly agricultural lands, which lands shall thereafter be subject to pre-emption and sale as other public lands, and be subject to all the laws and regulations applicable to the same.

SEC. 2343. The President is authorized to establish additional land districts, and to appoint the necessary officers under existing laws, wherever he may deem the same necessary for the public convenience in executing the provisions of this chapter.

SEC. 2344. Nothing contained in this chapter shall be construed to impair, in any way, rights or interests in mining property acquired under existing laws; nor to affect the provisions of the act entitled "An act granting to A. Sutro the right of way and other privileges to aid in the construction of a draining and exploring tunnel to the Comstock lode, in the state of Nevada", approved July twenty-five, eighteen hundred and sixty-six.

SEC. 2345. The provisions of the preceding sections of this chapter shall not apply to the mineral lands situated in the states of Michigan, Wisconsin, and Minnesota, which are declared free and open to exploration and purchase according to legal subdivisions, in like manner as before the tenth day of May, eighteen hundred and seventy-two.

And any *bona fide* entries of such lands within the states named since the tenth of May, eighteen hundred and seventy-two, may be patented without reference to any of the foregoing provisions of this chapter. Such lands shall be offered for public sale in the same manner, at the same minimum price, and under the same rights of pre-emption as other public lands.

SEC. 2346. No act passed at the first session of the Thirty-eighth Congress granting lands to states or corporations to aid in the construction of roads, or for other purposes, or to extend the time of grants made prior to the thirtieth day of January, eighteen hundred and sixty-five, shall be so construed as to embrace mineral lands, which in all cases are reserved exclusively to the United States, unless otherwise specially provided in the act or acts making the grant.

TITLE LXXIV.—REPEAL PROVISIONS.

SEC. 5595. The foregoing seventy-three titles embrace the statutes of the United States, general and permanent in their nature, in force on the 1st day of December, one thousand eight hundred and seventy-three, as revised and consolidated by commissioners appointed under an act of Congress, and the same shall be designated and cited as The Revised Statutes of the United States.

SEC. 5596. All acts of Congress passed prior to said first day of December, one thousand eight hundred and seventy-three, any portion of which is embraced in any section of said revision, are hereby repealed, and the section applicable thereto shall be in force in lieu thereof; all parts of such acts not contained in such revision having been repealed or superseded by subsequent acts, or not being general and permanent in their nature: *Provided*, That the incorporation into such revision of any general and permanent provision, taken from an act making appropriations, or from an act containing other provisions of a private, local, or temporary character, shall not repeal or in any way affect any appropriation, or any provision of a private, local, or temporary character, contained in any of said acts, but the same shall remain in force; and all acts of Congress passed prior to said last-named day, no part of which are embraced in said revision, shall not be affected or changed by its enactments.

SEC. 5597. The repeal of the several acts embraced in said revision shall not affect any act done, or any right accruing or accrued, or any suit or proceeding had or commenced in any civil cause before the said repeal, but all rights and liabilities under said acts shall continue, and may be enforced in the same manner as if said repeal had not been made; nor shall said repeal in any manner affect the right to any office, or change the term or tenure thereof.

SEC. 5598. All offenses committed, and all penalties or forfeitures incurred, under any statute embraced in said revision prior to said repeal, may be prosecuted and punished in the same manner and with the same effect as if said repeal had not been made.

SEC. 5599. All acts of limitation, whether applicable to civil causes and proceedings, or to the prosecution of offenses, or for the recovery of penalties or forfeitures, embraced in said revision and covered by said repeal, shall not be affected thereby; but all suits, proceedings, or prosecutions, whether civil or criminal, for causes arising, or acts done or committed prior to said repeal, may be commenced and prosecuted within the same time as if said repeal had not been made.

SEC. 5600. The arrangement and classification of the several sections of the revision have been made for the purpose of a more convenient and orderly arrangement of the same, and therefore no inference or presumption of a legislative construction is to be drawn by reason of the title under which any particular section is placed.

SEC. 5601. The enactment of the said revision is not to affect or repeal any act of Congress passed since the 1st day of December, one thousand eight hundred and seventy-three, and all acts passed since that date are to have full effect as if passed after the enactment of this revision, and so far as such acts vary from, or conflict with, any provision contained in said revision, they are to have effect as subsequent statutes, and as repealing any portion of the revision inconsistent therewith.

Approved, June 22, 1874.

The following is an act of Congress approved June 6, 1874 (U. S. Stats., v. 18, p. 61):

AN ACT to amend the act entitled "An act to promote the development of the mining resources of the United States", passed May tenth, eighteen hundred and seventy-two.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of the fifth section of the act entitled "An act to promote the development of the mining resources of the United States", passed May tenth, eighteen hundred and seventy-two, which requires expenditures of labor and improvements on claims located prior to the passage of said act, are hereby so amended that the time for the first annual expenditure on claims located prior to the passage of said act shall be extended to the first day of January, eighteen hundred and seventy-five.

PRECIOUS METALS.

The following is an act of Congress approved February 11, 1875 (U. S. Stats., v. 18, p. 315):

AN ACT to amend section two thousand three hundred and twenty-four of the Revised Statutes, relating to the development of the mining resources of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section two thousand three hundred and twenty-four of the Revised Statutes be, and the same is hereby, amended so that where a person or company has or may run a tunnel for the purposes of developing a lode or lodes owned by said person or company, the money so expended in said tunnel shall be taken and considered as expended on said lode or lodes, whether located prior to or since the passage of said act, and such person or company shall not be required to perform work on the surface of said lode or lodes in order to hold the same as required by said act.

The following is an act of Congress approved May 5, 1876 (U. S. Stats., v. 19, p. 52):

AN ACT to exclude the states of Missouri and Kansas from the provisions of the act of Congress entitled "An act to promote the development of the mining resources of the United States", approved May tenth, eighteen hundred and seventy-two.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, within the states of Missouri and Kansas, deposits of coal, iron, lead, or other mineral be, and they are hereby, excluded from the operation of the act entitled "An act to promote the development of the mining resources of the United States", approved May tenth, eighteen hundred and seventy-two, and all lands in said states shall be subject to disposal as agricultural lands.

The following is an act of Congress approved January 22, 1880 (U. S. Stats., v. 21, p. 61):

AN ACT to amend sections twenty-three hundred and twenty-four and twenty-three hundred and twenty-five of the Revised Statutes of the United States concerning mineral lands.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section twenty-three hundred and twenty-five of the Revised Statutes of the United States be amended by adding thereto the following words: "Provided, That where the claimant for a patent is not a resident of or within the land district wherein the vein, lode, ledge, or deposit sought to be patented is located, the application for patent and the affidavits required to be made in this section by the claimant for such patent may be made by his, her, or its authorized agent, where said agent is conversant with the facts sought to be established by said affidavits: And provided, That this section shall apply to all applications now pending for patents to mineral lands."

SEC. 2. That section twenty-three hundred and twenty-four of the Revised Statutes of the United States be amended by adding the following words: "Provided, That the period within which the work required to be done annually on all unpatented mineral claims shall commence on the first day of January succeeding the date of location of such claim, and this section shall apply to all claims located since the tenth day of May, anno Domini eighteen hundred and seventy-two."

The following is an act of Congress approved March 3, 1881 (U. S. Stats., v. 21, p. 505):

AN ACT to amend section twenty-three hundred and twenty-six of the Revised Statutes relating to suits at law affecting the title to mining-claims.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That if, in any action brought pursuant to section twenty-three hundred and twenty-six of the Revised Statutes, title to the ground in controversy shall not be established by either party, the jury shall so find, and judgment shall be entered according to the verdict. In such case costs shall not be allowed to either party; and the claimant shall not proceed in the land-office, or be entitled to a patent for the ground in controversy, until he shall have perfected his title.

Official instructions to registers and receivers under above laws from Commissioner of the General Land-Office.

MINERAL LANDS OPEN TO EXPLORATION, OCCUPATION, AND PURCHASE.

1. It will be perceived that, by the foregoing provisions of law, the mineral lands in the public domain, surveyed or unsurveyed, are open to exploration, occupation, and purchase by all citizens of the United States and all those who have declared their intentions to become such.

STATUS OF LODGE-CLAIMS LOCATED PRIOR TO MAY 10, 1872.

2. By an examination of the several sections of the Revised Statutes it will be seen that the status of lode-claims located previous to the 10th May, 1872, is not changed with regard to their extent along the lode or width of surface.

3. Mining rights acquired under such previous locations are, however, enlarged by said Revised Statutes in the following respect, viz: The locators of all such previously-taken veins or lodes, their heirs and assigns, so long as they comply with the laws of Congress, and with state, territorial, or local regulations not in conflict therewith, governing mining-claims, are invested with the exclusive possessory right of all the surface included within the lines of their locations, and of all veins, lodes, or ledges throughout their entire depth, the top or apex of which lies inside of such surface-lines extended downward vertically, although such veins, lodes, or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side-lines of such locations at the surface, it being expressly provided, however, that the right of possession to such outside parts of said veins or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward, as aforesaid, through the end-lines of their locations, so continued in their own direction that such planes will intersect such exterior parts of such veins, lodes, or ledges; no right being granted, however, to the claimant of such outside portion of a vein or ledge to enter upon the surface location of another claimant.

4. It is to be distinctly understood, however, that the law limits the possessory right to veins, lodes, or ledges, other than the one named in the original location, to such as were not *adversely claimed on May 10, 1872*, and that where such other vein or ledge was so adversely claimed at that date, the right of the party so adversely claiming is in no way impaired by the provisions of the Revised Statutes.

5. In order to hold the possessory title to a mining-claim located prior to May 10, 1872, and for which a patent has not been issued, the law requires that \$10 shall be expended annually in labor or improvements on each claim of 100 feet on the course of the vein or lode until a patent shall have been issued therefor; but where a number of such claims are held in common upon the same vein or lode the aggregate expenditure that would be necessary to hold all the claims, at the rate of \$10 per hundred feet, may be made upon any one claim; a failure to comply with this requirement in any one year subjecting the claim upon which such failure occurred to relocation by other parties, the same as if no previous location thereof had ever been made, unless the claimants under the original location shall have resumed work thereon after such failure and before such relocation. The first annual expenditure upon claims of this class should have been performed subsequent to May 10, 1872, and prior to January 1, 1875. From and after January 1, 1875, the required amount must be expended *annually* until patent issues. By decision of the honorable Secretary of the Interior, dated March 4, 1879, such annual expenditures are not required subsequent to entry, the date of issuing the patent certificate being the date contemplated by statute.

6. Upon the failure of any one of several co-owners of a vein, lode, or ledge, which has not been entered, to contribute his proportion of the expenditures necessary to hold the claim or claims so held in ownership in common, the co-owners who have performed the labor, or made the improvements, as required by said Revised Statutes, may, at the expiration of the year, give such delinquent co-owner personal notice in writing, or notice by publication in the newspaper published nearest the claim, for at least once a week for ninety days; and if, upon the expiration of ninety days after such notice in writing, or upon the expiration of one hundred and eighty days after the first newspaper publication of notice, the delinquent co-owner shall have failed to contribute his proportion to meet such expenditures or improvements, his interest in the claim by law passes to his co-owners who have made the expenditures or improvements as aforesaid. Where a claimant alleges ownership of a forfeited interest under the foregoing provision, the sworn statement of the publisher as to the facts of publication, giving dates and a printed copy of the notice published, should be furnished, and the claimant must swear that the delinquent co-owner failed to contribute his proper proportion within the period fixed by the statute.

PATENTS FOR VEINS OR LODES HERETOFORE ISSUED.

7. Rights under patents for veins or lodes heretofore granted under previous legislation of Congress are enlarged by the Revised Statutes so as to invest the patentee, his heirs or assigns, with title to all veins, lodes, or ledges, throughout their entire depth, the top or apex of which lies within the end and side boundary-lines of his claim on the surface, as patented, extended downward vertically, although such veins, lodes, or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side-lines of the claim at the surface. The right of possession to such outside parts of such veins or ledges to be confined to such portions thereof as lie between vertical planes drawn downward through the end-lines of the claims at the surface, so continued in their own direction that such planes will intersect such exterior parts of such veins or ledges, it being expressly provided, however, that all veins, lodes, or ledges, the top or apex of which lies inside such surface locations, other than the one named in the patent, which were *adversely claimed on the 10th May, 1872*, are excluded from such conveyance by patent.

8. Applications for patents for mining-claims pending at the date of the act of May 10, 1872, may be prosecuted to final decision in the General Land-Office, and, where no adverse rights are affected thereby, patents will be issued in pursuance of the provisions of the Revised Statutes.

MANNER OF LOCATING CLAIMS ON VEINS OR LODES AFTER MAY 10, 1872.

