IN THE SENATE OF THE UNITED STATES.

APRIL 3, 1882.—Ordered to be printed.

Mr. MORGAN, from the Committee on Public Lands, submitted the following

REPORT:

[To accompany bill S. 1619.]

The Committee on Public Lands, to whom was referred the following resolutions—

Resolved, That the resolution of the Senate adopted on the 27th day of October, 1881, authorizing the Committee on Public Lands to investigate the condition of the General Land Office with a view to providing better accommodations for the officers and employés thereof, and a proper grading of the clerks, and for the preservation of the books and papers, be revived and continued until the further action of the Senate.

Attest:

F. E. SHOBER,
Acting Secretary.

On motion by Mr. Blair:

Resolved, That the Committee on Public Lands be instructed to inquire into the administration of the land laws and system, and their operation in the practical disposition of the public lands, and any abuses and hardships which may exist in their administration, and to report to the Senate any facts and recommendations with reference to the same, which, in their opinion, the public interests may require.

Attest:

F. E. SHOBER,
Acting Secretary.

have had the same under consideration, and respectfully report their recommendations thereupon; and the evidence taken by order of the Senate.

The evidence taken under these resolutions includes the statements of the Commissioner of the General Land Office, and the depositions of the chief clerk, the law clerk, the head of each division, and of the chief clerk of the Interior Department.

From these statements a full understanding of the actual condition of the General Land Office, and of the Interior Department building can be obtained. The committee agree that the Interior Department edifice is incapable of properly accommodating the Patent Office, the Bureau of Indian Affairs, and the General Land Office, and that these difficulties and embarrassments are increasing rapidly.

The want of sufficient room, light, and ventilation is very damaging to the health of the employés, and greatly delays them in their work, causing a serious loss of time and efficiency in their service. It also exposes the most valuable papers and records to theft, and to great danger from fire, and has already caused the destruction of many of them by mold and decay, and by the ravages of insects and vermin.

Mr. Lockwood, chief clerk of the Interior Department, has the supervision of the entire building. His entire deposition is referred to as presenting in condensed form a general view of the condition of each bureau in the department.

The statements of Mr. Lockwood are supported in detail by every witness examined by the committee.

It is obvious that there must be a change in the accommodations for the several bureaus now occupying the Interior Department building. The removal of the Indian Bureau to another building would afford some temporary relief, but that would be inadequate even to the present necessities of the Patent Office and Land Office, and must, if made, be followed soon by other like expedients. What new arrangements will give permanent relief from this defective and embarrassing condition of the Interior Department must be determined by the settlement of the question, whether the General Land Office shall remain a bureau in the Interior Department. If it remains in the Interior Department, its removal to another building cannot be avoided, or long delayed, as well for its own accommodation as to make room for the Patent Office and the Bureau of Indian Affairs.

This question includes far more that is important to the people of the United States, of this and coming generations, than the orderly and prompt transaction of the business connected with the disposal of our vast public domain; but that consideration alone is sufficient to demand the earnest attention of Congress to the necessity that exists for some change that will secure a better supervision of the business of the General Land Office.

The condition of the business of that bureau is illustrated, rather than fully disclosed, in the testimony submitted with this report. This evidence, which does not include a full statement of the condition of the Land Office because of the reluctance of the committee to swell the report with statements in complete detail, shows the following state of facts:

1. In the division of private land claims there are at least 8,733 claims yet unadjudicated from the State of Louisiana alone. These claims originated under treaties.

In Oregon and Washington Territory 2,343 claims remain to be adjudicated.

In New Mexico, under the donation act of July 22, 1854, 208 claims remain for adjudication.

In California 53 claims remain to be disposed of.

The other descriptions of business as yet unsettled in this division, can be best stated in the language of the witness, Mr. Harrison, as follows:

GRANTS ORIGINALLY IN NEW MEXICO, NOW IN NEW MEXICO AND COLORADO.

Confirmed by Congress under 8th section, act July 22, 1854, undisposed of, 40.

The same remarks will apply to this class of claims as were made with reference to California claims. These claims as confirmed, are, however, for much larger tracts than those in California, and the description of boundaries contained in the grants from which their location must be determined, is very vague and indefinite in the majority of cases.

Of this class of claims there have been reported by the surveyor-general of New Mexico, under said 8th section, act July 22, 1854, and are now pending in Congress for action, 70.

Grants in Arizona reported to Congress by surveyor-general of that Territory, under act of 1854, as extended to Arizona, 11.

Total pending in Congress, 81.

In Supreme Court scrip, locations made prior to act January 28, 1879, above referred to, no patents are authorized to be issued, but a certificate approving duplicate certificate of entry was prescribed by Secretary's decision of August 4, 1875, to be issued by this office as evidence of title.

There are awaiting approvals of duplicates in this division, 1,176.

Scrip applications under act June 2, 1858, to be examined, 96.

Scrip assignments to be examined, act of June 2, 1858, and Supreme Court scrip, 163.

Scrip suspended on account of imperfections in assignments, 169.

This division is also charged with the issuing of patents for all Indian allotments and reservations, under the various treaties. Its duties, however, in this particular are purely ministerial, as all questions of conflict are determined by the Office of Indian Affairs, the only labor required by this office being posting the different allotments upon the tract books, and the preparation of patents.

In 1812 a large part of the land in the county of New Madrid was injured by earthquakes; and on February 17, 1815, Congress passed an act for the relief of parties who had thus suffered. By this act persons whose lands had been materially injured were authorized to locate a like quantity of land on any of the public lands in the Territory of Missouri, the sale of which was authorized by law. And it was made the duty of the recorder of land titles in the Territory, when it appeared to him from the oath or affirmation of competent witness or witnesses, that any person was entitled to a tract of land under the provisions of the act, to furnish him a certificate to that effect. On this certificate, upon the application of the claimant, a location was to be made by the principal deputy surveyor of the Territory, who was required to cause the location to be surveyed and a plat of the same to be returned to the recorder with a notice designating the tract located, and the name of the claimant.

The act further provided for a report to be forwarded by the recorder to the Commissioner of the General Land Office of the claims allowed and locations made; and for the delivery to each claimant of a certificate of his claim and location, which should entitle him, on its being transmitted to the Commissioner, "to a patent to be issued in like manner as is provided by law for other public lands of the United States." The act also declared that in all cases where the location was made under its provisions, the title of the claimant to the original land, founded generally upon some French or Spanish grant, or other evidence of title emanating from either of those governments, should revert to and vest in the United States.

Number of said claims reported	516
Number disposed of	382
Claims undisposed of	134

In addition to the foregoing there are a large number of private land claims and donations in the States of Florida, Missouri, Arkansas, Alabama, Mississippi, Illinois, Michigan, and Indiana still unadjusted and unpatented.

In Florida there are 866 claims confirmed by or pursuant to acts of Congress, or by the United States Supreme Court, of which United States surveys, with descriptive notes, are on file here. The land involved amounts to nearly 1,300,000 acres; and a very few only of said claims have been called up for patenting.

There are other claims in Florida which have been confirmed, but not located or surveyed; and there are many conflicts between those surveyed, which will at some time have to be adjusted in this office.

In the old Vincennes (Indiana) and Sault Ste. Marie (Michigan) land districts there are about 100 military and other donations unadjusted and unpatented.

Since the passage of the act of June 6, 1874, this office has not been obliged to issue patents in confirmed Missouri claims, but many important cases come before us for adjudication from that State. This act, however, does not apply to New Madrid claims, which are not private land claims within its meaning, and are, therefore, still subject to patent.

It is impossible to tell, without much research, how many unadjudicated claims remain in the States of Alabama, Mississippi, and Arkansas, but there are quite a large number, and they are the subjects of considerable correspondence every year.

To show the age of many of these claims, Mr. Harrison states that "in Louisiana alone there are at least 10,000 claims, some of which were adjudicated as far back as 1807, and from that time to the present we have not disposed of more than 1,300. The average number of letters written from this division is 1,300 per annum, of which some require a clerk three or four days to prepare.

In the public lands division the chief, Mr. Howell, states as follows:

We have charge of the adjudication or all private cash entries, private locations with land warrants, and the several kinds of scrip, homesteads, timber-culture entries, timber-land entries, restored military and Indian reservations, public sales under President's proclamations, and other minor details that do not occur to me now. This division is the basis and framework of other divisions of the office. We post in our records all pre-emption filings and entries, as well as the entries and filings adjudicated in this division. We also note on our records swamp-land selections, university selections, public offerings, executive withdrawals, town-site entries, donation claims, &c. Many of the postings come from other divisions of the office.

Q. It is rather a historical division ?—A. We note in permanent records most of the transactions in the administration of the land service.

Q. Does that include also private land claims ?—A. We note a reference to private land claims whenever possible, but the descriptions of those claims are so irregular and there are so many conflicts in regard to boundary lines, and points of that kind, that that work is left to the division of private land claims.

Q. Are pre-emption entries also in your jurisdiction ?—A. We post all pre-emption entries and note any conflicts. The pre-emption division adjudicate the claims, and on their approval of the cases they are sent back to our division so that we can note their approval on our records. The clerks in the pre-emption division pass upon the sufficiency of proof.

Mr. Howell states that his division, with about fifty clerks employed, is six months behind, in the *mere posting of entries*, without which no work can proceed properly in any other division where any question of title, survey, or location may arise. This division is also behind from one to six months in its correspondence. There are more than 1,000 contested cases pending in this division, and a still larger number held for consideration as being in conflict with other entries where no actual contest has been instituted.

This division has been crowded out of the rooms into a long hallway, on either side of which are open alcoves for the cases in which patent models are intended to be kept. The papers of the division, which must be frequently examined are some of them in the first basement, and are scattered in cases from there to the attic, wherever room can be found for them, in the open hallways or elsewhere. The clerks have frequently to walk a fourth of a mile to get a paper that is needed, and it requires the skill of an expert to know exactly where to look for it. Some of these contested cases involve property to the value of millions of dollars. Mr. Howell says, "Of the several classes of entries on the records yet to be examined and passed upon, there are doubtless 100,000 cases, and with pre-emptions and soldiers' filings they embrace an aggregate area of more than 20,000,000 acres of land." In this division about 100 letters are written each day; the correspondence is much behind, and in some cases letters are filed away with the papers in the case until it is decided, and so remain unanswered for as much as a year.

In the pre-emption division there are 1,195 contested cases undecided, and 7,879 cases suspended or not acted upon. In this division 6,877 letters are written annually. In each of the above divisions the records run from ten pages to one thousand.

The mineral-land division was organized in 1866. This division examines the mineral-land surveys, and writes up the patents issued to claimants. The increase of business is very rapid; 1,718 cases are remaining to be examined, besides 20 contested cases, and 575 cases that involve the character of the land as to whether it is mineral land. This division is three weeks behind in its correspondence.

The surveying division is about one month behind in its work. The statements of Mr. Dallas, the chief of the division, are valuable as showing the imperfections in our public surveys, and the necessity of having inspectors of the work actually in the field. In the swamp-lands division there are "hundreds of cases" of private claims opposed to claims of States that are not acted on, and 14,000,000 acres of land claimed by States under swamp-land grants not acted upon. Some of the contested cases are twenty years old.

The railroad division was organized in 1872. Its jurisdiction covers an estimated area of 155,000,000 acres of land, of which 47,392,765 acres have been patented, and selections are pending and to be decided for 2,145,000 acres.

There are 3,921 cases of actual entries within railroad land-grant limits not disposed of, and 970 cases contested and not disposed of in this division. "In many cases the record is voluminous, and the questions involved are intricate, requiring very careful examination and consideration to reach proper decisions." This is equally true of the other divisions. The letters received during the last fiscal year were 3,727, and 6,153 were written and recorded. Some classes of work are greatly in arrears.

The work of the recorder's division has been largely increased by the addition to it of the Virginia bounty-land bureau, and the bureau of military bounty lands. Some of the cases undisposed of are very old. Scrip in favor of the estate of John Paul Jones was recently issued in one of them. In about 12,000 cases patents are yet to be written.

There are in the Land Office, not actually delivered, 291,572 patents that are in all respects complete and ready for delivery. These, being mostly of parchment, are being destroyed by rats, and obliterated by the lapse of time.

In the division of accounts some important parts of the work are four months behind. This division is called upon frequently by Congress and the Interior Department for statistical tables and statements, which are prepared by the clerks, who would find all they could do to keep the accounts of the division up to date. No account is kept in the General Land Office of moneys received for timber depredations. In the law clerk's division the business referred to it is several months in arrears, and many cases that require examination are never referred to this division, because the two clerks assigned to it are not able to examine them for want of time.

The forests of the country on the public domain are suffering greatly from depredations. The timber division is poorly provided with means to prevent this waste, which endangers the farming interest by its effect on the rainfall, and is rapidly sweeping away grand bodies of timber that can never be replaced.

Enough appears in these statements to induce careful attention to this bureau of public lands, which has in its charge the evidences of title to all the vast area of lands that has passed from the United States into private ownership, and the future disposal of an area that can be sold at some price, and much of which is very valuable, of about 1,500,000,000 acres.

The General Land Office is a great land court, with a jurisdiction that includes almost the entire range of the vast number of questions that arise out of our system of legislation respecting the public domain, if the changing, shifting, temporizing, and often conflicting legislation of Congress on this subject can be justly called a system.

Confusion and contradiction in the decisions of the General Land Office, of the local land offices, and the courts have been the natural results of the character of our legislation and the imperfect administration of our land laws.

The bills for special relief now before Congress, and that have for years been urged here, the claims for indemnity for time, labor, and money expended by patentees and other persons whose titles, issued under an act of Congress, or under one decision of the General Land Office, which have been destroyed by other laws or decisions, are sufficient proof of the necessity of a better administration of our land laws.

Doubtless Congress is responsible for much of this trouble and loss to the people, but far the greater part of it is due to an inefficient administration of the land laws, in the shallow and hasty consideration given to their meaning and proper application to cases by the general and local land offices. It is only justice to say that the Secretaries of the Interior, the Commissioners of the General Land Office, and the chiefs of divisions have, as a rule, been able and efficient officers, and they have devoted all the time and energy possible to the faithful discharge of their duties to the public. The clerks also, as a rule, have done their duty diligently and faithfully and with far more of ability than could reasonably be expected from men who eke out a bare subsistence on the salaries allowed them, when they could earn twice the money or more in other service or pursuits. The fault is in the system, which is, after all, as good as could be devised with the facilities afforded by Congress, in room, light, ventilation, the number and grade of clerks, and their pay.

Every officer examined testifies to the necessity of having the pay of certain classes of clerks increased, so as to put a higher grade of talent and information within reach of employment for the more responsible clerkships in the several divisions, and to keep men in place after they have become experts in the great variety of special subjects that constantly arise for examination.

They also testify as to the number of clerks needed in addition to those now authorized to bring up the business in arrears. The entire number required to bring up the work and keep it up being about 90. For the year ending June 30, 1881, the clerical force of the General Land Office numbered 195. The Commissioner in his estimate submitted with his annual report asks for 243 clerks, which is an increase of 48 over the number employed at the close of the last fiscal year, and of 42 over the number now allowed. Under the last appropriation the sum allowed for all salaries, clerk hire, messengers, and labor was $287,820. The amount estimated for is $389,400, as follows:

Commissioner	$5,000 00
Deputy commissioner	3,000 00
3 inspectors of surveyor general and district land offices, at $3,000 each	9,000 00
Chief clerk	2,500 00
Law officer	2,500 00
Recorder	2,000 00
3 principal clerks, of public lands, private lands, and of surveys, at $2,000 each	6,000 00
6 chiefs of division, at $2,000 each	12,000 00
Receiving clerk	2,000 00
Chief draughtsman	2,000 00
35 clerks of class 4, at $1,800 each	63,000 00
50 clerks of class 3, at $1,600 each	80,000 00
60 clerks of class 2, at $1,400 each	84,000 00
55 clerks of class 1, at $1,200 each	66,000 00
35 copyists, at $900 each	31,500 00
Chief messenger	900 00
8 assistant messengers, at $720 each	5,760 00
6 packers at $720 each	4,320 00
12 laborers, at $660 each	7,920 00
	389,400 00

The cash receipts on account of lands and land entries during the last fiscal year were $5,408,804.16.

But 10,893,397 acres of land were disposed of, showing that the cash sales represent only a small proportion of the work done by the land offices. A large income was derived from fees for the work of the employés of the land offices.

In comparison with this amount of receipts, and the current work of the bureau, the foregoing estimate is certainly very moderate.

Many other matters in which legislative reforms are needed are disclosed in this testimony, but the committee think it better not to attempt to patch up a defective system until it has been determined that Congress prefers that system to the change they propose.

This great land court—the General Land Office—now has pending before it not less than 140,000 cases for examination, of which about one-third are contested, either with the Government of the United States or with private litigants.

As it has been in the past, so it will be in the future, that ninety per cent. of the decisions made in this tribunal will be final and conclusive of the title to the lands in controversy. The value of those lands can scarcely be computed, so rapid is the increase of value from the improvements put upon them by occupants, from railway extensions, from the enormous immigration to the United States, the rapid natural increase of population and wealth, and the growth of new industries.

The testimony discloses that the great body of those cases are in fact decided by the division clerks, many of whom are not educated lawyers; and who get pay at the rates of from $1,000 to $1,800 per annum.

It is greatly to their honor that so little is alleged against their integrity under such circumstances.

A single case is frequently found to cover more than a million dollars in value, and to require an examination of a record of over a thousand pages.

The clerk takes the case assigned to him and examines the record and finds the facts, giving such weight to the testimony as he thinks it entitled to, both as to competency and credibility, and its value in comparison with other contradictory statements. On his findings he applies the law as he understands it, and that is the adjudication of the case to stand until it is reversed.

The chief of the division takes the facts as found by the clerk and reviews the application of the principles of law, which the clerk has announced, to the case in hand and passes upon the soundness of his rulings on the law.

This is done when the chief of division has the time to give the case even this slight examination, but it is the exception, and not the rule, that he can do so much in the re-examination of the case. He never reviews the facts as found by the clerk, unless some exception taken or some special order from a superior makes it a special duty.

A board of general supervision is organized by the Commissioner of the General Land Office, not under any law of Congress, consisting of three clerks detailed from other duties to examine all the letters written from all the divisions and all the decisions made in each.

It will be readily seen that this board cannot perform this work thoroughly from sheer lack of time and physical strength. They give a rapid glance at such matters as seem to be most important, and only in rare cases do they stop a case on its hurried progress through the official routine.

This scarcely amounts to a pretence of a review. The case then goes to the chief clerk and from him to the Commissioner. Neither of these officers have so much time as those through whose hands the cases have come to review them, and they are passed into decisions, no one objecting.

In contested cases, where the parties are able to employ counsel, exceptions, and appeals contribute to procure a more thorough review, but in those cases, of which there are many, the decisions must be greatly delayed, from the pressure of other current business, in every stage of their progress, and must be examined in the midst of many urgent demands upon the time and attention of the bureau officers to other business of equal or greater importance. If the case is difficult, and the Commissioner is advised of the trouble, he refers it to the law clerk, and his examination is delayed by a great pressure of business in his office. If the case reaches the Secretary of the Interior it is then brought into competition with a vast multitude of cases and questions and duties that engage his attention, from his important part in the general executive administration of the entire country, down through the Patent Office, the Pension Bureau, the Bureau of Indian Affairs, the Bureau of Education, the General Land Office, the Geological Survey, the Census Bureau, the office of Commissioner of Railroads, the Pension Agency, and the appointments to offices in which thousands of officers, clerks, and employés are to be heard, in some form, and provided for.

When we consider the number of cases and questions that grow out of our complicated land laws, in which the highest officer in the department should settle and announce the rulings, and the actual impossibility that he can make personal examination into one case in a hundred that really need his supervision, it becomes evident that Congress should provide a better security for the wise and enlightened administration of this great landed estate held in trust for the people.

To your committee it appears to be the plain duty of Congress either to aid the Secretary of the Interior in giving a larger part of his time to the public lands and their administration, by transferring other bureaus, now in the Interior Department, to some other department, or to give to the public lands a more efficient and satisfactory supervision, by creating a department of public lands, similar in its organization to the Department of Agriculture. This fact is so patent that it needs no discussion. An argument is urged against this plan, that the bureaus of Lands and Indian Affairs are so intimately connected that it will be difficult to separate them.

Your committee are not convinced that this is a real difficulty.

The Bureau of Indian Affairs was created by the act of July 9, 1832, in the War Department. The General Land Office was created April 25, 1812, as a bureau in the Treasury Department, and was transferred to the Interior Department March 3, 1849; and in the same act the Bureau of Indian Affairs was transferred from the War Department to the Interior Department.

They were no more identified in their jurisdiction or duties after the transfer than they had been while they were in different departments. Your committee do not find in the laws of the United States any enactment which gives to the Bureau of Indian Affairs, or any officer or agent thereof, any authority over the disposal or occupancy of the public lands, subject to sale or open to entry, in conflict with the jurisdiction conferred by law on the General Land Office, its officers or agents.

Without attempting a full discussion of this topic in this report, your committee recommend that a Department of Public Lands be created by law, and will hereafter report a bill for that purpose.

This bureau, more than any other, unless it is the Patent Office or Printing Office, requires a building especially adapted to the nature of the business to be conducted in it.

Your committee also report a bill.

As it will be necessary, in any event, to provide immediately for additional room for the accommodation of the General Land Office, your committee recommend that this subject be referred to the Committee on Public Buildings and Grounds for their consideration.

TESTIMONY

TAKEN BY

THE COMMITTEE ON PUBLIC LANDS

IN REGARD TO

THE CONDITION OF THE GENERAL LAND OFFICE.

DECEMBER 27, 1881.

The subcommittee, consisting of Messrs. Morgan, chairman, Blair, and Hill of Colorado, met at the General Land Office, Tuesday, December 27, 1881.

Present, Messrs. Morgan and Blair.

The committee commenced the duty required by the resolution of the Senate, and proceeded with the examination of witnesses.

Hon. N. C. MCFARLAND, Commissioner of the General Land Office, testified as follows:

By Senator MORGAN:

Question. Judge McFarland, when did you take charge of the General Land Office as Commissioner?—Answer. On the 23d of June last.

Q. You have examined, of course, the reports of Mr. Williamson and others of your predecessors?—A. Yes, sir; considerably.

Q. I notice that, commencing with Mr. Commissioner Drummond's report, attention has been called to the condition of the General Land Office, as also in the reports of his successor, Mr. Burdett, and others. I wish to ask you whether, having looked over the subject and examined the condition of the office, you think it is in any wise improved upon the description they gave of it, or whether it is now in a worse condition than it was then in regard to arrearages of work, want of room, and want of convenience in the keeping of the files, and also in respect of the want of security from fires?—A. I do not suppose it has improved in any material respect from the condition stated in the reports mentioned. Some branches of business have been brought forward a little since some of those statements were made, but the general condition is about the same.

Q. Has it been necessarily the fact that other branches of the business of the office have been to some extent retarded?—A. Yes, sir.

Q. We wish to examine you in a preliminary way, and very generally at this stage of our investigation, upon the condition of the Land Office, expecting after we have obtained the details from the heads of divisions to return and get a more specific statement from you, with your recommendations. Proceeding in this general manner, I will ask you whether you think that there is sufficient room in this building that can be assigned to the General Land Office and the other branches of business that are being conducted here to enable this bureau to transact the public business committed to it with sufficient promptitude and dispatch?—A. There is clearly not sufficient room.

Q. Can the room be obtained in this building for the Patent Office, the General Land Office, and the Indian Office sufficient to accommodate the business of them all?—A. There cannot.

Q. I will ask you whether a portion of the alcoves which were set apart in the construction of the building for the accommodation of the cases containing models of inventions have been applied to the use of the General Land Office or not?—A. They have been so applied during the last summer. The public lands division of this bureau was removed to the western part of the upper story in the northwest side of the building at considerable expense, and that division is now engaged in their work there.

Q. Those rooms were not built for the accommodation of clerks, but they were taken merely as a temporary expedient to get a place in which to work.—A. Yes, sir; it was but temporary.

Q. While working in these alcoves are the clerks liable to interruption from the public who pass between them, occupying as they do nearly the whole of the west side?—A. The public need not pass through there.

Q. Still the hallways are open to the public?—A. They are.

Q. These rooms which are occupied by the clerks are not cut off by any partition?—A. No, sir.

By Senator BLAIR:

Q. This occupation by the Land Office is to the exclusion of the convenient use of the alcoves of the Patent Office?—A. Yes, sir.

By Senator MORGAN:

Q. That part of the building was arranged for the convenience of the Patent Office?—A. It was.

Q. Do you think that the files of the General Land Office, that have been put away for years back, as you were obliged to keep them in the office at this time, are in a condition of security either against fire, vermin, or other causes of destruction?—A. They are very insecure generally, and necessarily in a somewhat scattered and disorganized condition.

Q. Do you know whether the clerks or employés in the General Land Office have difficulty in obtaining sufficient light to find the files when they are needed in these old cases?—A. Many of the rooms are dark in which these files are kept, and also small and inconvenient.

Q. In order to make room for clerks to work in the lower stories of this building has it been found necessary to remove many old files into the attic?—A. I cannot say as to that.

Q. Do you think that if the Indian Bureau was removed from this building there would then be sufficient room for the Patent Office and the Land Office?—A. I am inclined to think so.

By Senator BLAIR:

Q. You mean by the present force?—A. No, with an additional force. I think they have about sixty clerks in the Indian Bureau; I suppose if they were moved out and the rooms now occupied by the officers and subordinates of that bureau were used by the Land Office, with the public lands division still remaining in the upper story, there would be room enough.

By Senator MORGAN:

Q. Suppose a sufficient increase of the force of the Land Office was made to bring the work up to date, could you get along with the room that would be vacated by the Indian Bureau?—A. Not without keeping a portion of the room assigned to the Patent Office up stairs.

Q. Is there any increase or diminution in the general amount of work required in the disposal of the public lands of the United States noticeable within the last three years?—A. I think the public lands proper may be diminishing in area, but the increase in mining operations will probably offset the decrease of business in the other branch. I presume the amount of business transacted by the office is about the same.

Q. Considering the rapidity of immigration to this country, and the settlement that is being made upon the public lands, do you think that there will be a still larger volume of work devolved upon this bureau for the next ten years?—A. I do not think that the work will diminish certainly in five years. It is difficult to speak for so long a time as ten years.

Q. Is it possible for the Commissioner of the General Land Office, without such assistance as could be employed in a great measure in the routine duties of the bureau, to give his personal attention with sufficient deliberation to all the important questions that arise in this bureau?—A. It is not. I think more than three-fourths of the time of the Commissioner is taken up with seeing callers on business, signing the mail, and that part of the executive work which he ought to have supervision of, leaving very little time for the examination of contested and important cases which he must ultimately determine.

Q. Has it been your observation of the conduct of the employés in this bureau that they are diligent and attentive in their work?—A. I think, as a rule, the employés here are faithful. There may be some exceptions, as I presume there always are where so large a number are employed.

Q. Have you observed any waste of time among them for the lack of sufficient employment to fill up the hours of labor?—A. I have not.

Q. Do you think that the rooms of the two lower stories of this building—they might be called the basement and sub-basement—are sufficiently ventilated and lighted to make them healthful places of work?—A. I do not. Some of them are dark, and but few of them are well ventilated.

Q. With sufficient room for the accommodation of the clerks, with proper ventilation and light, and a proper arrangement of the files of the office that are needed for immediate reference, do you think that there would be a greater economy in the public service in this bureau than now exists?—A. Undoubtedly. A large portion of the time of the clerks is taken up in answering letters of inquiry, which simply want to know what is being done with certain cases, and why they are not disposed of. These all must be answered, and the answer usually is that the cases will be taken up in their order when reached.

Q. I suppose there is consequently very considerable delay in making the answers?—A. There is some delay in doing that work, and much time lost in making references.

Q. Do you find the arrearages of work in the bureau very considerable?—A. I do; in the different divisions it ranges from three months to two years. The accounts division we try to keep up as nearly as possible, as a matter of necessity. Some branches of the public lands division are further behind than others. From the calculations I have casually made, I should say there were nearly 60,000 cases of one kind and another that have not been as yet posted or entered upon the books. There are probably about 1,300 contested cases in that division undecided. In the recorder's division there are 12,000 to 14,000 patents ready for issue. The heads of the different divisions can furnish exact information upon these subjects.

Q. With the present volume of current work coming before this bureau, and with the prospective amount of work that you will have to do here, is it possible that, with the existing number and arrangement of the clerical force, these arrearages can be overcome?—A. I do not think they can. I think that, if Congress were to give the additional aid I have asked for, it would take two years to bring up the work.

Q. If Congress were to give you additional aid, you would also be compelled to have more room for the accommodation of the clerical force?—A. Yes, sir; I regard it as an absolute necessity that additional room be secured, and would suggest that, for immediate purposes, the Secretary be empowered to rent some adjoining property either for this office or the Indian or Patent Office.

Q. What is the actual force employed now in the General Land Office?—A. Two hundred and twenty clerks, and twenty-two messengers and laborers.

By Senator BLAIR:

Q. What increase do you think you ought to have in number for a sufficient performance of the work of the office?—A. I believe I have asked for an increase of about fifty in my report, and I ought to have that many or more.

Q. You have spoken, judge, of the construction of a new building, or the hiring of accommodations outside of the present building, for the accommodation of part of the Land Office, or the whole of the office of Indian Affairs. In that connection I wish to ask you, with reference to the preservation of the files, if you believe it possible to hire any building that would afford proper protection against fire?—A. The files would undoubtedly be safer in this building then in any building we could hire.

Q. Do you consider this building now as fire-proof?—A. I do not know just how to answer that question. It is presumed to be a fire-proof building, though there has recently been a fire in it which has consumed a portion of it, and a large amount of public property stored in it.

Q. The danger of fire remains the same in a large portion of the building?—A. The west and north sides of the building are considered safer than before the fire.

Q. With the files here and your force elsewhere would the public service be performed to advantage?—A. It would be done at an inconvenience if any portion of the force was outside of the building.

Q. Then, practically, it would be a detriment to the public service to divide your force at all?—A. Yes; the work is much more efficient when performed in a compact body. There is a great deal of conference between one division and another in the decision of cases. The clerks go from one division to another, to ascertain all the facts in a given case.

Q. In regard to the quality of the service here, or the character of the questions to be considered, I wish to inquire, not as to the faithfulness of the force, so much as to whether you are able to get, for the salaries now paid, that class of talent which is desirable for the consideration of the questions which have to be disposed of?—A. I am not able to do it with the salaries paid. In many instances, when a man becomes efficient here, and very valuable, he finds other employment which is far more remunerative, and we are continually losing clerks in that way.