9. From and after the 10th May, 1872, any person who is a citizen of the United States, or who has declared his intention to become a citizen, may locate, record, and hold a mining-claim of 1,500 *linear feet* along the course

of any mineral vein or lode subject to location; or an association of persons, severally qualified as above, may make joint location of such claim of 1,500 feet, but in no event can a location of a vein or lode made subsequent to May 10, 1872, exceed 1,500 feet along the course thereof, whatever may be the number of persons composing the association.

10. With regard to the extent of surface-ground adjoining a vein or lode, and claimed for the convenient working thereof, the Revised Statutes provide that the lateral extent of locations of veins or lodes made after May 10, 1872, shall in no case *exceed 300 feet on each side of the middle of the vein at the surface*, and that no such surface rights shall be limited by any mining regulations to less than 25 feet on each side of the middle of the vein at the surface, except where adverse rights existing on the 10th May, 1872, may render such limitation necessary; the end-lines of such claims to be in all cases parallel to each other. Said lateral measurements cannot extend beyond 300 feet on *either* side of the middle of the vein at the surface, or such distance as is allowed by local laws. For example: 400 feet cannot be taken on one side and 200 feet on the other. If, however, 300 feet on each side are allowed, and, by reason of prior claims, but 100 feet can be taken on one side, the locator will not be restricted to less than 300 feet on the other side; and when the locator does not determine by exploration *where* the middle of the vein at the surface is, his discovery shaft must be assumed to mark such point.

11. By the foregoing it will be perceived that no lode-claim located after the 10th May, 1872, can exceed a parallelogram 1,500 feet in length by 600 feet in width, but whether surface ground of that width can be taken depends upon the local regulations or state or territorial laws in force in the several mining districts; and that no such local regulations or state or territorial laws shall limit a vein or lode-claim to less than 1,500 feet along the course thereof, whether the location is made by one or more persons, nor can surface rights be limited to less than 50 feet in width, unless adverse claims existing on the 10th day of May, 1872, render such lateral limitation necessary.

12. It is provided by the Revised Statutes that the miners of each district may make rules and regulations not in conflict with the laws of the United States, or of the state or territory in which such districts are respectively situated, governing the location, manner of recording, and amount of work necessary to hold possession of a claim. They likewise require that the location shall be so distinctly marked on the ground that its boundaries may be readily traced. This is a very important matter, and locators cannot exercise too much care in defining their locations at the outset, inasmuch as the law requires that all records of mining locations made subsequent to May 10, 1872, shall contain the name or names of the locators, the date of the location, and such a *description of the claim or claims* located; by reference to some natural object or permanent monument, as will identify the claim.

13. The statutes provide that no lode-claim shall be recorded until after the discovery of a vein or lode within the limits of the claim located, the object of which provision is evidently to prevent the appropriation of presumed mineral ground for speculative purposes, to the exclusion of *bona fide* prospectors, before sufficient work has been done to determine whether a vein or lode really exists.

14. The claimant should, therefore, prior to locating his claim, unless the vein can be traced upon the surface, sink a shaft or run a tunnel or drift to a sufficient depth therein to discover and develop a mineral-bearing vein, lode, or crevice; should determine, if possible, the general course of such vein in either direction from the point of discovery, by which direction he will be governed in marking the boundaries of his claim on the surface. His location notice should give the course and distance, as nearly as practicable, from the discovery shaft on the claim to some permanent, well-known points or objects, such, for instance, as stone monuments, blazed trees, the confluence of streams, point of intersection of well-known gulches, ravines, or roads, prominent buttes, hills, etc., which may be in the immediate vicinity, and which will serve to perpetuate and fix the *locus* of the claim and render it susceptible of identification from the description thereof given in the record of locations in the district, and should be duly recorded.

15. In addition to the foregoing data, the claimant should state the names of adjoining claims, or, if none adjoin, the relative positions of the nearest claims; should drive a post or erect a monument of stones at each corner of his surface ground, and, at the point of discovery or discovery shaft, should fix a post, stake, or board, upon which should be designated the name of the lode, the name or names of the locators, the number of feet claimed, and in which direction from the point of discovery; it being essential that the location notice filed for record, in addition to the foregoing description, should state whether the entire claim of 1,500 feet is taken on one side of the point of discovery, or whether it is partly upon one and partly upon the other side thereof, and, in the latter case, how many feet are claimed upon each side of such discovery point.

16. Within a reasonable time, say twenty days after the location shall have been marked on the ground, or such time as is allowed by the local laws, notice thereof, accurately describing the claim in manner aforesaid, should be filed for record with the proper recorder of the district, who will thereupon issue the usual certificate of location.

17. In order to hold the possessory right to a location made since May 10, 1872, not less than \$100 worth of labor must be performed or improvements made thereon annually until entry shall have been made. Under the provisions of the act of Congress approved January 22, 1880, the first annual expenditure becomes due, and must be performed during the calendar year succeeding that in which the location was made. Expenditure made or labor performed prior to the 1st day of January succeeding the date of location will not be considered as a part of, or applied upon, the first annual expenditure required by law. Failure to make the expenditure or perform the

labor required will subject the claim to relocation by any other party having the necessary qualifications, unless the original locator, his heirs, assigns, or legal representatives have resumed work thereon after such failure and before such relocation.

18. The expenditures required upon mining-claims may be made from the surface or in running a tunnel for the development of such claims, the act of February 11, 1875, providing that, where a person or company has or may run a tunnel for the purpose of developing a lode or lodes owned by said person or company, the money so expended in said tunnel shall be taken and considered as expended on said lode or lodes, and such person or company shall not be required to perform work on the surface of said lode or lodes in order to hold the same.

19. The importance of attending to these details in the matter of location, labor, and expenditure will be the more readily perceived when it is understood that a failure to give the subject proper attention may invalidate the claim.

Official instructions.

TUNNEL RIGHTS.

20. Section 2323 provides that, where a tunnel is run for the development of a vein or lode or for the discovery of mines, the owners of such tunnel shall have the right of possession of all veins or lodes within 3,000 feet from the face of such tunnel on the line thereof, not previously known to exist, discovered in such tunnel, to the same extent as if discovered from the surface; and locations on the line of such tunnel of veins or lodes not appearing on the surface, made by other parties after the commencement of the tunnel, and while the same is being prosecuted with reasonable diligence, shall be invalid; but failure to prosecute the work on the tunnel for six months shall be considered as an abandonment of the right to all undiscovered veins or lodes on the line of said tunnel.

21. The effect of this is simply to give the proprietors of a mining tunnel run in good faith the possessory right to 1,500 feet of any blind lodes cut, discovered, or intersected by such tunnel, which were not previously known to exist, within 3,000 feet from the face or point of commencement of such tunnel, and to prohibit other parties, after the commencement of the tunnel, from prospecting for and making locations of lodes on the *line thereof* and within said distance of 3,000 feet, unless such lodes appear upon the surface or were previously known to exist.

22. The term "face", as used in said section, is construed and held to mean the first working face formed in the tunnel, and to signify the point at which the tunnel actually enters cover, it being from this point that the 3,000 feet are to be counted, upon which prospecting is prohibited as aforesaid.

23. To avail themselves of the benefits of this provision of law, the proprietors of a mining tunnel will be required, at the time they enter cover as aforesaid, to give proper notice of their tunnel location by erecting a substantial post, board, or monument at the face or point of commencement thereof, upon which should be posted a good and sufficient notice, giving the names of the parties or company claiming the tunnel right; the actual or proposed course or direction of the tunnel; the height and width thereof, and the course and distance from such face or point of commencement to some permanent well-known objects in the vicinity by which to fix and determine the *locus*, in manner heretofore set forth, applicable to locations of veins or lodes, and at the time of posting such notice they shall, in order that miners or prospectors may be enabled to determine whether or not they are within the lines of the tunnel, establish the boundary-lines thereof, by stakes or monuments placed along such lines at proper intervals, to the terminus of the 3,000 feet from the face or point of commencement of the tunnel, and the lines so marked will define and govern as to the specific boundaries within which prospecting for lodes not previously known to exist is prohibited while work on the tunnel is being prosecuted with reasonable diligence.

24. At the time of posting notice and marking out the lines of the tunnel as aforesaid, a full and correct copy of such notice of location defining the tunnel-claim must be filed for record with the mining recorder of the district, to which notice must be attached the sworn statement or declaration of the owners, claimants, or projectors of such tunnel, setting forth the facts in the case; stating the amount expended by themselves and their predecessors in interest in prosecuting work thereon, the extent of the work performed, and that it is *bona fide* their intention to prosecute work on the tunnel so located and described with reasonable diligence for the development of a vein or lode, or for the discovery of mines, or both, as the case may be. This notice of location must be duly recorded, and, with the said sworn statement attached, kept on the recorder's files for future reference.

25. By a compliance with the foregoing much needless difficulty will be avoided, and the way for the adjustment of legal rights acquired in virtue of said section 2323 will be made much more easy and certain.

26. This office will take particular care that no improper advantage is taken of this provision of law by parties making or professing to make tunnel locations, ostensibly for the purposes named in the statute, but really for the purpose of monopolizing the lands lying in front of their tunnels, to the detriment of the mining interests and to the exclusion of *bona fide* prospectors or miners, but will hold such tunnel claimants to a strict compliance with the terms of the statutes; and a *reasonable diligence* on their part in prosecuting the work is one of the essential conditions of their implied contract. Negligence or want of due diligence will be construed as working a forfeiture of their right to all undiscovered veins on the line of such tunnel.

MANNER OF PROCEEDING TO OBTAIN GOVERNMENT TITLE TO VEIN OR LODE-CLAIMS.

27. By section 2325 authority is given for granting titles for mines by patent from the government to any person, association, or corporation having the necessary qualifications as to citizenship and holding the right of possession to a claim in compliance with law.

28. The claimant is required, in the first place, to have a correct survey of his claim made under authority of the surveyor-general of the state or territory in which the claim lies, such survey to show with accuracy the exterior surface-boundaries of the claim, which boundaries are required to be distinctly marked by monuments on the ground. Four plats and one copy of the original field-notes in each case will be prepared by the surveyor-general; one plat and the original field-notes to be retained in the office of the surveyor-general, one copy of the plat to be given the claimant for posting upon the claim, one plat and a copy of the field-notes to be given the claimant for filing with the proper register, to be finally transmitted by that officer, with other papers in the case, to this office, and one plat to be sent by the surveyor-general to the register of the proper land district, to be retained on his files for future reference.

29. The claimant is then required to post a copy of the plat of such survey in a conspicuous place upon the claim, together with notice of his intention to apply for a patent therefor, which notice will give the date of posting, the name of the claimant, the name of the claim, mine, or lode; the mining district and county; whether the location is of record, and, if so, where the record may be found; the number of feet claimed along the vein and the presumed direction thereof; the number of feet claimed on the lode in each direction from the point of discovery, or other well-defined place on the claim; the name or names of adjoining claimants on the same or other lodes; or, if none adjoin, the names of the nearest claims, etc.

30. After posting the said plat and notice upon the premises, the claimant will file, with the proper register and receiver, a copy of such plat, and the field-notes of survey of the claim, accompanied by the affidavit of at least two credible witnesses that such plat and notice are posted conspicuously upon the claim, giving the date and place of such posting, a copy of the *notice* so posted to be attached to, and form a part of, said affidavit.

31. Attached to the field-notes so filed must be the sworn statement of the claimant that he has the possessory right to the premises therein described, in virtue of a compliance by himself (and by his grantors, if he claims by purchase) with the mining rules, regulations, and customs of the mining district, state, or territory in which the claim lies, and with the mining laws of Congress; such sworn statement to narrate briefly, but as clearly as possible, the facts constituting such compliance, the origin of his possession, and the basis of his claim to a patent.

32. This affidavit should be supported by appropriate evidence from the mining recorder's office as to his possessory right, as follows, viz: Where he claims to be a locator, a full, true, and correct copy of such location should be furnished, as the same appears upon the mining records; such copy to be attested by the seal of the recorder, or, if he has no seal, then he should make oath to the same being correct, as shown by his records; where the applicant claims as a locator in company with others who have since conveyed their interests in the lode to him, a copy of the original record of location should be filed, together with an abstract of title from the proper recorder, under seal or oath as aforesaid, tracing the co-locator's possessory rights in the claim to such applicant for patent; where the applicant claims only as a purchaser for valuable consideration, a copy of the location record must be filed, under seal or upon oath as aforesaid, with an abstract of title certified as above by the proper recorder, tracing the right of possession by a continuous chain of conveyances from the original locators to the applicant, also certifying that no conveyances affecting the title to the claim in question appear of record in his office other than those set forth in the accompanying abstract.

33. In the event of the mining records in any case having been destroyed by fire or otherwise lost, affidavit of the fact should be made, and secondary evidence of possessory title will be received, which may consist of the affidavit of the claimant, supported by those of any other parties cognizant of the facts relative to his location, occupancy, possession, improvements, etc.; and in such case of lost records, any deeds, certificates of location or purchase, or other evidence which may be in the claimant's possession and tend to establish his claim should be filed.

34. Upon the receipt of these papers 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. In all cases sixty days must intervene between the first and the last insertion of the notice in such newspaper. When the notice is published in a *weekly* newspaper, ten consecutive insertions are necessary; when in a *daily* newspaper, the notice must appear in each issue for the required period.

35. The notices so published and posted must be as full and complete as possible, and embrace all the *data* given in the notice posted upon the claim.

36. Too much care cannot be exercised in the preparation of these notices, inasmuch as upon their accuracy and completeness will depend, in a great measure, the regularity and validity of the whole proceeding.

37. The claimant, either at the time of filing these papers with the register, or at any time during the sixty

days' publication, is required to file a certificate of the surveyor-general that not less than \$500 worth of labor has been expended or improvements made upon the claim by the applicant or his grantors; that the plat filed by the claimant is correct; that the field-notes of the survey, as filed, furnish such an accurate description of the claim as will, if incorporated into a patent, serve to fully identify the premises, and that such reference is made therein to natural objects or permanent monuments as will perpetuate and fix the *locus* thereof.

38. It will be the more convenient way to have this certificate indorsed by the surveyor-general, both upon the plat and field-notes of the survey filed by the claimant as aforesaid.

39. After the sixty days' period of newspaper publication has expired, the claimant will file his affidavit showing that the plat and notice aforesaid remained conspicuously posted upon the claim sought to be patented during said sixty days' publication, giving the dates.

40. Upon the filing of this affidavit the register will, if no adverse claim was filed in his office during the period of publication, permit the claimant to pay for the land according to the area given in the plat and field-notes of survey aforesaid, at the rate of \$5 for each acre and \$5 for each fractional part of an acre, the receiver issuing the usual duplicate receipt therefor. The claimant will also make a sworn statement of all charges and fees paid by him for publication and surveys, together with all fees and money paid the register and receiver of the land-office; after which the whole matter will be forwarded to the Commissioner of the General Land-Office, and a patent issued thereon, if found regular.

41. In sending up the papers in the case the register must not omit certifying to the fact that the notice was posted in his office for the full period of sixty days, such certificate to state distinctly when such posting was done and how long continued.

42. The consecutive series of numbers of mineral entries must be continued, whether the same are of lode or placer-claims.

43. The surveyor-general must continue to designate all surveyed mineral claims as heretofore by a progressive series of numbers, beginning with lot No. 37 in each township; the claim to be so designated at date of filing the plat, field-notes, etc., in addition to the local designation of the claim; it being required in all cases that the plat and field-notes of the survey of a claim must, in addition to the reference to permanent objects in the neighborhood, describe the *locus* of the claim with reference to the lines of public surveys by a line connecting a corner of the claim with the nearest public corner of the United States surveys, unless such a claim be on unsurveyed lands at a remote distance from such public corner, in which latter case the reference by course and distance to permanent objects in the neighborhood will be a sufficient designation by which to fix the *locus* until the public surveys shall have been closed upon its boundaries.

ADVERSE CLAIMS.

44. Section 2326 provides for adverse claims, fixes the time within which they shall be filed to have legal effect, and prescribes the manner of their adjustment.

45. Said section requires that the adverse claim shall be filed during the period of publication of notice; that it must be on the oath of the adverse claimant; and that it must show the "*nature*", the "*boundaries*", and the "*extent*" of the adverse claim.

46. In order that this section of law may be properly carried into effect, the following is communicated for the information of all concerned:

47. An adverse mining-claim must be filed with the register of the same land-office with whom the application for patent was filed, or, in his absence, with the receiver, and within the sixty days' period of newspaper publication of notice.

48. The adverse notice must be duly sworn to by the person or persons making the same before an officer authorized to administer oaths within the land district, or before the register or receiver; it will fully set forth the nature and extent of the interference or conflict; whether the adverse party claims as a purchaser for valuable consideration or as a locator; if the former, a certified copy of the original location, the original conveyance, a duly-certified copy thereof, or an abstract of title from the office of the proper recorder should be furnished, or if the transaction was a mere verbal one, he will narrate the circumstances attending the purchase, the date thereof, and the amount paid, which facts should be supported by the affidavit of one or more witnesses, if any were present at the time, and if he claims as a locator he must file a duly-certified copy of the location from the office of the proper recorder.

49. In order that the "*boundaries*" and "*extent*" of the claim may be shown, it will be incumbent upon the adverse claimant to file a plat showing his entire claim, its relative situation or position with the one against which he claims, and the extent of the conflict. This plat must be made from an actual survey by a United States deputy surveyor, who will officially certify thereon to its correctness; and, in addition, there must be attached to such plat of survey a certificate or sworn statement by the surveyor as to the approximate value of the labor performed or improvements made upon the claim by the adverse party or his predecessors in interest, and the plat must indicate the position of any shafts, tunnels, or other improvements, if any such exist, upon the claim of the party opposing the application, and by which party said improvements were made.

50. Upon the foregoing being filed within the sixty days as aforesaid, the register, or, in his absence, the receiver, will give notice in writing to *both parties* to the contest that such adverse claim has been filed, informing them that the party who filed the adverse claim will be required, within thirty days from the date of such filing, to commence proceedings in a court of competent jurisdiction to determine the question of right of possession, and to prosecute the same with reasonable diligence to final judgment, and that, should such adverse claimant fail to do so, his adverse claim will be considered waived, and the application for patent be allowed to proceed upon its merits.

51. When an adverse claim is filed as aforesaid, the register or receiver will indorse upon the same the precise date of filing, and preserve a record of the date of notifications issued thereon; and thereafter all proceedings on the application for patent will be suspended, with the exception of the completion of the publication and posting of notices and plat, and the filing of the necessary proof thereof, until the controversy shall have been adjudicated in court, or the adverse claim waived or withdrawn.

52. The proceedings after rendition of judgment of the court in such case are so clearly defined by the act itself as to render it unnecessary to enlarge thereon in this place.

53. The proceedings to obtain patents for claims usually called placers, including all forms of deposit, are similar to the proceedings prescribed for obtaining patents for vein or lode-claims; but where said placer-claim shall be upon surveyed lands, and conform to legal subdivisions, no further survey or plat will be required, and all placer-mining claims located after May 10, 1872, shall conform as nearly as practicable with the United States system of public-land surveys and the rectangular subdivisions of such surveys, and no such location shall include more than twenty acres for each individual claimant; but where placer-claims cannot be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands. But where such claims are located previous to the public surveys, and do not conform to legal subdivisions, survey, plat, and entry thereof may be made according to the boundaries thereof, provided the location is in all respects legal.

54. The proceedings for obtaining patents for veins or lodes having already been fully given, it will not be necessary to repeat them here; it being thought that careful attention thereto by applicants and the local officers will enable them to act understandingly in the matter and make such slight modifications in the notice, or otherwise, as may be necessary in view of the different nature of the two classes of claims, placer-claims being fixed, however, at \$2 50 per acre or fractional part of an acre.

55. By section 2330 authority is given for the subdivision of forty-acre legal subdivisions into ten-acre lots, which is intended for the greater convenience of miners in segregating their claims, both from one another and from intervening agricultural lands.

56. It is held, therefore, that, under a proper construction of the law, these ten-acre lots in mining districts should be considered and dealt with, to all intents and purposes, as legal subdivisions, and that an applicant having a legal claim which conforms to one or more of these ten-acre lots, either adjoining or cornering, may make entry thereof, after the usual proceedings, without further survey or plat.

57. In cases of this kind, however, the notice given of the application must be very specific and accurate in description, and as the forty-acre tracts may be subdivided into ten-acre lots, either in the form of squares of ten by ten chains, or of parallelograms five by twenty chains, so long as the lines are parallel and at right angles with the lines of the public surveys, it will be necessary that the notice and application state specifically what ten-acre lots are sought to be patented, in addition to the other *data* required in the notice.

58. Where the ten-acre subdivision is in the form of a square it may be described, for instance, as the "S. E. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ ", or if in the form of a parallelogram, as aforesaid, it may be described as the "W. $\frac{1}{2}$ of the W. $\frac{1}{2}$ of the S. W. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$ (or the N. $\frac{1}{2}$ of the S. $\frac{1}{2}$ of the N. E. $\frac{1}{4}$ of the S. E. $\frac{1}{4}$) of section ———, township ———, range ———", as the case may be; but, in addition to this description of the land, the notice must give all the other *data* that is required in a mineral application, by which parties may be put on inquiry as to the premises sought to be patented. The proof submitted with applications for claims of this kind must show clearly the character and the extent of the improvements upon the premises.

Inasmuch as the surveyor-general has no duty to perform in connection with the entry of a placer-claim of legal subdivisions, the proof of improvements must show their value to be not less than \$500, and that they were made by the applicant for patent or his grantors.

59. Applicants for patent to a placer-claim, who are also in possession of a known vein or lode included therein, must state in their application that the placer includes such vein or lode. The published and posted notices must also include such statement; and the vein or lode must be surveyed and marked upon the plat; the field-notes and plat giving the area of the lode-claim or claims and the area of the placer separately. If veins or lodes lying within a placer location are owned by other parties, the fact should be distinctly stated in the application for patent and in all the notices. It should be remembered that an application which omits to include an application for a known vein or lode therein must be construed as a conclusive declaration that the applicant has no right of possession to the vein or lode. Where there is no known lode or vein, the fact must appear by the affidavit of claimant and one or more witnesses.

60. When an adverse claim is filed to a placer application, the proceedings are the same as in the case of vein or lode-claims already described.

QUANTITY OF PLACER GROUND SUBJECT TO LOCATION.

61. By section 2330 it is declared that no location of a placer-claim made after July 9, 1870, shall exceed 160 acres for any one person or association of persons, which location shall conform to the United States surveys.

62. Section 2331 provides that all placer-mining claims located after May 10, 1872, shall conform as nearly as practicable with the United States system of public surveys and the subdivisions of such surveys, and no such locations shall include more than 20 acres for each individual claimant.

63. The foregoing provisions of law are construed to mean that after the 9th day of July, 1870, no location of a placer-claim can be made to exceed 160 acres, whatever may be the number of locators associated together, or whatever the local regulations of the district may allow; and that from and after May 10, 1872, no location made by an individual can exceed 20 acres, and no location made by an association of individuals can exceed 160 acres, which location of 160 acres cannot be made by a less number than eight *bona fide* locators; and no local laws or mining regulations can restrict a placer location to less than 20 acres, although the locator is not compelled to take so much.

64. The regulations hereinbefore given as to the manner of marking locations on the ground, and placing the same on record, must be observed in the case of placer locations, so far as the same are applicable; the law requiring, however, that where placer-claims are upon *surveyed* public lands the locations must hereafter be made to conform to legal subdivisions thereof as near as practicable.

65. With regard to the proofs necessary to establish the possessory right to a placer-claim, section 2332 provides that "where such person or association, they and their grantors, have held and worked their claims for a period equal to the time prescribed by the statute of limitations for mining-claims of the state or territory where the same may be situated, evidence of such possession and working of the claims for such period shall be sufficient to establish a right to a patent thereto under this chapter, in the absence of any adverse claim".

66. This provision of law will greatly lessen the burden of proof, more especially in the case of old claims located many years since, the records of which, in many cases, have been destroyed by fire, or lost in other ways during the lapse of time, but concerning the possessory right to which all controversy or litigation has long been settled.

67. When an applicant desires to make his proof of possessory right in accordance with this provision of law, you will not require him to produce evidence of location, copies of conveyances, or abstracts of title, as in other cases, but will require him to furnish a duly-certified copy of the statute of limitations of mining-claims for the state or territory, together with his sworn statement, giving a clear and succinct narration of the facts as to the origin of his title, and likewise as to the continuation of his possession of the mining ground covered by his application; the area thereof, the nature and extent of the mining that has been done thereon; whether there has been any opposition to his possession, or litigation with regard to his claim, and, if so, when the same ceased; whether such cessation was caused by compromise or by judicial decree, and any additional facts within the claimant's knowledge having a direct bearing upon his possession and *bona fides* which he may desire to submit in support of his claim.

68. There should likewise be filed a certificate, under seal of the court having jurisdiction of mining cases within the judicial district embracing the claim, that no suit or action of any character whatever involving the right of possession to any portion of the claim applied for is pending, and that there has been no litigation before said court affecting the title to said claim, or any part thereof, for a period equal to the time fixed by the statute of limitations for mining-claims in the state or territory as aforesaid, other than that which has been finally decided in favor of the claimant.