Q. In what employment do they naturally tend?—A. Some of them have been employed by railroad companies. The other day one went as a clerk to a Congressional committee. A great deal of the work in this bureau ought to be done by men who are not only lawyers, but men of ability. Questions involving large amounts of money are decided here, though not always finally. Other questions involve smaller amounts, but at the same time are all-important to the party in interest, and concern perhaps everything he has in the world.

Q. What class of qualifications, as things now are, is requisite to decide these questions?—A. The necessary qualifications are legal ability, careful attention, and integrity of character. The men who are employed here at twelve hundred, fourteen hundred, and sixteen hundred dollars, and a few at eighteen hundred dollars a year, are deciding these questions.

Q. Did these men have any prior legal education?—A. Some of them are lawyers, and have practiced before coming here, but quite a number of them have worked up in the particular branch that they are employed in until they have become familiar with it.

Q. Of course it will not be claimed that men who will work for twelve hundred dollars a year are possessed of great legal ability. How much more would you have to pay to obtain men fitted for the position to keep it permanently?—A. I think from eighteen hundred to twenty-five hundred a year would command that character of talent.

Q. Is it not the fact that the men who now receive these salaries are the ones who leave you?—A. Yes.

Q. So that you are unable to retain that talent even at those prices?—A. Yes.

Q. Is this the fact, that from this policy of the government of paying really nominal prices for first-class labor they are educating a class of men who soon leave its employment and take advantage of the instruction the government has given them at these low rates of tuition, and represent interests adverse to the government and to its injury?—A. No doubt that often occurs.

Q. To be a little plainer, this office becomes a training school to fit men to prey upon the government itself?—A. It fits them for other places. We teach men to make money outside in other businesses, whereas we ought to be able to employ men here who had become fitted for their duties here by active business outside.

Q. Do you think it a benefit to the service in this bureau to have a fixed tenure of office for the higher class of clerks?—A. I think the President in his message struck the right idea, though I have not fully matured any plan in my own mind.

Q. Please to explain the method by which decisions are arrived at in all matters affecting the disposal of the public domain, and whether they pass under your supervision or revision in every case, or whether that would be possible.—A. In the first place, it would be impossible for me to consider all of the cases that come before the bureau. The method that is pursued now is substantially this: The clerks in the different divisions write the letters, or decisions, on the various subjects that belong to their particular division. The clerk writes his initials on the letter, the chief of the division reviews the letter, and if it is according to his view he puts his initials on the letter. If the decision is not approved by him he either notes his exceptions to it on a slip of paper accompanying it, or has it rewritten according to his view. Then

I have appointed two of my best lawyers as a board of critics, to whom all the letters go.

Q. Is not that something new in the bureau?—A. It was done substantially before, but not exactly in this way. The business of this board of critics is to review all the letters; where they agree with the letter it is signed by me, as a matter of course; where they disagree with the letter or with each other, not being able to come to a conclusion, the letter is brought to me and I ultimately decide the points of difference raised. The business of the law clerk is much more general. To him I refer anything that I may choose. If one of these letters come up, about which there is a difference of opinion, I may refer it to him, or any incidental questions which I have not time to investigate. He is not one of those two whom I have mentioned as constituting the board of critics, his business being of a more general nature. He is expected to be ready at any time to examine any point I may desire.

Q. Practically the decisions made in reference to the disposal of the public domain, or any land question, are made by a clerk, or head of division, the board of critics, or by yourself when the matter is called to your special attention, with such assistance from the law clerk as you see proper to require?—A. That is it.

Q. These decisions or letters then go from the Land Office directly to the parties interested or through the Secretary of the Interior?—A. They go directly to the respective land-offices and thence to the parties in interest.

Q. What cases, if any, fall ultimately under the supervision and examination of the Secretary?—A. All cases may be appealed to him. I may have informal consultations with him merely for advisement, but the responsibility is upon me, excepting in case of formal appeal to the Secretary.

CURTIS W. HOLCOMB, chief clerk of the General Land Office, testified as follows:

By Senator MORGAN:

Question. We are making a preliminary and general examination of this office now, and will examine you in that way, furnishing you an opportunity hereafter of making any additional suggestions that you may deem necessary. What is your opinion in a general way as to the question of room for the accommodation of clerks of the office and the files? Will this building accommodate the General Land Office, Patent Office, and Indian Office?—Answer. My opinion is that the General Land Office, the Patent Office, and the Indian Office cannot be properly accommodated in this building. That is, of course, leaving the model halls for the purposes originally intended.

Q. Do you know how many model halls designed for the accommodation of the Patent Office are now occupied by the General Land Office?—A. About one-half of the west hall is now occupied by the General Land Office. The first floor of the hall is used. There are galleries there which we have not used, and they are suitable for use in a limited way only, and for a part of the year.

Q. If the Indian Bureau was removed from this building would it furnish you room sufficient to enable a return of the employés of the General Land Office to the rooms originally designed for them, and take them out of the Patent Office model halls?—A. I presume it would just about accommodate them, that is by using all the rooms now occupied by the Indian Bureau.

Q. If it was found necessary to add fifty employés to the present force for the transaction of the public business, more room would have to be provided to enable them to do the work required?—A. Yes, unless we continued the use of the model room. We made the change there for the very purpose of being able to accommodate a large number of clerks. It was a temporary expedient.

Q. Are these model halls, as they are at present arranged, convenient and appropriate rooms for the business of the Land Office?—A. The public lands division is very well accommodated there. The rooms are airy, high, and so arranged that they are quite comfortable.

Q. Are they in open communication with the hallways running through the building?—A. Yes.

Q. Is that serious?—A. Not very. It is a little annoyance. We have one of the laborers sitting there to see that the doors are kept closed leading into the G-street model hall. He has this with his other duties. We have got along very comfortably under this arrangement. Of course it is pretty high up, and involves a little more messenger duty than if they were on this floor.

Q. Is there more than one elevator?—A. Only one, and I think that is used simply for hoisting freight.

Q. Do you think that the basement rooms and the rooms above them, making the first and second floors of this building, are sufficiently ventilated and lighted to make them healthy places for work?—A. The lower story on Ninth street is used largely for storage purposes, although employés of some kind are working there. I would not consider them healthful, but cannot speak with certainty on this point.

Q. Could any part of the Land Office force be moved down there?—A. I have never made such a careful examination of the basement room, never having had occasion to visit it for any purpose, as to enable me to form a correct judgment in the premises. The rooms on the floor next below this on Ninth street, and first above the basement, are certainly very inferior to those on this floor in height, light, and ventilation.

By Senator BLAIR:

Q. How is it actually; are they suitable rooms to work in, in reference to convenience and health?—A. The outside tier of rooms fronting on the street, while not superior are still good enough to get along quite well in. The rooms on the inside, facing the court, seem to lack ventilation and light.

By Senator MORGAN:

Q. Have you discovered that the air down there is impure?—A. I have discovered a difference in the atmosphere. We have been compelled to use those rooms, and have come to look upon them without criticism, while knowing them to be inferior.

Q. What proportion do you think of the files of this bureau are kept in cases in the hallway and corridors outside of the room?—A. It woulds be difficult to give any figures with exactness. Prior to the time we moved the public lands division to the model hall, both sides of the hall here on this floor were used for cases and records. On a dark day they were compelled to take these records fifty or sixty feet in order to read them. Most of these records except the oldest ones have been moved to the upper story.

Q. Taking all this papers in the bureau, do you think there is as much as half of the number of the papers and records that are kept in cases outside of the rooms?—A. No, I would not put it as high as one-half. I should not presume there were now more than one-quarter, possibly one-third.

Q. There are a number of rooms in this building occupied by the General Land Office which seem to be filled up almost completely with cases of papers and files, there being only sufficient room between the cases for persons to move conveniently. Do you consider that these papers are secure, either against fire, vermin, or mildew?—A. There is necessarily a degree of insecurity about those papers from vermin and fire, but at the time of the fire here four years ago the papers were removed from the rooms most exposed, and but few were lost. Some little misplacement occurred but that was remedied after a short time.

By Senator BLAIR:

Q. Suppose the fire had not been put out?—A. The records were taken out from below, but not from the entire building. There certainly is very great danger in most of the public buildings, where papers are kept in the different rooms. A large proportion of our records is kept in file cases securely closed so that there is not that great danger which would otherwise exist. In case of a fire, which could not be extinguished, great loss would certainly result.

By Senator MORGAN:

Q. Are you acquainted with the storage room afforded in the attic of this building?—A. I am not.

Q. With reference to the general accommodation of the clerks in the Land Office as it is now organized and arranged, what is your opinion as to the difficulty and embarrassment to the clerks and officers resulting from the overcrowded state of the rooms in which they are employed?—A. It is difficult to make an estimate of the percentage of advantage which would result from plenty of room, but it is my opinion that with the same force, and ample accommodation in the matter of room and arrangement, there ought to be twenty per cent. more work done in certain kinds of labor. To illustrate, we are compelled now to have from eight to ten and sometimes more clerks employed in a single room, at work upon different matters, some of them upon contested cases which require deliberate care and study in their examination, and the examination of laws and decisions. There are others at work upon *ex parte* cases, and others, perhaps, at the same time copying, and some answering general correspondence. The natural result is that owing to the necessary comparing and conversation there is more or less confusion. In a room where there are eight persons, if two of them find it necessary to discuss a subject which is in hand, which very frequently happens in our business, it will necessarily disturb the whole room. My estimate in relation to the value of having increased room is simply a rough one, but I have no doubt it would result very largely to the benefit of this office if we had ample accommodations.

By Senator BLAIR:

Q. Take those same rooms which you speak of as now containing from eight to ten clerks, how many do you think could properly be accommodated?—A. That depends somewhat upon the character of the work on which they are engaged. I should presume that eight copyists might be well accommodated in an average room. The rooms are not all of the same size. No more than four persons engaged upon matters which require quiet and deliberate labor should be in one room.

Q. Take these rooms as they average throughout the Land Office, from four to six would be as many as could be accommodated with profit to the public service?—A. I should presume that to be a fair average.

By Senator MORGAN:

Q. Would you not consider a room of the average size as too crowded by having eight persons kept at work there?—A. Necessarily. Some are compelled to sit near the windows, and in order to get proper ventilation for the whole room are exposed to a draught of air, hence the ventilation is imperfect.

Q. I suppose you are well acquainted with the personnel of the employés?—A. I am reasonably acquainted with them. It is a part of my duty to supervise them, to attend to the proper distribution of work, and to see whether they perform their duties in a proper way, and whether their conduct is such as it should be.

Q. How long have you been in the public service?—A. About ten years. Although most of that time I have been employed in the Land Office. I was one year in the Indian Office.

Q. What is your opinion of the character and conduct of the clerical force in this bureau, and of their ability to discharge their duties to the public, and of their habits of industry and attention to business?—A. I think our force will compare favorably with any in the public service. The business transacted here is really a profession in itself. No person can acquire it in a brief period. After a person becomes well versed in the business of the office and acquires that familiarity with the laws and decisions and regulations which enables him to do proper and valuable service, he is very frequently sought after by people from the outside to help their interests in the same matters, and therefore it has been the history of the office that one after another of these men who have shown themselves to have good capacity have left the office. The poorer class of employés never want to go. As far as industry and good habits are concerned, I think the office ranks well. In point of ability we have many excellent clerks.

Q. Then the fact that the public business is largely behind is not due the inefficiency of the force employed here, or to their want of industry?—A. I think not; with this one exception, that the office would bear a higher grade of ability. There ought to be a larger proportion of good lawyers in this service. The questions settled here frequently involve great values and necessitate the use of the very best intellects and professional education.

By Senator BLAIR:

Q. State some instances that occur to you when the exact process of the disposition of some of these large masses of property has been gone through with.—A. A contested case has recently been decided by the Secretary of the Interior involving mineral lands on the town-site of Deadwood, Dak., covering all the land which the town of Deadwood has applied to enter as a town-site. In that case I suppose there were more than a half bushel of papers, constituting the record of proof and proceedings. That case was decided while I was chief of the mineral division, and was examined and written up by a man who was at that time receiving twelve hundred dollars a year. He was, however, a studious, careful man, and has since been promoted to a sixteen hundred dollar clerkship. This is but one of very many like cases.

Q. In the practical operations of the office are you not obliged necessarily to exercise a supervisory or an advisory power in connection with the work of the clerks?—A. Continually.

Q. But as a matter of necessity where such vast masses of testimony are concerned you rely upon his finding upon questions of fact?—A. Very largely.

Q. Is it not possible for yourself or any one who is above this clerk to go minutely into this examination of the testimony itself?—A. That is a physical impossibility.

Q. So that practically the questions of fact out of which these questions of law arise are subject to the decision of the clerks who consider the case primarily?—A. It frequently happens that in very important cases where the facts are found by the clerk, the party in interest insisting in argument that the testimony does not legitimately sustain such finding, it is brought to the attention of the Commissioner, and there is a conference upon it before a decision is made. The Commissioner, law clerk, or myself, examine it, or if that is impracticable, some reliable clerk, other than the original examiner, reviews it. As a rule, however, we rely on the clerks for the facts.

Q. Would it be possible for the Commissioner or yourself to re-examine to any very great extent questions of fact that arise in the office?—A. It would not be a physical possibility.

Q. There are a few exceptional cases where you examine the testimony?—A. Yes, in a limited number.

Q. So that there is not a superior grade of capacity applied to the settlement of questions of fact that arise before the office?—A. That is the very point I had in my mind a few moments since when I said that we desired and should have a superior grade of ability in the clerical force; yet we have now many good clerks.

Q. I understand you then to insist that there should be a superior grade of ability for the consideratlon of questions of law that arise, and also for the examination of testimony, and the settlemant of those important questions of fact out of which the questions of law arise?—A. I do.

Q. It applies to the entire force employed in the office, excepting copyists, and those who do merely clerical work?—A. It does. No man who has not more than an average ability can properly be intrusted with this work.

By Senator MORGAN:

Q. Do you as chief clerk have any supervision of the decisions made by the chiefs of divisions?—A. I am consulted daily from morning till night upon these matters by the chiefs of divisions and those having cases in charge. My duties as prescribed by the law, except when I am acting commissioner, are purely executive, while as a matter of fact I suppose that three-fourths of my entire time is given to the consideration of legal matters.

Q. Because the heads of divisions have confidence in your judgment and experience and not because the law requires it?—A. Presumably to an extent; but the nature and difficulties of our work necessitate much consultation among all who are well informed in the business. An assistant commissioner is asked for with the very intent to subdivide the duties here, because it is simply a physical impossibility for the commissioner to place his individual judgment upon all the cases decided here. Such vast amounts of money and land are involved in the decisions that they should be very carcfully scrutinized before property rights are concluded.

Q. Do you regard the appointment of an assistant commissioner as being a matter of real necessity in this bureau?—A. I do not know of anything in the matter of reorganization more necessary.

Q. For the reasons you have given?—A. Yes; because there should be a proper division of duties between the commissioner and the assistant, in order that all the business of the office may receive uniform and proper direction and attention.

Q. I will ask you whether the executive duties devolving by law upon the chief clerk would be sufficient to employ the time of an active well-informed man every day?—A. Yes; there are ninety-seven district land offices and sixteen surveyor-general's offices. In each land office there are two officers, a register and a receiver, and usually one or more clerks. Every expenditure in these offices for rent, furniture, clerk-hire, &c., is authorized by the Secretary of the Interior on requisition from this office. All the examination of applications for such authority is made in the chief clerk's division, and all questions concerning the proper administration of those officers are examined there. All bonds of those officers are there examined, and all appointments recorded, transmitted, &c. Complaints of irregularity or want of proper attention to duty, possibly of fraud, collusion, or dishonesty in some form are continually preferred, and those matters have to be investigated, and when an officer is found to be in default the matter is called to the attention of the Secretary of the Interior, with such recommendations as the Commissioner may see fit to make. All questions relating to change of boundaries of land districts and location of offices pertain to the chief clerk's division. There are questions of irregularity in surveys which necessarily come up here and constitute a part of the executive duties of the office. We have to see that the duties of the offices in charge of surveys are properly performed. The attention necessarily given to these things, and also to the proper performance of the duties of this bureau, will keep an active chief clerk very busy indeed.

Q. How many divisions are there in this bureau?—A. Thirteen. They comprise the chief clerk, law clerk, private land claims, mineral, pre-emption, public lands, railroad, recorder's accounts, surveying, swamp land, draughting, and timber. There is also a packer's division where we send off records, parcels, and maps, and do all that kind of business. The warrant division has been under the charge of the recorder for some time. That was done for purposes of convenience, but it is really a separate division, which I think should be maintained.

Q. What is the warrant division; is it a disbursing division?—A. It is not a disbursing office. It is charged with the examination of land warrants, their proper and legal assignment, and questions of title involved.

Q. How many of these divisions are able to keep up with the current business?—A. None of them.

Q. How is the accounts division?—A. That is behind one or two quarters.

Q. What does the accounts division have charge of?—A. With exception of fees for exemplifications, it has charge of all the financial matters of the office, such as receipts and disbursements, the accounts of the local land offices relating to their entire business, the settlement of surveying accounts, the disbursements by special agents, and the settlement of everything pertaining to finance in the office.

Q. Are the moneys that pass through this bureau, from any source whatever derived, audited by a special auditor in the Treasury Department?—A. Yes; our accounts when adjusted are sent to the First Comptroller of the Treasury.

Q. But your accounting division first has the adjustment of the accounts here, both as to the receipts and disbursements?—A. Yes.

Q. And from here they go through the regular routine of the Treasury Department?—A. Yes. Applications for the return of purchase money on lands erroneously sold also go to this division.

Q. All questions relating to applications to have the return of purchase money on lands which have been improperly sold, and all questions of demands against the bureau must pass under the supervision of the division of accounts?—A. Yes.

Q. Is it not important that the business of that division should be kept up to date?—A. It is very important.

Q. Important to all concerned, the government and a great many individuals?—A. In every respect very important.

Q. Now why has it not been kept up to date?—A. The clerical force has not been sufficiently large to enable them to do the work.

Q. Is the clerical force efficient enough?—A. The accounts division is very efficient. The chief of that division is a very competent man. The reputation of that division has been admirable with the Treasury Department, where they have the very best opportunity to form a correct judgment.

Q. Are the employés of the General Land Office paid from the accounts division?—A. No; they are paid by the disbursing officer of the department.

By Senator BLAIR:

Q. State whether a division of the force now employed in this bureau, and placing a portion of it in another building at a greater or less distance from the one occupied by the remainder of the force would be attended with any inconvenience in the transaction of business. If so, state fully in regard to it.—A. A very great inconvenience would result. Our records here contain all the transactions relative to the sale of public lands, and hardly a business letter can be answered which does not necessitate the examination of those records and cases. Frequently a clerk in one division has to go to two or three other divisions in order to get the necessary information to enable him to answer a letter of inquiry. If any portion of the office were put in a separate building it would work inconveniences of the gravest character.

By Senator MORGAN:

Q. Have you any reason to believe that any of these divisions are behind in their work because of the inefficiency or want of industry of the persons employed in them?—A. No; I have no idea of that kind. I believe the force taken together will compare favorably with that of any other department or bureau in the public service.

Q. Is it not a fact that the duties imposed by law upon the different employés of the various divisions are of such a character as to require very close and constant application?—A. The most careful and constant work is necessary.

Q. Have not these persons who are thus employed proven themselves to be faithful in an unusual degree in the discharge of their duties?—A. The clerks frequently work out of hours, and manifest a very creditable interest in their duties.

By Senator BLAIR:

Q. State the period of time that the public business is in arrears in the several divisions, and the amount of work pending.—A. It would be difficult for me to give so full and accurate an answer to this question as the heads of divisions, and no one could answer with certainty, but in the private land claims division there is a large class of cases not yet adjusted, which are examined when they are called up by the parties in interest. In the mineral division, the regular series of entries I think is some fourteen months behind. The railroad division is very much behind, but precisely to what extent it is very difficult to tell, the amount of work which will be involved in the adjustment of cases depending so largely upon circumstances. The pre-emption division is behind to a considerable extent, but these divisions are all being daily fed by the monthly returns from the local land offices, and by contested cases and otherwise, so that it is difficult to give a full and explicit answer. In the recorder's division they are about six months behind with the preparation and recording of patents in cases ready to have the patents written and signed.

Q. With what promptitude after the rendering of a decision ought these patents to be issued?—A. After a case is approved there is no delay essential to the writing of a patent. It ought to be prepared immediately and transmitted to the party.

Q. Is there any serious inconvenience to parties in waiting?—A. We are beset daily by persons who desire their patents. They desire to raise money, to mortgage their lands, or to improve them; frequently they are in debt, and in many cases it is only when they get a clear title from the government that they are able to make their land available as security for loans, or to make a fair sale. Very frequently in mining matters, large sales are pending; wealthy associations and corporations desire to put money into expensive machinery to develop their mines, and they desire to have a clear title before they go to a great expense.

Q. This delay, I understand, is purely the result of insufficient service?—A. Almost entirely so, although ampler accommodations in respect to office room would be to some extent a factor in expediting business.

Q. Does this delay not only make increased work for this office, but tend very largely to impair and destroy the individual interest concerned?—A. As a rule it does.

Q. Leading to litigation, losses, confusion, and the destruction of the interest of individuals?—A. Very generally. A delay in the transaction of a portion of the business of this office to a very small extent is not perhaps so very serious. An entry should not be passed to patent in a less period than perhaps two or three months after it is made in the district land office. There is over the whole public domain more or less fraud involved in proceedings for title, and such brief delay as is sufficient to permit a showing of fraud to be made in a case would not be undesirable. The delay of which I spoke is beyond all that, extending to a much longer period of time. In mineral lands it is particularly desirable that entries be acted upon with promptness. This class of entries as a rule either represent large values or the owners think them very valuable. The owners in a large number of cases, desire their patents in order to raise money for the expensive development of the mine; because they desire to effect a sale of the property, or a sale is pending, but cannot be consummated until title is secured from the government. Not unfrequently a corporation or association negotiate for valuable mining property, and are ready to begin extensive operations for its development; but the purchase price is large and risks cannot be as sumed, hence even the sale is made dependent upon issue of patent, and everything waits until it is issued.

There is little necessity for delay in this class of cases. The location is recorded in the county or mining organization records, and any transfers of title are made of record in the county records. When application is made for patent, notice thereof is published for sixty days in the newspaper published nearest the mine, and any adverse claim must be filed with the district land officers within that period, and proceedings in court for the determination of the question of the possessory title must be commenced within thirty days after filing of the adverse claim, in which case proceedings for patent are stayed until the controversy is finally determined by the courts or the adverse claim waived. If the courts render decision, the entry is allowed according to the judgment roll; and while in other cases non-compliance with law may be shown, yet a sufficient notice of the pending application is given to enable every presentation of this character to be promptly made, and the public as well as the private interests would be largely subserved by prompt action on all perfect cases. In mineral cases contested before this office, prompt action is likewise very desirable.

Q. How is it in relation to agricultural lands?—A. In relation to agricultural lands, after a man has made his entry and paid his money for the land, he can legally sell or mortgage it. He has upon final entry done all that is required of him to perfect his title. Should the case be defective and be delayed in this office, he may in the mean while have disposed of his title, and an innocent purchaser may be compelled to suffer by having bought land before the title was perfected. It is safe to presume that homesteaders and pre-emptors are poor men, and this class of people must suffer very largely by any considerable delay in securing their evidences of title.

Q. State in reference to any extra work performed by the employés of the bureau, and whether they are paid for it?—A. There is no extra work performed for which there is extra compensation. It would be very difficult to give in figures the amount of extra labor done. The best clerks in the office have always been in the habit of working out of hours. They get a large case for instance, and becoming interested in it, apply themselves to its consideration with such assiduity that the ordinary office hours do not afford sufficient time. The usual work is pressing, it is creditable for them to keep it up as near as possible, and altogether there has been a great deal of work done out of office hours and always by our best clerks. The regular hours are from nine in the morning to four in the afternoon, and during my connection with the office I have known clerks to work in the evening until eleven or twelve o'clock.

Q. And the character of this extra work is of a judicial nature in a large measure?—A. Yes, very largely. Copying is generally, though not always, done in office hours. I have very frequently worked until one or two o'clock at night, and I have taken my minutes home and written up cases. I have done it, when work was pressing, for years. You will find in the office that the chiefs of divisions very frequently come back here and work upon matters which involve deliberation, thought and hard labor.

Q. Were you a practicing lawyer?—A. I was in a law office for two or three years studying law and assisting in the work, and subsequently practiced for a year.

Q. You may state how the amount of work performed by yourself, by chiefs of divisions, and others compares with the work done by professional men in active practice?—A. The best clerks in this office certainly work as hard and as diligently as the average professional man. They are never relieved from the pressure of business; there is more than they can possibly do, continually being pressed for action.

Q. As to the character of the questions which they are called upon to consider and decide, the amounts involved, and the difficulty of those questions, how, in your judgment, does the work of yourself and the chiefs of divisions in the Land Office compare with that of an active lawyer in this city?—A. I think our work fully as difficult, and that it requires fully as many hours of labor for its successful performance as that of any practicing lawer. In some cases the amounts involved are enormous, occasionally reaching to several million dollars.

By Senator MORGAN:

Q. It frequently occurs in the investigation of cases brought here for settlement that you have to refer back over your files for many years to get the thread of the title?—A. Yes; very frequently in certain classes of cases.

Q. Is the business of the office increasing or diminishing?—A. It is increasing, and I believe it will increase for the next twenty-five years.

Q. Although you think the public lands may be disposed of still you think that other questions will arise to occasion an increase of the work of the Land Office for twenty-five years?—A. Of course that is a general estimate. The increase may continue for a longer or shorter period. It depends upon conditions which perhaps cannot be accurately estimated at this time. One thing, however, is reasonably certain. If the force and capacity of this office is to be kept at the minimum, thus inevitably postponing the adjustment of every conflict and controversy which is not pressed to a conclusion by parties in interest, the point of time when the business will begin to diminish will be far beyond what would by most people be considered a reasonable estimate.

Q. Will you give your reasons for believing that the business of the public land office will increase rather than diminish in the future?—A. The mining interests, as I have remarked, are in my judgment, at least so far as proceedings for government title are concerned, yet in their infancy. When the vast territory of the mineral regions is considered, and the difficulties and expense of any proper exploration and prospecting for minerals is taken into account, it will be apparent to any person who is at all informed in the premises that many years will elapse before mineral discoveries will cease. These future discoveries precede location, ownership, and proceedings for title which this office must adjust. Also, the mining interests of the West attained great importance many years before Congress provided for the sale of mineral lands; meanwhile mining claims were held under miners' laws and local regulations. When Congress did act, provision was made securing the owners of mines in a right of indefinite possession conditioned on certain annual expenditures, and this possession can be defended in the local courts. Hence patents for the land were not considered very desirable, save for exceptionable reasons, until a comparatively recent date. The mining industry has now become a matter of national interest. It not only seeks and obtains capital from almost every section of the country, but men of wealth and business experience from almost every nation are actively engaged in it. These interests are now the subject of purchase and sale everywhere. Manifestly this condition of things renders it desirable that title to the mining claim should be placed beyond controversy; hence the number of claims for which patent is sought has largely increased. During the last fiscal year the number of entries of mineral lands was about double that of the preceding year. This branch of our business will doubtless increase for many years, and requires able and deliberate consideration. There is also a large extent of country, aside from mineral lands, yet to be surveyed and disposed of; a large number of private claims in New Mexico, Arizona, and Louisiana yet to be acted upon, and an immense amount of unfinished business now in the office. As the supply of good available lands grows less it is probable that their value will increase, and contests and controversy multiply. This office, as the source of original title, will have a continually increasing labor in giving information and furnishing exemplifications; and in all cases of whatever character which have not or shall not have been adjudicated, demands for final adjustment will be made by the original parties, or the legal representatives of deceased claimants; witnesses will have died or gone to parts unknown; new interests and complications will have arisen, and the difficulties of adjustment will have vastly increased. In addition to this, and much more of detail which might be named, it is probable that in the future there will be a more restless activity in securing valuable lands, and that the pressure upon this office from every source will increase until all the desirable lands shall have been finally disposed of.

Q. Are the restrictions upon the limits of reservations a fruitful source of difficulty?—A. They always represent certain difficulties, and ultimately the reservations themselves will be disposed of and devolve much labor upon this office.

Q. And all that work must go through the General Land Office?—A. The whole of it.

Q. Every individual title to be settled in this country from this time forth, in the land States and Territories, as they are called, must undergo the supervision of this bureau?—A. Yes; that is substantially true, for even a confirmation of title by Congress involves subsequent and final action of the most important character by this office.

By Senator BLAIR:

Q. What connection does this office have with private land claims?—A. Its principal duty relates to the final survey or location of the grant on the ground. This duty, however, is one of vast difficulty, and involves a consideration of the entire case.

Q. Do you have reference to conflicts which grow out of disagreeing surveys by different governments?—A. They arise in this way. A claim which has been confirmed by Congress or is adjudged to be legal, may be described rudely and imperfectly in the original grant. The modes of measurement at that time were exceedingly primitive, and the ascertainment of exact boundaries is a matter of great difficulty. Since the descriptions were originally written streams may have changed their course, and other evidences of boundaries may have been disturbed. Grants may have been indefinitely described in some particulars, and are found to overlap, and a great number of other difficulties arise to increase the work of examination and settlement.

Q. Has the adjustment of private land claims in California and the Territories derived from Mexico delayed the settlement of the country? A. It has been a fruitful source of controversy always, and has retarded adjustments of title. In California nearly all such grants have been finally adjusted. In New Mexico and Arizona the existence of unadjusted claims has undoubtedly retarded the settlement and development of those Territories, and it is now very important that some action should be taken or measure adopted by Congress for the final settlement of those claims. Manifestly settlement is delayed wherever the people cannot know what is private and what public land. So long as these claims are unadjusted they constitute as many indefinite reservations as there are claims.

Q. Would it be possible to bring up the business of arrears with the present force?—A. It is not possible. There is a physical limit placed upon men.

Q. Would it be practicable to increase the force here with your present accommodations?—A. To a certain extent, yes. We should be somewhat crowded by an increase, but could arrange for desk room, though not in the manner most desirable. It is a matter of public necessity that the force be increased, and almost as great a necessity that our accommodations be enlarged; but pending any arrangement for more room, all personal comfort must be subordinated to the performance of the work. It is certainly not to the national credit that a sufficient and fairly paid force of able men is not provided for the adjustment of land titles derived from the government.

DECEMBER 28, 1881.

Subcommittee met at the General Land Office. Present, Messrs. Morgan and Blair.

L. HARRISON, chief of the division of private land claims, was called and testified as follows:

By Senator MORGAN:

Question. Are you the principal clerk on private land claims, and, as such, the chief of private land claims division?—Answer. I am.