69. The claimant should support his narrative of facts relative to his possession, occupancy, and improvements by corroborative testimony of any disinterested person or persons of credibility who may be cognizant of the facts in the case and are capable of testifying understandingly in the premises.

70. It will be to the advantage of claimants to make their proofs as full and complete as practicable.

MILL-SITES.

71. Section 2337 provides that "where non-mineral land not contiguous to the vein or lode is used or occupied by the proprietor of such vein or lode for mining or milling purposes, such non-adjacent surface-ground may be embraced and included in an application for a patent for such vein or lode, and the same may be patented therewith, subject to the same preliminary requirements as to survey and notice as are applicable to veins or lodes; but no location hereafter made of such non-adjacent land shall exceed five acres, and payment for the same must be made at the same rate as fixed by this chapter for the superficies of the lode. The owner of a quartz-mill or reduction-works, not owning a mine in connection therewith, may also receive a patent for his mill-site, as provided in this section".

72. To avail themselves of this provision of law, parties holding the possessory right to a vein or lode, and to a piece of non-mineral land not contiguous thereto, for mining or milling purposes, not exceeding the quantity allowed for such purpose by section 2337 United States Revised Statutes, or prior laws, under which the land was appropriated, the proprietors of such vein or lode may file, in the proper land-office, their application for a patent,

under oath, in manner already set forth herein, which application, together with the plat and field-notes, may include, embrace, and describe, in addition to the vein or lode, such non-contiguous mill-site, and after due proceedings as to notice, etc., a patent will be issued conveying the same as one claim.

73. In making the survey in a case of this kind, the lode-claim should be described in the plat and field-notes as "Lot No. 37, A", and the mill-site as "Lot No. 37, B", or whatever may be its appropriate numerical designation; the course and distance from a corner of the mill-site to a corner of the lode-claim to be invariably given in such plat and field-notes, and a copy of the plat and notice of application for patent must be conspicuously posted upon the mill-site, as well as upon the vein or lode, for the statutory period of sixty days. In making the entry no separate receipt or certificate need be issued for the mill-site, but the whole area of both lode and mill-site will be embraced in one entry, the price being \$5 for each acre and fractional part of an acre embraced by such lode and mill-site claim.

74. In case the owner of a quartz-mill or reduction-works is not the owner or claimant of a vein or lode, the law permits him to make application therefor in the same manner prescribed herein for mining-claims, and after due notice and proceedings, in the absence of a valid adverse filing, to enter and receive a patent for his mill-site at said price per acre.

75. In every case there must be satisfactory proof that the land claimed as a mill-site is not mineral in character, which proof may, where the matter is unquestioned, consist of the sworn statement of the claimant, supported by that of one or more disinterested persons capable, from acquaintance with the land, to testify understandingly.

76. The law expressly limits mill-site locations made from and after its passage to *five acres*.

77. The registers and receivers will preserve an unbroken consecutive series of numbers for all mineral entries.

PROOF OF CITIZENSHIP OF MINING CLAIMANTS.

78. The proof necessary to establish the citizenship of applicants for mining patents must be made in the following manner: In case of an incorporated company, a certified copy of their charter or certificate of incorporation must be filed. In case of an association of persons unincorporated, the affidavit of their duly-authorized agent, made upon his own knowledge, or upon information and belief, setting forth the residence of each person forming such association, must be submitted. This affidavit must be accompanied by a power of attorney from the parties forming such association, authorizing the person who makes the affidavit of citizenship to act for them in the matter of their application for patent.

79. In case of an individual, or an association of individuals who do not appear by their duly-authorized agent, you will require the affidavit of each applicant, showing whether he is a native or naturalized citizen, when and where born, and his residence.

80. In case an applicant has declared his intention to become a citizen, or has been naturalized, his affidavit must show the date, place, and the court before which he declared his intention, or from which his certificate of citizenship issued, and present residence.

81. The affidavit of the claimant as to his citizenship may be taken before the register or receiver, or any other officer authorized to administer oaths within the land district. If citizenship is established by the testimony of disinterested persons, such testimony may be taken at any place before any person authorized to administer oaths, and whose official character is duly verified.

APPOINTMENT OF DEPUTY SURVEYORS OF MINING-CLAIMS—CHARGES FOR SURVEYS AND PUBLICATIONS—FEES OF REGISTERS AND RECEIVERS, ETC.

82. Section 2334 provides for the appointment of surveyors of mineral claims, authorizes the Commissioner of the General Land-Office to establish the rates to be charged for surveys and for newspaper publications, prescribes the fees allowed to the local officers for receiving and acting upon applications for mining patents and for adverse claims thereto, etc.

Under this authority of law the following rates have been established as the maximum charges for newspaper publications in mining cases:

(a) Where a daily newspaper is designated, the charge shall not exceed \$7 for each ten lines of space occupied, and where a weekly newspaper is designated as the medium of publication, \$5 for the same space will be allowed. Such charge shall be accepted as full payment for publication in each issue of the newspaper for the entire period required by law.

It is expected that these notices shall not be so abbreviated as to curtail the description essential to a perfect notice, and the said rates established upon the understanding that they are to be in the usual body-type used for advertisements.

(b) For the publication of citations in contests or hearings involving the character of lands, the charges shall not exceed \$8 for five publications in weekly newspapers or \$10 for publications in daily newspapers for thirty days.

83. The surveyors-general of the several districts will, in pursuance of said law, appoint in each land district as many *competent* deputies for the survey of mining-claims as may seek such appointment; it being distinctly

understood that all expenses of these notices and surveys are to be borne by the mining claimants and not by the United States; the system of making *deposits* for mineral surveys, as required by previous instructions, being hereby revoked as regards *field work*; the claimant having the option of employing *any* deputy surveyor within such district to do his work in the field.

84. With regard to the *plating* of the claim and other *office work* in the surveyor-general's office, that officer will make an estimate of the cost thereof, which amount the claimant will deposit with any assistant United States treasurer or designated depository, in favor of the United States treasurer, to be passed to the credit of the fund created by "individual depositors for surveys of the public lands", and file with the surveyor-general duplicate certificates of such deposit in the usual manner.

85. The surveyors-general will endeavor to appoint mineral deputy surveyors, so that one or more may be located in each mining district, for the greater convenience of miners.

86. The usual oaths will be required of these deputies and their assistants as to the correctness of each survey executed by them.

The duty of the deputy mineral surveyor ceases when he has executed the survey and returned the field-notes and preliminary plat thereof with his report to the surveyor-general. He will not be allowed to prepare for the mining claimant the papers in support of an application for patent, or otherwise perform the duties of an attorney before the land-office in connection with a mining-claim.

The surveyors-general and local land-officers are expected to report any infringement of this regulation to this office.

87. The law requires that each applicant shall file with the register and receiver a sworn statement of all charges and fees paid by him for publication of notice and for survey, together with all fees and money paid the register and receiver, which sworn statement is required to be transmitted to this office for the information of the Commissioner.

88. Should it appear that excessive or exorbitant charges have been made by any surveyor or any publisher, prompt action will be taken with the view of correcting the abuse.

89. The fees payable to the register and receiver for filing and acting upon applications for mineral-land patents are \$5 to each officer, to be paid by the applicant for patent at the time of filing, and the like sum of \$5 is payable to each officer by an adverse claimant at the time of filing his adverse claim.

90. All fees or charges under this law may be paid in United States currency.

91. The register and receiver will, at the close of each month, forward to this office an abstract of mining applications filed, and a register of receipts, accompanied with an abstract of mineral lands sold, and an abstract of adverse claims filed.

92. The fees and purchase money received by registers and receivers must be placed to the credit of the United States in the receiver's monthly and quarterly account, charging up in the disbursing account the sums to which the register and receiver may be respectively entitled as fees and commissions, with limitations in regard to the legal maximum.

HEARINGS TO ESTABLISH THE CHARACTER OF LANDS.

93. In every case where it becomes necessary under the law and existing instructions of this office that a hearing be held and testimony taken for the purpose of ascertaining the mineral or agricultural character of land, the local officers are directed to cause the evidence to be taken before a duly-qualified officer, whose office is located nearest the land in dispute, the distance to be computed by ordinary routes of travel.

Whenever the local office comes within this rule, the hearing will be held before the register and receiver.

It is intended to cause these hearings to be held, as far as practicable, in such manner as to afford the least inconvenience to persons interested. Should it appear, therefore, by written stipulation of all the parties that this purpose will best be subserved by the designation of any particular officer authorized to administer oaths within the land district in which the land in controversy is situated, the instructions herein may be departed from in accordance with such stipulation. Such deviation may also be allowed where the officer who would otherwise be designated is an interested party, or where, for other good reason, his selection would be improper.

When the evidence is taken before an officer other than the register and receiver, the record should be sealed up, the title of the case indorsed on the envelope, and the whole returned by mail or express to the register and receiver.

On the 27th April, 1880, in accordance with the directions of the Secretary of the Interior, this office revoked the withdrawals theretofore made, upon general information that vast tracts of public land were mineral in character, and instructed the local officers, in the absence of a specific allegation of the mineral character of land, to allow applications for agricultural entry thereof, upon due proof.

Hereafter the only tracts of public land that will be withheld from entry as agricultural land, on account of its mineral character, will be such as are returned by the surveyor-general as mineral; and even the presumption which is supported by such return may be overcome by testimony taken at a regular hearing.

94. Hearings to determine the character of land, as practically distinguished, are of two kinds:

1st. Where lands which are sought to be entered and patented as agricultural are alleged by affidavit to be mineral, or, when sought as mineral, their non-mineral character is alleged.

The proceedings relative to this class are in the nature of a contest between two or more known parties, and the testimony may be taken on personal notice of at least ten days, duly served on all parties, or, if they cannot be found, then by publication for thirty days in a newspaper of general circulation, to be designated by the register of the land-office as published nearest to the land in controversy. If publication is made in a weekly newspaper, the notice must be inserted in five consecutive weekly issues thereof.

2d. When lands are returned as mineral by the surveyor-general.

When such lands are sought to be entered as agricultural, notice must be given by publication for thirty days, as aforesaid.

95. All notices must describe the land, give the name and address of the claimant, the character of his claim, and the time, place, and purpose of the hearing.

Proof of service of notice, when personal, must consist of either acknowledgment of service indorsed on the citation (which is always desirable), or the affidavit of the party serving the same, giving date, place, and manner of service, indorsed as aforesaid.

Proof of publication must be the affidavit of the publisher of the newspaper, stating the period of publication, giving dates, stating whether in a daily or weekly issue, and a copy of the notice so published must be attached to, and form a part of, the affidavit.

Proof of posting on the claim must be made by the affidavits of two or more persons who state when and where the notice was posted; that it remained so posted during the prescribed period, giving dates, and a copy of the notice so posted must be attached to, and made a part of, the affidavits.

Proof of notice is indispensable to the regularity of proceedings, and must accompany the record in every case.

The expense of notice must in every case be paid by the parties thereto.

96. At the hearing there must be filed the affidavit of the publisher of the paper that the said notice was published for the required time, stating when and for how long such publication was made, a printed copy thereof to be attached and made a part of the affidavit.

97. At the hearing, the claimants and witnesses will be thoroughly examined with regard to the character of the land; whether the same has been thoroughly prospected; whether or not there exists within the tract or tracts claimed any lode or vein of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or other valuable deposit which has ever been claimed, located, recorded, or worked; whether such work is entirely abandoned, or whether occasionally resumed; if such lode does exist, by whom claimed, under what designation, and in which subdivision of the land it lies; whether any placer-mine or mines exist upon the land; if so, what is the character thereof—whether of the shallow-surface description, or of the deep cement, blue-lead, or gravel deposits; to what extent mining is carried on when water can be obtained, and what the facilities are for obtaining water for mining purposes; upon what particular ten-acre subdivisions mining has been done, and at what time the land was abandoned for mining purposes, if abandoned at all.

98. The testimony should also show the agricultural capacities of the land, what kind of crops are raised thereon, and the value thereof; the number of acres actually cultivated for crops of cereals or vegetables, and within which particular ten-acre subdivision such crops are raised; also which of these subdivisions embrace his improvements, giving in detail the extent and value of his improvements, such as house, barn, vineyard, orchard, fencing, etc.

99. It is thought that *bona fide* settlers upon lands really agricultural will be able to show, by a clear, logical, and succinct chain of evidence, that their claims are founded upon law and justice; while parties who have made little or no permanent agricultural improvements, and who only seek title for speculative purposes, on account of the mineral deposits known to themselves to be contained in the land, will be defeated in their intentions.

100. The testimony should be as full and complete as possible; and, in addition to the leading points indicated above, everything of importance bearing upon the question of the character of the land should be elicited at the hearing.

101. Where the testimony is taken before an officer who does not use a seal, other than the register and receiver, the official character of such officer must be attested by a clerk of a court of record, and the testimony transmitted to the register and receiver, who will thereupon examine and forward the same to this office, with their joint opinion as to the character of the land as shown by the testimony.

102. When the case comes before this office, such an award of the land will be made as the law and the facts may justify; and in cases where a survey is necessary to set apart the mineral from the agricultural land in any forty-acre tract, the necessary instructions will be issued to enable the agricultural claimant, *at his own expense*, to have the work done, at his option, either by United States deputy, county, or other local surveyor; the survey in such case may be executed in such manner as will segregate the portion of land actually containing the mine, and used as surface-ground for the convenient working thereof, from the remainder of the tract, which remainder will be patented to the agriculturist to whom the same may have been awarded, subject, however, to the condition that

the land may be entered upon by the proprietor of any vein or lode for which a patent has been issued by the United States, for the purpose of extracting and removing the ore from the same where found to penetrate or intersect the land so patented as agricultural, as stipulated by the mining act.

103. Such survey, when executed, must be properly sworn to by the surveyor, either before a notary public, officer of a court of record, or before the register or receiver, the deponent's character and credibility to be properly certified to by the officer administering the oath.

104. Upon the filing of the plat and field-notes of such survey, duly sworn to as aforesaid, you will transmit the same to the surveyor-general for his verification and approval; who, if he finds the work correctly performed, will properly mark out the same upon the original township plat in his office, and furnish authenticated copies of such plat and description both to the proper local land-office and to this office, to be affixed to the duplicate and, triplicate township plats respectively.

105. In cases where a portion of a forty-acre tract is awarded to an agricultural claimant, and he causes the segregation thereof from the mineral portion, as aforesaid, such agricultural portion will not be given a numerical designation, as in the case of surveyed mineral claims, but will simply be described as the "Fractional ——— quarter of the ——— quarter of section ———, in township ———, of range ———, meridian, containing ——— acres, the same being exclusive of the land adjudged to be mineral in said forty-acre tract".

106. The surveyor must correctly compute the area of such agricultural portion, which computation will be verified by the surveyor-general.

107. After the authenticated plat and field-notes of the survey have been received from the surveyor-general this office will issue the necessary order for the entry of the land, and in issuing the receiver's receipt and register's patent certificate you will invariably be governed by the description of the land given in the order from this office.

108. The fees for taking testimony and reducing the same to writing in these cases will have to be defrayed by the parties in interest. Where such testimony is taken before any other officer than the register and receiver, the register and receiver will be entitled to no fees.

109. If, upon a review of the testimony at this office, a ten-acre tract should be found to be properly mineral in character, that fact will be no bar to the execution of the settler's legal right to the remaining *non-mineral* portion of his claim, if contiguous.

110. No fear need be entertained that miners will be permitted to make entries of tracts ostensibly as mining-claims which are not mineral, simply for the purpose of obtaining possession and defrauding settlers out of their valuable agricultural improvements, it being almost an impossibility for such a fraud to be consummated under the laws and regulations applicable to obtaining patents for mining-claims.

111. The fact that a certain tract of land is decided upon testimony to be mineral in character is by no means equivalent to an award of the land to a miner. A miner is compelled by law to give sixty days' publication of notice, and posting of diagrams and notices, as a preliminary step; and then, before he can enter the land, he must show that the land yields mineral; that he is entitled to the possessory right thereto in virtue of compliance with local customs or rules of miners, or by virtue of the statute of limitations; that he or his grantors have expended, in actual labor and improvements, an amount of not less than five hundred dollars thereon, and that the claim is one in regard to which there is no controversy or opposing claim. After all these proofs are met, he is entitled to have a survey made at his own cost, where a survey is required, after which he can enter and pay for the land embraced by his claim.

112. Blank forms for proofs in mineral cases are not furnished by the General Land-Office.

AN ACT providing for the sale of saline lands. (Approved January 12, 1877. U. S. Stats., v. 19, p. 221.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever it shall be made appear to the register and the receiver of any land-office of the United States that any lands within their district are saline in character, it shall be the duty of said register and said receiver, under the regulation of the General Land-Office, to take testimony in reference to such lands to ascertain their true character, and to report the same to the General Land-Office; and if, upon such testimony, the Commissioner of the General Land-Office shall find that such lands are saline, and incapable of being purchased under any of the laws of the United States relative to the public domain, then, and in such case, such lands shall be offered for sale by public auction at the local land-office of the district in which the same shall be situated, under such regulations as shall be prescribed by the Commissioner of the General Land-Office, and sold to the highest bidder for cash at a price not less than one dollar and twenty-five cents per acre; and in case said lands fail to sell when so offered, then the same shall be subject to private sale at such land-office, for cash, at a price not less than one dollar and twenty-five cents per acre, in the same manner as other lands of the United States are sold: *Provided,* That the foregoing enactments shall not apply to any state or territory which has not had a grant of salines by act of Congress, nor to any state which may have had such a grant, until either the grant has been fully satisfied, or the right of selection thereunder has expired by efflux of time. But nothing in this act shall authorize the sale or

conveyance of any title other than such as the United States has, and the patents issued shall be in the form of a release and quit-claim of all title of the United States in such lands.

SEC. 2. That all executive proclamations relating to the sales of public lands shall be published in only one newspaper, the same to be printed and published in the state or territory where the lands are situated, and to be designated by the Secretary of the Interior.

General Land-Office instructions under saline act.

The act of Congress of January 12, 1877 (copy above), provides a mode of proceeding by which public lands indicated, by the field-notes of survey or otherwise, to be *saline in character* may be rendered subject to disposal.

Should *prima-facie* evidence that certain tracts are saline in character be filed with the register and receiver of the proper land district, they will designate a time for a hearing at their office, and give notice to all parties in interest, in order that they may have ample opportunity to be present with their witnesses.

At the hearing the witnesses will be thoroughly examined with regard to the true character of the land, and whether the same contains any known mines of gold, silver, cinnabar, lead, tin, copper, or other valuable mineral deposit, or any deposit of coal.

The witnesses will also be examined in regard to the extent of the saline deposits upon the given tracts, and whether the same are claimed by any person; if so, the names of the claimants and the extent of their improvements must be shown.

The testimony should also show the agricultural capacities of the land, what kind of crops, if any, have been raised thereon, and the value thereof. The testimony should be as full and complete as possible, and, in addition to the leading points indicated above, everything of importance bearing upon the question of the character of the land should be elicited at the hearing.

The register and receiver will transmit the testimony to this office with their joint opinion thereon. When the case comes before this office, such a decision will be rendered in regard to the character of the land as the law and the facts may warrant.

Should the given tracts be adjudged agricultural, they will be subject to disposal as such. Should the tracts be adjudged *saline lands*, the register and receiver will be instructed to offer the same for sale, after public notice, at the local land-office of the district in which the same shall be situated, and to sell said tract or tracts to the highest bidder for cash, at a price not less than \$1 25 per acre.

In case said lands fail to sell when so offered, the same will be subject to private sale at such land-office for cash, at a price not less than \$1 25 per acre, in the same manner as other public lands are sold, and already indicated herein.

The provisions of this act do not apply to any lands within the territories, nor to any within the states of Mississippi, Louisiana, Florida, California, and Nevada, none of which have had a grant of salines by act of Congress.

[Circular.]

General Land-Office instructions, under acts approved June 3, 1878, for the sale of timber-lands and removal of timber from public lands.

DEPARTMENT OF THE INTERIOR, GENERAL LAND-OFFICE,
Washington, D. C., August 15, 1878.

TO REGISTERS AND RECEIVERS OF UNITED STATES LAND-OFFICES:

GENTLEMEN: The following is a review of the provisions of the act entitled "An act for the sale of timber-lands in the states of California, Oregon, Nevada, and in Washington territory", approved June 3, 1878, and of the act approved same date, entitled "An act authorizing the citizens of Colorado, Nevada, and the territories to fell and remove timber on the public domain for mining and domestic purposes", so far as they relate to the privilege of cutting and removing timber from the public lands of the United States, the punishment therefor, or to the protection of "timber and of the undergrowth" growing upon the public lands. Copies of these acts are annexed.

The fourth section of the first-mentioned act provides that "it shall be unlawful to cut, or cause or procure to be cut, or wantonly destroy, any timber growing on any lands of the United States, in said states and territory, or remove, or cause to be removed, any timber from said public lands, with intent to export or dispose of the same; and no owner, master, or consignee of any vessel, or owner, director, or agent of any railroad, shall knowingly transport the same, or any lumber manufactured therefrom; any person violating the provisions of this section shall be guilty of a misdemeanor, and, on conviction, shall be fined for every such offense a sum not less than one hundred nor more than one thousand dollars". Provision is also embraced in said section that "the penalties herein provided shall not take effect until ninety days after the passage of this act". This section also contains a proviso, as follows: "And nothing herein contained shall prevent any miner or agriculturist from clearing his land in the ordinary working of his mining-claim, or preparing his farm for tillage, or from taking the timber necessary

to support his improvements, or the taking of timber for the use of the United States." The penalty provided for in this section takes effect after the first day of September, 1878, and applies to cutting for any purpose other than that mentioned in this proviso, such as the wanton destruction of timber, or its removal for export or disposal.

In the states and territory mentioned the effort of the executive will, in the future, be directed to the proper punishment of parties who may cut for purposes not authorized by the statute under consideration, and to the prevention, so far as practicable, of further trespass against the general law.

The fifth section of the act provides "that any person prosecuted in said states and territory for violating section two thousand four hundred and sixty-one of the Revised Statutes of the United States, who is not prosecuted for cutting timber for export from the United States, may be relieved from further prosecution and liability therefor upon payment, into the court wherein said action is pending, of the sum of \$2 50 per acre for all lands on which he shall have cut, or caused to be cut, timber, or removed, or caused to be removed, the same: *Provided*, That nothing contained in this section shall be construed as granting to the person hereby relieved the title to said lands for said payment; but he shall have the right to purchase the same upon the same terms and conditions as other persons, as provided hereinbefore in this act". This provision is applicable alike to cases pending at the time of the passage of the act, and to such cases as have been since or may hereafter be commenced.

Section 5 also contains provision that all moneys collected under this act shall be covered into the Treasury of the United States, and section 4751 of the Revised Statutes of the United States, which authorizes the penalties and forfeitures incurred under sections 2461 and 2462 of the Revised Statutes to be sued for, recovered, and accounted for, under the direction of the Secretary of the Navy, is repealed, so far as it relates to these states and territory.

By the provisions of the last-mentioned act "all citizens of the United States and other persons *bona fide* residents of the states of Colorado, Nevada, or either of the territories of New Mexico, Arizona, Utah, Wyoming, Dakota, Idaho, and Montana, and all other mineral districts of the United States, are authorized and permitted to fell and remove, for building, agricultural, mining, or other domestic purposes, any timber or other trees growing or being upon the public lands, said lands being mineral and not subject to entry under the existing laws of the United States, except for mineral entry in either of said states, territories, or districts of which such citizens may be, at the time, *bona fide* residents, subject to such rules and regulations as the Secretary of the Interior may prescribe for protection of the timber, and of the undergrowth growing upon such lands, and for other purposes".

The first section contains a provision that this act shall not extend to railroad corporations. A copy of the rules and regulations prescribed by the Secretary of the Interior for the protection of the timber and the undergrowth growing upon the mineral lands of the United States, in compliance with this provision, is printed herewith. The second section of this act makes it the duty of the register and receiver of any local land-office, in whose district any mineral land may be situated, to ascertain from time to time whether any timber is being cut or used upon any of the mineral lands, except for the purposes authorized by this act, within their respective land districts; and, if so, they are required to notify the Commissioner of the General Land-Office of that fact.

These reports will be made by the registers and receivers separately from those relating to any other subject, and will give the details of any violation of the provisions of this act.

The registers and receivers are allowed all necessary expenses incurred in making such proper examinations in regard to violations of the provisions of this act, which will be paid and allowed them in making up their next quarterly accounts.

The third section provides that "any person or persons who shall violate the provisions of this act, or any rules and regulations in pursuance thereof made by the Secretary of the Interior, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum not exceeding five hundred dollars, and to which may be added imprisonment for any term not exceeding six months".

When violations of the provisions of this act are brought to the attention of this office, either by report from the registers and receivers or by other persons who, as good citizens, may feel an interest in the protection of the public timber, if the facts are deemed sufficient to warrant prosecutions they will be brought to the attention of the Department of Justice, that instructions may be given to the proper district attorney to institute legal proceedings.