Q. What are the usual duties of that division?—A. On this division devolves the examination and location by a proper survey, and patenting of all claims recognized or confirmed by or in pursuance of some act of Congress, which had their origin in some written evidence of title from a foreign government before the acquisition by the United States of the territory in which they are situated, and are embraced within the purchases of Louisiana and Florida, the cession made by Mexico by the treaty of Guadalupe Hidalgo and the subsequent Gadsden purchase, rights of property being guaranteed by the several treaties of acquisition; the examination and patenting of the locations authorized by Congress of lands in lieu of lands injured by earthquakes in the county of New Madrid, Missouri; also, the adjustment of donations and mission claims in Oregon and Washington Territory, and donations in the Territories of New Mexico and Arizona; likewise the patenting of allotments and reservations for Indians under the various treaties, and the preparation and authentication of scrip issued in accordance with law, in lieu of confirmed unlocated private land claims.

Q. If you have a written report setting forth the duties of the division of private land claims please to present it.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., November 30, 1881.

PRIVATE LAND CLAIMS DIVISION.

This division of the General Land Office has charge of all claims which had their origin in some form of concession from a foreign government before the acquisition by the United States of the territory in which they are located and are embraced within the purchases of Louisiana and Florida, the former by the treaty of April 30, 1803, with France, and the other by the treaty of February 22, 1819, with Spain, and the cession made by Mexico by the treaty of Guadalupe Hidalgo and the subsequent Gadsden purchase.

The rights of claimants to property acquired from the former governments when they exercised sovereignty over the region of country in which their respective claims are situated are recognized and protected in the treaties of acquisition referred to. After the confirmation of this class of claims under the various laws passed by Congress for ascertaining their validity, their proper location by a United States survey and patenting come within the supervision of this division. It also has charge of the examination, location, and patenting of donation claims in the State of Oregon and the Territories of Washington, New Mexico, and Arizona and of Indian lands, both reservations and allotments, and of the issuing of scrip in satisfaction of confirmed claims where the title to such claims has been adjudicated by the Supreme Court of the United States, under the act of Congress of June 22, 1860, and certificates of location or scrip decreed by said court; also, of the examination and authentication of other scrip issued for like purpose under act June 2, 1858, and the examination and patenting of New Madrid locations, act February 17, 1815, and of other matters in the service similar to the foregoing.

It is estimated that in the State of Louisiana alone the number of confirmed private land claims is		10,000
Of this number there have been patented	978	
Satisfied with certificates of location, act June 2, 1858	289	
		1,267
Total undisposed of		8,733

There remaining at least 8,733 claims unadjudicated and subject to patent.

Relative to the inquiry made by Senator Blair upon his former visit as to the necessity of issuing patents for this class of claims would say in reply that the acts of Congress confirming private land claims in Louisiana generally provide for the issue of patents and consequently this office has no jurisdiction to consider that question, but must execute the requirements of the law in that respect by issuing such patents when applied for.

Upon the general proposition as to the necessity of a patent, my understanding is, that a patent is essential to establish the boundaries of a confirmed claim and invest the patentee or lawful claimant with the legal title to the land described in such boundaries, being conclusive evidence of both.

"In the Federal courts, where the distinction between legal and equitable proceedings is strictly maintained, and remedies afforded by law and equity are separately pursued, the action of ejectment can only be sustained upon the possession by the plaintiff of the legal title. * * * The patent is the instrument which, under the laws of Congress, passes the title of the United States. It is the government conveyance. * * * But in the action of ejectment in the Federal courts, the legal title must prevail, and the patent, when regular on its face, is conclusive evidence of that title." Gibson *vs.* Choteau, 13 Wallace, 102.

Independent of the foregoing considerations its convenience, too, is undoubtedly appreciated in the daily business transactions of life. Suppose, for the sake of illustration, that the owner of a confirmed grant of land desired to borrow money upon his property or transfer it. In either transaction the title would be brought directly in question, and, in the absence of a patent, the confirmation would have to be resorted to, to establish title. That evidence is not in the possession of the claimant, and could only be exhibited by him by copies furnished from this office. The confirmation clearly established, a question might very properly arise as to the correctness of the boundaries of the claim as confirmed, which in many cases are vague and difficult of location, and being liable to be changed by the government before the issue of a patent might defeat the object. In this view of the matter a patent is of much importance, as the objections stated would thus be obviated.

Patents also are absolutely necessary where two private land claims are confirmed for the same, or portions of the same tract of land, to give the claimants a standing in court in a suit, if necessary, to determine which is the superior title, and cases of this kind frequently occur in the administration of this office.

I will now endeavor to give a brief outline of the system adopted of disposing of this class of claims, the same rule applying to all other classes of claims within the jurisdiction of this division, and the labor involved in their examination and adjustment.

These claims are disposed of as called up by the parties in interest or their duly authorized attorney, *e. g.:* An application being made for a patent in a specific case, an examination is first made of the files, of which there are alphabetical indexes, containing the names of the confirmees in the cases on file, and if the necessary papers are found constituting the basis of patent, they are examined to ascertain whether the confirmation is properly stated, the question of confirmation being previously inquired into and settled by our own records, that the claim is correctly surveyed, and corresponds in every particular with the survey as presented upon our township plat, and generally that the papers are in all respects regular, and conform to the law. If the examination results satisfactorily, the patent is issued and the case closed; but if the papers should not be found upon the files, the party is so advised, and is also informed that they must be transmitted before action is taken. Frequently the local land officers are instructed in that particular direct from this office.

DONATIONS IN OREGON AND WASHINGTON TERRITORY, FORMERLY OREGON TERRITORY.

By act September 27, 1850, a grant of public lands was made to every white settler above the age of 18 years, a citizen of the United States or who had declared his intention of becoming such on or before December 1, 1851, if a resident of said Territory on or before December 1, 1850; 320 acres to a single man and 640 acres to a married man, one half to himself and the other half to the wife, to be held in her own right upon the condition of four years' continuous residence and cultivation. A similar grant was also made by the same act to those who went there between December 1, 1850, and December 1, 1853, and possessed the same qualifications prescribed for the other class, and upon the same condition except that the settler must have been 21 years of age; and a single man was only entitled to 160 acres and a married man to 320 acres, one-half of which went to the wife in her own right.

The time when a claim could be initiated was further extended by subsequent legislation to December 1, 1855.

The files here show that there still remain to be patented, of the above claims..	343
To which add (supposed to have been abandoned)	2,000
Total	2,343

Relative to the claims supposed to have been abandoned, would say that notifications were filed as required by law, but the proof of residence and cultivation is wanting, and from the fact that they have continued in this condition for a long period of years, there can be no question but these claims have been abandoned, and consequently will never be perfected. They cannot be disposed of, however, without legislation of Congress, fixing a time under a penalty of forfeiture when claimants should come forward and furnish such proof.

The necessity for this legislation arises from a defect in the original donation act in not fixing a time when the proofs required by it of residence and cultivation, &c., should be made.

NEW MEXICO DONATIONS UNDER 2D SEC., ACT JULY 22, 1854. (SIMILAR TO OREGON.)

Total reported to date	234
Patented to present time	26
Total undisposed of	208

The act of July 22, 1854 (2d sec.), makes a grant of 160 acres of land to all persons above the age of 21 years, citizens of the United States or naturalized citizens who were residents of the Territory of New Mexico, on or before January 1, 1853, and a like grant of 160 acres of land to persons possessing the same qualifications who went to said Territory between January 1, 1853, and January 1, 1858—in the latter class upon the condition of four years residence and cultivation. Requirements in these cases which must be established by satisfactory proof, are—

1. Age January 1, 1853; if in the second class when claim is alleged.
2. Whether native born or naturalized.
3. Continuous residence and cultivation for four years, if in the second class.
4. That land is agricultural and non-mineral.
5. That donee has never received the benefits of any grant from Spain or Mexico, which has been recognized by the United States.

By the act of Congress approved February 5, 1875, Stats. 18, p. 305, certain lands in Santa Cruz valley, Pima County, Arizona Territory, were relinquished and granted "to the person or persons who have been in the actual *bona fide* occupancy or possession of said land by themselves or their ancestors or grantees for twenty years next preceding the date of the passage of the act." The register and receiver are authorized by said act "to hear and determine, subject to the approval of the Commissioner of the General Land Office, the rights of the parties claiming under" said act and for that purpose authority is given to summon witnesses, administer oaths, and take testimony relative to such occupancy or possession. The act further provides upon the final determination of any such claim for a survey and patent.

Total number of said claims reported to date	89

These claims have been suspended awaiting perfection of proofs as required by law.

CLAIMS IN CALIFORNIA PRESENTED TO BOARD OF LAND COMMISSIONERS (ACT MARCH 3, 1851).

Supplemental legislation	813
Mission claims under No. 609 (24)	23
Total	836
Claims rejected by Board and courts, or both	212
Claims finally confirmed (estimated)	624
Claims surveyed and reported	596
Confirmed claims not yet reported	28
Confirmed claims docketed but not disposed of	25
Total in California to be disposed of	53

In the settlement of these claims we dispose, on an average, of seventeen a year. Many complications arise in the consideration of this class of claims, the boundaries of which as a general thing, are contested, the act of July 1, 1864, affording facilities to all interested parties for that purpose. These claims usually embrace large tracts of valuable land, and in settling contests we are called upon to decide both questions of law, in construing the confirmatory decrees, which in many cases are very ambiguous, and questions of fact in determining the correct location of the boundaries of a claim as fixed by the decree.

GRANTS ORIGINALLY IN NEW MEXICO, NOW IN NEW MEXICO AND COLORADO.

Confirmed by Congress, under 8th section, act July 22, 1854, undisposed of, 40.

The same remarks will apply to this class of claims as were made with reference to California claims. These claims as confirmed, are, however, for much larger tracts than those in California, and the description of boundaries contained in the grants from which their location must be determined, is very vague and indefinite in the majority of cases.

Of this class of claims there have been reported by the surveyor-general of New Mexico, under said 8th section, act July 22, 1854, and are now pending in Congress for action, 70.

Grants in Arizona reported to Congress by surveyor-general of that Territory, under act of 1854, as extended to Arizona, 11.

Total pending in Congress, 81.

This division is also charged with the examination of all applications for certificates of location, under the act of June 2, 1858. Said act was designed for the benefit of owners of confirmed private land claims, applying only to those claims confirmed by it and prior acts of Congress, where the land embraced by such claims had been disposed of by the United States as public lands, and cannot therefore be satisfied by a location in place, and the examination necessary is—

1. Right of party to make the application.
2. As to confirmation.
3. Original locus of grant.
4. That land so confirmed has been disposed of by United States.

This scrip, like that issued by this division by virtue of decrees of the Supreme Court of the United States, under act of 1860, according to the provisions of the act of Congress, approved January 28, 1879, is made receivable by actual settlers in commutation of homestead and payment for pre-emption claims, and is also assignable, and the examination of assignments as to their regularity is conducted here prior to transmission to recorder for patenting.

In Supreme Court scrip, locations made prior to act January 28, 1879, above referred to, no patents are authorized to be issued, but a certificate approving duplicate certificate of entry was prescribed by Secretary's decision of August 4, 1875, to be issued by this office as evidence of title.

There are awaiting approvals of duplicates in this division, 1,176.

Scrip applications under act June 2, 1858, to be examined, 96.

Scrip assignments to be examined, act of June 2, 1858, and Supreme Court scrip, 163.
Scrip suspended on account of imperfections in assignments, 169.

This division is also charged with the issuing of patents for all Indian allotments and reservations, under the various treaties. Its duties, however, in this particular are purely ministerial, as all questions of conflict are determined by the Office of Indian Affairs, the only labor required by this office being posting the different allotments upon the tract books, and the preparation of patents.

In 1812, a large part of the land in the county of New Madrid was injured by earthquakes; and on February 17, 1815, Congress passed an act for the relief of parties who had thus suffered. By this act persons whose lands had been materially injured were authorized to locate a like quantity of land on any of the public lands in the Territory of Missouri, the sale of which was authorized by law. And it was made the duty of the recorder of land titles in the Territory, when it appeared to him from the oath or affirmation of competent witness or witnesses, that any person was entitled to a tract of land under the provisions of the act, to furnish him a certificate to that effect. On this certificate, upon the application of the claimant, a location was to be made by the principal deputy surveyor of the Territory, who was required to cause the location to be surveyed and a plat of the same to be returned to the recorder with a notice designating the tract located, and the name of the claimant.

The act further provided for a report to be forwarded by the recorder to the Commissioner of the General Land Office of the claims allowed and locations made; and for the delivery to each claimant of a certificate of his claim and location, which should entitle him, on its being transmitted to the Commissioner, "to a patent to be issued in like manner as is provided by law for other public lands of the United States." The act also declared that in all cases when the location was made under its provisions, the title of the claimant to the original land, founded generally upon some French or Spanish grant, or other evidence of title emanating from either of those governments, should revert to and vest in the United States.

Number of said claims reported	516
Number disposed of	382
Claims undisposed of	134

In addition to the foregoing there are a large number of private land claims and donations in the States of Florida, Missouri, Arkansas, Alabama, Mississippi, Illinois, Michigan, and Indiana still unadjusted and unpatented.

In Florida there are 866 claims confirmed by, or pursuant to acts of Congress, or by the United States Supreme Court, of which United States surveys, with descriptive notes, are on file here. The land involved amounts to nearly 1,300,000 acres; and a very few only of said claims have been called up for patenting.

There are other claims in Florida which have been confirmed, but not located or surveyed; and there are many conflicts between those surveyed, which will at some time have to be adjusted in this office.

In the old Vincennes (Indiana) and Sault Ste. Marie (Michigan) land districts there are about 100 military and other donations unadjusted and unpatented.

Since the passage of the act of June 6, 1874, this office has not been obliged to issue patents in confirmed Missouri claims, but many important cases come before us for adjudication from that State. This act, however, does not apply to New Madrid claims, which are not private land claims within its meaning, and are, therefore, still subject to patent.

It is impossible to tell, without much research, how many unadjudicated claims remain in the States of Alabama, Mississippi, and Arkansas, but there are quite a large number, and they are the subjects of considerable correspondence every year.

Respectfully submitted.

L. HARRISON,
P. C. P. Land Claims.

Approved.

N. C. McFARLAND,
Commissioner.

For Hons. J. T. MORGAN and H. W. BLAIR,
Of Committee on Public Lands, United States Senate.

Q. Are there any additional duties to those mentioned in your report devolving upon you? If so, state them in general terms.—A. There are matters of correspondence. We have on an average during the year thirteen hundred letters from the various States and Territories where the private land claims are situated making inquiries both as to title and survey. These letters are all answered carefully and with a view to furnish full information. We generally make the information as complete as possible. Very frequently in writing a letter of one page it will require an examination of two or three days in order to obtain the necessary data upon which to base the answer.

Q. How many clerks are in your division?—A. There are nine, including myself, six gentlemen and three lady copyists, to do the work of the division.

Q. Have you any messengers?—A. None.

Q. How many of these clerks are in charge of the investigation of these questions referred to in your report?—A. Four. Mr. Dickinson has charge of California and New Mexico claims. Mr. Walker has general supervision over the southern claims, New Mexico and Arizona donations, and applications for scrip under act June 2, 1858, and the issuing of Supreme Court scrip; Mr. Smith over the donations in Oregon and Washington Territory, and Mr. Lauffer the examination of assignments of all classes of scrip, Indian matters, and the preparation of patents for California and New Mexico claims. I have a general supervision over the whole division, apportion the work and give directions as to how it shall be done; examine and revise the correspondence and decisions before submitting them to the Commissioner, and answer all personal requests for information. I am the medium of communication between the Commissioner and the division and am responsible to him for the correctness of the work done.

Q. In the conduct of your supervision over the division, do you have the assistance of the law clerk of the bureau?—A. Not very often. We settle all our own questions. There are a great many questions submitted from the division to the Commissioner. We settle everything in the division but there may be some questions that the Commissioner is not entirely satisfied about which he may refer to the law clerk.

Q. How much room is assigned to your division?—A. Two rooms.

Q. What are their dimensions?—A. One is about the same size as the room of the Commissioner and the other is some smaller; I would say that the entire length of both rooms is about 50 feet, with a width of 20 feet.

Q. Have you room enough for the accomodation of the clerks and copyists at present employed?—A. I think we have for the present force. I am much better situated than the remainder of the office, so far as the accomodations are concerned. I have not, however, accomodations for all my records, which are very voluminous.

Q. The records to which you refer are such as you are compelled to resort to frequently for information.—A. Yes, sir.

Q. Where are those records kept which are not in your room?—A. In the hall in the Ninth street corridor. I keep in a case in the corridor the Chickasaw, Creek, and Choctaw patent records, and Chickasaw tract books and records of correspondence. I also keep there all the patent and other blanks in use in this division.

Q. Would it facilitate your work if you had sufficient accommodations within the room you occupy for the current business of your division?—A. I think it would. It is rather inconvenient to go into the hall which is dark.

Q. Are these papers kept in file cases?—A. So far as the papers in my room are concerned, I have them all in file cases. The papers in my room relate to California, New Mexico, Arizona, Louisiana, Missouri, Arkansas, Alabama, Florida, Mississippi, Indiana, Illinois, and Michigan claims; also, Chickasaw, Creek, and Choctaw papers and miscellaneous letters; but the donation claims in Oregon, Washington Territory, and certain Indian papers which are kept in the other room are not in file holders.

Q. What is the number of file cases in your division?—A. Five hundred and ten file holders.

Q. Are the papers usually large or numerous in private land claims? —A. Yes, sir; in some exceptional cases they might aggregate a thousand papers, and would fill a bushel basket of closely written documents comprising testimony and original exhibits.

Q. Why is it that the private land claims division is so far behind? Is it because of the want of attention to their interests on the part of claimants, or want of sufficient force here to adjudicate the questions coming before it?—A. It is because of the want of sufficient force.

Q. How many of these claims are pressing upon the immediate attentiod of the division?—A. I cannot state with particularity. I am able, however, with the present force, to keep up the current work, to answer the correspondence, and take up all cases and dispose of them as they are called up.

Q. Would there be any object in going into the cases until they are called up?—A. I do not know that there would be.

Q. Is there an increase or accumulation of business in your office yearly over and above what you can dispose of?—A. No, sir; I think that we dispose of all the cases that are called up during the year.

Q. You give preference then to those called up by the claimants, and many of them thus called up are those that appear to be most pressing?—A. Yes, sir; we do not dispose of any cases except those called up for that purpose.

Q. So that the cases are not actually disposed of in the order in which they are called up by the claimants?—A. No, sir; because there are some cases which the Commissioner makes special. For instance, a patent is required for use in court. That is a case which the Commissioner would make special, and we would take that up out of its order and dispose of it.

Q. Then the consideration of cases in the private land claims division depends very largely upon the requirements made by the Commissioner? —A. Yes, sir; as far as the order of their consideration is concerned, which does not in any way affect the number of cases disposed of within a stated period.

Q. How many additional skilled clerks would it require to bring up the business of this division to date?—A. That question would be very difficult to answer, because it is impossible until a case is taken up to know the amount of labor involved in its examination.

Q. Would it require a force equal to that which you now have in your office to bring all of these cases to a decision?—A. I do not apprehend that we would be able to settle them in a hundred years hence with the present force. In Louisana, alone, there are at least 10,000 claims, some of which were adjudicated as far back as 1807, and from that time to the present we have not disposed of more than 1,300. At this rate you can form an idea how long it would take to adjudicate the remainder. My recollection is that about 1,000 have been patented and 300 satisfied with certificates of location. The actual number has been determined and is stated in my letter.

Q. Does a delay in final settlement and adjudication of these questions add to the embarrassments of making a proper decision?—A. In some respects it does, though I think we find at the present time no more difficulty in their adjudication than when I entered the office sixteen years ago.

Q. I speak in reference to evidence.—A. The delay might be embarrassing in that respect, though it is not probable that witnesses could be procured at this date competent to testify to matters occurring three-fourths of a century ago.

Q. Is your action based entirely upon records sent up from the land office?—A. Not exactly; though the papers upon which patents issue are prepared in the different local land offices or surveyors-generals' offices. In the cases that have been confirmed by acts of Congress upon reports of commissions, we have the reports and resort to those records in determining questions of confirmation. In matters of location we have to rely upon data furnished through or from subordinate offices.

Q. Suppose that data should be destroyed by fire or other accident, what would be the condition of this office in respect to the location of these claims?—A. Plats of all surveys are furnished to this office, and the local land offices, by the different surveyors-general, and if all the plats were destroyed it would put things in a very bad shape.

Q. To what source of information would you then resort for the data upon which to locate private land claims?—A. If you mean claims which have not been patented, it would be almost impossible to identify them from the records in this office, which would be the only resort in the contingency which you state, as the original reports are very vague as to matters of location.

Q. Under such a condition of things would it not be more prudent and economical to have these cases finally adjudicated as early as practicable?—A. In that view of the matter it would.

Q. Are there any claims that come here for confirmation which have not been acted upon by any court or by any board of commissioners?—A. There was a class of claims at Sault Marie in which the law gave the commissioners final jurisdiction to confirm, but they have been all disposed of in that respect. There is also a class of claims from New Mexico, Colorado, and Arizona which are reported through this office to Congress for action.

Q. In these cases are the questions to be determined upon proofs taken here under the orders of this bureau?—A. No, sir. The law gives the surveyors-general of those districts jurisdiction to pass upon the validity or invalidity of every private land claim presented to them, and requires that every claim so presented shall be transmitted to Congress for final action. These claims, therefore, as they are reported by the surveyors-general from time to time, consisting usually of the surveyor-generals' opinion, together with transcript of the testimony taken by him upon questions of boundary and genuineness of original title papers, are sent to the Secretary of the Interior for transmission by him to Congress.

Q. The adjudication of these claims is not intrusted to this bureau?—A. No, sir. It is intrusted to the surveyors-general of New Mexico, Colorado, and Arizona; Congress reserving to itself final action in the matter.

Q. Are there any private land claims that depend for confirmation upon the action taken by this bureau?—A. None, except the class hereinbefore referred to, which have all been confirmed.

Q. The question of confirmation is always decided by commissioners, surveyors-general, the courts, or by Congress?—A. Not exactly. The surveyor-general has not the power to confirm. Congress did not clothe him with that power, but gave him jurisdiction to pass upon validity or invalidity of original title papers.

Q. The investigation, then, of private land claims, is intrusted to the courts, to the surveyor-general in some cases, to commissioners in other cases, and the confirmation is intrusted to the courts, to commissioners, and to Congress?—A. Yes, sir; claims under acts of Congress passed from time to time have been adjudicated by boards of commissioners, but in no case did any board of commissioners have jurisdiction to confirm, except those appointed under act of March 2, 1805, such authority having been conferred upon them by the fourth section of the act of March 3, 1807.

Q. There are no questions which require an original investigation upon testimony not taken heretofore in this office?—A. If you refer to questions of confirmation I answer in the negative, but upon questions of survey, it frequently becomes necessary to order a hearing before the surveyor-general or local land office to determine the correct boundaries of a confirmed claim.

Q. What are the duties of your division in the investigation of private land claims in respect to their being confirmed or disallowed, and whether it is a part of the duties of your division to take original evidence upon questions of that kind?—A. We have no jurisdiction over a private land claim unless it has been confirmed by or in pursuance of some act of Congress. We examine here and pass upon the question whether a claim is confirmed or not, when it is called up. If it has been confirmed and the law provides for a survey, and such survey has been made, it also must be examined to determine whether it conforms to the boundaries as confirmed; and it may be necessary to take testimony upon the question of location. We would direct the surveyor-general or register and receiver to take the testimony.

Q. Then you would act upon the report of the surveyor-general or register and receiver as to whether the claims so confirmed cover the tract that was confirmed?—A. Yes, sir. The report would furnish a basis for our action.

Q. Then, after that, your further duty would be to issue patents?—A. Of course the Secretary of the Interior has an appellate jurisdiction over this office, and its decisions are subject to appeal to him.

Q. The further duty of your division would be to direct the issue of the patent in accordance with your examination and determination of the question here?—A. Yes, sir.

By Senator BLAIR:

Q. Are there complicated questions in your division? What sort of questions do you consider, and in what way do they arise?—A. To answer this question let me refer for illustration to the act of Congress of March 3, 1851, which provided for the appointment of a board of land commissioners for the adjudication of claims in California; said act also provided for an appeal to the United States district court and to the Supreme Court of the United States upon questions of title, either by the claimant or the United States. Under the operations of this act about six hundred and twenty-five claims were confirmed, and the confirmations in a great many cases are vague and indefinite as to boundaries, and raise questions of fact which we must consider. Questions of law also arise in construing the decrees of the courts in very many of these claims. As an illustration take the following case where the question presented for our consideration was whether it was a decree for quantity within larger exterior boundaries, or a decree by boundaries;

the decree of the board, which was in "all things affirmed," being for boundaries:

HEIRS OF JUAN READ
vs.
THE UNITED STATES.

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the said claim of the petitioners is valid, and it is therefore hereby decreed that the same be confirmed.

The land of which confirmation is hereby made is the same on which said Juan Read resided in his lifetime; is known by the name of Corte de Madera del Presidio; is situated in Marin County, and bounded as follows, to wit: Commencing from the solar which faces west at a point at the slope and foot of the hills which lie in that direction, and on the edge of the forest of red-woods, called Corte de Madera del Presidio, and running from thence in a northwardly direction four thousand five hundred varas to an arroyo called Holom, where is another forest of red-woods called Corte de Madera de San Pablo; thence by the waters of said arroyo and the bay of San Francisco, ten thousand varas to the Point Taburon, said point serving as a mark and limit; thence running along the borders of said bay and continuing in a westerly direction along the shore of the bay formed by Point Caballos and Point Taburon, four thousand seven hundred varas to the mouth of the Cañada and the point of the "Sausal" which is near the estero lying east of the house on said premises, which was occupied by said Juan Read in November, 1835, and thence continuing the measurement from east to west along the last line eight hundred varas to the place of beginning; containing one square league of land, be the same more or less; being the same land described in the testimonial of juridical possession on file in this case, as having been measured to said Juan Read under a grant of the same to him, to which testimonial and the map therein referred to, and constituting a part of the *espediente*, a traced copy of which is filed in the case, reference is to be had.

ALPHEUS FELCH,
R. AUG. THOMPSON,
Commissioners.

Filed in office June 13, 1854.

In the United States district court for the northern district of California. Stated term, January 14, 1856.

THE UNITED STATES, APPELLANTS,
vs.
HEIRS OF JOHN READ, APPELLEES.
"Corte de Madera del Presidio." Transcript from board of coms., No. 497.

On appeal from the final decision of the board of commissioners to ascertain and settle private land-claims in the State of California.

Decree.

This cause came on to be heard at a stated term of the court, on appeal from the final decision of the board of commissioners to ascertain and settle the private land-claims in the State of California, under the act of Congress, approved on the 3d day of March, A. D. 1851, upon the transcript of the proceedings and decision of the board of commissioners, and the papers and evidence on which the said decision was founded; and it appearing to the court that the said transcript has been duly filed, according to law, and counsel for the respective parties having been heard, it is, by the court, hereby ordered, adjudged, and decreed that the said decision be, and the same is hereby, in all things affirmed; and it is likewise further ordered, adjudged, and decreed, that the claim of the appellees is a good and valid claim, and that the said claim be, and the same is hereby, confirmed to the extent and quantity of one square leagues, being the same land described in the grant and of which the possession was proved to have been long enjoyed: Provided that the said quantity of one square league, now confirmed to the claimants, be contained, within the boundaries called for in the said grant, and the map to which the grant refers; and if there be less than that quantity within the said boundaries, then we confirm to the claimants that less quantity.

OGDEN HOFFMAN, JR.,
U. S. Dist. Judge.

Q. You would say that this illustrates in one case the nature of the questions in litigation before this division?—A. Yes, sir.

Q. Do many controversies arise before this office between rival claimants under government grants and patents?—A. Yes, sir. We have controversies between rival claimants, but when such claims have been patented our jurisdiction is ended.

Q. The question in controversy is not always between the claimant and the government?—A. No, sir, not at all; though the government is generally interested. Suppose, for an illustration, a claim has been surveyed for twice the quantity of land that it is entitled to through mistake of government officers. In such a case it is our duty to have the survey reformed and located according to the confirmed boundaries of such claim.

Q. Then, one private claimant may set up ownership according to the survey, while another claims the same land, or a portion of it, as against the survey, and you are called upon in a litigation of that sort to pass upon the validity of the survey, and correct the error, if there is any?—A. Yes, sir.

Q. To what extent is there litigation or controversy of that nature arising?—A. In California private land-claim surveys, at least thirty per cent. of them are contested. There are also contests growing out of the surveys of New Mexico claims; and so, also, with almost every class of surveys.

Q. It is growing out of imperfect, defective, or erroneous surveys?—A. Generally erroneous surveys.

Q. It follows, then, that the surveys themselves have been hasty or imperfectly made?—A. Not always. The survey may be all right so far as the work is concerned, but wrong as to the location of the proper boundaries.

Q. Is there to some extent the same difficulty in all parts of the country besides California?—A. These questions generally arise in the consideration of all classes of private land-claim surveys. In the grants made by Spain, France, and Mexico, the boundaries are not set forth with sufficient particularity to be identified, and hence the difficulty experienced in locating them correctly.

Q. In the construction which the surveyor-general places upon the instrument which is to guide him in making his survey of the land, is it liable to subsequent revision in this office?—A. Yes, sir; this office has jurisdiction to revise the acts of the surveyor-general in connection with private land-claim surveys.

Q. What provision is made for the guidance of the surveyor-general in the original survey which he is to make?—A. He must be governed by the original title papers and the confirmation.

Q. Is there nothing in the proceedings which take place prior to the act of the surveyor in locating the grants which construes those grants where they appear to be indefinite? Is there no construction by court or commissioners, or by Congress, which throws light upon the duty of the surveyors-general in making the location itself, or is it all left to the vague language of the grant?—A. The confirmation usually follows the language of the grant, and consequently the surveyor-general relies upon the grant in determining its location, unless the decree of confirmation changes it. In some cases the confirmations are very simple, and there is no trouble in identifying the boundaries.

Q. When the boundaries are fixed, does the surveyor-general in making a survey in accordance with those boundaries or which he supposes to be in accordance with them, establish monuments so as to locate definitely by metes and bounds and courses and distances the tract of land in question?—A. Yes, sir.

Q. He fixes exact exterior lines by monuments. Now, I want to know if this location made by the surveyor-general thus definite, and fixed by monuments, is subject to a revision afterwards?—A. It is.