Rules and regulations prescribed by the Secretary of the Interior for the protection of the timber and of the undergrowth growing upon mineral lands of the United States, not subject to entry under existing laws of the United States, except for mineral entry, in the states of Colorado and Nevada, or in the territories of New Mexico, Arizona, Utah, Wyoming, Dakota, Idaho, or Montana, and in all other mineral districts of the United States, in compliance with the provisions of an act, approved June 3, 1878, entitled "An act authorizing the citizens of Colorado, Nevada, and the territories to fell and remove timber on the public domain for mining and domestic purposes".

With the view to and the intention of preserving the young timber and undergrowth upon the mineral lands of the United States, and to the end that the mountain sides may not be left denuded and barren of the timber and undergrowth necessary to prevent the precipitation of the rainfall and melting snows in floods upon the fertile,

arable lands in the valleys below, thus destroying the agricultural and pasturage interests of the mineral and mountainous portions of the country, I do hereby make and cause to be promulgated, by virtue of the power vested in me by the act entitled "An act authorizing the citizens of Colorado, Nevada, and the territories (excepting Washington territory) to fell and remove timber on the public domain for mining and domestic purposes", the following rules and regulations:

1. Section 2461, Revised Statutes, is still in force in all of the states and territories named in the bill, and its provisions may be enforced, as heretofore, against persons trespassing upon any other than lands which are in fact mineral, or have been withdrawn as such; and in all cases where trespasses are committed upon the timber upon public lands which are not mineral, the trespassers will be prosecuted under said section.

2. It shall be unlawful for any person to cut or remove, or cause to be cut or removed, from any of the mineral lands of the United States, any timber or undergrowth, of any kind whatsoever, less than 8 inches in diameter, and any person so offending shall be liable to be fined, in compliance with the provisions of the third section of said act, in any sum not exceeding \$500, and to which may be added imprisonment for any term not exceeding six months.

3. It shall be the duty of the register and receiver of each and every local land-office, in whose district any mineral land may be situated, to ascertain, by personal observation, or by sending persons to examine the same from time to time, whether any timber is being cut or used upon any such lands except for the purpose of building, or for agricultural, mining, or other domestic purposes, or whether any timber is cut in violation of these rules and regulations within their respective land districts; and if they shall ascertain that there is any such violation they shall immediately report the same to this office, giving in detail the facts, designating the location of the land, and, if surveyed, giving description by legal subdivisions, giving the names and residences of persons who have violated the provisions of the act above referred to, or the rules and regulations prescribed thereunder, and also the names and residences of witnesses by whom the facts of such violation can be proven.

4. All necessary expenses incurred by registers and receivers for traveling and other necessary expenses in making personal examination, or for the payment of the services and expenses of persons employed to make such examinations, will be paid and allowed to such registers and receivers in making up their next quarterly accounts after such expenses shall have been incurred.

Very respectfully,

J. A. WILLIAMSON,
Commissioner.

DEPARTMENT OF THE INTERIOR, August 16, 1878.

The foregoing is hereby approved.

C. SCHURZ,
Secretary.

AN ACT for the sale of timber-lands in the states of California, Oregon, Nevada, and in Washington territory. (Approved June 3, 1878. U. S. Stats., v. 20, p. 89.)

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

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

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

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

SEC. 4. That after the passage of this act it shall be unlawful to cut, or cause or procure to be cut, or wantonly destroy, any timber growing on any lands of the United States, in said states and territory, or remove, or cause to be removed, any timber from said public lands, with intent to export or dispose of the same; and no owner, master, or consignee of any vessel, or owner, director, or agent of any railroad, shall knowingly transport the same, or any lumber manufactured therefrom; and any person violating the provisions of this section shall be guilty of a misdemeanor, and, on conviction, shall be fined for every such offense a sum not less than one hundred nor more than one thousand dollars: *Provided*, That nothing herein contained shall prevent any miner or agriculturist from clearing his land in the ordinary working of his mining-claim, or preparing his farm for tillage, or from taking the timber necessary to support his improvements, or the taking of timber for the use of the United States; and the penalties herein provided shall not take effect until ninety days after the passage of this act.

SEC. 5. That any person prosecuted in said states and territory for violating section two thousand four hundred and sixty-one of the Revised Statutes of the United States who is not prosecuted for cutting timber for export from the United States, may be relieved from further prosecution and liability therefor upon payment, into the court wherein said action is pending, of the sum of two dollars and fifty cents per acre for all lands on which he shall have cut or caused to be cut timber, or removed or caused to be removed the same: *Provided*, That nothing contained in this section shall be construed as granting to the person hereby relieved the title to said lands for said payment; but he shall have the right to purchase the same upon the same terms and conditions as other persons, as provided hereinbefore in this act: *And further provided*, That all moneys collected under this act shall be covered into the Treasury of the United States. And section four thousand seven hundred and fifty-one of the Revised Statutes is hereby repealed, so far as it relates to the states and territory herein named.

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

AN ACT authorizing the citizens of Colorado, Nevada, and the territories to fell and remove timber on the public domain for mining and domestic purposes. (Approved June 3, 1878. U. S. Stats., v. 20, p. 88.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all citizens of the United States and other persons, *bona fide* residents of the state of Colorado or Nevada, or either of the territories of New Mexico, Arizona, Utah, Wyoming, Dakota, Idaho, or Montana, and all other mineral districts of the United States, shall be, and are hereby, authorized and permitted to fell and remove, for building, agricultural, mining, or other domestic purposes, any timber or other trees growing or being on the public lands, said lands being mineral, and not subject to entry under existing laws of the United States, except for mineral entry, in either of said states, territories, or districts of which such citizens or persons may be at the time *bona fide*

arable lands in the valleys below, thus destroying the agricultural and pasturage interests of the mineral and mountainous portions of the country, I do hereby make and cause to be promulgated, by virtue of the power vested in me by the act entitled "An act authorizing the citizens of Colorado, Nevada, and the territories (excepting Washington territory) to fell and remove timber on the public domain for mining and domestic purposes", the following rules and regulations:

1. Section 2461, Revised Statutes, is still in force in all of the states and territories named in the bill, and its provisions may be enforced, as heretofore, against persons trespassing upon any other than lands which are in fact mineral, or have been withdrawn as such; and in all cases where trespasses are committed upon the timber upon public lands which are not mineral, the trespassers will be prosecuted under said section.

2. It shall be unlawful for any person to cut or remove, or cause to be cut or removed, from any of the mineral lands of the United States, any timber or undergrowth, of any kind whatsoever, less than 8 inches in diameter, and any person so offending shall be liable to be fined, in compliance with the provisions of the third section of said act, in any sum not exceeding \$500, and to which may be added imprisonment for any term not exceeding six months.

3. It shall be the duty of the register and receiver of each and every local land-office, in whose district any mineral land may be situated, to ascertain, by personal observation, or by sending persons to examine the same from time to time, whether any timber is being cut or used upon any such lands except for the purpose of building, or for agricultural, mining, or other domestic purposes, or whether any timber is cut in violation of these rules and regulations within their respective land districts; and if they shall ascertain that there is any such violation they shall immediately report the same to this office, giving in detail the facts, designating the location of the land, and, if surveyed, giving description by legal subdivisions, giving the names and residences of persons who have violated the provisions of the act above referred to, or the rules and regulations prescribed thereunder, and also the names and residences of witnesses by whom the facts of such violation can be proven.

4. All necessary expenses incurred by registers and receivers for traveling and other necessary expenses in making personal examination, or for the payment of the services and expenses of persons employed to make such examinations, will be paid and allowed to such registers and receivers in making up their next quarterly accounts after such expenses shall have been incurred.

Very respectfully,

J. A. WILLIAMSON,
Commissioner.

DEPARTMENT OF THE INTERIOR, August 16, 1878.

The foregoing is hereby approved.

C. SCHURZ,
Secretary.

AN ACT for the sale of timber-lands in the states of California, Oregon, Nevada, and in Washington territory. (Approved June 3, 1878. U. S. Stats., v. 20, p. 89.)

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

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

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

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

SEC. 4. That after the passage of this act it shall be unlawful to cut, or cause or procure to be cut, or wantonly destroy, any timber growing on any lands of the United States, in said states and territory, or remove, or cause to be removed, any timber from said public lands, with intent to export or dispose of the same; and no owner, master, or consignee of any vessel, or owner, director, or agent of any railroad, shall knowingly transport the same, or any lumber manufactured therefrom; and any person violating the provisions of this section shall be guilty of a misdemeanor, and, on conviction, shall be fined for every such offense a sum not less than one hundred nor more than one thousand dollars: *Provided*, That nothing herein contained shall prevent any miner or agriculturist from clearing his land in the ordinary working of his mining-claim, or preparing his farm for tillage, or from taking the timber necessary to support his improvements, or the taking of timber for the use of the United States; and the penalties herein provided shall not take effect until ninety days after the passage of this act.

SEC. 5. That any person prosecuted in said states and territory for violating section two thousand four hundred and sixty-one of the Revised Statutes of the United States who is not prosecuted for cutting timber for export from the United States, may be relieved from further prosecution and liability therefor upon payment, into the court wherein said action is pending, of the sum of two dollars and fifty cents per acre for all lands on which he shall have cut or caused to be cut timber, or removed or caused to be removed the same: *Provided*, That nothing contained in this section shall be construed as granting to the person hereby relieved the title to said lands for said payment; but he shall have the right to purchase the same upon the same terms and conditions as other persons, as provided hereinbefore in this act: *And further provided*, That all moneys collected under this act shall be covered into the Treasury of the United States. And section four thousand seven hundred and fifty-one of the Revised Statutes is hereby repealed, so far as it relates to the states and territory herein named.

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

AN ACT authorizing the citizens of Colorado, Nevada, and the territories to fell and remove timber on the public domain for mining and domestic purposes. (Approved June 3, 1878. U. S. Stats., v. 20, p. 88.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all citizens of the United States and other persons, *bona fide* residents of the state of Colorado or Nevada, or either of the territories of New Mexico, Arizona, Utah, Wyoming, Dakota, Idaho, or Montana, and all other mineral districts of the United States, shall be, and are hereby, authorized and permitted to fell and remove, for building, agricultural, mining, or other domestic purposes, any timber or other trees growing or being on the public lands, said lands being mineral, and not subject to entry under existing laws of the United States, except for mineral entry, in either of said states, territories, or districts of which such citizens or persons may be at the time *bona fide*

residents, subject to such rules and regulations as the Secretary of the Interior may prescribe for the protection of the timber and of the undergrowth growing upon such lands, and for other purposes: *Provided*, The provisions of this act shall not extend to railroad corporations.

SEC. 2. That it shall be the duty of the register and the receiver of any local land-office, in whose district any mineral land may be situated, to ascertain from time to time whether any timber is being cut or used upon any such lands, except for the purposes authorized by this act, within their respective land districts; and if so, they shall immediately notify the Commissioner of the General Land-Office of that fact; and all necessary expenses incurred in making such proper examinations shall be paid and allowed such register and receiver in making up their next quarterly accounts.

SEC. 3. Any person or persons who shall violate the provisions of this act, or any rules and regulations in pursuance thereof made by the Secretary of the Interior, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not exceeding five hundred dollars, and to which may be added imprisonment for any term not exceeding six months.

Supplemental official regulations under the two last-named acts.

DEPARTMENT OF THE INTERIOR, GENERAL LAND-OFFICE,
Washington, D. C., June 30, 1882.

To REGISTERS AND RECEIVERS OF UNITED STATES LAND-OFFICES,
and to *Special Timber Agents of the General Land-Office* :

GENTLEMEN: The rules and regulations heretofore prescribed by this department under act of Congress approved June 3, 1878, entitled "An act authorizing the citizens of Colorado, Nevada, and the territories to fell and remove timber from the public domain for mining and domestic purposes", are hereby modified as follows:

All citizens and *bona fide* residents of the states and territories mentioned therein are authorized to fell and remove, or employ others to fell and remove, or to purchase from others who fell and remove, any timber growing or being upon the public mineral lands in said states or territories: *Provided*—

- 1st. That the same is not for export from the state or territory where cut;
- 2d. That no timber less than 8 inches in diameter is cut or removed;
- 3d. That it is not wantonly wasted or destroyed.

The above regulations apply also to right-of-way railroad companies procuring timber for construction purposes from the public lands under the act of March 3, 1875.

Every right-of-way railroad company, however, obtaining public timber under said act, whether from lands mineral or non-mineral in character, must, in addition, observe the following regulations:

1st. The company must appoint some one or more persons as its agent or agents for the procurement of such material; such appointment must be in writing; a copy of the same must be filed in this office; and such person or persons so appointed must be borne upon the pay-rolls as employed by the company, in order to be regarded by this office as the agent or agents of the company.

2d. In the procurement of timber or other material for construction, each and every person employed by or under said company or its agents must also be borne upon the monthly pay-rolls of the company, and be paid as other regular employes of said company.

3d. No public timber is permitted to be taken or used in the *repair* or *improvement* of such road after the original construction of the same.

4th. No public timber is permitted to be taken and used as *fuel* by any railroad.

As the rules and regulations in relation to the cutting and removing of timber from the public mineral lands are modified as hereinbefore stated, all agents and officers of this department are hereby instructed that in reporting cases of alleged trespass they will be governed in their report, upon the mineral or non-mineral character of the land, by the following general rule:

Where the lands are situated in districts of country that are mountainous, interspersed with gulches and narrow valleys, and minerals are known to exist at different points therein, such lands, in the absence of proof to the contrary, will be held to be mineral in character; but where there are extensive valleys, plains, or mountain ranges, and no known minerals exist, the land may be considered and treated as non-mineral.

Said agents and officers are further instructed that hereafter, in forwarding reports in cases of timber trespass, a simple statement to the effect that the lands in question are mineral or non-mineral in character will not be regarded by this office as sufficient proof; evidence establishing that fact must in all cases accompany and form a part of said report.

In investigating cases of timber trespass in *mineral* districts, said agents and officers will be careful hereafter to report only those cases in which there has been a violation of the rules and regulations above specified.

All rules and regulations heretofore prescribed by this department in cases of timber trespass upon public lands non-mineral in character remain in force.

All rules and regulations or instructions heretofore prescribed under said act of June 3, 1878, by this department, inconsistent with the provisions contained in this circular, are hereby rescinded.

Very respectfully,

N. C. McFARLAND,
Commissioner.

H. M. TELLER,
Secretary.

Approved:

JULY 1, 1882.

TITLE XI.—CHAP. 1. (U. S. Rev. Stats., p. 74.)

SECTION 437. There shall be at the seat of government an executive department to be known as the Department of the Interior, and a Secretary of the Interior, who shall be the head thereof.

* * * * *

CHAP. 2.

SEC. 441. The Secretary of the Interior is charged with the supervision of public business relating to the following subjects:

* * * * *

Second. The public lands, including mines.

CHAP. 3.

SEC. 446. There shall be in the Department of the Interior a Commissioner of the General Land-Office, who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be entitled to a salary of four thousand dollars a year.

SEC. 447. There shall be in the General Land-Office an officer called the recorder of the General Land-Office, who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be entitled to a salary of two thousand dollars a year.

* * * * *

SEC. 450. The President is authorized to appoint, from time to time, by and with the advice and consent of the Senate, a secretary, at a salary of one thousand five hundred dollars a year, whose duty it shall be, under the direction of the President, to sign, in his name, and for him, all patents for land sold or granted under the authority of the United States.

* * * * *

SEC. 453. The Commissioner of the General Land-Office shall perform, under the direction of the Secretary of the Interior, all executive duties appertaining to the surveying and sale of the public lands of the United States, or in anywise respecting such public lands, and, also, such as relate to private claims of land, and the issuing of patents for all grants of land under the authority of the government.

SEC. 454. The Commissioner of the General Land-Office shall retain the charge of the seal heretofore adopted for the office, which may continue to be used, and of the records, books, papers, and other property appertaining to the office.

* * * * *

SEC. 456. All returns relative to the public lands shall be made to the Commissioner of the General Land-Office.

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SEC. 458. All patents issuing from the General Land-Office shall be issued in the name of the United States, and be signed by the President, and countersigned by the recorder of the General Land-Office, and shall be recorded in the office, in books to be kept for the purpose.

SEC. 459. It shall be the duty of the recorder of the General Land-Office, in pursuance of instructions from the Commissioner, to certify and affix the seal of the office to all patents for public lands, and to attend to the correct engrossing, recording, and transmission of such patents. * * *

TITLE XXXII.—THE PUBLIC LANDS. (U. S. Rev. Stats., p. 388.)

CHAP. 1.—*Surveyors and deputy surveyors.*

SEC. 2207. There shall be appointed by the President, by and with the advice and consent of the Senate, a surveyor-general for the states and territories herein named, embracing, respectively, one surveying district, namely: Louisiana, Florida, Minnesota, Kansas,* California, Nevada, Oregon, Nebraska, and Iowa, Dakota, Colorado, New Mexico, Idaho, Washington, Montana, Utah, Wyoming, Arizona.

* * * * *

*NOTE.—The office of surveyor-general of Kansas was abolished 30th September, 1876, by act of July 31, 1876. (Sundry civil appropriation act, U. S. Stats., v. 19, p. 121.)

PRECIOUS METALS.

SEC. 2223. Every surveyor-general shall engage a sufficient number of skillful surveyors as his deputies, to whom he is authorized to administer the necessary oaths upon their appointments. He shall have authority to frame regulations for their direction, not inconsistent with law or the instructions of the General Land-Office, and to remove them for negligence or misconduct in office.

CHAP. 2.—Registers and receivers.

SEC. 2234. There shall be appointed by the President, by and with the advice and consent of the Senate, a register of the land-office and a receiver of public moneys for each land district established by law.

SEC. 2238. Registers and receivers, in addition to their salaries, shall be allowed each the following fees and commissions, namely:

Ninth. A fee of five dollars for filing and acting upon each application for patent or adverse claim filed for mineral lands, to be paid by the respective parties.

Tenth. Registers and receivers are allowed, jointly, at the rate of fifteen cents per hundred words for testimony reduced by them to writing for claimants in establishing pre-emption and homestead rights.

Eleventh. A like fee as provided in the preceding subdivision, when such writing is done in the land-office, in establishing claims for mineral lands.

Twelfth. Registers and receivers in California, Oregon, Washington, Nevada, Colorado, Idaho, New Mexico, Arizona, Utah, Wyoming, and Montana are each entitled to collect and receive fifty per centum on the fees and commissions provided for in the first, third, and tenth subdivisions of this section.

CHAP. 4.—Pre-emptions.

SEC. 2257. All lands belonging to the United States, to which the Indian title has been, or may hereafter be, extinguished, shall be subject to the right of pre-emption under the conditions, restrictions, and stipulations provided by law.

SEC. 2258. The following classes of lands, unless otherwise specially provided for by law, shall not be subject to the rights of pre-emption, to wit:

Fourth. Lands on which are situated any known salines or mines.

CHAP. 5.—Homesteads.

SEC. 2289. Every person who is the head of a family, or who has arrived at the age of twenty-one years and is a citizen of the United States, or who has filed his declaration of intention to become such, as required by the naturalization laws, shall be entitled to enter one-quarter section or a less quantity of unappropriated public lands upon which such person may have filed a pre-emption claim, or which may, at the time the application is made, be subject to pre-emption.

CHAP. 8.—Reservation and sale of town-sites on the public lands.

SEC. 2386. Where mineral veins are possessed, which possession is recognized by local authority, and to the extent so possessed and recognized, the title to town lots to be acquired shall be subject to such recognized possession and the necessary use thereof; but nothing contained in this section shall be so construed as to recognize any color of title in possessors for mining purposes as against the United States.

SEC. 2392. No title shall be acquired under the foregoing provisions of this chapter to any mine of gold, silver, cinnabar, or copper; or to any valid mining-claim or possession held under existing laws.

CHAP. 9.—Survey of the public lands.

SEC. 2406. There shall be no further geological survey by the government, unless hereafter authorized by law. The public surveys shall extend over all mineral lands; and all subdividing of surveyed lands into lots less than one hundred and sixty acres may be done by county and local surveyors at the expense of claimants; but nothing in this section contained shall require the survey of waste or useless lands.

CHAP. 11.—The public lands.

SEC. 2471. Every person who falsely makes, alters, forges, or counterfeits, or causes or procures to be falsely made, altered, forged, or counterfeited, or willingly aids and assists in the false making, altering, forging, or

counterfeiting any petition, certificate, order, report, decree, concession, denouncement, deed, patent, confirmation, diseño, map, expediente or part of an expediente, or any title-paper, or evidence of right, title, or claim to lands, mines, or minerals in California, or any instrument of writing whatever in relation to lands or mines or minerals in the state of California, for the purpose of setting up or establishing against the United States any claim, right, or title to lands, mines, or minerals within the state of California, or for the purpose of enabling any person to set up or establish any such claim; and every person who, for such purpose, utters or publishes as true and genuine any such false, forged, altered, or counterfeited petition, certificate, order, report, decree, concession, denouncement, deed, patent, confirmation, diseño, map, expediente or part of an expediente, title-paper, evidence of right, title, or claim to lands or mines or minerals in the state of California, or any instrument of writing whatever in relation to lands or mines or minerals in the state of California, shall be punishable by imprisonment at hard labor not less than three years and not more than ten years, and by a fine of not more than ten thousand dollars. (18 May, 1858, c. 40, s. 1, v. 11, p. 290.)

SEC. 2472. Every person who makes, or causes or procures to be made, or willingly aids and assists in making any falsely-dated petition, certificate, order, report, decree, concession, denouncement, deed, patent, confirmation, diseño, map, expediente or part of an expediente, or any title-paper, or written evidence of right, title, or claim, under Mexican authority, to any lands, mines, or minerals in the state of California, or any instrument of writing in relation to lands or mines or minerals in the state of California, having a false date, or falsely purporting to be made by any Mexican officer or authority prior to the seventh day of July, eighteen hundred and forty-six, for the purpose of setting up or establishing any claim against the United States to lands or mines or minerals within the state of California, or of enabling any person to set up or establish any such claim; and every person who signs his name as governor, secretary, or other public officer acting under Mexican authority, to any instrument of writing falsely purporting to be a grant, concession, or denouncement under Mexican authority, and during its existence in California, of lands, mines, or minerals, or falsely purporting to be an informe, report, record, confirmation, or other proceeding on an application for a grant, concession, or denouncement under Mexican authority, during its existence in California, of lands, mines, or minerals, shall be punishable as prescribed in the preceding section. (18 May, 1858, c. 40, s. 2, v. 11, p. 291.)

SEC. 2473. Every person who, for the purpose of setting up or establishing any claim against the United States to lands, mines, or minerals, within the state of California, presents, or causes, or procures to be presented, before any court, judge, commission, or commissioner, or other officer of the United States, any false, forged, altered, or counterfeited petition, certificate, order, report, decree, concession, denouncement, deed, patent, diseño, map, expediente or part of an expediente, title-paper, or written evidence of right, title, or claim to lands, mines, or minerals in the state of California, knowing the same to be false, forged, altered, or counterfeited, or any falsely-dated petition, certificate, order, report, decree, concession, denouncement, deed, patent, confirmation, diseño, map, expediente or part of an expediente, title-paper, or written evidence of right, title, or claim to lands, mines, or minerals in California, knowing the same to be falsely dated; and every person who prosecutes in any court of the United States, by appeal or otherwise, any claim against the United States for lands, mines, or minerals in California, which claim is founded upon, or evidenced by, any petition, certificate, order, report, decree, concession, denouncement, deed, patent, confirmation, diseño, map, expediente or part of an expediente, title-paper, or written evidence of right, title, or claim, which has been forged, altered, counterfeited, or falsely dated, knowing the same to be forged, altered, counterfeited, or falsely dated, shall be punishable as prescribed in section twenty-four hundred and seventy-one.

TITLE XIII.—CHAP. 17.—THE JUDICIARY. (U. S. Rev. Stats., p. 172.)

* * * * *

SECTION 910. No possessory action between persons in any court of the United States for the recovery of any mining title, or for damages to any such title, shall be affected by the fact that the paramount title to the land in which such mines lie is in the United States, but each case shall be adjudged by the law of possession.

AN ACT making appropriations for the legislative, executive, and judicial expenses of the government for the fiscal year ending June thirtieth, eighteen hundred and seventy-nine, and for other purposes. (Approved June 19, 1878. U. S. Stats., v. 20, p. 178.)

* * * * *

EXECUTIVE.

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And the duties prescribed by section of the Revised Statutes numbered four hundred and fifty shall devolve upon and be discharged by one of the executive clerks, to be designated by the President for that purpose.

AN ACT making appropriations for sundry civil expenses of the government for the fiscal year ending June thirtieth, eighteen hundred and eighty, and for other purposes. (Approved March 3, 1879. U. S. Stats., v. 20, p. 394.)

GEOLOGICAL SURVEY.