Q. It is not binding upon any party whatever?—A. That depends upon circumstances. If a California survey under the act of June 14, 1860, and regularly published in accordance with that act, and no exceptions filed in either of the United States district courts within the time prescribed, such a survey would be conclusive, but any other survey is liable to be changed at any time before patent issues.

Q. The decision is simply fixing in the successful claimant the title to whatever may be described in the confirmation.—A. It is a formal recognition of his title by the United States, and prepares the case for patent.

Q. And the actual possession to which he is entitled under the grant is to be ascertained and fixed by the survey of the surveyor-general, subsequently, which is liable to be overruled and changed until there is a subsequent affirmation by this office subject to appeal to the Secretary of the Interior?—A. Yes, sir.

Q. When such a survey has been approved by this office, or upon an appeal to the Secretary of the Interior, then, and not till then, is the title ascertained, perfected, and quieted?—A. The matter is not finally classed until the patent issues, which follows the approval of the survey.

Q. Then do I understand that no patent upon any of these grants is issued until the approval of the survey, and the issuing of the patent immediately follows the approval of the survey?—A. Yes, sir; this is the practice in California cases. In no other class of surveys does the law require a formal approval by the commissioner, indorsed upon the plat. The issuing of a patent, however, is in effect the approval of a survey.

Q. Does the law usually authorize the issuance of the patent?—A. Yes, sir; there are, however, confirmatory acts in which no provision is made for the issue of a patent, which are covered by section 2447, Revised Statutes.

Q. Is there any object in all this, unless the controversy is thus to merge in a patent, that you can perceive?—A. There might be some object in having the boundaries finally determined; but it is desirable a patent should issue to finally close the matter.

Q. Then the failure in the law in any particular case to provide for the ultimate issuance of a patent is a very marked defect in the law itself?—A. Yes, sir; but there are not many such omissions in the laws confirming private land claims.

Q. If the patent does not issue, has anything been gained by this long controversy and examination before your office? Are the parties placed in any different relation to each other from what they would have been if there had never been any steps whatever taken in confirmation of survey or action, by Congress, of any kind whatever? Does what has been done pass for anything or not?—A. Yes, sir; it would result in a final determination of the question of survey. In no case where a contest has arisen as to the correct location of a claim is the law defective in that particular.

Q. Are the investigations by your division and the information in your possession of great importance to Congress in the legislation rendered necessary upon these grants?—A. I would say that almost every bill presented in Congress for the confirmation of a private land claim is sent to this office for a report. I have prepared during my sixteen years' experience here numerous reports on bills of that character. Congress has the benefit of whatever information we may have here concerning these private land claims.

Q. What is your opinion as to the possibility of the Congressional committees investigating these cases were it not for the labors of your office?—A. I do not think that th ecommittees of Congress have the time to devote to matters of this kind. Suchinvestigations require a great deal of labor and research, which they have not the facilities to under take.

Q. You have expressed considerable confidence that you can do all that is necessary here now, so far as the current work is concerned, with your present force?—A. Yes, sir.

Q. You do not think that this vast mass of accumulated claims need be disposed of any faster than they are called up?—A. That is my impression about them.

Q. What I want to get at is this: Whether these cases have not accumulated for the reason that parties have experienced the impossibility of getting early and prompt attention to their claims, and failed to prosecute them, some of the claims having been filed as far back as 1807, and from that time to the present?—A. Some claimants are disposed to be tardy in applying for their patents when they have confirmations and United States surveys to fall back upon, and particularly so if there are any expenses involved in the final settlement of the claims.

Q. What claims are taken up until somebody desires it?—A. None. We have as much as can be attended to in settling cases called up.

Q. Do you call those claims which have been surveyed pending claims?—A. Yes, sir. All those claims are subject to patent.

Q. Then you do not anticipate that in the great mass of these claims there will be any controversy, but that as soon as you can reach them the only thing to be done will be to issue the patent?—A. Every case requires an examination as to the confirmation and survey, whether contested or not.

Q. This mass of pending cases, as you call them, have never been examined at all?—A. No, sir.

Q. Then, if all these cases are still subject to examination if there is no settlement until the examination is made, and that examination is very likely to reveal imperfections of title here, is it not exceedingly important that the examinations should be made immediately?—A. Yes, sir; particularly if the United States is to be benefited in any way.

Q. Why not the individuals who have these claims and pay the United States for the property? Why are they not entitled to early and prompt action of the government, so that if they are in error, or technical imperfections abound in their claims, where any substantial proof is required, they may have early notice, either they or their heirs, of the same? Is it not the imperative duty of the government to do this?—A. It probably is.

Q. Is it not a fact that this great mass of delayed pending cases is so delayed by reason of the negligence of the government in not affording proper facilities for making examinations and settling controverte questions that might be reached?—A. It amounts to that, as we could not dispose of any more claims than we do, even if they should all be called up at the same time.

By Senator MORGAN:

Q. Speaking of the destruction by fire or otherwise of the records in your division, what recourse would you have?—A. The patent records and records of correspondence could not be replaced, but some portion of our records might be replaced by copies from the local land offices and surveyors-generals' offices.

Q. In the case of the confirmation by commissioners?—A. Those records are kept in the division of private land claims. The original certificates of confirmation are filed in the offices of the surveyors-generals' or local land offices.

By Senator BLAIR:

Q. The original record of the survey is kept by the surveyor-general, and a duplicate is furnished to this office, and plats are forwarded here, so that in the event of the destruction by fire or otherwise of the records in your division your information in reference to surveys would have to be obtained from the surveyors-general.—A. Yes, sir; or local land offices.

Q. In the case supposed, and the additional case of the destruction of the records in the offices of the surveyors-general and local land offices, there would be absolutely no data available anywhere for a proper decision of these claims.—A. No, sir.

Q. In a case before commissioners, where a controversy has been pending as to the right of the claimant to confirmation of his claim, who keeps the papers upon which the adjudication of the commissioners is based?—A. They are kept in the offices of the different surveyors-general or registers and receivers. We have not the original evidence here. We merely have the abstract or transcripts.

This is the case in Louisiana and the Southern States generally, except Missouri, where the original evidence has been transferred to the State authorities pursuant to law.

Q. Do you know it to be a fact that the evidence upon which these claims have been based has been preserved in the offices of the different surveyors-general?—A. I believe so, though I cannot state positively from personal knowledge.

Q. This original evidence is not in this department?—A. No, sir, except in regard to claims in the State of Florida we have a portion of the evidence.

Q. Have you had occasion to visit the offices of any of the surveyors-general?—A. I have only visited the office of the surveyor-general of California.

Q. Are the records kept in a fire-proof building?—A. Yes, sir. They are kept in the United States sub-treasury building, which is supposed to be fire-proof.

Mr. Harrison subsequently submitted an additional communication, as follows:

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., January 3, 1882.

The term "Private Land Claim," literally speaking, signifies a right of property based upon some written evidence of title, protected by treaty stipulation, emanating from the government which preceded the United States in sovereignty in the region of country where situated.

The private land claims which grew out of the treaty of April 30, 1803, with France by which the United States acquired the province of Louisiana are situated principally in the States of Louisiana, Missouri, and Arkansas, some also being found in Mississippi and Alabama south of the thirty-first parallel.

By act of March 26, 1804 (Stats. 2, page 283), the southern part of the province of Louisiana was constituted the Territory of Orleans, which comprised what is now the State of Louisiana, and all that tract of land west of the Perdido River south of the thirty-first parallel. The title of the United States to this tract of land as claimed under the said treaty of April 30, 1803, was disputed by Spain, but the claim of that government was subsequently relinquished by the treaty of February 22, 1819. The residue of said cession was known as the district of Louisiana.

The first legislation looking to a formal recognition of these claims was the act of March 2, 1805 (Stats. 2, page 324), for their adjustment. This act provided that the

Territory of Orleans should be divided into two districts, and for the appointment of a register for each, and for the district of Louisiana a recorder of land titles. In pursuance of its requirements every claimant was to deliver before the 1st day of March, 1806, to the proper register or recorder a notice in writing stating the nature and extent of his claim, and also to deliver within that period, that the same might be recorded, every grant, order of survey, deed, conveyance, or other written evidence of claim. It further provided for the appointment by the President of two persons for each of said districts, who, with the registers and recorder of land titles, should be commissioners for the purpose of ascertaining within their respective districts the rights of claimants as specified in said act.

By act April 21, 1806 (Stats. 2, page 391), the time for delivering notices, as aforesaid, was extended to January 1, 1807, and by act March 3, 1807, stats. 2, page 440, the time was further extended to July 1, 1808. By the fourth section of the last-mentioned act it was provided that the commissioners should "have full powers to decide according to the laws and established usages and customs of the French and Spanish Governments upon all claims to lands within their respective districts, where the claim is made by any person or persons, or the legal representatives of any person or persons, who were on the twentieth of December, one thousand eight hundred and three, inhabitants of Louisiana, and for a tract not exceeding the quantity of acres contained in a league square, and which does not include either a lead mine or salt spring; which decision of the commissioners when in favor of the claimant shall be final against the United States, any act of Congress to the contrary notwithstanding."

The 6th section provided that transcripts of the final decisions made in favor of claimants in virtue of said act should be transmitted to the Secretary of the Treasury (who then exercised appellate jurisdiction over the Commissioner of the General Land Office), and to the surveyor-general, or officer acting as such, and for the delivery to the claimant of each claim so confirmed a certificate stating the circumstances of the case, and that he is entitled to a patent, &c. This confirmation certificate, as it is styled, according to the provisions of the act, was to be filed with the proper register or recorder within twelve months from date, and it was made his duty, the land having been previously surveyed, and a plat filed with him, to issue a patent certificate, which, upon presentation to the Commissioner of the General Land Office, entitled the claimant to a patent.

Numerous other acts have been passed, at various times, since then, giving facilities to claimants to present their claims to the government for recognition. Some made provision for the appointment of boards of commissioners for their adjustment, the claims acted upon by such boards having been subsequently confirmed by Congress; others constituted the registers and receivers of certain districts, where such claims were known to exist, as commissioners to pass upon their validity, the claims reported by them, also, having been subsequently confirmed by Congress, while in others Congress delegated the power of confirmation to the United States district courts, with right of appeal to the Supreme Court of the United States.

It will thus be observed we have to deal with three separate classes of confirmations:

1. By boards of commissioners.
2. By Congress upon reports of boards of commissioners.
3. By the Federal courts.

The last act of Congress under which a claim might be presented to the government for recognition was the act of June 22, 1860 (Stats. 12, page 85). This act applied to the States of Florida, Louisiana, and Missouri, and expired by its own limitation June 22, 1865. It was revived by the act of March 2, 1867 (Stats. 14, page 544), for three years, and again revived by act June 10, 1872 (Stats. 17, page 378), for three years.

It was necessary in order that the government might know the public from the private property, and to protect the interests of private claimants, to segregate the claims so confirmed from the mass of public domain; consequently, the confirmatory acts usually made provision for their survey, and such as could be located were surveyed from time to time. The surveys so made, however, do not conclude the government, and may be changed, if erroneous, at any time prior to the issue of a patent. It becomes important, therefore, when an application is made for the issue of a patent, to examine: 1st. As to confirmation; 2d. As to survey. And these prerequisites must be satisfactorily determined before patent issues.

FLORIDA.

Florida was acquired from Spain by the treaty of February 22, 1819, and here also are found numerous private land claims based upon grants made by the Spanish Government while it exercised ownership there, very few of which have been patented. These grants, like those in Louisiana, &c., were confirmed by Congress at various times upon reports made by commissioners and by the Federal courts under its authority.

The survey in each case, as well as the matter of confirmation before patent issues, is subjected to a critical examination, with a view to ascertain whether it conforms to the boundaries of the grant as confirmed, and in many cases the location of confirmed boundaries is a matter which requires much labor and research.

By the treaty with the Republic of Mexico of February 2, 1848 (Stats. 9, p. 922), known as the treaty of Guadalupe Hidalgo, and the subsequent treaty with the same republic of December 30, 1853 (Stats. 10, p. 1031), known as the Gadsden Purchase, the United States acquired a large region of country embracing the present States of California and Nevada, the Territories of Utah and Arizona, a portion of the State of Colorado, and portions of the Territories of New Mexico and Wyoming.

The private land-claims growing out of these treaties, however, are confined to the State of California and the Territories of New Mexico and Arizona, with possibly three or four in Colorado.

Congress first took action in reference to claims in California, and by the act of March 3, 1851 (9 Stats., p. 631), provided for their adjudication by a commission appointed for the purpose, with right of appeal to the United States courts. The confirmations made under these provisions of law had regard to the validity of the claims, their area and boundaries, but the location of the same, by a United States survey, except such matters of survey as were adjudicated by the courts under act of June 14, 1860 (Stats. 12, p. 33), and the issuing of patents upon both classes of survey, are under the jurisdiction of this office.

In regard to the private land-claims in New Mexico, however, different proceedings for their adjudication were instituted. By the act of July 22, 1854 (Stats. 10, p. 308), Congress made it the duty of the surveyor-general of said Territory, under instructions from the Secretary of the Interior, to ascertain the origin, character, and extent of all claims to lands under the laws, usages, and customs of Spain and Mexico, to make final report of all such claims to be laid before Congress; the land claimed to be reserved from disposition by the United States until the final action of Congress. The reports of the surveyor-general, under the foregoing provisions, uniformly relate to the authenticity of the title papers and the validity of the claims, sometimes embracing the facts as to possession, extent of area, boundaries, &c.

As far as the claims have been reported by the surveyor-general of New Mexico, they have been surveyed, and in those cases which have been confirmed, where patents have not already issued, are subject to patent, providing the survey in any such case is in accordance with the confirmation.

The proceedings for the confirmation of private claims in Colorado and Arizona are similar to those in New Mexico, the eighth section of the said act of July 22, 1854, having been extended to Colorado by act February 28, 1861 (Stats. 12, p. 172), and to Arizona by act July 15, 1870 (Stats. 16, p. 304).

To discharge the duties devolving upon the private land claims division, Congress, by the act of July 4, 1836 (Stats. 5, p. 107), provided for the appointment by the President, by and with the advice and consent of the Senate, of a principal clerk on private land claims, at an annual compensation of eighteen hundred dollars, and from that time to the present the salary has been the same.

There are also employed in this branch of the service one clerk (assistant), $1,800; one clerk, $1,600; two clerks, $1,400 each; one translator, $1,200; three copyists, $900 each.

Mr. J. R. Dickinson, who is the assistant chief of division, and receives a salary of $1,800, has special charge of all contested cases in California and New Mexico, and of the preparation of reports to Congress upon claims presented to registers and receivers under act June 22, 1860, and supplemental legislation.

W. H. Walker (salary, $1,600) has charge of all claims growing out of treaty of April 30, 1803, including the issue of certificates of location under the act of June 2, 1858, and in addition New Mexico and Arizona donations.

W. D. Smith (salary, $1,400) has charge of the examination of donations in Oregon and Washington Territory.

J. B. Lauffer (salary, $1,400) has special charge of examination of all matters of assignment of scrip under act of June 2, 1858, and Supreme Court scrip; also of Indian matters and miscellaneous correspondence.

Clarence Key (salary, $1,200), miscellaneous correspondence and such translations as are necessary to be made from time to time.

Respectfully submitted,

L. HARRISON,
P. C. on P. Land Claims.

Approved.

N. C. MCFARLAND,
Commissioner.

To Hon. J. T. MORGAN and H. W. BLAIR,
Of Committee on Public Lands, U. S. Senate.

Mr. E. N. HOWELL, chief of the public lands division, testified as follows:

By Senator MORGAN:

Question. Have you made any report upon the subjects embraced in this investigation?—Answer. No, sir; not since July, when I made a general report for the new Commissioner, as to the condition of the work at that time; but a report on our division, which comprises seventy persons and takes in such a large and wide field of labor, may be correct to-day and may not be correct to-morrow.

Q. What description of the public domain comes under your jurisdiction?—A. We have charge of the adjudication of all private cash entries, private locations with land warrants, and the several kinds of scrip, homesteads, timber-culture entries, timber-land entries, restored military and Indian reservations, public sales under President's proclamations, and other minor details that do not occur to me now. This division is the basis and framework of other divisions of the office. We post in our records all pre-emption filings and entries, as well as the entries and filings adjudicated in this division. We also note on our records swamp-land selections, university selections, public offerings, executive withdrawals, town-site entries, donation claims, &c. Many of the postings come from other divisions of the office.

Q. It is rather a historical division?—A. We note in permanent records most of the transactions in the administration of the land service.

Q. Does that include also private land claims?—A. We note a reference to private land claims whenever possible, but the descriptions of those claims are so irregular and there are so many conflicts in regard to boundary lines, and points of that kind, that that work is left to the division of private land claims.

Q. Are pre-emption entries also in your jurisdiction?—A. We post all pre-emption entries and note any conflicts. The pre-emption division adjudicate the claims, and on their approval of the cases they are sent back to our division so that we can note their approval on our records. The clerks in the pre-emption division pass upon the sufficiency of proof.

Q. Your first duty, I take it then, on the coming in of any certificate of entry, whether it may be by private purchase, public donation, reservation lands reverted, or anything of that kind, is to note it upon your tract-books, and ascertain whether that claim is in conflict with any prior claim awarded by the government, so that in that way you keep maps in your division which show the location of every tract of land disposed of by the government under its general laws?—A. Nearly every one. There may be some mineral and private claims in certain localities which we have no present knowledge of, but in the end my division will have a knowledge of the disposals of lands taken care of in other divisions.

Q. On the coming in of any paper relating to the entry of lands, or the taking up of lands by any person whatsoever, if you discover that there is a conflict between that entry and any prior disposal made by the Government of the United States, is it necessary that you should then examine into the surveys and other records bearing upon the case in order to adjudicate the validity of the claim with which it conflicts?—A. Yes; when any conflict is noted we consult the plats in the surveying division, or the notation of areas in our own records; then we go over our tract-books; these tract-books consist of five hundred pages each, wherein are laid out three or four sections to a page. Every regular township has thirty-six sections in it. When we come to post up an entry returned from a district land-office, we examine carefully the entries posted in adjacent sections to see if a conflict does not exist. Some entries are made in two, three, or four different sections and townships, so that when a thorough examination is made, it is necessary to look in the adjoining sections. It takes a good deal of care and labor to secure accuracy. People often say we are behind in our postings, but it is often good policy to go slow. We find it necessary to note every possible conflict that exists; therefore it is necessary to look all around in contguous sections in order to satisfy ourselves.

Q. How far behind is your division in the matter of posting entries?—A. I think all our posting could be got up in six months, if I could assign to that service all clerks on contested cases and special work.

Q. With the present force engaged as it is, how long do you anticipate it will be before you can get the posting up?—A. I think that with the present force I could get that work up in six months, that is, if the force was arranged as it is now, and if the returns did not continue to come in monthly, but with the returns coming in, we are falling in arrears. There is such an immense number of returns coming in, that with the present force I am unable to keep up with the current work.

Q. How many employés in your division are engaged in the matter of posting entries?—A. There are about fifty. A portion of my force are posting only a portion of each month, just as they can catch the opportunity. The rest of the time they are engaged in correspondence, and the examination of proof and testimony.

Q. If they posted all the time they would have to neglect important current business?—A. Yes, sir.

Q. You speak of conflicting claims.—A. The greatest number of conflicts are homestead entries with pre-emption filings. There is no limit to the number of filings which may be put upon a piece of land prior to the date of an actual entry of the same. These entries may conflict with school, swamp, and railroad grants, prior valid entries, or locations erroneously posted, with private land claims or other color of title.

Q. By entry you mean the act of the register and receiver in designating the person entitled to the pre-emption?—A. Yes, sir; upon claimants meeting the requirements of law and regulations.

By Senator BLAIR:

Q. What is the entry itself?—A. It is the issue of a numbered certificate and receipt and notation of same on the plats and records upon compliance with statutory conditions by claimant. The applicant makes a written application to register of land office for the land desired. If the tract is subject to entry the register certifies to that fact. The applicant then shows the register's certificate to the receiver and pays the purchase money or its equivalent, and receives a numbered receipt therefor. The certificate and receipt issued and the notations of same upon the plats and records are the necessary steps in completing what is called an entry.

By Senator MORGAN:

Q. Does your division have the adjudication of appeals from the local offices upon questions of right in making the entry between these persons who have filed their claims upon it?—A. Yes, sir; upon cases adjusted by my division.

Q. Suppose there are conflicts in the surveys, or discrepancies in the surveys upon return here, do you have anything to adjudge so as to settle the correct survey?—A. No, sir; those matters go to the surveying division for adjustment. We occasionally ask for a resurvey, when we are satisfied that the original survey is erroneous, but the order is given through the surveying division. We occasionally ask for a resurvey when we are satisfied that the original survey is erroneous, but the order is given by the surveying division.

Q. Are there other cases of conflict besides those which you have referred to? Are there cases arising under the homestead laws similar to those under the pre-emption laws?—A. Yes; there are conflicts with railroad conditional grants which are not clearly defined by the statute or records.. When entries have been allowed on lands claimed by a railroad company, and conflicting claims arise, we refer such cases to the railroad division for settlement, and on final adjudication we make our records conform therewith.

Q. Is there much conflict of claims in reference to Indian reservations?—A. Not very many. The boundaries of those reservations are generally so exact that conflicts are avoided.

Q. Suppose that an Indian reservee has a right to dispose of his land in fee simple, such as can be done under the act of March 2, 1832, with the Creek Indian tribes, and conflict should arise between two purchasers from the reservee, would that be adjudicated in the public lands division?—A. No, sir. If the reservation still existed and parties claimed under the Indian title, I think that such matter would be settled in the Indian Office.

Q. How could it be adjudicated in the Indian Office so as to warrant the issuance of patent without some adjudication in this office?—A. We only take charge of Indian reservations when such reservations have been restored to the mass of public domain.

Q. And then in case of an Indian reservation becoming a part of the public domain and subject to the general disposal of lands under the law, any controversy that might arise would be decided in your division?—A. Yes, sir, if no counter claims are asserted.

Q. In cases where Indians have been entirely removed from reservations, they having entirely disposed of their lands, as is sometimes the case under the treaties and laws, and a case should arise here between two claimants under the same Indians, would that be subject to the jurisdiction of your division?—A. Yes, sir; in most cases where the executive branch of the government has yet jurisdiction.

Q. There has not recently been much of that kind of litigation?—A. No, sir.

Q. Does the adjudication of these conflicts, which come within the jurisdiction of your division require special skill in the persons to whom that adjudication is intrusted?—A. Yes, sir; in many instances very conflicting and delicate questions arise which require experience, readiness of perception, good judgment, and special study.

It wants many requisites that would be essential to a judge on the bench.

Q. How many men in your division are intrusted with the investigation and decision of questions of conflict of the description you have been mentioning?—A. There are eighteen men engaged on important contested cases. Ordinary conflicts the posting clerks take care of.

I may have fifty employés writing up and adjusting apparent or real conflicts, but, generally speaking, eighteen men are engaged on contested cases.

Q. These eighteen men thus engaged on contested cases are supposed to be entirely familiar with the public land laws?—A. Yes, sir.

Q. Does it require a very general acquaintance with all the public land laws to qualify persons for this branch of the service?—A. They ought to have a general acquaintance with the law, instructions, opinions, and decisions. You can hardly conceive of any land law of which an occasional application might not be made.

Q. Are the cases of conflict very numerous?—A. No, sir; those of real conflict are not very numerous. There are a great many apparent conflicts arising from errors in posting; for instance, a man's entry may be in the northeast, and it may be posted in the southeast, quarter of the section; also, errors in numbers of township and range. These errors have to be searched out and corrected.

Q. These errors result from inaccuracy, or negligence in posting?—A. Yes, sir; generally.

Q. Have you any system of supervision or revision of the postings by which errors can be discovered and corrected at the time they were made?—A. No, sir; the work of posting entries and filings has been so immense that we could not review. When a new clerk comes in we review his or her attempts for two or three months going over the work carefully. We do this to test the accuracy of these persons, and if we find them accurate we close the revision. If they are not accurate in essential details, they are put on other work which requires careful examination and thorough revision.

Q. Is a diagram sent here with the local entries in writing or figures to indicate the description of the land?—A. Accompanying the returns sent here there is a full abstract of all filings and entries with numbers, names, and descriptions, but diagrams are not sent up with these entries. The township plats must be retained in the district land offices.

Q. Does it not require a clerk to be for a considerable period engaged in the duties of posting, and also in the duties in deciding questions of controversy or conflict before he can be regarded as qualified for the rapid and accurate performance of those duties?—A. Ordinarily this is so, but there are exceptions. I have some clerks who after remaining a single month can take right hold and do good service without any trouble. They seem to grasp the thing so readily and naturally that in a short time they become as accomplished, expert, and accurate as some persons who come and dig along for a year or more.

Q. In regard to posting the tract books and keeping them in a condition of accuracy so as to show the decisions upon conflicts and controversies about entries, I will ask if that comprises the chief business of your division?—A. No, sir; only secondarily.

Q. Your division furnishes to the balance of the land office here the location upon the tract books of the entries which have been made under any laws of the United States, unless in some cases of private land claims?—A. Yes, sir; generally.

Q. How many rooms are occupied by these clerks and employés?—A. The employés of my division are occupying now the north half of the west wing of the model room of the "Interior Department building," which is divided off into alcoves. Some are large and some are small.

Q. How many persons would that make for a room?—A. It would make from five to six clerks in a room.

Q. Is that sufficient accommodation to enable the division to do its work promptly and efficiently?—A. It is not. We have not sufficient space for our records and files there. Letters, papers, and record books by the hundreds of thousands had to be left on the floor below, while many are placed in an upper gallery. It frequently happens that a clerk in examining a case has to leave his desk and perhaps travel a quarter of a mile to verify a necessary point; hence he cannot now accomplish near as much work as though we had space enough to have everything near by.

Q. Are these files necessary to be used in the current business of the office?—A. Yes, sir; largely.

Q. There are still some files of an older date that you have sometimes to refer to?—A. Yes, sir.

Q. That of course is a very great inconvenience, and bad economy of time?—A. Yes, sir. If we had everything at hand my division need not be so far in arrears.

Q. The real cause of your division being behind in its work is that you have not had sufficient force and sufficient accommodations?—A. Yes, sir. I now have no more than seventy clerks, while about two years ago I had in my division eighty-eight clerks.

Q. I wish to ask you whether your clerks and copyists are employed industriously and diligently as a rule?—A. They are.

Q. You sometimes have to require their services out of office hours?—A. I do.

Q. Is that a frequent occurrence?—A. It happens very often. Something may be required by the Executive, the Secretary, the Commissioner, or Congress, within a certain limit of time, and the clerk intrusted with the work may be obliged to come back at night, or on Sunday, to finish the work in time. He is not of course required to come on Sunday, though the door is either left open, or kept closed, as may suit his sense of responsibility and duty.

Q. The fact of the posting of the entries being behind must retard all the business of the bureau, does it not?—A. It does, largely. For instance, an inquiry may come up from some division as to a conflict; we turn to our tract-book and find them posted up positively to last June, and no conflict may appear, and it may be necessary, in order to discover the conflict, to pull out and examine a great many bundles of papers, thereby taking double the time and labor to discover a fact, which otherwise might have been reached in short order.

Q. Then it is of the first importance that the tract-books should be posted up to date?—A. By all means.

Q. Not only for the proper dispatch of business in your division, or security of titles, but for the transactions of all the other divisions in the office?—A. Yes, sir.

Q. Is it not also of great importance that questions of conflict in entries should be settled as promptly as possible?—A. Yes, sir.

Q. You have been compelled, in order to have as much posting done as possible, to withdraw your clerical force from other necessary duties?—A. Yes, sir. I have had to take clerks from other very important work in order to bring up arrears of posting, because I had not the requisite number of book-keepers.

Q. In questions of conflicting entries, or claims of any kind, whether involving pre-emption, homestead, or other claims, do you adjudicate the conflicts here upon the testimony sent up from the local land office, or do you take testimony of witnesses who have not been examined before the local offices?—A. Ordinarily we settle conflicts on data which appear in the regular returns, files, and records. It is often necessary, however, to call, through the district land officers; for additional affidavits, testimony, or proofs, in order to determine or properly pass upon apparent or real conflicting interests.

Q. Are there rules in this bureau under which a party in interest may have the right to bring forward evidence which has not been considered by the local land offices, and ask for a rehearing?—A. Yes, sir, in contested cases.

Q. Do these questions frequently involve oral statements by attorneys?—A. Not ordinarily; attorneys generally put in written or printed briefs instead of making oral arguments. As the latter are not made matters of record, their influence could not be seen by the appellate authority, in cases of appeals to the Secretary of the Interior. Suits brought before us for decision are often in the nature of lawsuits, and are decided upon sworn testimony, cross-examination, the record, and written arguments.

Q. In case no appeal is taken to any superior officer, are the adjudications made in your decision conclusive?—A. Yes, sir; such decision settles the question of title, and is generally arrived at and written up in our division.

Q. You put one of your clerks in charge of a contested case; he examines it upon the evidence, record, and the law, and then decides it. The case is then brought under your supervision, I take it?—A. Yes, sir; I read the decision, and if I think everything is stated properly, and correct conclusions of law have been arrived at from the facts set forth, I put my initials on the decision or letter, and it then goes before a board of critics, and is passed upon by them. Then it finally comes to the Commissioner for approval and signature.

Q. Do you, as a matter of fact, investigate satisfactorily and sufficiently all the decisions made by these eighteen men spoken of?—A. No, sir; not the data on which the decision is founded. It would be impossible for any person to do so. Some cases may have ten thousand pages of record testimony.

Q. It is a matter of impossibility to review all the evidence, both as to the law and facts, passed upon by these eighteen clerks?—A. It is impossible for one person to do so.

Q. Of course it is equally impossible for the Commissioner to review all of these cases?—A. Yes, sir; absolutely impossible.

Q. So that in the haste of adjudication errors may be committed which it is impossible for you to detect for the want of time?—A. Yes, sir.

Q. Would there be an advantage to your division in increasing the number of men to decide these controverted cases, and also to increase the capacity for such work, by getting a higher grade of ability?—A. There would, in having a greater number of the most competent men now employed.

Q. In the exercise of the judicial powers of your division, would it not be unfortunate for the government to have men put in there who are not well versed in the law and executive rulings when questions of doubt and difficulty demand solution?—A. Certainly, it would be very unfortunate and unwise.

Q. Is it not also necessary that any man engaged in that sort of adjudication should have the advantage of considerable experience?—A. By all means.

Q. What has been the fact in reference to clerks leaving the division after they have become efficient?—A. Some of the best men employed during an administration of 20 years have left us and connected themselves with big corporations or firms, who wanted shrewd, capable, and experienced men; my division has been weakened and crippled during the last two or three years by the loss of five or six good men, whose services were called for elsewhere at increased salaries because they had shown superior capacity in the division of public lands.