For the salary of the director of the geological survey, which office is hereby established under the Interior Department, who shall be appointed by the President, by and with the advice and consent of the Senate, six thousand dollars: *Provided*, That this officer shall have the direction of the geological survey and the classification of the public lands and examination of the geological structure, mineral resources, and products of the national domain. And that the director and members of the geological survey shall have no personal or private interests in the lands or mineral wealth of the region under survey, and shall execute no surveys or examinations for private parties or corporations; and the geological and geographical survey of the territories, and the geographical and geological survey of the Rocky mountain region, under the Department of the Interior, and the geographical surveys west of the one hundredth meridian, under the War Department, are hereby discontinued, to take effect on the thirtieth day of June, eighteen hundred and seventy-nine. And all collections of rocks, minerals, soils, fossils, and objects of natural history, archæology, and ethnology made by the coast and interior survey, the geological survey, or by any other parties, for the government of the United States, when no longer needed for investigations in progress, shall be deposited in the National Museum.

* * * * *
The publications of the geological survey shall consist of the annual report of operations, geological and economic maps illustrating the resources and classification of the lands, and reports upon general and economic geology and paleontology. The annual report of operations of the geological survey shall accompany the annual report of the Secretary of the Interior. All special memoirs and reports of said survey shall be issued in uniform quarto series if deemed necessary by the director, but otherwise in ordinary octavos. Three thousand copies of each shall be published for scientific exchanges, and for sale at the price of publication, and all literary and cartographic materials received in exchange, shall be the property of the United States and form a part of the library of the organization; and the money resulting from the sale of such publications shall be covered into the Treasury of the United States, under the direction of the Secretary of the Interior.

DEPARTMENT OF THE INTERIOR, GENERAL LAND-OFFICE,
Washington, D. C., May 9, 1882.

TO REGISTERS AND RECEIVERS, UNITED STATES DISTRICT LAND-OFFICES:

GENTLEMEN: Your attention is directed to the provisions of the following act of Congress, approved April 26, 1882:

AN ACT to amend section twenty-three hundred and twenty-six of the Revised Statutes, in regard to mineral lands, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the adverse claim required by section twenty-three hundred and twenty-six of the Revised Statutes may be verified by the oath of any duly authorized agent or attorney-in-fact of the adverse claimant cognizant of the facts stated; and the adverse claimant, if residing or at the time being beyond the limits of the district wherein the claim is situated, may make oath to the adverse claim before the clerk of any court of record of the United States or the state or territory where the adverse claimant may then be, or before any notary public of such state or territory.

SEC. 2. That applicants for mineral patents, if residing beyond the limits of the district wherein the claim is situated, may make any oath or affidavit required for proof of citizenship before the clerk of any court of record, or before any notary public of any state or territory.

1. It will be observed that the act is not retroactive, and hence cannot affect proceedings had prior to its approval; where citizenship, however, has not been proven, it may be established as provided by section 2 of this act.

2. Where an agent or attorney-in-fact verifies the adverse claim, he must distinctly swear that he is such agent or attorney, and accompany his affidavit by proof thereof.

3. The agent or attorney-in-fact must make the affidavit in verification of the adverse claim within the land district where the claim is situated.

Very respectfully,

N. C. McFARLAND,
Commissioner.

DEPARTMENT OF THE INTERIOR, May 26, 1882.

Approved:

H. M. TELLER,
Secretary.

Decision of July 6, 1882, by Secretary of the Interior, relative to town-sites and mineral locations on the same land.

RICO TOWN-SITE CASE.

1. The location of a mill-site claim upon the public land of the United States does not operate as an appropriation thereof so as to reserve it from town-site location.
2. Burden of proof rests with the protestants. They should *show* location, title, and compliance with law as regards both lode and mill-site, as would be required in a court of justice to establish such claim.
3. Town-sites may be located on mineral land. The question of the relative legal rights of the town-site and the mineral claimant as to occupation or possessory title to the surface must be left to courts of competent jurisdiction to settle.
4. The practice of the department of inserting in town-site and mineral-land patents mutual clauses of reservation adhered to.

DEPARTMENT OF THE INTERIOR,
Washington, July 6, 1882.

THE COMMISSIONER OF THE GENERAL LAND-OFFICE:

SIR: I have considered the case of the "Gulch", the "Independent", and the "Maid of Athens" Mill-sites *v.* The Town-site of Rico, in the Lake City land district, Colorado, on appeal by the latter from your decision of March 4, 1882, holding its entry for cancellation.

The mill-sites are separate and independent claims; but since all the protests filed by mill-site claimants against issuance of patent for the town-site involve the same questions, they are considered as one case. They were located, respectively, in April, May, and July, 1879, and the petition for incorporation of the town-site was filed in September following.

Your decision held that the land was non-mineral; that the mill-sites were duly located and recorded in connection with lode-claims by the proprietors thereof, whereby the land was legally appropriated; and hence that their prior location precluded location of the town-site.

I think this was erroneous.

Mill-sites are recognized by section 2337, Revised Statutes, where the land is non-mineral, and is used by the proprietor of a vein or lode, and may be included in an application for patent for such vein or lode, and be patented therewith, subject to the same preliminary requirements as to survey and notice as are applicable to veins or lodes; and, second, the owner of a quartz-mill or reduction-works, not owning a mine in connection therewith, may also receive a patent for his mill-site, as provided in the section.

The present applications are by virtue of the first provision, under which there *can be no mill-site unless there is a lode or vein to which it may attach.* The mill-site claimants have not applied for a patent, and there is no evidence of a lode, vein, or claimants therefor, except as appears in the protest of the mill-site claimants against issue of patent to the town-site.

The protestants, seeking to have the mill-sites excluded from the entry of the town-site, must first establish a title to the mill-sites. To do this they must show that it is non-mineral in character. I do not think that this is done. On the contrary, it appears to be conclusively proven that such is not the character of the supposed mill-sites. It is within a mineral belt, and not less than sixteen lode-claims are marked on the map of the town. The proof is uncontradicted that mineral had been found within the town-site and on some portions of the mill-site. I do not think it worth while to discuss at length the character of the testimony on that point. The town-site entry had been made. The protestants said that it was in fraud of their rights. The burden of proof was then clearly on them, and they failed to show that the land was of such a character as authorized the location of it for mill-site purposes. But, in addition to having failed to show that the land might have been taken as a mill-site, they failed to show that they did so take in accordance with the law governing such location. It is true that the statute is silent as to the location of mill-sites; but it is not unreasonable to suppose such location must be made substantially as that of a mining-claim. Such mill-site location must be made by the owner or proprietor of a lode or a quartz-mill or reduction-works. The letter of the statute would seem to require that such mill-site ought to be used in connection with such lode for mining or milling purposes before a legal location can be made; it is not, however, necessary to determine that question in this case, for there is no proof that the protestants were the proprietors of any vein or lode. The protestants did introduce location certificates of lodes, and in connection with such lodes the mill-site locations; but there is no evidence that the lodes were taken in accordance with law; it does not appear that the locator complied with the local laws of the United States statutes concerning such location and the development of such lodes. Proof of location and compliance with law concerning such appropriation ought to be the same that would be required in a court of justice to establish a title to such lode-claim and mill-site; in this the protestants have signally failed. Much has been said with regard to the good faith of the protestants as to the location of the mill-sites, and it is charged that such location was not made for mill-site purposes, but to secure the same for town-site purposes. This, I think, is quite apparent from the evidence. Still, if there had been a strict compliance with the law in such location, I should not feel justified to reject the evidence of legal location on this ground alone. But such lack of faith may well be considered in determining whether the protestants ought to be further heard in support of their title. I think, as full opportunity was given to establish the

title, there ought to be no further delay in this matter, and the patent for the town-site ought to issue to the proper authorities, if their proceedings have been regular.

It has been urged that if this town-site is on mineral land the entry ought to be canceled. That a town-site may be located on mineral land cannot now be questioned. What are the rights of lot owners and mineral claimants within the boundaries of such town-site after entry is a somewhat difficult question. Section 2386 provides as follows:

Where mineral veins are possessed, which possession is recognized by local authority, and to the extent so possessed and recognized, the title to town lots to be acquired shall be subject to such recognized possession and the necessary use thereof; but nothing contained in this section shall be so construed as to recognize any color of title in possessors for mining purposes as against the United States.

This section, taken in connection with section 2392, which is as follows, "No title shall be acquired under the foregoing provisions of this chapter to any mine of gold, silver, cinnabar, or copper, or to any valid mining-claim or possession held under existing laws," must protect the mineral claimant in his possession of the vein or lode, together with the surface as recognized by law. Such lots are declared to be taken burdened with the mineral claimant's rights. Now, what are the rights of the mineral claimant to the surface of the ground held in connection with his lode or mine? Section 2322 of the Revised Statutes contains the following:

The locators of all mining locations heretofore made, or which shall hereafter be made, on any mineral vein, lode, or ledge situated on the public domain, their heirs or assigns, where no adverse claim exists on the tenth day of May, eighteen hundred and seventy-two, so long as they comply with the laws of the United States, and with state, territorial, and local regulations not in conflict with the laws of the United States governing their possessory title, shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations, and of all veins, lodes, and ledges throughout their entire depth, the top or apex of which lies inside of such surface-lines extended downward vertically, although such veins, lodes, or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side-lines of such surface locations.

It has been claimed that by virtue of this section the town-lot claimant, holding under a patent issued to the town, takes no title to the surface of a lode; but we must take all the provisions of the statute together. It is provided in section 2386 that the title to town lots to be acquired shall be subject to such recognized possession and the *necessary use thereof*. Now, what is the necessary use of such recognized possession? The town-site claimant takes it for building purposes; the mineral claimant for mining purposes. The mineral claimant may desire to use the ground for the purpose of sinking a shaft to his lode. He may want it for the erection of the buildings required in carrying on his mining enterprise, for reduction-works, or for a mill-site; if he does, the town-lot claimant's rights are subordinated to his. The *quasi* title of the lot owner must give way to the title of the mineral claimant in all such cases; that is, the "necessary use thereof" for mining purposes.

Whether the lot owner does take his lot subject to the rights of the mineral claimant as to surface must depend on priority of occupation. If a portion of the public lands have been settled upon and occupied by a town-site, such occupation is a lawful one. (Chapter 8, Revised Statutes of the United States.) It is not to be supposed that the recognized right of such lot owner is to be destroyed by the subsequent discovery of a mineral vein that may have its course through such lot. Large and flourishing towns have been built on the mineral lands of the United States, valuable buildings erected on such town lots, long before the entry of such town-sites. The rights of the occupants are fully recognized by the custom and usages of the country, as well as by the statute, and provision is made for the completion of the title by patent to the corporation authorities or to the county judge in trust for such lot owners. There ought to be no conflict between the lot owner and the mineral claimant whose vein enters a town-site; and the respective rights are clearly defined both by law and custom. If the mineral claimant is in possession of a mineral vein, his possession is recognized as a valid one to the full extent of his *possession* and the necessary use thereof. If at the time of taking of the town lots the mineral claimant's rights exist, the lot owner will take it subject to the rights of such mineral claimant, as before stated; and although the lot owner may hold his title under the corporation authorities or county judge, having received such patent, still the title of the mineral claimant is not different from what it was before the issue of such patent, and the question must still be determined, whether his title was acquired subsequently or previously to the inception of the lot owner's claim.

All such questions must be left to courts of competent jurisdiction to settle. This department cannot, in the nature of things, be called on to adjudicate such conflicting claims. Questions of priority of occupancy, as well as the question what is the necessary use of such surface by the mineral claimant, ought to be submitted to a jury of the neighborhood where such controversies arise; and such appears to have been the legislative intent with reference to all conflicting claims concerning mineral and town-site rights. It has been the custom in the department to insert in the town-site patents a clause reserving all the mineral and mineral rights to the government, or to the legal occupant thereof, as the case might be; and to insert in the mineral claimant's patent a reservation reserving all town-site rights. Whether the language employed heretofore is the most exact that might have been employed I do not consider of any importance, for the legal effect of the patent is the same with or without the reservation.

The statute defines and determines the rights of the different claimants; and if the patent contains a reservation broader than that of the statute, it is a nullity so far as it exceeds the statutory restriction; and if it contains a reservation not authorized by law, such reservation is a nullity. (See *Stark v. Starrs*, 6 Wallace, 402.)

The custom of inserting such reservation in the patent has the sanction of long practice, as well as the approval of the courts, and is in the interest of peace and good order, and ought not now to be departed from; therefore, the patent in this, and all other cases of like character, will be issued with the usual reservation; and should the owners of the mineral veins within the town-site make application for patent to such mineral veins, they will receive patents therefor, with the proper and usual reservation as to the rights of the lot owners within such town-site.

For these reasons your decision is reversed, and the entry of the town-site will remain intact.

The papers transmitted with your letter of May 10, 1882, are herewith returned.

Very respectfully,

H. M. TELLER,
Secretary.