Q. What salaries are received by the eighteen men who decide contested cases?—A. One gets $1,800 per annum; six get $1,600 each; seven get $1,400 each; and the others get $1,200 eachper annum. In the matter of experience, capability, and industry, most of those men are worth $2,500 per annum. I get only $1,800 a year for superintending and endeavoring to direct the administration of one of the most important branches of the public service.

Q. In reference to the model room upstairs occupied by your division, I desire to ask if that great hall was not constructed and designed for the Patent Office?—A. The model room was intended for the exclusive use of the Patent Office.

Q. Have you clerks working in the hall-ways?—A. Most of my clerks are working in the open hall, and the constant passage of strangers and visitors by the desks of clerks causes serious inconvenience to business. Our chairs and desks are on a stone floor simply covered by cold matting, continued during winter and summer; and quite a number are obliged to work in dark corners for lack of sufficient room.

Q. What proportion, do you think, of your records and files in the current dispatch of business are kept outside of your rooms?—A. Perhaps one-fourth.

Q. Are the files in your division very numerous?—A. Very numerous. I presume we have more than a million letters relating to land questions.

Q. What number of letters do you have to answer in your division daily?—A. About one hundred letters a day.

Q. And all of the letters require accuracy in the examination of the facts so as to give proper answers?—A. Yes, sir.

Q. Many of them require an extensive investigation and examination both of questions of law and fact?—A. Yes, sir.

Q. Is it your purpose to keep the people informed punctually who make inquiry?—A. That is our aim; but we find it impossible to do this, except in special cases, without neglecting important interests.

Q. How far behind are you with your correspondence?—A. From one to six months. Some letters of inquiry in regard to pending cases are filed with the cases, are not answered until the cases are finally settled, so that we can give the result of the final adjudication. It thus happens that in some instances letters remain more than twelve months unanswered. Our present Commissioner, however, has ordered that all letters of inquiry shall be at least acknowledged promptly.

Q. Is the delay mentioned owing to the neglect of your division, or the clerks employed in it, or have they not got the time?—A. We have neither the time nor the force. The delay is not generally the neglect of the clerks.

By Senator BLAIR:

Q. You say that making the best average which you can in your mind of all the business of the division, it is six months behind?—A. I should think its current business was that far behind.

Q. That is to say, if no new business came in, the old business could be disposed of in six months' time, concentrating the entire force on on it?—A. Yes; I believe so.

Q. How much additional force, in your best judgment, is necessary in your division, of the same average quality that you now have, to bring up the work in arrears and transact that which might accumulate in the mean time so as to bring your work up to date within one year's time?—A. I think I could do it with twenty men of first-class qualifications.

Q. How many would you need if your additional force were to be of the average qualifications of new clerks as they come to you?—A. I would need thirty, and perhaps more.

Q. What class of assistants do you stand most in need of, that of first-class competency, or medium qualifications?—A. I would like four or five persons competent to investigate and decide contested cases; that is, good men, acquainted with the laws relating to the public lands. I would like a few persons capable of examining homestead proof. We have many thousand cases of homestead proof which we have not had time to examine so as to determine whether they are correct or not.

Q. Will you state the number of different classes of entries in arrears. —A. I cannot undertake to state the exact number of cases. They do not pass through my hands personally. I think there are perhaps fifty thousand timber-culture entries which are just beginning to be proved upon. I have no means of knowing just how many such claims will be put in course of completion by final proof, but I think within the year there may be four or five thousand sets of proofs to examine and pass upon. Of desert land claims I think that there are about twelve hundred which are not proved up.

Q. How many applications are there in reference to locations with Sioux, Valentine, and other scrip?—A. I cannot now form an idea of how many there are. They have been coming in for years. They are not great in numbers, but they are intricate and perplexing, and require much attention and care.

By Senator MORGAN:

Q. What other arrearages are there?—A. There are some cases of sales of timber and stone lands in California, Nevada, Oregon, and Washington Territory requiring examination; also, our private cash entries are behind. Of the several classes of entries on the records yet to be examined and passed upon, there are doubtless one hundred thousand cases, and with pre-emption and soldiers' filings they embrace an aggregate area of more than twenty million acres of land. Our posting of swamp-land selections and public offerings are also in arrears.

Q. How about the grants for school purposes?—A. The grants for public schools are now adjudicated in the pre-emption division. My division adjudicates upon locations made for agricultural colleges.

By Senator BLAIR:

Q. What number of contested cases do you think there are now pending in your division, which fall to the consideration of the eighteen men referred to?—A. There are, perhaps, a thousand cases in all.

Q. They constitute, practically, a court, with a thousand cases pending, and involving questions of law and of fact, and in some cases embracing a record of thousands of pages?—A. Yes, sir. They are judges, with important cases before them, awaiting their judicial opinion and decision.

Q. Will you state as to the amounts involved in these law-suits before your division, giving the public an idea of the importance of this litigation before your eighteen clerks?—A. Some of the cases involve millions of dollars, notably contests against scrip locations of land in the city of Chicago and elsewhere. The great mass of cases now before us for adjudication, however, involve interests of smaller values, say, from five hundred to ten thousand dollars each. The decision of one case before us may involve, and practically decide, other cases amounting to large sums. The value of the lands involved in contested homestead entries is over a million dollars, I should judge.

Q. Can you state anything further as to the nature of the subject-matter we have been considering?—A. I cannot, at this moment, recall to mind anything further of particular importance in the line pursued.

Q. I will go further. In these suits you say that there are instances where the record is extended to at least ten thousand pages. Are the records, as a rule, quite voluminous?—A. Not to that extent. As a rule, in contested cases where both parties appear with witnesses, the record will be confined to a few hundred pages each.

Q. In cases where defendants do not appear, does the government furnish evidence?—A. The registers and receivers are expected to draw out all the facts at the hearings, and to represent the interest of the government. The contestant in each case is the plaintiff who brings the suit; and, if the defendant does not appear, there is practically only one party to present testimony and argument. In *ex-parte* cases generally the witnesses for the government are the office records and files.

By Senator MORGAN:

Q. In your experience in the administration of the homestead law, have you not found that there is a great effort to defraud the government and stretch the law beyond its just limits, and also an effort under corporations to take up homesteads?—A. I have, in many instances.

By Senator BLAIR:

Q. So that these things oftentimes retard cases and require an unusual amount of investigation for the reason that there is no contest by any party?—A. Yes, sir; such entries are usually suspended, awaiting investigation and report by special agents of the department.

Q. And because there is no one to take care of the interests of the government?—A. Because the government has no regularly authorized agent in the districts who can bring contests against entries for fraud.

Q. Please explain what you mean by the attempted perpetration of frauds under the homestead act?—A. Many entries are made by persons who are employed by rich capitalists to make entry and pretend to settle upon the public land, and who fail to comply with the law in the matter of actual residence and improvements, but they bring witnesses up with what appears to be plausible proof. In this way men of capital have appropriated large tracts of valuable land, thus defeating the actual settlement of the country. Of course patents issue to the men who make the homestead entries, but as soon as they get patent or title they turn around and deed the land to the speculators who employed them, at the prearranged price.

Q. In these instances, there being no private contestant, does it not devolve upon your office and the district officers to exercise greater diligence and care in order to detect the fraud than would be necessary in those cases where individual contests had been waged?—A. Yes, sir; in cases where we had knowledge of fraud.

Q. You say the United States is a party in every case, directly or indirectly?—A. The United States is interested to see that she is not robbed of her public lands by a pretended but fraudulent compliance with the law. When we are reasonably sure that extensive frauds are intended or have been perpetrated, we seek thorough investigation through special agent, whenever practicable.

Q. Is this special agent sent to any locality for the purpose of discovering these attempted frauds unless some private individual makes complaint to the office?—A. Not often. We may have a special agent employed for a whole year in a State. On visiting certain localities he may learn of attempted fraud and report the information to this office for instructions. For instance, if perjury is alleged in homestead or timber culture entry, we submit the case to the Secretary of the Interior with the view of asking the Attorney-General to put the matter in the hands of the United States district attorney for the district in which the fraud is charged to be committed for the purpose of prosecution.

Q. Is it done to any great extent?—A. Not to a great extent. In quite a number of cases very few convictions have resulted. In some instances juries fail to agree.

Q. In regard to the qualifications of these eighteen clerks who consider this class of questions, I would like to ask here if, when they entered the office, they had had any professional education?—A. Only a few of them did have. I do not believe that one-half of them had been admitted to the bar before being appointed to clerkships.

Q. How many have actually studied the law to any extent, so as to have a reasonable knowledge of its principles?—A. I do not think that any one has been assigned to important duty until he had studied pretty thoroughly the general and special laws relating to public lands. He ought, also, to some extent, to be familiar with the common law, the rules of practice, and the rules governing evidence.

Q. What are the ages of these gentlemen, approximately?—A. From twenty-five to forty-five years.

Q. How long have these gentlemen been employed in the consideration of this class of cases, which have been here longest?—A. I think two-thirds of these persons have been on contested cases for five or six years. Perhaps none of them have been employed on this class of work for a longer period than twelve years.

Q. These men first examine the evidence submitted. They make up their conclusions upon it in all matters of fact; then having found the facts in their own minds, they write a letter stating their conclusions upon the evidence as to the facts in the case and their opinions upon the law applicable to those facts, and so far as they are concerned decide the case. That letter embodies their conclusions of fact and law. The letter is delivered to you as the next step in the process. If you approve it, it goes to the board of critics and from them to the Commissioner?—A. Yes, sir; that is the usual practice.

Q. Now, is not this true, that the law applicable to the decision of any cause depends upon the facts in that cause? Is not a decision of the facts involved the primary condition in every case? In other words, there is no occasion to apply the law only to a given state of facts, so that a man who settles those facts settles the case?—A. In most instances.

Q. If he settles what the facts are, whether rightly or wrongly, he controls the case, does he not?—A. He does, usually.

Q. Is it not a fact from your own experience in the explanation of the causes which comprise matters of evidence as well as of law that the decision upon the conflicting testimony requires as great an exercise of the powers of the mind on questions of fact as in the application of the law to the facts themselves?—A. Yes, sir.

Q. Therefore, you need at the very foundation of the examination of every one of these contested cases as great powers of mind as are needed in the final adjudication, in case of appeal, by the Secretary of the Interior himself?—A. That would be very desirable.

Q. So that the country owes to itself and claimants the establishment of a competent tribunal for the settlement of these facts, every examiner and judge on contested cases being liable to be called upon to perform duties equal in degree to those performed by the Secretary?—

A. Yes, sir; the value of such a tribunal to land owners and claimants would equal tenfold its cost.

Q. Is there any court in the country which passes upon more important interests or larger values, taking the litigation as a whole, than you have before these eighteen gentlemen in your division?—A. In important home interests I don't believe there is. In the matter of money value there probably may be. My division is very diversified, embracing such great and varied interests in all the land States and Territories that it is difficult for me at this time to do more than to give a general *résumé* of the situation.

By Senator MORGAN:

Q. In your opinion, in the present crowded state of the bureaus, is there not great danger of the destruction of everything by fire?—A. There is local danger; certain rooms might be burned out before we could stop a fire.

Q. If a fire was to originate in the attic or down in the lower floor, where I understand there is a large amount of material stored, would it be very hard to extinguish it?—A. A fire could be extinguished up in the attic very readily if water could only be obtained on the start. Should a fire break out, untold millions in record value would doubtless be destroyed before fire-engines could get water on the flames. We, up stairs, are temporarily occupying space originally designed as a model room for the Patent Office. It is not well adapted to its present purposes. The heat in summer, the extremes of heat and cold in winter, and the want of proper ventilation, these conspire to make the space objectionable for clerical labor. Some are getting sick there and some are ruining their eyes by working in dark places.

Q. You have to resort to additional apparatus, such as stoves?—A. Seven or eight stoves are required in winter in the alcoves, and they tend to the insecurity of the records on account of the danger from fire. These stoves are at times in the care of men not under the control of the Land Office, and we cannot fully calculate the danger. We have an immense amount of valuable records in our charge and custody, embracing titles to hundreds of thousands of homes throughout the land, which, if destroyed, it would be very difficult if not impossible to replace.

DECEMBER 29, 1881.

Subcommittee met at the General Land Office. Present, Messrs. Morgan and Blair.

HENRY HOWES, chief of the pre-emption division, testified as follows:

By Senator MORGAN:

Question. When was the pre-emption division separated from the public lands division?—Answer. In 1835.

Q. How long have you been in charge of the pre-emption division?—A. About one year.

Q. Were you a practicing lawyer before you came here, or had you any previous professional experience?—A. No, sir.

Q. I wish you would describe generally the cases that come before your division for consideration and adjudication.—A. Entries under pre-emption laws; entries under town-site laws; sales of Osage Indian trust and diminished reserve lands; claims of parties who purchased from Mexican grantees or assigns; lands within grants subsequently rejected, or which were excluded from final survey of confirmed grants; conflicting claims between claimants of the above-named character, and others, are here adjusted; adjusting the grants to the several States and Territories for schools, internal improvements, agricultural colleges, seminaries, public buildings, and salines.

Q. Have you a complete statement of the amount of work performed by the pre-emption division?—A. The following is a statement of the work performed by the pre-emption division during the year ending June 30, 1881:

Contested cases in the division undecided July 1, 1880		978
Received during the year ending June 30, 1881		974
Total		1,952
Decided during the year	699	
Finally referred	58	
		757
Total in division undecided June 30, 1881		1,195
Ex parte cases in division July 1, 1880		4,299
Ex parte cases received during the year		9,053
Total		13,353
Approved during the year		5,412
Referred to other divisions		61
		5,473
Leaving in the division suspended		1,098
Not acted upon		6,781
Total in division June 30, 1881		7,879

During the year ending June 30, 1881, there were received 6,267 letters.

Number of letters written by the division	6,877
Number of pages recorded by the division	6,373
Number of pages copied by the division	3,734

While the above statement shows an apparently marked decrease in the number of contested cases decided, as compared with the previous year, it may be remarked that the cases of actual contest decided have been fully equal in number to those of that year. This is accounted for by the fact that in the previous year cases which were suspended for conflict with filings, or similar causes, and in which no party appeared as contestant, were treated as contested cases, while in the year ending June 30, 1881, these cases were classified as *ex parte*, and have been so reported. While the number of *ex parte* cases disposed of has been greater than in the previous year, the number undisposed of is also greater, which is accounted for by the large increase in the number of entries received, principally from the sale of Osage Indian lands in the State of Kansas.

Q. How many clerks are employed in your division?—A. There are eighteen. Three of these are copyists.

Q. Do all these clerks consider the questions that come before your division?—A. No, sir; we classify the cases. Some of these clerks take charge of *ex parte* cases, where there are no contests. We have only three clerks on contested cases.

Q. What do you call contested cases?—A. Cases where there are two or more claimants for the same land, and hearings have been had before the register and receiver to determine their respective claims.

Q. When a pre-emption case comes in, it comes first from the public lands division to you, and then you assume jurisdiction of it?—A. Yes, sir; pre-emption cases where the entries are made go direct to the public lands division and are posted there, and then come to us.

Q. You do not keep any tract books in your division for the posting in pre-emption cases?—A. No, sir.

Q. You have to rely then upon the public lands division to ascertain before the cases reach your division, as that relates to the posting of them upon the tract books, which means, of course, a map of the face of the country according to the surveys?—A. Yes, sir.

Q. About how many cases are there in your division, coming under these various subdivisions that you have mentioned, that remain undecided?—A. I have a statement made out to the 2d of June. There were then 1,195 contested cases.

Q. Has that number been increased since June?—A. It has been reduced. We are now acting upon cases received last February, which is bringing the work up to within a year. We have 7,879 *ex parte* cases on hand.

Q. How long would it take with your present force to work these cases up?—A. With the force we now have working upon this class of cases, it would take them a year and a half to get them up if they did not have any current business.

Q. Has that number of cases been increased or decreased since June last; I mean these *ex parte* cases?—A. They have been increased since June. It is owing principally to the sale of the Osage lands in Kansas.

By Senator BLAIR

Q. If your clerks confined their attention wholly to current business instead of these accumulated cases, would they be able to touch the back business at all?—A. Yes, sir.

Q. How does it happen that there is an accumulation; how did you get behind?—A. It occurred before I took charge of the division, over a year ago. We are now gaining upon the business; we have gained six months during the past year in contested cases. We have gained about a thousand *ex parte* cases over the year previous. Our work in the last year as compared with the year previous, in regard to the contested cases, would make a very good showing. We finally settled 757 contested cases last year with three clerks I have mentioned. The year before, the showing is not so good in *ex parte* cases, though the contested cases were put down at 1,300. This classification was not correct. The clerk in charge put down as contested cases all *ex parte* cases that required correspondence. I have eliminated that class from the contested cases.

By Senator MORGAN:

Q. Please proceed with the next subdivision in your division.—A. So far as regards the State selections for schools, internal improvements, and agricultural colleges, very little action has been had the past year, because of the want of clerical force.

Q. Have the States made their selections?—A. They have, to a large extent.

Q. About how far behind is that subdivision of your office?—A. In some States it is two years behind.

Q. Do cases under the act of July 23, 1866, belong to the private land division?—A. No, sir. They belong to the pre-emption division. Parties in interest are obliged to conform to the pre-emption laws in making their proof, and hence they are sent to the pre-emption division for settlement.

Q. Are these purchases made from the government or from individuals?—A. From the government.

Q. Out of what description of lands are they made?—A. They are found within the exterior boundaries of Mexican grants, and have been excluded from the final survey of such grants.

Q. How many clerks have you in that subdivision?—A. That class of cases is acted upon by the three clerks spoken of, who have charge of contested cases.

Q. How far is the business of this particular subdivision behind?—A. We are acting now upon cases received last February.

Q. What is the next subdivision?—A. The next subdivision has the consideration of town site cases. There are very few of these on hand. They are made special. Town site parties file under pre-emption laws. This division is not behind at all.

Q. How many clerks have you in charge of this subdivision?—A. One, and he also has charge of certain correspondence. That embraces all the work in this subdivision.

Q. Under what class do the Osage lands and the diminished reservations come?—A. They come under the *ex parte* class.

Q. These Osage lands are titles of the Osages which have been extinguished, and the lands have become a part of the public domain and sold to actual settlers under the pre-emption laws?—A. Yes, sir; and settlers can make payment of one-fourth of the purchase money at date of making proof, and the balance in three equal annual instalments thereafter, or pay the full amount at date of making proof.

Q. The diminished reserves, or the land that lay outside of the new lines of reservations and within the lines of original reservations, are also brought under the same system and paid for in the same manner?—A. Yes, sir. Diminished reserves is a term used in the department in purchasing or disposing of those lands.

Q. How many rooms do you occupy?—A. Three.

Q. How many clerks do you usually have to a room?—A. We have six or seven in a room.

Q. Is that sufficient room for the proper dispatch of business?—A. So far as desk room is concerned it is, but we want room for files. Two of our rooms are cased from floor to ceiling and used for files, and we are also obliged to use cases in the halls for files, which is a matter of great inconvenience, and interferes with prompt dispatch of the business. As we have been situated for the last year our cases have been moved about from one place to another on account of repairing. It is too dark in the halls to see well. We have had to use temporary cases which have been taken to some other part of the building, causing great annoyance.

Q. Do the cases for consideration that come under your division generally involve the examination of a considerable number of papers?—A. Yes, sir. We have cases that embrace from ten pages of testimony to a thousand. One of our clerks is now working upon a case from California in which he has been employed for two weeks reading testimony and has not finished yet.

By Senator BLAIR:

Q. How many filed cases are there in your division now?—A. I do not know the exact number.

By Senator MORGAN:

Q. Does the presence of so many clerks in a room numbering seven or eight lead to confusion or interruption of the business, or is it healthful for those so employed?—A. Not to any great extent, but so far as health is concerned it is very deleterious. Where there are so many in a room it is difficult to suit all in the matters of heat and ventilation.

Q. Give the committee some idea of the magnitude of the cases that are in contest in your division in reference to the amount involved and the extent of the property, and also in reference to the class of contesting or conflicting cases.—A. So far as regards the amount of land involved in an ordinary pre-emption contest it can only embrace 160 acres of land. Some are more valuable than others. This is the extent of a claim excepting those arising under the section of the act of July 23, 1866, the California act, where the purchasers under said act can purchase to the extent of their original purchase upon making satisfactory proof that they have used, improved, and continued in actual possession of the same.

Q. Are the questions brought up for adjudication in your division settled in respect to the facts upon which they are founded and also in respect to the law?—A. Yes, sir.

Q. It requires considerable knowledge and ability to comprehend and decide these questions properly?—A. Yes, sir.

Q. Is the evidence in pre-emption claims sent from the local land office to you in all cases?—A. Yes, sir.

Q. You then act upon the record of the local land office as transmitted to you?—A. Yes, sir.

Q. Do any questions of conflicts of surveys come up in your division? —A. Sometimes, and are referred to the surveying division for settlement.

Q. Do you review personally the decisions made by the clerks in contested cases, and also in *ex parte* cases?—A. I do.

Q. Have you time to look over every case and examine carefully into facts?—A. I do not examine the facts; I rely upon the statement of facts as found by the clerk. I review a decision in respect to the application of law to the facts.

Q. And your decision, if adverse to the clerk, is submitted to further criticism by officers of the bureau?—A. Yes; there is a board of reading clerks, composed of two gentlemen in the office, who examine all the letters before they are sent to the Commissioner.

Q. Is that a recent arrangement?—A. No, sir; we have at all times had a detail of officers to constitute this board of critics.

Q. After they have passed a decision in your division, as the letter comes from your division, then it is sent to the Commissioner for his signature if they find no objection, but if they find objection it is returned to you for reconsideration, with their notes and comments?—A. Yes, sir; and if we disagree it is referred to the chief clerk, and if no conclusion is then arrived at it goes before the Commissioner for his decision.

Q. What proportion of your files is kept outside of your room in the corridors of the building?—A. I should think about twenty-five per cent.

Q Is there a larger percentage of the files that are outside of your room that are necessary to be resorted to in contested cases?—A. No, sir; the files in the halls are of the *ex parte* class.

By Senator BLAIR:

Q. Please explain what town-site cases are.—A. They are cases where lands are settled upon for municipal purposes. The lands are surveyed or unsurveyed, as the case may be. A combination of persons organize themselves into a municipal corporation or council. After they have located themselves they usually make a filing of lands in the corporate name. The judge of the county usually makes the filing for the benefit of the corporation, and he or the mayor of the corporation can make the entries. This entry is made for municipal uses, for public buildings, and other purposes. This whole body of land is segregated from the public domain. They can segregate 640 acres in one body. It depends upon the number of inhabitants. The law fixes the limit.

Q. Do any suggestions occur to you from your experience to make to the committee which you think would improve the efficiency of the public service in your division?—A. We are in need of additional clerks to act upon a class of cases that require a good knowledge of law.

Q. Do you mean that your force is somewhat deficient in that quality? —A. Yes, sir; in respect of the more difficult cases that arise, where there are neither precedents nor rulings of the department to guide us. There are, however, rulings in a great majority of cases that arise under the pre-emption laws, which a non-professional man can learn as quickly as a professional.

Q. There are not many questions, then, that arise in your division that have not been in some form adjudicated in your bureau, and these precedents are required to be followed?—A. No, sir.

Q. Are your clerks efficient and industrious?—A. They are.

Q. What is your opinion as to the salaries paid to your clerks?—A. I think the present salaries are too low, especially for clerks who work upon contested cases.

By Senator MORGAN:

Q. Are your clerks frequently required to work out of office hours in order to keep up the business?—A. They frequently work upon special cases extra hours and on Sundays.

Q. You say your clerks are, as a rule, faithful, diligent, industrious, and reliable?—A. Yes, sir.

D. K. SICKELS, chief of the division of mineral claims, testified as follows:

By Senator MORGAN:

Question. When was the division of mineral claims organized?—Answer. It was organized in 1866, soon after the first mineral law was passed, and before I came into the division.

Q. Please describe to the committee generally the subjects over which you have jurisdiction.—A. In the first place, we have a class of *ex-parte* cases. These are cases where entries of mineral lands have been made, and there is no opposition to them. These cases of course constitute the larger part of our work. Then there is a class of cases where protest has been put in by parties who have neglected to file an adverse claim during the time provided by law, or who assert no claim in themselves. These are treated as *ex parte* cases, but we have to examine them a great deal more particularly than we would an ordinary *ex-parte* case. Then we have a class of contested cases which involve the character of the land. One party claims it as mineral land and the other as agricultural land. The testimony is taken at the local land office, and we have to examine it here and decide whether the land is mineral or agricultural. Another class of contested work is where an adverse claim is filed in the land office during the period of publication of the notice of the application for a patent, and the applicant appeals from the decision of the local land office allowing the adverse claim.

Q. Does this involve the question of the priority or discovery of location?—A. No, sir. In a case of that kind the courts only have jurisdiction. It involves different questions, the first probably being that the adverse claim does not show the nature, boundaries, and extent of the land, and that the declaration is not in due form. There may be objection to jurisdiction, or something of that kind. These cases are not so frequent now as they were formerly, because the department has ruled that if an adverse claim is filed during the period of publication, and is in due form, the department will not examine the matter until the courts have first passed upon it and settled the question of the priority of the location or right of possession.

Q. Is there any appeal from the decision of the courts?—A. No, sir. This office is required by the law to issue patents to the party determined by the court to have the right of possession. I believe, though, that at the last session of Congress (March 3, 1881) a law was passed which provided that the judgment of the courts should not be binding unless parties were shown to have the right to make the entry; but of course that question never comes before this office, so it is not material here.

Q. In this class of cases as to whether the land is agricultural or mineral, the party claiming it as agricultural land claims under some homestead or pre-emption rights, and the other party claims that he has made a discovery of mineral upon it which has segregated it from the public domain, and dispose of it under the laws of that character?—A. A large class of these cases, particularly from California, are where the lands are claimed to be within railroad grants, or something of that kind. The railroad grant only takes agricultural land, and the railroads employ agents to go upon these lands and examine them, and they select and apply for them.

Q. And the persons claiming such lands as agricultural, or the railroad, bring up a contest as to the character of the land?—A. Yes, sir.

Q. I wish to ask you what is the line of demarkation fixed by the rulings of this department, under which you ascertain whether the land is mineral or agricultural?—A. If there is sufficient indication of mineral deposits in the land to warrant its development for that purpose, or for working the land for the mineral, we hold it to be mineral land.

Q. Do you mean the development by mines sunk upon the surface in the particular tract, or mines that might come from a distance underneath the surface?—A. It would be immaterial probably how the land was developed if the proof was satisfactory that there was a deposit of mineral there which could be profitably worked either from the surface or by some other means.

Q. From the drift of a lode you would ascertain that there was mineral beneath the surface of a forty-acre tract?—A. We would segregate from that forty-acre tract all that was shown to contain minerals. If it was all mineral we would exclude it from agricultural entry.

Q. Where you describe a certain portion of a forty-acre tract as mineral land, is the remaining portion of those forty acres open to entry under the homestead, or the pre-emption laws, as the case may be, and in that case the additional surveys have to be made with the view of fixing the line of demarkation?—A. That is the case.

Q. How is it in respect to the minerals which are found on the public lands; what description of minerals do you include in the general term mineral lands, so as to segregate them from the public domain?—A. The language of the law is, all public lands of the United States containing valuable deposits of mineral, veins or lodes of quartz or other rock in place, bearing gold, silver, or other valuable mineral deposits; also, all other forms of deposit except those contained in veins of quartz or other rock in place, called "placers." Under the term of *other valuable mineral deposits*, the office has held iron, coal, petroleum, although in a liquid state, limestone, marble, and all valuable building stone, to be included. We have never made any ruling upon granite or sandstone. We include lime or limestone because it is mineral, and reduced by fire and other agencies to another condition, and the land is more valuable therefor than for agricultural uses.

By Senator BLAIR:

Q. Marble is, of course, valuable for statuary and ornaments, as well as for building?—A. Of course.

Q. How is it in relation to salt deposits?—A. They are included in the law.

Q. And salt springs?—A. They are provided for in separate statutes.

Q. So that in administering the law in your division you have to consider the question, whether all of these mineral deposits of ledges, of veins, said to be valuable for mining, are in conflict either upon a particular tract by adverse claimants, or by parties claiming some adjoining tract?—A. Yes, sir.

Q. As to the class of ability required among the men to whom is intrusted the decision of these questions, how is it—when I use the word ability, I mean in reference to his mental capacity, and also his training and experience?—A. I believe that it requires a very good class of ability; it requires also considerable experience.

Q. A man must understand law, geology, mineralogy, and mining, or something of them?—A. Yes, sir; this information and ability are required to be possessed by some of the employés in this division. Of course, all of us are not good geologists or mineralogists, but somebody must understand these subjects.

Q. What subdivisions are there in your division?—A. There are the examiners of contested cases, the examiners of *ex parte* cases, the examiner of surveys, the patent writers. By that I mean those who write patents, and there is the division of copyists and that of draughtsmen.

Q. With the exception of the patent writers and the copyists, I suppose it requires special skill to perform the work in each of these divisions?—A. It does.

Q. How many clerks in your division?—A. I think there are in the division now twenty-six clerks. There are three who are employed constantly in examining contested cases. There are two who examine cases involving the character of land. We do not always speak of these as contested cases. There are six clerks who examine *ex-parte* cases, and there are five draughtsmen. We have not a sufficient number of any of these classes to perform the work. Then there are two men who examine surveys, three copyists, and five patent writers.

Q. In reference to the examination of surveys, is that done in regard to mineral lands entirely in your division, or is part of it done in another division?—A. It is all done in this division. It is a different class of surveys from the ordinary surveys of the public lands, and requires a different examination entirely.

Q. In reference to patent writers, as I understand you, your patents are all written up in your division, and not sent to the recorder except for his signature?—A. Yes, sir.

Q. So that your division is expected to present the full history of every land title which goes to a patent, and of every controversy which precedes it, except those that belong to the courts?—A. Yes, sir.

Q. How far behind, if behind at all, is your subdivision of contested cases?—A. In regard to those cases I will say that their nature is such as to prevent them from being taken out in regular order. Some of the cases are very old, and we have examined and decided cases that have recently been received, so that unless I can give you the number of cases on hand it would be impossible to state how far behind that division is.

Q. These cases that are examined out of order are cases that have been made special by the Commissioner?—A. Yes, sir. Our *ex parte* cases are taken up in regular order. We do not take a case up, unless there is some urgent and special necessity for it, but there is no regular order for the contested cases.

Q. How far behind are these divisions in their work?—A. I had a statement prepared three or four weeks ago. At that time the record shows that there were 1,718 unexamined *ex parte* cases on file. Only twenty-one contested cases remain unexamined. These are purely mineral contests. I have another class of cases involving the character of the land as to whether it is mineral or agricultural. The number is 575.

In this latter class of work there are now about 900 *ex parte* cases which we have to examine to determine whether a hearing shall be ordered or whether the agricultural entry can be approved and patented. These lands have been returned by the surveyor-general as being agricultural as to character, and the entries have been allowed upon due publication of notice. No contestant appeared to claim them as mineral lands; but at some time prior to entry, affidavits had been filed alleging the land to be mineral in character.

Q. So you had to decide whether the report of the surveyor-general was correct?—A. Yes, sir; the entries had been allowed, but we had to determine whether the *ex parte* proofs taken at the time of the entry counterbalanced the report of the surveyor-general as to the character of the land, or the affidavits which had been filed, alleging the land to be mineral.

Q. What is the ratio of the increase of the cases?—A. In 1879, from September 15 to November 15, two months, eighty-three cases were received. In 1880, from September 15 to November 15, one hundred dred and eighty-three were received, making just one hundred more.

In 1881, from September 15 to November 15, two hundred and forty-five cases were received. The average the first year was one case in two days, or one-half a case a day; the second year three and one-quarter cases a day, and the third year four and one-third cases a day.

These were *ex parte* cases, mineral entries, and application for patents.

Q. Have you reason to believe that the number will be increased or decreased in the future?—A. It will be rapidly increased, and in about the ratio just given.

Q. Owing, of course, to a greater amount of enterprise and the more rapid settlement of the West?—A. Yes, sir; there is so much area of the country being developed as mineral lands.

By Senator BLAIR:

Q. The applications for patents are not likely to come in until considerable has been done in the way of location and development of lands, are they?—A. No, sir; an applicant cannot get a patent until he has expended at least five hundred dollars in improvements. Of course, just prior to this he had to make his location and have it recorded, and publish his application, and furnish all his proofs. In the absence of an adverse claim the entry is allowed.

Q. I will ask you to give some description of the process by which mineral lands are segregated from the public domain, and about the powers of this bureau to give to the individual a title, commencing with the discovery of what the party alleges to be mineral land; that is, a ledge or lode or deposit of mineral capable of being mined. Does that man stake off his land according to his own survey and the regulations of the department?—A. He is required, when he makes his location, to locate it upon the ground so that the lines can be readily traced.

Q. Does he make the survey on private account, or does the government furnish an officer?—A. The location does not require any survey. It is staked off in any manner the party may choose to adopt. It is not always in right lines. The ends are right lines, but the side lines are not necessarily so. The department has ruled that the law intends the location to be essentially a parallelogram. It may not be an absolute parallelogram, but there must not be acute angles.

Q. After he has made his location and staked off his land he then files the evidence of his location in the local land office?—A. No, sir. The location notice is filed and recorded either with an officer known as the recorder of the mining district, or in the office of the county recorder. That depends on State law and local usage, not upon the laws of the United States.

Q. The applicant then goes to the land office when he has to apply for a patent, and presents the evidence of his location with this description, and that is forwarded to this department?—A. The first thing is the procuring a survey under the approval of the United States surveyor-general. That is the first proceeding by government officers.

Q. This survey is made by a private surveyor under the approval of the surveyor-general?—A. It is made by a surveyor, appointed by the United States surveyor-general, as a United States deputy mineral surveyor.

Q. After the lands are surveyed he deposits his plat in the land office?—A. First, he goes to the claim and posts a copy of the plat in some conspicuous place on the claim, with a notice that he intends to apply for a patent. Then he goes to the land office and applies to the register for a patent.

Q. He leaves then with the land office the evidence of his location, and survey, and its approval. Then the case is said to be initiated for the purposes of final action here. After that the local office sends up the papers to this office?—A. After publication in the newspapers for a period of sixty days, so as to give other claimants an opportunity to come in. This publication in the newspapers must be concurrent with the posting of this plat.

Q. When a case gets here your investigation leads you through the whole process. If you detect irregularities of a serious character in the proceedings up to the time of adjudication here, you will then either set aside or confirm, according to your opinion of what the law is and the rights of parties under it?—A. We allow them to amend their papers wherever it can be done consistently with law and equity.

Q. Then a contest arises frequently in reference to the prior discovery and location of the lands. This contest is always decided by the courts, and your jurisdiction does not attach to that at all?—A. No, sir; it does not.

Q. Then the party in whose favor the decision may be comes here, and from that point you proceed to investigate the subject?—A. Yes, sir.

Q. But the question as to whether the land is mineral or whether it is agricultural is not a question required to be referred to the courts. That is original in the land office, and is open to adjudication in all the stages of proceeding in your division?—A. Yes, sir.

Q. And questions as to the accuracy of surveys made by the deputy-surveyor, and approved by the surveyor-general, are brought here for adjudication unless they may have been previously adjudicated by some court?—A. We would have to examine the question, anyway.

Q. So that the matter of the survey is entirely within the jurisdiction of your division?—A. Yes, sir. That being the basis of the title, and the patent having to rest upon the survey, we have to examine it very carefully. We have to keep plat-books here covering, of course, the whole territory of the mineral regions of the country. That is shown more particularly by plats than by tract-books. It is impossible to post upon a tract-book a description so that it will be a notice of some conflicting description. There is a plat for each case, which is kept here and made a record. On that point I have a little data, in writing, which might be introduced here. It is as follows:

Number of volumes of patent record without plats, 24.

Total number of patents contained therein, and total number of plats "behind," 1,830.

Average number of patents and plats contained in one volume, 76.

Time required by one man to fill one volume, including the necessary comparing, &c., about *one month.* It will, therefore, require the steady work of one draftsman for at least *two years* to bring the plats in the record-books up to this date, independent of the current drafting work in the records from this time on.

To make the plats for the current issue of patents (averaging at present about 75 per month) *is now* already a little *over what one man can do,* and to make the duplicates of these plats in the record volumes is *just about as much as one man can do.* And if the number of patents issued should increase, which is almost certain, it will require the *steady work of* 3 *men* to do the entire current drafting work, connected with the issue and the recording of patents, besides the making of plats for certified copies and other occasional odd jobs.

As to the time required for completing the connected diagrams of surveyed, entered, and patented mining claims, and the mineral land, the index maps showing mining districts, &c., for all mining States and Territories, which diagrams are necessary for the purposes of reference, &c., it is very difficult to make an accurate estimate. But it would certainly occupy two men for not less than two years to put all of the same in proper shape, and after that it will take about one-half of one man's time to keep them all up to date.

There are two copies of each plat made in this office. One copy we put in the patent and the other in the patent record. The preparation of these two copies of plats requires a great deal of skill and time in order to make them accurate. Sometimes we find the plats entered by the surveyor-general to be incorrect. They fail to represent conflicts which we discover here in this office. That requires, sometimes, the preparation of plats here to inforn the surveyor-general. It makes the examination of his records a great deal easier. It would take twenty-four months for one man to bring up the arrearages in the patent records, to say nothing of current work. We have two men employed all the time in bringing up these arrearages. This calls my attention to another point, which is, that we are now receiving nearly or quite five cases every day. We can only issue patents for about two and one-third cases a day, or about eighty a month.

Q. So that with your present force you cannot do more than half the work that comes in for current disposition?—A. Yes, sir.

By Senator BLAIR:

Q. And the current work is increasing constantly?—A. Yes, sir.

By Senator MORGAN:

Q. I understand there is a class of very important cases which involve the question of the priority of right upon certain lands where the precious metals run at different degrees of inclination across various locations on the surface and beneath it. Are the questions adjudicated here or in the courts?—A. That is a somewhat complicated subject. We do not wait here for the courts to pass upon a question of that kind before we issue the patent, but undoubtedly the courts do often take jurisdiction after we have issued the patent. We issue the patent upon the surface conditions. Where there is no surface conflict we issue the patent for the surface, although an adverse claim may have been filed and a suit may be pending, because we hold in such a case there can be no adverse claim.

Q. Your adjudications are entirely confined, after you have ascertained that the lands are mineral, to the extent of the boundaries upon the surface, and hence the importance of the surveys?—A. Yes, sir.

Q. How many rooms are occupied in your division, and about what are their dimensions?—A. We have three ordinary-sized rooms at present occupied, one small room the size of this, and another room we are to have of this size, which is about ten by fifteen, when it has been opened and fixed up for us. We now have three large rooms and one small room. These rooms are all necessary for our present working force. If we had to increase the force we would require more room. All available space is taken up, and in fact we are rather too closely crowded now for rapid and correct work, as well as for health.

Q. Do you keep your files in your rooms?—A. Yes, sir; as much as possible. There are some kept in the halls.

Q. What proportion is kept in the halls?—A. Probably one third.

Q. Do you have to make reference to those files in the halls?—A. We have to refer to them sometimes, although they are a class of cases that have been disposed of.

Q. Are the places occupied by files in the halls convenient or safe?—A. They are neither convenient nor safe. They are in an inconvenient place because it is too dark to examine them with facility, and the clerks are liable to interruptions while engaged in the examinations.

Q. Are not the final records of the adjudications of your division kept elsewhere than in this bureau?—A. No, sir.

Q. So that in the event of a fire destroying the records in any way, the adjudications would be lost?—A. Yes, sir. The only evidence then to be found would be the patent which the party himself holds, and a copy of the survey which is retained in the office of the surveyor-general. A copy which is corrected here is retained there also.

By Senator BLAIR:

Q. Prior to the issue of the patent the destruction of the record would be the destruction of the claim, would it?—A. We often find that evidence of title or location has been destroyed, but we allow it to be proven in some other manner, where such record has been destroyed, if possible. In such a case the proofs would have to be made over. We would have nothing then upon which to base a patent without new proofs.

By Senator MORGAN:

Q. Have you a messenger to your subdivision?—A. No messenger is assigned there particularly.

Q. State in what particulars you think that the public service requires the force in your office to be increased, and also as to the character of the persons who would be available for doing the work in an expeditious and accurate manner?—A. The important class of work of issuing patents in ordinary cases would require at least double the force at present engaged in that line of duty, because we only issue about half as many patents in a day as we receive cases.

Q. Is it necessary in your division to have additional force among what you would call the higher grades of clerkship?—A. Yes, sir; I think it is the general opinion that that division requires as high if not a higher grade of ability than any other division in the Land Office. It requires men who have scientific ability as well as a general knowledge of law. I think that is generally conceded by everybody who understands the nature of the work.

Q. The conflicts that occur here frequently apply to cases of very great magnitude respecting the value of the mines?—A. Yes, sir. We often have cases that involve many millions of dollars.

Q. Sometimes quite an unknown sum, but still very large?—A. Yes, sir.

Q. What other class of cases do you wish to mention?—A. There is perhaps another class of cases which I will speak of: where the department has issued a patent and valuable mines have been discovered or developed, and other claimants who perhaps were entitled to the patent came before the department and requested us to re-examine the proofs and recommend the Attorney-General to institute proceedings to set aside these patents on the ground of prior rights and fraud in procuring the patent, want of notice, and matters of that kind shown. We have to examine these more particularly than we would the proofs on the issue of a patent in an *ex parte* case.

Q. In these cases of patents issued to mineral claimants the other contesting party claiming that he had a prior mineral location upon the same land comes in and asks for a re-examination. Does the department act upon the idea that it is your duty to investigate?—A. Yes, sir; we always investigate these cases.

Q. Another class of cases is where a patent is issued, and a party claiming agricultural lands, or where he has become established by homestead entry or pre-emption, and it is afterwards ascertained that they contain valuable deposits of mineral ore, brought within the jurisdiction of the mineral division?—A. Yes, sir; we frequently have to revoke the entry or certificate so that the land may be segregated and brought within the mineral laws. After the patent has been issued, we only inquire into it for the purpose of ascertaining whether there are sufficient grounds to recommend to the Attorney-General the institution of suits to set aside the patents, which suits have to be instituted in the courts of law, on the ground of want of notice. This division would not assume the jurisdiction of setting aside a patent, if, after the patent was issued, it was discovered that the lands were valuable for mining.

Q. In all cases before issuing a patent this same notice is required, and if it is discovered afterwards that the terms of the law have not been complied with, your division is authorized to make an appeal to the courts through the Attorney-General, and to go back and revoke everything that has been done for the purpose of bringing this land within the purview of the mineral laws?—A. Yes, sir.

Q. Are not these questions generally very strongly litigated?—A. They are.

Q. Do you hear the arguments of counsel in your division upon these cases or do you require them to present briefs?—A. It is done by briefs ordinarily. The Commissioner, however, often hears oral arguments, but they are made before the Commissioner. He usually calls in the attendance of the examiner of the case or myself to listen.

Q. When the examiner of contested or *ex parte* cases in your division has finished his work of investigation is the matter then submitted to you for your consideration?—A. It is.

Q. Have you the time or is it possible for you physically to make an examination of the facts in each case upon which he predicates his decision?—A. It would be impossible for me to investigate the facts personally.

Q. So that the practical fact is that the examiner decides the case?—A. Yes, sir.

Q. And you review the finding as to whether he has made a proper application of the principles of law to the facts of the case?—A. I do.

Q. Is your decision subjected to the criticism of a board of critics?—A. Yes, sir; though there are cases where the Commissioner hears oral arguments. I take the decision to him, and he usually hears it carefully before signing, and it does not go before the board of critics.

Q. The board of critics is composed of two gentlemen assigned to that duty for the purpose of supervising or criticising the action of all the subdivisions of this bureau?—A. Yes, sir.

Q. It would require peculiar and special skill in these critics to render any valuable decisions in these mineral cases, as they are different from the usual run of business because it involves scientific as well as professional questions?—A. They do not very often undertake to criticise in that line.

Q. Do you have the advantage of the judgment of the law clerk in the bureau?—A. Yes, sir; quite frequently.

Q. It would be impossible in justice to the claimants and in justice to the public service to have these cases coming into the office now any more rapidly disposed of than is done with the present force?—A. I do not think it could be done more rapidly with the present force. These cases undoubtedly require a great deal more labor than any other class of *ex parte* cases that are examined in this office.

Q. Is the correspondence in your division heavy?—A. We receive a great many more letters than we write, which is probably a different state of facts from that existing in any other division. The letters that we write will average eighty-five a week, while the number received is much larger, probably amounting to as much again.

Q. Do you not feel called upon to answer every letter that is sent in?—A. All that we receive do not require an answer. They may cover the proofs in a case, or something of that kind. We answer every letter of inquiry.

Q. It makes no difference how much expense of time or labor it may require, you feel called upon to answer every letter of inquiry received?—A. We do.

Q. How far behind is your division in respect to its correspondence?—A. Probably three weeks.

Q. So that a party writing here would not expect an answer, even in an ordinary case, within three weeks?—A. About that time.

By Senator BLAIR:

Q. I would like to apprehend a little better just what is necessary in order that the jurisdiction of courts may attach which is exclusive of the jurisdiction of this office?—A. Perhaps I can answer the question best by reading the law applicable to the subject, which is as follows:

* * * 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 jurisdicdiction, 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.

These adverse claims involve the right of possession to a certain amount of surface claim. As I stated before, we do not recognize any adverse claim where no surface conflict is involved, but if an adverse claim is filed in the local land offices which shows the nature of the adverse claim and the boundary and extent of it by surveys and by other means, under this provision of the law the Land Office is bound to suspend all proceedings, providing a suit is commenced within thirty days after the filing of this adverse claim.

Q. Does not that provision of law cover all conflicts that can arise between individual claimants prior to the issue of any patent, as to the location?—A. Yes, sir; it does, provided it is filed according to the terms of this law.

Q. Unless the adverse claim receives color or standing by virtue of such filing as is required by the statute, how can there be any adverse claim whatever, which even you would recognize, which would interfere with a grant of the patent to a party who has made the location according to the requirements of the law and applies for his patent?—A. There can be no adverse claim here further than is provided by law. It must be shown that the applicant for the patent has failed to comply with the terms of the law.

Q. Does that decision give rise to a contest before you as to the relative rights of individuals to the patent?—A. Not at all.

Q. But as to whether the applicant has a claim as against the United States; therefore the effect of the statute is that all contest for the issuance of any patent by the United States, as between individuals, are now referred to the courts, and contested cases are settled before your division; this latter class of cases including only questions arising between the applicant and the government directly?—A. That is all. Frequently a protest is filed here, the examination into which involves a great deal of time and labor, where the protest really only shows some right in the contesting protestant. It does not undertake to show that the applicant has failed to comply with the law as regards his own claim, but sets up some rights in the protestant himself; but the protests are so constructed that they require careful examination and adjudication.

Q. Because it retnrns the protestant to the courts?—A. Yes, sir. The party has failed to file his adverse claim within the time prescribed by law. He undertakes to show by a record of his own that he has a prior right, or that there is a conflict under the surface when there is no conflict on the surface, and these arguments are presented in such a manner that they pretend to attack the record of the applicant, although in fact we ascertain that they do not. This class of cases comes up very frequently.

Q. These parties claim to come up as the friend of the government against the real applicant. If the real applicant is not safe from their interposition then the matter is thrown open and the applicant may be obliged to start *de novo* on the land, and thus the opportunity to come in during the period of publication may be given to the protestant?—A. Yes, sir. They may have failed to avail themselves of the first opportunity, and this places them in a new *status*. We have a great deal of that work, and it is sometimes of valuable assistance to the government. We are in all cases bound to examine the proofs and see that the application of the applicant is correct and entitles him to a patent, yet there may be parts of the record that are deficient, or some facts which have not been exposed that the protestant is able to show, that will result in the cancellation of his entry.

Q. Immense numbers of locations are being made, and the necessary development work being done from year to year, with the view to the acquirement of patents, and about the determination of the five years allowed by the law for development. Do you know about that?—A. There is no time in which a mineral claimant must present his proofs. Before he can get a patent he must have expended five hundred dollars within five years. He may expend that sum in one year. After that it is not necessary that he should apply for a patent, but he becomes entitled to it, and an application prior to that time, unless a full expenditure has been made, would be rejected.

Q. As a fact as to the manner in which the mining business of the country is now being conducted, do you or not know that a great number of locations have been made and rights to patents perfected by these expenditures yearly for development work?—A. I do not know about that officially. The proofs of the expenditure of that five hundred dollars are presented to the surveyor-general, and they come before us in the nature of a certificate that the money has been expended; we never know anything more than the certificate of the surveyor-general.

Q. You have not the knowledge of the transactions going on in the country relating to the expenditure of this development money?—A. Nothing further than any person might judge from reading the mining journals and other publications.

Q. What is your understanding from such sources of information and observation as you have?—A. In a great majority of cases the title is procured from the government inside of five years; the expenditures are all made within a short time.

Q. Bearing upon the immense rush or increase in your work, which must come soon, have you any suggestions to make which might be indicative to Congress of the great prospective increase of the work of your division?—A. I do not know that I have any special information to furnish just now.

By Senator MORGAN:

Q. Is there any process by which a mining claim can be brought out and patented except by this expenditure of five hundred dollars?—A. No, sir; except in placer cases where the party obtains his title by virtue of holding the same by statute of limitations—that is, under the law in placer claims, equivalent to the certificate of a surveyor-general requiring the expenditure of five hundred dollars inside of five years.

Q. A distinct law obtains in the case of placer cases from ordinary mining cases?—A. It is a different provision of law. Where a man has held possession for a period prescribed by the statute of limitations of the State in which the claim is located, he is entitled to the benefits mentioned.

Q. So that he acquires a title by occupancy from holding possession for a period of time and working it?—A. Yes, sir.

Q. Do you find any difficulty in the application of the placer-mining features of the law to iron and coal beds?—A. Coal land is disposed of under a special statute regarding coal. It does not come under the ordinary mining acts. As to iron beds, we have had but one or two cases presented since the mining act was passed.

Q. There is one branch of this subject I have omitted to examine you about, which is of some importance; that is, in the controversies which arise between the land-grant railroads and the government, in respect to mineral lands; in any area set apart by law to these railroads, in what way do these questions generally come before this division?—A. Where the lands have been returned to this office by the surveyor-general as mineral land, or where the party makes a specific claim alleging the lands to be mineral.

Q. Is there much controversy relating to that branch of the subject?—A. Yes, sir. I think probably one-half of the cases in the division involving the character of land is of that class.

Q. The railroad division of this bureau has no jurisdiction to decide any question as to whether lands are mineral or non-mineral?—A. No, sir.

By Senator BLAIR:

Q. How do these controversies arise between the government and the land-grant railroads and individuals?—A. Under the instructions of the Commissioner, issued from the surveying division of this office, the deputy surveyor, when he surveys the land, classifies it in the field-notes which go before the surveyor-general.

It states the land as valuable for agricultural purposes, or shows that a particular subdivision is held for mining purposes. It may be placer mining or quartz ledges, or something else, and the surveyor-general, when he constructs his plat, indicates this mineral land on the plat, and in the general certificate accompanying the field-notes he states the sections or parts of sections which are mineral lands.

This is a return by an officer of the government, and must be set aside, if at all, by testimony taken at a regular hearing.

Q. In regard to these primary surveys themselves, by the surveyor-general or deputy, does the geological survey have any relation or connection with this survey; does it furnish any information to the deputy surveyor who goes upon the ground and makes this survey of which you speak?—A. I think not.

Q. Is the geological survey usually made subsequent to or previous to this survey?—A. They have usually been unsurveyed lands where the geological surveys have been made.

Q. Is the information derived through this geological survey of any service, so far as you know, practically, to surveyors of public lands?—A. I think they are not.

Q. What chances are there that an ordinary surveyor of the public lands will be able to judge with much accuracy whether the lands are mineral or otherwise?—A. He could only judge from surface indications such as shafts sunk into the ground, or men working placer mines; and in some sections of the country, where these large placer diggings are situated, by ditches and other evidences of that character.

Q. Then it must follow that in all of those portions of the public domain which have not been developed to any considerable extent as mineral lands that great masses of this character of lands would be included in the agricultural classifications?—A. Yes, sir; that is the fact. In Alabama the surveys were made years ago, when the return of the surveyor-general was not required to state whether the lands were mineral or not, and I do not think there has ever been a single survey in this State which did indicate the existence of coal.

Q. If a patent is once issued and it is not contended that fraud exists, this valuable mineral land would be acquired in the same way as agricultural land?—A. Yes, sir.

Q. In regard to the railroad land-grant, is it a fact or otherwise that large masses of mineral lands are held by them under agricultural grants?—A. It is quite probable that some tracts have been patented to railroads that contain mineral. At least it has been so alleged, and there are some cases where the Interior Department has recommended to the Attorney-General that suits be instituted to set them aside.

Q. Upon what ground?—A. Upon the ground that patents were procured without proper notice by the railroad company. There may not have been fraud, but if it is not shown that proper care was taken we do not recommend the instituting of the suit.

Q. Do you think that the interests of the government in such cases are properly guarded without a more exact and scientific survey of these lands for the purpose of ascertaining whether it is granting mineral lands as agricultural lands?—A. I think the interests of the government are quite secure, because notice is required so particularly that if there is a valuable mine or if there are parties who claim as mineral any particular tract of land, there need be no failure of getting notice.

Q. Ought there not to be a more careful examination by the government involving a more sufficient scrutiny of the character of the lands? —A. I think that the interest of the government is properly protected for this reason, that its mineral sections are so well known that the surveyor-general when he approves a plat or township survey if it is within these well-known mineral sections returns the land as mineral. He does it perhaps upon personal or general information as well as upon the matters set forth in the field-notes of survey.

Q. How does it occur that a grant of valuable mineral lands is sometimes made as agricultural?—A. From the fact that these discoveries are made subsequent to the survey.

Q. Ought not the government to take pains to make these discoveries in advance in order to realize the proper value of mineral lands?—A. I should presume that that would be a very proper and useful way of doing. It would of course be more expensive. These lands that are mineral are in remote parts of the country, generally with very rugged surfaces; they are 600 feet one way by 1,500 the other. It costs the party $500 in expenditures on the land before he can obtain his patent. The government only gets $105; the claimant expends his $500 for improvements. It shows his good faith. The government really gets for the mineral land $5 per acre for a maximum claim. For placer lands the government gets $2.50 per acre.

Q. Do you think it is of much account to the government whether it sells land as mineral or agricultural; it gets four times as much in one case as in another?—A. A table has been prepared in the office which shows all these matters precisely—the receipts for mineral and agricultural lands, and the difference amounts in the aggregate to quite a sum of money.

Q. You think that, perhaps, the difference of income in disposing of the public lands as mineral instead of agricultural would hardly pay for more minute and scientific examination of the lands for the purpose of ascertaining to which class they belong?—A. I should think not.

STEPHEN J. DALLAS, chief of the surveying division of the General Land Office, testified as follows:

By Senator MORGAN:

Question. About how much unsurveyed public land is there in the United States, counting by square acres?—Answer. About one thousand million acres.

Q. Do you include Alaska in that computation?—A. I do.

Q. How many surveyors-general are there?—A. In the States and Territories there are sixteen.

Q. Is the work of surveying extending rapidly?—Very rapidly, indeed, especially under the deposit system.

Q. Please explain that system.—A. When land is situated in remote parts of the country, away from the lines of public surveys, and where the government would not be justified in sending a surveyor of its own, especially to survey a little piece of land, the surveyor-general has authority, under the law, to employ especial local county surveyors in order to economize expenses of the survey. The system, as modified by late law, exists in the fact that if a deposit of money is made by a party ostensibly claiming land, but without any claim upon the United States, he can have a surveyor sent to survey the land under the authority of the government. The money deposited is presumed to be an equivalent to the cost of the surveys to be made. The parties in interest make application to the surveyor-general, describing the land to be surveyed, and the surveyor-general estimates the cost at so many dollars per mile, and they deposit the amount specified for surveying in the field and for necessary office work. When the survey is returned to the surveyor-general it has to be examined, and then a projection of the field-notes and other incidental work are made out and forwarded to this office and to the register of the local land-office by the surveyor-general.

Q. These deposits are made available for entry of lands, and are also assignable?—A. Yes, sir; when this assignable character came on, the trouble commenced, which is noted in the report of the Commissioner. During the last year, while Congress made an appropriation of three hundred thousand dollars for surveying the public lands, deposits were made amounting to one million eight hundred thousand dollars. With these means extensive field work was made. We had no means of examining these surveys or to ascertain how they were made in the field. There were hundreds of contracts entered into by the surveyors-general for the surveys, and there existed no adequate appropriation to pay examiners of surveys in the field to test their accuracy, so that the surveyors-general had to take for granted the correctness of a survey when it was covered by an affidavit of the deputy surveyor that the necessary work had been performed by him in accordance with the law and instructions. This statement or affidavit, made under the solemnity of an oath, was all the data upon which the surveyor-general had to rely in approving surveys. Instances have occurred, and have ome to the knowledge of this office, where agents for imaginary settlers have advanced moneys, and that surveys have been subsequently made of sterile lands of easy execution, but devoid of settlements. When these surveys were returned to the surveyors-general and this office, they seemed to be apparently all right and properly covered by affidavits, except that in a majority of cases there were no settlers found within the townships surveyed. An applicant for a survey, under instructions from this office, is required to state, under oath, that the land to be surveyed is of a non-mineral character, as the law requires surveys only of agricultural land, and that the parties applying for the survey are actual settlers. This statement has to be corroborated by the statements of two additional parties who are cognizant of the facts stated by the applicant. We thought that we could check frauds in the deposit system, and did at first progress well and slowly until the assignment principle was ingrafted upon it by an act of Congress approved March 3, 1879. Then the flood-gates were opened, and they could, with triplicate certificates of deposit as *pseudo* settlers, enter the best public land, anywhere in the United States, under the pre-emption and homestead laws, or assign the certificates by indorsement to any party. Lands of no present value whatever were surveyed, neither were there any settlers thereon. This was undoubtedly an abuse, and in order to check it in future this office has recently recommended, in its annual report, a project to have the assignment provision of the law repealed. If Congress repeals the objectionable feature parties depositing in future the amount, say eight hundred dollars, for the survey of a township, and averring that they are *bona fide* settlers therein, will be obliged to take land in the identical township for which they deposit moneys.

Q. The working of this new system of deposits for surveys has, I suppose, thrown upon the offices of the surveyors-general a vast accumulation of business?—A. Yes.

Q. Has it been physically impossible for the surveyor-general to investigate the transactions in their own offices before transmitting them here?—A. Not with such care as has been done heretofore.

Q. Are the persons employed as surveyors more or less skilled?—A. Many of them are good surveyors, but not all. The enlarged surveys called into requisition deputy surveyors, of whose qualifications this office was unaware.

Q. This deposit system has also made it necessary to appoint or employ a large additional number of deputy surveyors?—A. Yes; men, whom this office did not know, and who had no reputation for skill and integrity, and who were known only to the surveyors-general, have been employed.

Q. Is it not possible to impose restrictions upon the conduct and action of these deputy surveyors, through which the government can be properly protected in the matter of distinction between mineral and agricultural lands?—A. They cannot do it. Even a geologist, who has appropriate instruments, makes experiments, and spends more time in experimenting than a deputy surveyor is required to do, can hardly make the distinction. United States deputy surveyors, working under contract, run their lines at distances of one mile apart and at right angles with each other, and so far as their ocular observation is concerned, make an examination of the ground; but their object is to survey as many miles as practicable per day, in order to make as much profit as possible. If their work is faithfully performed, they do not make much money by these surveys.

Q. Can you rely, as a matter of practice, upon the reports made by these deputy surveyors, under this deposit system, as to whether the lands are mineral or non-mineral?—A. No; because I know that they have no opportunities of prospecting and examining the land properly. Their object is only to survey from certain corners, and measure, mark, and subdivide the lands. That is all.

Q. Would there not be a further danger, in the case of these deputy surveyors, of their being enticed away from the line of their duties by prospectors, who might wish to include mineral lands in agricultural surveys?—A. I have no doubt of it.

Q. And the government, in that case, would be compromised by having lands returned by these deputy surveyors as agricultural lands which might afterwards turn out to be mineral lands?—A. There is no doubt of it, judging from frequent contests arising as to the disputed character of the lands.

Q. When these surveys, made by these deputies, come up from the offices of the surveyors-general to the General Land Office, do the duties of your office require that they shall all be investigated and examined here?—A. Yes, sir; and payments to deputies are consequently delayed, because there exists a want of sufficient force to promptly examine the work. It is a very hard duty, and involves a great deal of time.

Q. How many surveys have been returned by these deputy surveyors to your office, which now remain unexamined?—A. There are at present probably fifteen returns awaiting inspection preliminary to the approval or disapproval of work certified by the surveyors-general.

Q. How many plats have you?—A. There are probably forty or fifty township plats. We examine them now quite readily, as we have at present one additional examiner, who is a scientific gentleman. When the returns of surveys are passed in the surveying division, they go to the accounting division, where all accounts are examined and reported for payment. We are not overwhelmed now with work. Some time since circulars were issued by this office which were very stringent in their terms, and calculated to check the abuse of the deposit system. Since the publication of the circulars the cases have diminished greatly. The season is late now and they are not coming in with such a rush as before.

Q. Do these deputy surveyors lay off the township, sections, and divisions of sections?—A. Yes, sir; they lay off the exterior or township lines six miles square, and subsequently divide the same into sections comprising six hundred and forty acres, more or less.

Q. These parties who make these deposits usually require the survey of a township, and after that you require that it shall be divided into sections and quarter-sections?—A. Yes, sir.

Q. So that if a man wanted a deposit for a township, he would have to sectionize it; and if he wanted but a quarter-section he would ordinarily survey a township, and then proceed to lay off his quarter-section of one hundred and sixty acres?—A. Yes, sir.

Q. And the plat would show the township, section, or subdivision, or the particular place that the man wanted surveyed?—A. It would.

Q. Suppose one of these deputy surveyors should make a departure from the described lines, and should diverge from them or converge too much, by examining the plat, could you tell if there was a mistake, the limit, of course, being given to each township?—A. We could tell that the mistake had been made, and would correct it by returning the work found defective to the proper surveyor-general.

Q. You examine every plat sent here with the view to discover these mistakes?—A. Yes, sir; we do.

Q. I wish to ask you whether, in your experience, in reference to the surveys of the public domain, in consequence of the fact that different surveyors-general in the field at different times and different subordinates have changed the bases and meridians, and that the public surveys, in a great number of cases, were out of line?—A. Yes, sir; it is greatly so, particularly in the early surveys in California. It was owing to the fact that surveys were then pushed forward wherever settlers established themselves. Sometimes the settlement was made east of the meridian line, and sometimes on the west of it, and when we came to join the two lines at the meridian they would not agree. California is prolific in such errors. There are some also in Oregon; but these errors seldom occur in other States, owing to the character of the country being less mountainous, and settlements progressing regularly.

Q. All of these difficulties in the surveying of the public lands bring questions here before your division for settlement?—A. Yes, sir. A plat is sent here by the surveyor-general for record, showing the topography of the country surveyed, and certain corners and lines marked upon it, which may be wrong; but, owing to improvements having been made by settlers in accordance with those lines and corners, the survey is maintained. When adjoining surveys are made, evidence is produced that corners are in the wrong places, causing unequal areas of quarter-sections, but no resurvey is resorted to, because the land had been disposed of and improvements of the purchasers of the land had been made, and it would work hardship and injustice to change said corners, as it would be in violation of surveying laws, which interdict such resurveys. All these distorted township lines arise in this way, and are maintained. Other lines, subsequently established, are deflected in order to meet such corners.

Q. It involves an irregular number of acres in townships, and even in sections and subdivision of sections?—A. Yes, sir. Sometimes a section, presumed to contain six hundred and forty acres, will contain twice as much land, which is sold by minor subdivisions or lots.

Q. Now, when lands are purchased from the government at private sale, public entry, or otherwise, do you have to examine in your office every survey of every subdivision which is thus purchased?—A. Every one has to be examined by us. When we receive township plats, and, having examined them, find no objection thereto, they are then sent to the accounting division for use in the adjustment of the deputy surveyor's accounts. Subsequently they are distributed for entry to the respective bookkeepers, who keep tract-books showing each legal subdivision in each township. When sales come in, and the certificates of the register and receiver show that a certain amount of money has been paid for the land specified, the entry is posted in the tract-books, and shows what land has been disposed of. It also shows what lands are vacant, how many acres are in each subdivision, how much money has been paid for it, and gives the separate price of each subdivision according to the actual area in it. The examination has first to be made of the plat, and then as to the posting in the tract-book.

Q. Then the examination is compared with the entry in the certificate, and if they correspond a patent can be issued?—A. Yes, sir.

Q. Do you find cases of conflict of survey?—A. A great many. They have to be settled in this office. Correspondence has to be opened upon the subject of conflict for the purpose of obtaining information. Sometimes the plats show that errors have been committed either by their addition, omission, or transposition, which prevent the issuance of a patent. We open this correspondence with the surveyor-general, who has the original plat. We inquire, in general terms, if a certain section contains so many acres, or if such a lot contains so many acres, and what the distances are from one point to another, what the entire area is upon the original plat, and other particulars necessary for our guidance. He sends us a copy of his plat and the information asked for. We find that his plat disagrees with ours. We then correct upon our plat what is required, and refer to the letter of the surveyor-general for evidence of the correction.

Q. Is the area in every legal subdivision of land computed first in the offices of the surveyors-general, and then brought here to be revised?—A. It is.

Q. It is then posted upon the books as revised and corrected, and the correction is transmitted to the offices of the surveyors-general and other local offices?—A. Yes, sir.

Q. In the division of these surveys and the computation of areas, and in the division of the lands into townships, sections, and subdivisions, does it require men of peculiar skill in the business to make these computations?—A. No, sir. They are most all at right angles, except in some instances where a reference is made to lands along a meandered river or lake, causing fractional sections, which call for the computation of areas by latitude and departure.

Q. Is it an easy matter to correct errors in township and section lines, where you find them?—A. It requires a scientific man, especially one with mathematical acquirements.

Q. When a conflict of surveys arises, is a scientific man required? —A. It does. A conflict sometimes arises in regard to the boundaries of a claim; a private claim may interfere, and difficulty may arise. On this class of work we have now an employé, formerly educated at West Point, who is an accomplished mathematician.

Q. How many clerks are there employed in the surveying division? —A. There are nine clerks, of whom two are lady copyists. The entire work of the division is performed by this number of clerks, counting myself as one. That is not a sufficient force.

Q. How much additional force do you need, and of what description? —A. We need two, one examiner of surveys and another correspondent. We have an immense correspondence in regard to the surveys in those States where we have no surveyors-general. Applications are being continually made for the survey of land alleged to have been left unsurveyed at the time the offices of the surveyors-general were closed.

Q. The examiner that you require should be a man of scientific ability. The correspondent should be a man who had sufficient knowledge to investigate a question and give an answer, so that both would have to be men of skill?—A. Yes, sir. No matter what outsider comes in, he cannot at once do as well as an experienced clerk, even if he be a man of more than ordinary skill and intelligence and is unacquainted with the routine of the business. He does not know the law or the precedents or the general run of business, and has to be informed before he becomes valuable.

Q. How many rooms are there under your charge?—A. There are two. The area of each is thirty-six feet square. We have not sufficient room for the accommodation of our clerks. We have a large number of file cases, occupying a considerable portion of the area, so much so that we have not the room in which to systematically arrange our papers. They are piled up, one upon another.

Q. Is it a great public inconvenience to have your division so crowded, both in regard to the accommodation of your clerks and for the files?—A. Certainly.

Q. What floor of the building are you on?—A. On the lower floor, first above the basement.

Q. Have you sufficient light on that floor for your work?—A. Not quite. Some of the clerks in the center of the rooms claim they cannot see very well in cloudy weather.

Q. What proportion of your files and payers are kept outside of the rooms?—A. We have got all our papers inside of the rooms, though they are scattered about.

Q. In reference to the prospective survey of lands involving the immense number of acres spoken of, do you think that there will be a rapid increase in the demand for surveys?—A. No, I do not think there will be, because the land that is left unsurveyed is mostly mountainous and arid. The best lands have been surveyed, except in a few instances. However, as long as this deposit system continues and assignments are permitted there will be an immense rush of surveying. If the system is continued we would have to have a sufficient appropriation for the examination of surveys in the field, to test their accuracy. Last year we had only eight thousand dollars. When the same is divided into sixteen surveying districts, it is only enough to enable a very small amount of work to be inspected in each.

Q. You are retarded in getting payment for the deputy surveyors because the division of accounts is unable to look over the accounts?—A. Yes, sir.

Q. How far behind are the deputy surveyors in their payments?—A. I know of a case which has been out more than a month and we cannot reach it. Surveyors are writing from all parts of the country inquiring about their accounts.

Q. The correspondence of your division being heavy, how many letters do you receive and answer in a day?—A. Probably thirty are received, and nearly all are answered. A great deal of research is required to make proper replies. Our division is pretty nearly up to date in its correspondence. The current business is quite well up. We have but a few men, but they are very industrious and feel an interest in their work.

Q. Do you refer to the cases suspended for investigation?—A. I do not.

By Senator BLAIR:

Q. How is it that a party wishing to have public lands surveyed on the deposit system, and who gets a certificate for the amount of money he has thus deposited, can make any advantage to himself by speculation in the use of the certificates in payment for public lands?—A. If the party is a *bona fide* settler and applies for the survey intending to enter the land, he derives no advantage at all. But there are some men who have got money to loan. They are not settlers, and do not intend to become such. They look for some men whom they may induce to become *quasi* settlers. Sometimes these moneyed parties fabricate various names, claiming that they are actual settlers in a certain township and want the township surveyed. The statement goes on further to say that the land is not mineral but agricultural, and that the applicant wants to avail himself of the advantages which the law gives, and to deposit money for the survey in accordance with the estimated cost by the surveyor-general. He sometimes indicates who is to be the surveyor, and the surveyor-general appoints him. The certificate of deposit is made out in triplicate; one is retained by the applicant, one by the surveyor-general, and one is forwarded to the office of the Secretary of the Treasury. The man who is speculating makes his money by securing the deputy surveyor at a lower rate than estimated for by the surveyor-general.

By Senator MORGAN:

Q. Are there any other matters which you have to suggest, needing the assistance of Congress for their improvement?—A. We have embodied these suggestions in our annual report and in our estimates. We would like an appropriation large enough to send examiners of surveys into the field, directly from this office, who should report to this office. We have also asked an appropriation to enable the surveyors-general to go over their districts, with the view of personally inspecting localities which are settled and require surveys, so that they may know, when application is made for a survey of given land, whether or not it is such land as ought to be surveyed.

DECEMBER 30, 1881.

Subcommittee met at the General Land Office. Present, Messrs. Morgan and Blair.

S. L. CRISSEY, chief of the swamp-land division, testified as follows:

By Senator MORGAN:

Question. How long have you occupied the position of chief of the swamp-land division?—Answer. Three years the first of this month.

Q. State the subjects that come under the jurisdiction of your division and their character.—A. The adjustment of the claims of the different States to swamp lands, and swamp-land indemnity.

Q. That of course applies only to what are called the land States?—A. They are States to which the swamp-land act applies. There are certain States to which the provisions of the swamp grant have not been entered, viz, Kansas, Nebraska, Nevada, and Colorado.

Q. Are there any Territories excepted?—A. It does not apply to Territories. It applies to those States which were public-land States at the date of the passage of the act of September 28, 1850. On March 12, 1860, it was extended to Minnesota and Oregon.

Q. In the surveys in the Territories and upon the extinguished Indian reservations is it necessary to make a designation of those swamp lands within the meaning of the laws of the United States?—A. It is.

Q. To what extent would you say that the selections of swamp lands is still incomplete, if you can give the percentage?—A. I have a statement here which answers that question.

Statement as to the amount of work in the swamp-land division.

States.	Number of acres selected.	Number of acres patented.	Number of acres to which the claim of the States remains unadjusted.
Alabama	479, 514. 44	395, 315. 09	84, 199. 35
Arkansas	8, 652, 472. 93	7, 130, 766. 32	1, 521, 706. 61
California	1, 736, 432. 87	1, 413, 553. 71	322, 879. 16
Florida	15, 656, 859. 23	14, 735, 184. 97	921, 674. 26
Illinois	3, 267, 470. 65	1, 454, 756. 44	1, 812, 714. 21
Indiana	1, 354. 732. 50	1, 257, 588. 41	97, 144. 09
Iowa	3, 449, 720. 18	1, 175, 471. 80	2, 274, 248. 38
Louisiana (act of 1849)	10, 880, 101. 79	8, 338, 269. 16	2, 541, 832. 63
Louisiana (act of 1850)	554, 084. 24	217, 973. 91	336, 110. 33
Michigan	7, 273, 844. 72	5, 659, 377. 14	1, 614, 467. 58
Minnesota	3, 834, 152. 30	1, 992, 244. 99	2, 841, 907. 31
Mississippi	3, 070, 645. 29	2, 681, 383. 16	389, 262. 13
Missouri	4, 719, 256. 00	3, 331, 866. 06	1. 387, 389. 94
Ohio	54, 458. 14	25, 640. 71	28, 817. 43
Oregon	174, 205. 92	4, 449. 54	169, 756. 38
Wisconsin	4, 200, 785. 85	3, 071, 459. 61	1, 129, 326. 24
Total	69, 358, 737. 05	52, 885, 301. 02	16, 473, 436. 03

Of the 17,254.325.96 acres not patented it is estimated that 3,000,000 acres have been disposed of by granting to the States indemnity, or patenting the lands to individuals, States, or corporations, thus leaving 14,254,325.96 yet to be acted upon.

The claim of the States to this area, under the swamp-land grant, is in conflict with private land claims, railroad and military wagon-road grants, pre-emption and homestead entries, military bounty land-warrant and scrip locations, Indian reservations, and reservations for schools, military and naval purposes.

The settlement of these adverse claims requires the ordering of hearings by this office, examination of testimony taken at the same, rendering a decision thereon, making the same final, and the patenting of the land either to the State, individuals, or corporations.

Five hundred thousand area of new selections were made and reported to this office during the past year, viz: Louisiana, 300,000; Illinois, 140,000; Wisconsin, 120,000.

The States are now pressing for a settlement of their indemnity claims under acts of Congress approved March 2, 1855, as extended by act of March 3, 1857, and the office is making progress in this class of work, being aided by Congress by special appropriations for that purpose.

Q. What margin is there for the making of additional claims by these States?—A. They can select all the swamp and overflowed lands. There is no bar to the selection either as to the quantity or time.

Q. The State agents of course are guided in the first instance by the reports of the surveyors-general?—A. There are two methods employed. The States were permitted, under circular from this office of November 21, 1850, to elect how they would take their lands, either according to the field notes of the government survey or by having their State agents select them and report the tracts to the surveyor-general, who would examine and approve, if found satisfactory, and forward them to this office. All the States, except Minnesota, Wisconsin, and Michigan, chose to select their lands through their own agents.

Q. Were the States to make an actual survey of the country according to the government surveys?—A. They took the government surveys. They are required to state in affidavits that they know the lines of survey and corners, and are acquainted with the character of each smallest subdivision. When the larger part of such subdivision is claimed by the State as swamp or overflowed land the surveyor-general examines it with the field-notes and plats of survey, and such other evidence as he can find in the State, and from these he makes lists of lands and forwards them to this office.

Q. Where the selections have been made by the State agents, has there not been great abuse of the law?—A. There is no doubt of that in many cases.

Q. Are not lands frequently located upon which are selected by the State agents as swamp lands?—A. They are.

Q. Then, in these cases, where lands have been actually conveyed by the government to private individuals, or corporations, and to which the State sets up a claim as swamp and overflowed land, provision has been made by law for the indemnity of those States in reference to those lands, by permitting them to make selections elsewhere, or by paying them the amount of money realized by the government from the sales of this land.

Q. Does not that class of claims bring before your division a large number of inquiries and examinations?—A. It does; it constitutes a large part of our work. The act referred to extends this privilege to the States from 1850 to 1857. Land sold since then the States have no legal claim to for indemnity.

Q. Still the States press their claims?—A. There is no law granting them indemnity, and we cannot consider any of these claims.

Q. In regard to cases reported to this office prior to the act of 1857, you hold that they have been conclusively established in favor of the State, and it has been so decided by the Supreme Court, and that no controversy has been left open about them?—A. I do, where no adverse claim existed to the same March 3, 1857.

Q. The States, in pressing their demands for swamp and overflowed land, frequently came in collision or controversy with the homestead and pre-emption claimants, in which case a special proceeding is necessary, in which the government is a party on one side and the States are the claimant on the other. In such a case the government undertakes to be neutral as between the State and the claimant to the homestead or pre-emption, and decide the question according to its rights?—A. Yes, sir.

Q. Are cases of that description numerous?—A. There are a great many of them.

Q. I suppose they are rejected in the local land offices?—A. The hearing is had in the local land office or before the surveyor-general, and the papers are sent to this office.

Q. How many subdivisions are there in your division?—A. Three. First, indemnity claims; second, general correspondence; third, adjusting homestead and pre-emptions conflicts. There are two copyists and one patent writer.

Q. When the patent writer has written the patents out they are then forwarded to the recorder's office?—A. They go to the recorder for his signature. They are all prepared and completed in the swamp-land division, except signing and attaching the office seal.

Q. What steps are necessary before patents can issue for swamp lands?—A. First we prepare a list of lands previously selected by the State, and submit it to the Secretary for approval; then a copy of such approved list is transmitted to the local land office; also a copy is sent to the governor at the same time. The local officers examine their records to see if there are any conflicts. If there are not they so report, and the governor, on the strength of the proceedings, requests a patent. When the reports are received the patent writer takes the list and prepares the patent from it.

Q. When you find that the pre-emption or homestead claimant, or purchaser from the government, is entitled to the land and not the State, I suppose the case is referred back to the pre-emption division or the public-lands division?—A. After due proceedings, we certify on the papers that the swamp claim is rejected, and return the papers to the proper division. In case the entry is confirmed by the act of 1857, the swamp selection is rejected, and the entry certified for patent.

Q. About what number of these private claims, as they may be termed, are pending in your division now?—A. There are hundreds of them.

Q. Why is the division behind in that particular?—A. It is principally from lack of force to do the work. Our current work is about all we can do comprising the patenting of lands and cases that are called up by parties. This is continually being done. Hearings are asked upon certain tracts of land. There are 14,000,000 acres of land in my division claimed by the States not acted upon, and it would be our duty to have hearings in every case where there is a conflict, but we are not able to do so for want of force.

Q. Is it important to the interests of all concerned, the government, State, and individual claimants of land, that these matters should be disposed of at as early a date as possible?—A. They ought all to be disposed of. Some of them are twenty years old. In fact there are a few cases still pending thirty years old.

By Senator BLAIR:

Q. Are the parties still living?—A. Many are dead, but their heirs or assigns are prosecuting the cases. They come to us from the old files from other divisions. We have taken them up and acted upon them just as rapidly as circumstances permitted.

By Senator MORGAN:

Q. I will ask you whether the delay that occurs in the adjudication of these matters does not add very much to the embarrassment in settling cases from the fact that the parties themselves have died and you have to trace up the heirship of the claimant?—A. It does.

Q. There are also cases of assignment or sale of lands held by private claimants, and in order to adjudicate properly and in favor of the persons entitled to the decision you have to trace up the claim of title?—A. That is done by the party claiming. We order a hearing and instruct the local officers to notify the original party, if he can be found, or his assignee or heir-at-law. If this cannot be done they serve notice the best they can. Sometimes they cannot get any trace of a party at all.

Q. In such a case as that, when the local officers are unable to get any track at all of the parties, the whole matter must stand suspended until there is some legislation to relieve the suspension?—A. If we give them legal notice we go on and act just the same as if they had appeared, for they have had their day in court.

Q. You make a record that a certain person was entitled to the patent and without reference to whether he is dead or alive?—A. Yes, sir.

Q. That must relieve a large number of tracts of land in a state of uncertainty and suspense, so far as this office is concerned?—A. Yes, sir; but to do so we often have to write half a dozen letters in one case and to see that legal notice is served, and in some cases to instruct the local officers to have the sheriff serve notice to make it legal.

Q. You think it would be hardly fair to have a statute of limitation by which these parties should be barred of their rights, inasmuch as the government has not furnished an adequate force to adjudicate the questions coming up?—A. It would be very unjust, to say the least.

Q. So that the government is forced to adjudicate these claims at some time?—A. This office at an early day restricted the grant by instructing the surveyors-general not to report lands when any adverse claims had attached. After this the courts declared that the claim and the rights of the States were not barred by any disposition made by the government, so that they are coming in now and selecting these lands, and placing them of record, and asking an adjustment of their claims.

Q. In regard to these indemnity lands, a party has located upon a subdivision of public land in a State, either by military land warrant, by private entry, by pre-emption or otherwise, and having made his location, proceeds through the land office to get his title. The State then comes in and asserts that this was swamp land, and that under the grant the State was entitled to it. That brings up the question as to whether it was swamp land at the time of the private entry, or location, or grant to the individual, and that question has to be decided in the local land office or here.—A. The Commissioner details a clerk, who is called a special agent, to go to the State and examine those lands in the field, and then he gives the State notice that at a certain time and place he will be present at the taking of testimony. If there is any question about the matter he is instructed to cross-examine witnesses. If he has any doubts as to the testimony presented he can call witnesses on the part of the government.

Q. The issue to which this testimony is applied is whether the land was so inundated with water as to be unfit for agricultural purposes at the date of the grant, no matter what its condition might have been since.—A. That is the issue.

Q. If the land was then what was denominated in the law as swamp lands the State is entitled to indemnity?—A. Yes, sir.

Q. Is there any other class of cases which have not been mentioned here in which litigation or controversy arises between the government and a State, or between a State and private claimants?—A. I think they are all included in my statement. All that we have ever had before us have been mentioned.

Q. Is the correspondence large in your division?—A. We take up a claim either for land or for indemnity, and during the time occupied in its consideration it requires constant correspondence. I answer most of the special letters. One clerk is engaged in that work all the time, and others occasionally. The corresponding clerk takes charge of the general correspondence of the division. We keep it up to date in all cases. We write correspondents in some cases that their letters are received and the matter will be taken up as soon as possible.

Q. Have you sufficient office room in your division for the accommodation both of clerks and files?—A. We have for the present force; it is the only division in the office that has.

Q. Are these swamp lands posted on tract-books in your office?—A. We have special records in the swamp-land division; large tract-books the same that they have in the public-lands division, and in these books are posted, according to townships and ranges, all the selections made. On the right-hand page of the book is noted the disposition made of each tract. We then send the list to the public-lands division, and the descriptions are transcribed on the tract-books. These lists are bound and kept for reference.

Q. Have you clerks whose special business it is to post these tracts?—A. Not especially; the patent-writer usually does this work.

By Senator BLAIR:

Q. Explain in regard to claims arising on the part of States for payment or repayment by the United States of money which is taken for lands disposed of to pre-emptors and the like which have been located and held under these swamp-land grants by the States.—A. The lands for which the States are entitled to claim indemnity were sold between September 28, 1850, and March 3, 1857. All these lands thus sold between those dates by the United States to individuals, the States can procure indemnity for provided they can make their claim good by showing that the lands were actually swamp or overflowed at the date of the grant.

Q. Do you mean that the States set up a claim to swamp lands where individuals are getting a living by actual cultivation of the soil, and that they are thus claiming to any great extent?—A. In some of the States, as Missouri, Illinois, Iowa, we generally find on examination by our agents that one-third of the lands claimed as swamp are not swamp lands and never have been.

Q. Is it proved that they were not swamp lands when without any reclamation men have gone and located homesteads upon them and have raised families?—A. That is sometimes the case, though sometimes very good land now was swamp land years ago. For instance, thirty years ago there were lands in the States of Iowa, Illinois, and other States, that time and the removal of timber have made dry lands.

Q. How about the other class of cases?—A. In the other cases which relate to repayment of land it is when the government has disposed of lands since 1857, and it is discovered to be swamp land.

Q. To what extent has the government repaid to the States money for the disposal of lands that have been ascertained and decided to be swamp lands?—A. I could answer your inquiry exactly by reference to the record. Illinois has received about one-fourth of a million dollars refunded. She is selecting swamp lands now.

Q. From the cultivated regions of the earth?—A. That is being done by that State, but I don't know that other States are doing it.

Q. How is it in regard to Florida, which has substantially 25,000 square miles, or about 15,500,000 acres claimed as swamp lands?—A. No selections have been made in that State for several years past.

Q. Arkansas has over 8,000,000 acres, or between 12,000 and 14,000 square miles. Has much money been repaid to Arkansas by the government?—A. Not any. The State has never presented a claim for indemnity. It is in debt to the government.

Q. For what?—A. Money loaned from the Smithsonian Institute. When a settlement is asked, the government would place the amount due for indemnity to the credit of the State on that account.

Q. I observe that bills have been introduced at this session of Congress bearing upon this matter in the State of Arkansas. Have you examined them?—A. I have seen the bill; it is substantially the same bill that came before the office last year, and which was reported upon. I think that report contains any information that the committee might need.

Q. Have you any knowledge of what was done by the States with these swamp lands?—A. I have learned incidentally from some of the State loans. The money is used for a school fund. The lands are sold in some cases by the States, and the proceeds applied to their improvement.

Q. What are the methods by which they dispose of the land?—A. That is not within my knowledge as to any of the States, as they vary in their practice. Illinois, Missouri, and Iowa have conveyed the land granted them to the counties, and they are exclusively under the control of the county authorities for any purpose whatever that the county sees fit to apply them to. Many of the States have gone on and disposed of their land to private parties prior to receiving patents from the government, and patents have not yet issued.

Q. In regard to that matter, do you issue patents for the swamp lands to the individuals to whom the States sell them, or directly to the State? —A. Directly to the State.

Q. Do many controversies arise between parties under the laws of the United States and State titles?—A. That often occurs.

Q. In such a case coming under your jurisdiction, have you ever given the patent to the State and afterwards had an attempt made to wrest it from the State?—A. The States are often called upon to relinquish invalid titles, so that the cloud may be removed from the legal title, and very generally do so.

Q. If there has been a wrongful selection of swamp lands by the State, the result works hardship to many meritorious claimants?—A. No doubt that occurs. A great proportion of swamp lands were confirmed by the act of March 3, 1857, to which I have referred.

Q. It cut off many rights in equity to which the parties were entitled?—A. A great many.

Q. Does the government refund money received from that class of persons who prove to be unjustly ousted by patents issued to the States? —A. In case of entries made since 1857 it does, but prior to that date the entries were confirmed, and are therefore held to be valid, and the purchase money cannot be refunded. This class of purchasers need some relief, as some of the States do not relinquish their title to the lands.

By Senator MORGAN:

Q. How much additional force would be necessary in your division to bring up the business in all its branches to date? Could you clear your dockets within two years?—A. We ought to have four good clerks in addition to those now in the division. They ought to be third-class clerks. No ordinary men can come in and do anything in this class of work within two years. A new man has to become trained to the business. He must become familiar with all the various laws governing the disposal of public lands and rulings thereunder. It takes two years to do this. The magnitude of the business is not comprehended until one has become thoroughly familiar with it. New questions are coming up all the time.

By Senator BLAIR:

Q. State, from your general knowledge of this whole subject matter, when it seems probable to you that these questions will be ultimately disposed of growing out of the swamp-lands legislation?—A. I do not think it could be approximated. They can go on selecting lands indefinitely as long as there are public lands to select from.

Q. I have noticed in some publication recently, perhaps it was the report of the Secretary of the Interior, that probably the end of the century will see the final disposition of all our public lands?—A. I should presume by that time it ought to be done. These selections under the swamp-land acts may continue until the lands are all disposed of, but the questions arising from them are liable to be perpetuated for generations afterwards.

S. L. CRISSEY,
Chief of Swamp Land Division.

J. D. SMITH, chief of the railroad division, testified as follows:

By Senator MORGAN:

Question. When was the railroad division created?—Answer. The division proper was organized in 1872. Before that time it was a part of the public-lands division.

Q. How many clerks have you in your division?—A. Fourteen clerks and three copyists.

Q. Describe, in a general way, the subjects that come before your division.—A. I have prepared a memorandum which will answer the question, and which I will read, as follows: There are some 83 separate and distinct grants of land for the benefit of railroads and wagon-roads, and there are numerous laws amending, enlarging, or otherwise affecting the various grants. The estimated quantity of land which will inure to the grants is about 155,000,000 acres. (See "The Public Domain," page 287.) Of that amount there had been certified or patented, up to the close of the last fiscal year, for all grants, 47,392,765 acres, and there were pending selections for about 2,145,000 acres.

Some grants have "lapsed," *i. e.*, the roads have not been constructed within the statutory period, but no forfeiture has been declared, and under the rulings of the courts and department they remain in force. (For full information as to such grants, see G. L. O. Report, 1880, pp. 108–111.)

Upon the filing of maps showing the lines of "general route" or "definite" location of roads, the lands in the "granted" and "indemnity" limits have been withdrawn from disposition under the general laws. The lands withdrawn are indicated by diagrams showing the line of road or proposed road, and the lateral limits on each side of the line within which the grants are to be satisfied. The diagrams are transmitted from this office to the various local land offices, with proper instructions, and duplicates are retained.

The work of the division, summarized, is—

Registering letters received, noting the distribution of same, and noting answers when answered.

Registering entrries of lands in railroad limits where there has been no formal hearing.

Docketing contested cases and, from time to time, entering upon the dockets papers received and action taken.

Examining and deciding upon entries of lands in railroad limits, and applications to enter without formal hearings had. These cases are decided on the record, in favor of the individual or the company, according to the facts and under the rulings of the department, or hearings are ordered if necessary.

Of actual entries of this class there were on hand, not finally disposed of, at the close of the last fiscal year, 3,921.

Examining and deciding cases where formal hearings have been had. Of these there remained at the close of the fiscal year 970 cases not finally disposed of, 313 of which had not been reached for action. In many cases the record is voluminous, and the questions involved are intricate, requiring very careful examination and consideration to reach proper decisions.

Almost every question that can arise under the land laws comes up and must be passed upon in these cases.

Appeals.—An appeal lies from every decision rendered to the Secretary, and appeals are taken in a large proportion of the cases. Such cases must all be submitted to the department for final decision, and that decision, when made, is promulgated through this office. This work requires the constant services of one clerk and, much of the time, of a copyist.

Recording.—All letters written are press-copied, and then recorded in letter-books. All patents are recorded in books prepared for that purpose. Copies of all approved lists are made for local officers and governors of States. The making of certified copies, when called for, consumes considerable time. Two copyists are engaged on the books, and one on the other work, and all are fully employed.

Examining, listing, certifying, and patenting railroad lands.—This class of work requires great care and labor, as will be readily seen, considering the complications caused by conflicting claims of individuals and grants.

Adjustment of grants.—Under present rulings of the department, before further certification of "indemnity" lands, it will be necessary, as to most grants, to examine them in detail, tract by tract, to ascertain the amount granted, the amount certified, the amount lost to the grant, the amount remaining subject to the grant in the "granted" limits, and the "indemnity" due. This will require much time and the services of experienced, careful, and faithful clerks. The work should be done as soon as possible.

Right of way.—Under the act of Congress approved March 3, 1875, and other acts granting the right of way, 135 companies have filed papers and maps for approval. The detail of the work involves the critical examination of all papers and maps, and much correspondence looking to the correction of the same, and the protection of the company in its right of way over every tract cut by its line where there is no prior valid claim. New companies are constantly presenting papers and maps, and old ones filing new maps, showing extensions of lines. One clerk is exclusively employed on this work.

During the last fiscal year there were received 3,727 letters, and 6,153 letters were written and recorded, and the letters received, written, &c., thus far in the present year are about in the same proportion. Some classes of the work are greatly in arrears. The force of clerks is inadequate, but no room is available for more, if they could be had. More clerks, and good ones, are needed.

Grants should be "adjusted." The pending cases should be brought up. The papers in the division should be systematically rearranged. Many maps, showing limits of grants, should be reproduced, those in use being worn out. Atlases should be prepared for all States where there are land grants, to show lines of roads and limits of grants in detail, such as we already have for a few States.

Rulings and decisions of the department and office should be carefully examined, collated and noted, to facilitate work and insure uniformity; but at present the entire force is kept busy in performing the current and more pressing duties. It is impossible to state, in figures, the exact status of the work in the division, since no two cases or grants involve precisely the same questions or amount of labor.

Q. Do any cases arise in the local land offices which are held for final adjudication in your division on the classes of land which have been forfeited and where the forfeiture has not been declared?—A. Questions and cases constantly arise concerning grants which have "lapsed," but where no forfeiture has been declared. These questions and cases are decided by the Commissioner through the railroad division, and the decisions are final if not appealed from.

Q. That involves a decision by your division as to whether the lands are subject to sale, or entry under the pre-emption and homestead laws?—A. Yes, sir; whether the lands must still be held subject to the grant, or open to disposition under the general laws.

Q. When you find that lands within the limits of a railroad grant are in controversy as to their being mineral or swamp lands, how is it?—A. If lands are claimed by railroad companies which have been returned or claimed as mineral we reject the claim, and do not admit it until the character of the land has been determined by the *mineral division* of the office. If it be decided to be agricultural land the company's claim is admitted, in the absence of any superior claim. So as to swamp lands. We do not pass tracts to companies which have been returned or claimed as swamp unless the character of the land has been determined through the swamp division.

Q. Any controversey with a private entry is decided in your division?—A. If there is a homestead, or pre-emption, or private entry, within railroad limits, we decide the question, in the first instance, whether the land was subject to the grant or to the entry.

Q. Who prepares the diagrams showing the location of the railway?—A. Maps are filed by the companies showing the proposed lines of their roads, or the lines as "definitely located." From these maps the diagrams to show the lands falling within the grant are prepared by our official draughtsmen.

Q. Are you governed, in the ascertainment of the land limits of a railway company, by the definite location, or by the original or first presentation of the general line of route?—A. We are governed by the limits established by measuring from the general line, or route, until the line has been definitely located, after which we are governed by the definitely located line.

Q. That involves, sometimes, a change of the land limits?—A. Always, where there has been a withdrawal of lands upon a general line, and upon definite location the line is found to deviate from the first or general line.

Q. Are witnesses ever examined in contested cases, by the office, or do you refer the questions to local land officers?—A. The hearings are had before the local land officers, and we decide the cases upon the record transmitted by them to us.

Q. The facts in each particular case are ascertained by the clerk to whom the case is referred, and upon his finding of the facts the action of the division is based?—A. Yes, sir. The clerk writes up the facts and the decision. If the decision is deemed the proper one by the chief of division and by the Commissioner, it is so promulgated; otherwise, it is revised.

Q. Is it practicable for you, as chief of this division, to examine into the statement of facts made by each clerk?—A. No, sir; it would be impossible. I must depend, for the facts, upon the clerk having the matter in charge. Of course, if a statement is made that would not seem warranted by other circumstances, I have it verified before passing the decision.

Q. The board of critics must equally depend upon the clerk as to the facts, as also the Commissioner and Secretary?—A. Yes, sir.

Q. So that the clerk is really the judge as to the facts?—A. Yes, sir;

in most cases. Of course, if it be alleged upon motion for review, or upon appeal, that the facts have been misstated or overlooked, an examination is made with a view to the proper showing.

Q. And the officers above the clerk, relying, generally, upon his statement of facts, decide the different questions of law that arise, and conform to the rulings of the department?—A. Yes, sir.

Q. Do the hearings, as they are called, in your division, sometimes occupy very considerable time in the examination of the records?—A. Yes, sir; in some cases the record is very voluminous.

Q. Some cases, I suppose, involve the consideration of one or two thousand pages of record?—A. Yes, sir; a few cases.

By Senator BLAIR:

Q. How much time have you known a clerk to spend in finding the facts in any case?—A. About six weeks; that is, in finding the facts from our office records, reading the testimony and record of the case, preparatory to the writing of the decision. That was what we know as the "Wolf Lake case."

By Senator MORGAN:

Q. Are there frequent applications for rehearings which involve reexamination of the whole subject-matter?—A. There are frequent applications for review of decisions, generally as to the points of law involved. There are occasional applications for rehearings, which involve a re-examination of the facts as well as of the law.

Q. When speaking of "indemnity" lands, do you refer to lands which fall within the mineral class, and the swamp-land class, as well as such lands as may have been taken up by private entry, or by grants prior to the grant to the railway?—A. Speaking of "indemnity" lands, I mean those reserved to make up the deficiency in the granted limits, by reason of the lands therein having been otherwise disposed of. The question whether certain grants are entitled to indemnity for swamp lands found in the granted limits is now before the department for decision. Mineral lands (except iron and coal) are excepted in terms from nearly all grants, and no indemnity seems to have been provided therefor, excepting in "grants of quantity"; that is, grants to the amount of a certain number of sections per mile of road. In such cases, I think, a company may take its full quantity, if found in all its "limits," however the land in the "granted" limits may have been lost.

Q. Do you keep tract-books in your division?—A. No, sir; we refer to the general tract-books.

Q. Do the lists of selections first come through the office to you?—A. They come through the office to my division direct; they are then referred to the public-lands division for posting on the tract-books. They are then returned to us for further action.

Q. What maps have you kept in your division?—A. We have all the maps showing the lines of the various roads and the limits of all grants. The maps or diagrams showing the limits of grants must be changed or amended whenever a company which has had lands withdrawn on a "general line" presents a map of "definite location."

Q. Is it very common that a railroad company does not finally adopt the line originally proposed?—A. Very few if any companies have finally adopted the original line exactly. Sometimes the original and the finally adopted line have been very nearly identical.

Q. The question of the right of way sometimes raises a controversy between Indian tribes and the railway?—A. Yes, sir. If we find that on a map filed by a company under the right-of-way acts the line of road or proposed road cuts an Indian reservation, we so inform the Secretary in submitting the map, but do not recommend its approval as in cases where the line cuts only public lands. The question is referred to the Indian Office, I presume.

Q. How is it when a railroad line cuts through a military reservation?—A. The Secretary is so informed by our office, in submitting the map, and the right of way as to the reservation is approved by the War Department or the President.

Q. How is it in the case of a private reservation?—A. That is a question between the railroad company and the individual claimant. When there is an entry of record for a tract cut by the line of road the right of way is a question over which we have no jurisdiction or control; but if the tracts cut by the line are vacant at the date of the approval of the map, subsequent patents for such tracts issued to individuals reserve the right of way in the company.

Q. The question of the construction of each railroad grant is involved in the work that is done in your division?—A. Yes, sir.

Q. What has been the cause of your division getting so far behind in these cases?—A. The volume of the work, the difficult questions involved, and inadequate clerical force.

Q. If you had sufficient force would you have had sufficient room?—A. No, sir; my division has always been very much crowded. We have had, until very recently, but two rooms for all the clerks and material, and could have accommodated no more.

Q. How does it happen that just now you have room enough?—A. The division has recently been removed, and now have one room of ordinary size and one of double size, giving us the space of three rooms where we formerly had but two.

Q. I suppose you have experienced considerable relief from the removing of the public lands division up into the model room?—A Yes, sir; the removal of that division gave us the additional room.

Q. How many additional clerks do you think it would require, and of what class, to bring the work in your division up to date within a period of two years?—A. I think it could be done with about eight more good men; but they should be capable and efficient lawyers—able to examine and intelligently decide the legal questions constantly arising. Men equal to the situation should not receive less than $1,600 per annum, as departmental salaries go; we have now some capable men at smaller pay, but they should have more. Given the eight additional clerks, we should need at least two more copyists.

Q. What are the atlases you speak of, of different States?—A. They are atlases showing the lines of roads and the limits of all grants in the State, and all conflicting limits. They are made up from the maps or diagrams showing the lines and limits heretofore described, and are in much better shape for use and preservation.

Q. Are the lands embraced in these railway land grants subject to State taxation?—A. Not until they have been certified or patented, or, at any rate, selected by the company.

Q. Are the railway companies holding back applications for certification or patents in cases where they might receive them?—A. I think they are in some cases.

Q. What is the reason of it?—A. I presume it is to avoid taxation.

Q. In view of that fact, and of the right of the State to tax these lands, would it not be proper to furnish the State with these atlases or maps?—A. It would be proper, if practicable. All the local land offices, however, have maps or diagrams showing the lines of the various roads and limits of grants.

Q. Have you space in which to keep your files in your rooms?—A. We have, at present.

Q. Does the examination of cases in your division sometimes require you to go far behind the enactment of the railway grant?—A. Yes, sir; we frequently must examine the history of lands as far back as there is any record.

Q. Then it becomes necessary for you to go through the files of the other divisions to ascertain the history of the cases undergoing examination?—A. Yes, sir; we must frequently search the files and records of other divisions.

Q. In reference to the files and records of the other divisions, there is embarrassment and difficulty, owing to want of room and light, in getting up the history of the cases that you want to adjust?—A. Yes, sir; there has always, since I have been in the office, been more or less embarrassment from those causes; especially in the public lands division, from which we most frequently obtain information.

Q. If you wish to ascertain whether an entry has been made under the land laws, of any description, with a view to providing indemnity for the land-grant railway, do your clerks inspect the records and files of the public lands division, or do you send to that division for a transcript?—A. Our clerks personally inspect the files and records of that division in making up lists of "granted" or "indemnity" lands for the benefit of any grant, so as to omit from any such list lands otherwise disposed of.

Q. So that whatever embarrassment exists in the arrangement of the files in the public lands division, or in the preëmption or mineral or swamp land divisions, is felt in your division?—A. Yes, sir, to some extent, as regards each of the divisions named; but more particularly as to the public lands division. We include no lands in our lists ever returned or claimed as mineral until the land has been decided by the mineral division to be non-mineral in character; and, having made up our lists for certification, we refer them to the swamp-land division, the chief of which certifies no swamp lands are included, or notes the swamp tracts, so that we may omit them.

By Senator BLAIR:

Q. Do you have controversies or claims on the part of roads for indemnity outside of established limits?—A. No, sir; the grants to States to aid in the construction of railroads are usually of every alternate section of public land designated by even (or odd) numbers for six (or ten) sections in width on each side of the line of road, and it is provided that by reason of losses, by entries or sales, &c., of any of said lands, the company may take as "indemnity" any public land, in alternate sections bearing odd (or even) numbers, lying outside the "granted" limits and not more than fifteen (or twenty) miles from the line of road. When the line and limits are finally fixed, no claim by the company is recognized to any lands outside of these lateral limits. The older grants were made to the States to aid in the construction of roads.

Q. How is it in regard to grants to corporations?—A. Those grants are on the same general plan, the grants being larger. They differ from earlier grants, in that they are usually grants of quantity; that is, grants to the amount of a certain number of sections per mile of road—so many times 640 acres per mile—whereas the earlier grants are of the alternate sections for so many sections in width, whether such sections are full or fractional, and contain just 640 acres each, or more or less. The grant to the Northern Pacific Railroad is ten sections per mile in the States, and twenty sections per mile in the Territories, on each side of the line of road, to be taken in alternate odd-numbered sections, or within twenty miles on each side of the road in the States, and within forty miles on each side of the road in the Territories, and it has for indemnity purposes lands in "odd" sections for twenty miles on each side of its granted limits in the States, and for ten miles in the Territories. That is, there are reserved for the purposes of the grant the odd-numbered sections included in belts eighty miles wide in the States, and one hundred miles wide in the Territories. The "even" numbered sections are not included in the "grant" or "indemnity."

Q. To what extent are the "indemnity" lands drawn upon to make good losses in "granted" limits?—A. In the older grants, to the States, all the lands will be exhausted, in most instances, "indemnity" lands as well as "granted" lands. The later grants, particularly to the "Pacific" roads have not progressed far enough, in their adjustment, to admit of an estimate.

Q. In these indemnity belts on either side of the grants, the companies take only the alternate sections?—A. Yes, sir.

Q. How about the grants to the Union Pacific, Central Pacific, Atlantic and Pacific, and Southern Pacific roads?—A. They are all in the same general condition as to the adjustment of their grants; that is, the adjustment has not so far progressed in any of them as to justify an estimate of what proportion of their indemnity will be necessary. A great portion of the lands are yet unsurveyed. A portion of the main line of the Southern Pacific Road has not been constructed. Only a portion of the Atlantic and Pacific is constructed, and none of Texas Pacific has been constructed in any State or Territory where it has a land grant from the United States.

Q. Do all these corporations, whether the roads are constructed or not, still claim these grants?—A. Yes, sir.

Q. Take a corporation like the Texas Pacific; it still has lands withdrawn for the purposes of the grant, and legislative action or judicial decree of forfeiture is necessary to put an end to this incumbrance?—A. Yes, sir. The time within which, by laws of the United States, that company may complete its road will not expire until next May. (See act May 2, 1872.)

Q. In the case of a private citizen who desires to locate anywhere on any of these lands included in a grant where the period for the construction of the road named in the grant has expired without such construction, would his application be rejected?—A. If on a granted section, not excepted out of the grant by some claim of record at date thereof, or at the withdrawal of the lands, his application would be rejected. If, however, such a person has initiated a claim, and it is of record, it would be permitted to stand awaiting the final disposition of the grant.

Q. The fact that the land, both on the constructed and unconstructed roads, is largely unsurveyed, are not all the lands in the limits practically withdrawn from settlement?—A. As to unsurveyed lands, a settler could not determine whether he was on an even or an odd section, and to that extent the railroad grant has the effect to withdraw all the land in its limits from settlement. Of course, settlers do go upon those lands and take their chances.

Q. If they do take that risk and squat or locate, and there is no law under which they can do it, and construct a homestead and develop the ands and make them valuable, they do so at the risk of total loss if the survey finally locates their improvements upon a railroad section?—A. Yes, sir; but I will say that in some cases the companies have relinquished in favor of the settler.

Q. Do they relinquish from necessity, or as an act of grace?—A. Where the company's right has attached, or the withdrawal for it has become effective previous to the date such settler initiated his claim on unsurveyed land, it is an act of grace. As to surveyed lands, an act of Congress approved June 22, 1874, provides that if any of the lands granted be found in possession of actual settlers whose entries or filings have been allowed subsequent to the attachment of the company's right, the company may relinquish its right in favor of the settler and take as indemnity any unappropriated public land within the limits of its grant. The act does not *require* the companies to thus relinquish, but they do so in many cases.

Q. These roads are expected to dispose of their lands at $2.50 per acre?—A. The price at which companies may dispose of their lands is not in any way controlled by the office or department.

Q. The title to the road is one that is subject to no conditions. Being absolute, they may dispose of their lands at whatever price they can obtain; but practically they dispose of their lands as a rule at $2.50 per acre?—A. I think so.

Q. Do you observe, in the practical workings of your division, whether the administration of the laws as between the railroad corporations and individuals operates to any considerable degree of hardship upon individual settlers?—A. It undoubtedly does work hardship in some cases.

Q. To what extent?—A. The hardship is mostly in the class of cases where registers and receivers have erroneously permitted filings and entries on the railroad lands. In some cases persons have resided on such lands for years before this office has been able to reach the cases for examination. Finding such cases, we represent the facts to the company, and ask relinquishment under the act of June 22, 1874, referred to. If the company relinquishes, as is frequently the case, the settler's claim can be completed. If the company refuses to relinquish, and insists upon its rights, as sometimes happens, the filing or entry is canceled.

Q. Are there many instances where individuals actually lose their farms or homesteads in this way?—A. There are numerous instances.

Q. Is it because the railroad insists on taking advantage of its legal rights?—A. Yes, sir; where the right of the company is superior under the law and rulings of the department. But the majority of decisions rendered by the office and department is in favor of settlers as against railroad compromises. In deciding the cases, we give the benefit of any doubt to the settler, and let the more powerful party appeal to the Secretary.

Q. You are speaking merely of your division?—A. Yes, sir.

Q. If there are further proceedings, the *onus* is thrown upon the corporation?—A. Yes, sir.

Q. How many cases are there where men have settled (which have been decided in your division during the past year) within the limits of railroad grants, apparently in good faith, and made improvements, and have finally been actually *ousted* from their improvements without compensation?—A. I find on examination that during the year ended December 31, 1881, there was final action, pursuant to office and department decisions, in about 824 cases, between settlers and companies; in about 635 of which cases the land in controversy was finally awarded to the settlers, and their filings or entries allowed or permitted to stand awaiting completion, or approved for patenting, and in about 189 cases the land was awarded to companies, and the filings or entries of settlers canceled. In addition, some 227 applications to file for or enter lands within the limits of grants, and reserved therefor, were finally rejected.

Q. How many cases of contest are pending before your division?—A. About 970 cases that we denominate "contested" or "docket" cases await final action, and about 300 of them have received no action. All cases considered by us are properly "contested" cases, involving lands in railroad limits. In addition to the cases above mentioned, we have awaiting final action more than 3,000 entries, or applications to enter, in railroad limits. These cases must all be decided, as well as those which have been the subject of formal hearings.

Q. Can you tell how many cases are pending between individuals and railroads of the kind I am now speaking of, where individuals have located upon lands granted to railroad companies?—A. All the cases in our division relate to lands in railroad limits, and claimed by railroad companies. As we examine the cases we determine whether the land was excepted out of the grant and subject to entry or not. Hence it would not be practicable, in advance of such examination, to state the number of settlers on "granted" lands.

Q. There is floating in the newspapers all the time much adverse criticism of the decisions of the office and departments. As between individuals and railroad corporations, is any legislation required, or any change in the rulings of the office that might be the result of legislation?—A. Nothing occurs to me just now. The grants are already made, and rights have accrued in most cases. Under existing laws companies may relinquish in favor of individuals. Of course the action of the office will be governed by any laws Congress may enact and by the rulings of the Secretary thereon.

Q. The disposition and practice of your office is invariably to give the benefit, in doubtful cases, to the weaker party?—A. Yes, sir.

By Senator MORGAN:

Q. Does the Interior Department construe a land grant to a railway as opening an even number of sections to occupancy?—A. The alternate sections are reserved to the United States, and are subject to occupancy and entry under general laws. A homesteader may, under present laws, take 160 acres in railroad limits. Formerly, homesteads in "granted" limits were restricted to 80 acres. Pre-emptors, on even-numbered sections in "granted" limits, are required to pay double the minimum price for lands—that is, $2.50 per acre.

Q. Have you made the study of law a specialty?—A. I have made the study of the land laws a specialty since 1870. I have been a clerk in this office since June, 1877, and have been in charge of the railroad division since May, 1880.

SETH W. CLARK, recorder of the General Land Office, testified as follows:

By Senator MORGAN:

Question. How long have you been in charge of the Recorder's division?—Answer. I have been Recorder since May, 1876.

Q. That is a division which is as old as the department?—A. Yes, sir; and which will outlive all the rest.

Q. Give the committee a general statement of the duties devolving upon your division by law, and by the regulations of this bureau.—A. My answer will be twofold, and will embrace the duties fixed by law, and then as fixed by regulations. The office of Recorder was established by an act approved in 1836, the duties being left somewhat vague. A curative act of 1841 was passed afterwards, which declared that this officer should sign, as well as record, seal, and transmit all patents of public lands, and it repealed the old act of 1812, which required the Commissioner to sign them. That act was not repealed when the Recorder commenced to sign. Since that time patents for agricultural lands have been signed, sealed, and transmitted by the Recorder. That officer signs all patents issued by the General Land Office. A portion, however, of the patents in the Land Office are prepared by other divisions. The Recorder only prepares patents for agricultural lands. To illustrate, I will say that our swamp-land patents and all railroad and mineral patents are prepared in the appropriate divisions of this office. All examinations are made in these divisions touching the propriety of issuing patents, and they are then taken to the Recorder, who signs them.

Q. Does the President sign every patent issued?—A. They are signed by himself or his secretary.

Q. All the patents prepared in your division are recorded there also?—A. They are.

Q. In cases relating to other than agricultural lands, do you make any revision of the action of the division through which the patent comes to you for signature?—A. No, sir; I do not have the papers. In reference to agricultural lands we carefully examine all those matters under my charge, and they are also examined by a board of examiners, whom I select for that purpose. A careful comparison is made of the original papers and it is then recorded, the original records being left in the office, so that the patent outstanding may be verified at any time by the record.

Q. Where provision is made for issuing a patent do you take jurisdiction to determine whether the division of public lands had correctly decided in favor of the patentee?—A. I do not take cognizance of the papers. They examine and pass upon the question of the party's right to a patent. If he is dead, it is my business to see that the examiner in the other division may have given proper directions for the estate, not to minor heirs, for which there is no law; but some of the bookkeepers make no difference between minor heirs and persons provided for by law.

Q. Practically, do you examine each case that is brought before you in order to determine whether a patent can issue?—A. Yes, sir; and to whom.

Q. Are patents issued to assignees?—A. Yes; they are in certain cases. The law provides that military bounty lands, warrant locations, can have the patent issued to assignees.

Q. In cases where assignees are entitled to a patent it becomes your duty to examine into the assignments and to trace the chain of title down to the claimant?—A. Yes, sir; that question is examined nowhere else.

Q. Your office, to a large extent, has the revision of the action of the public lands division?—A. It has of the whole office. In illustration of your last question, I can show from the books of my division that I have suspended a thousand cases during the past year that were approved as correct by other divisions in the office. They were found by either myself or my experts to be incorrect.

Q. The jurisdiction which you exercise in your division requires a very high degree of acquaintance with the land laws and working of the divisions of this bureau?—A. It does.

Q. How much force have you in your division?—A. I may perhaps be permitted to refer to a statement which I have prepared here. It was prepared about two weeks ago, since the previous visit of your committee to the Land Office. I have called the Commissioner's attention to the fact that the preparation of patents was very largely in arrears, though I have made heroic efforts to keep it up and have been utterly unable to do so. I went back to the records of the division in 1875, before I took charge of the office. I found that in 1875 there were engaged upon patent work, thirty-two clerks. During the last year I have had seven, and have that number at the present time.

I would like to explain to this committee that there has been added to my division work which none of my predecessors ever had to do, that is, the management of the old Virginia bounty-land bureau, and also the military bureau, comprising cases arising under the act of 1842–'50–'52, and 1855. These two bureaus together contain all of the old records and papers relating to the bounty-land system from the foundation of the government to the present time, commencing with the old Continental Congress in 1776. There were, in 1875, in these various bureaus, 52 clerks. I have at present to do this work, but twenty-seven clerks, including my own original division. The work embraced in the two divisions formerly performed by 52 clerks is now performed by about half that number. The work performed under the old military bounty system in 1875 was performed by nine clerks, and is now performed under my jurisdiction by three clerks. I find that in 1875 39,515 agricultural patents were prepared. They had 29 clerks to do it with. In twelve months each clerk prepared 1,362½ patents; now, in the last annual report, I prepared 26,593 by seven clerks. It is only a question of arithmetic to see what an increase there is in the work *per capita.*

Q. Have the improvements in printing had anything to do with this change in the amount of work performed?—A. It does not enter into the question at all.

Q. How do you account for the difference in the amount of work in that particular branch?—A. I was surprised to discover it myself. I account for it in two ways. First. I found this corps of 29 persons engaged in this work scattered all over the city of Washington. There were very few in the office under the eye of the chief. I found three on the rolls who did not do any work at all and did not pretend to. Whether right or wrong, I broke up this system. I wanted clerks to do the work and requested the Commissioner to remove them if they were not willing to work. I had the clerks called into the office and requested them to go to work. Those who would not go to work were discharged. I found chaos in the division. I substituted a system. My system may not be the best, but a system of some kind is better than none. These two reasons are all I can give this honorable committee as accounting for this result.

Q. Proceed with the classification of any other force you have?—A. I have a corps of correspondents. These clerks attend to the letters coming in and going out and also examine cases. There are also clerks engaged all the time upon some of the old cases, extending back perhaps for thirty years. These cases involve informal assignments of old land warrants and all questions entering into the locating of land warrants. I have another branch of work that consists of the examination of the old Virginia warrants. We issue scrip for these old warrants. Some of the cases just closed ran back for a long time. The estate of Captain John Paul Jones was settled here recently by the issuance of scrip.

Q. As I understand, the land warrants issued by Virginia for military or public services are taken up by scrip issued by the United States

Government, and that service involves the examination of the validity of the land warrant under the laws of Virginia, and then an examination of the question as to whether the persons claiming these scrip are entitled to it and then the scrip is issued?—A. Yes, sir.

Q. The scrip is issued from your office and you make a record of it?—A. Yes, sir.

By Senator BLAIR:

Q. What does that script say?—A. Receivable as so much money for the purchase of any land upon a private entry. It is also receivable for pre emption claims and commutation of homesteads.

Q. How many examiners have you in all?—A. Under the general head of 27 clerks I have included the examiners. They all examine cases at different times.

Q. Have you any copyist in addition to these 27 clerks?—A. None. All my clerks are examiners at times, and yet get a copyist's salary. I have clerks who receive but $720 per year.

Q State the number of clerks in each subdivision of your office, and the salaries that they draw, who are engaged in such work.—A. The number of correspondents who are not regular examiners is six, three of whom receive $1,400 each, the others $1,200.

Q. Are these correspondents required to make extensive and careful examinations into change of title and validity of location and entries?—A. The correspondents are not expected to do that. Though they often do.

Q. How many constitute your board of examiners?—A. Our board of examiners consists of three clerks. One examines the papers in a case, the other the patent, and the other the record.

Q. Are the cases that go to your division referred to this board of examiners?—A. There is no patent writen at all that does not go to the board of examiners.

Q. What is the highest salary paid in your division?—A. The highest salary paid in my division is $1,600 per year, to one clerk only, and the lowest is $720.

Q. Are any persons who get a salary as low as $720 per year employed in the investigation of cases, and all the way up from that grade to the highest?—A. Yes, sir.

Q. So you avail yourself of the service of any person you find who may not be otherwise engaged?—A. I do, regardless of salary, if found qualified.

Q. How far behind is your division in the examination of cases?—A. My current work pertaining to correspondence is up to within a week, which is as near as it can be kept. The examination of old cases is going on when I can spare the force to do it. I have got four or five thousand such cases pending.

Q. Does that number include the Virginia land-warrant cases?—A. No, sir; it includes the military work under the other bounty-land acts.

Q. When you speak of having this large number of old cases, do I understand you to include all manner of cases except the Virginia land-warrant cases?—A. I do of the old work, and I will say in regard to the current work, that the patent writing is the only part in my office that is behind. Cases have been approved in other divisions and have been sent to me for the issue of patents. I have probably 12,000 cases in which patents are yet to be written.

Q. About how many patents can a clerk write a day, includig then necessary investigation that must be bestowed on every case?—A. There are some classes of cases where they can write a good many more than they can others. A fair average for a clerk to write is ten patents and ten records, with the necessary examination of the papers as they go. To do this properly it is considered all that a clerk can do in one day.

Q. With your present force is it possible for you within three years to get up with the back business?—A. Not with that branch of it with the new work added. At the end of the three years I would be worse off with my present force.

Q. You then think that it is absolutely necessary to have an additional force to bring up that branch of the business?—A. Yes, sir.

Q. Is there any other branch in which you think it necessary to have additional force?—A. No, sir; I do not think it would be necessary in any branch except the patent writing and these old suspended cases. If I have three more clerks that would be sufficient. I have from four to six thousand cases suspended by special order. I have many cases suspended without special order, because we found upon the preliminary examination that they were incorrect.

Q. Before you can issue patents you are compelled to examine all these cases critically?—A. Yes, sir; and it entails an immense amount of correspondence.

Q. Have you found that the delay in the decision of suspended cases has worked inconvenience, injustice, and loss to the people?—A. It has very largely. The original parties are continually dying, and evidence is harder to get to-day than it was twenty years ago.

Q. In case of the destruction of the files of your office by fire or otherwise, the decision of these suspended cases would be a matter of extreme embarrassment?—A. They could never be obtained elsewhere. Most of the records in my office could not be duplicated. Of course cases that have not gone to patent might be, but these old suspended cases could not be, and I do not know any way by which they could be restored.

Q. In the cases suspended, after a patent has actually been signed, a caveat has been filed, and they are held up to see whether the work is to be done over and a change made in the adjudication?—A. In these cases some of the finest questions and nicest legal points arise.

Q. And, therefore require a high degree of skill and ability for their proper decision?—A. It wants a knowledge of the land system, as well as legal knowledge and ability, to prepare and handle these cases. You might take a lawyer of the most eminent ability, and if he knew nothing of the land system he would have to read up before he could dispose of them.

Q. How many patents are there that have been issued and have not been required or demanded?—A. It was estimated in 1875 that there were half a million here, and many more in the local offices. We have by count, two hundred and ninety-one thousand (291,572) of these old patents at this time that are being destroyed by time and rats, and they should be delivered. It is a serious question in my mind how it may be properly done. That is a question, however, for your committee to decide rather than for me.

Q. Are the files in your division in addition to these old patents very numerous?—A. Very.

Q. How many rooms do you occupy with your division?—A. Fifteen.

Q. What proportion of those rooms is occupied by files or papers?—A. All of the rooms are occupied but two. I have the clerks in rooms with files. The two rooms unoccupied by files measure about ten by sixteen feet.

Q. Are these file-cases so arranged and so cumbrous as to fill up almost the entire area of these rooms?—A. Some of the rooms are filled up entirely. No desk room can be found in them at all; many of these rooms have no outside light?

Q. In addition to these rooms you have to occupy the halls and corridors of the building?—A. Yes, sir.

Q. Do you consider that your files in case of fire would be safe in this building?—A. They certainly would not.

Q. Have you actually sufficient room to accommodate properly the clerks now at work in your office?—A. Not by any means.

Q. Are your rooms uncomfortable and unhealthy from overcrowding?—A. Some of them are not fit for human beings to remain in.

Q. That evil has been growing for a number of years?—A. It is increasing all the time.

Q. And will continue to increase as your files accumulate?—A. Yes, sir.

Q. You have no other place in which to put your clerks?—A. No, sir; we do the very best we can under the circumstances.

By Senator BLAIR:

Q. You have seven thousand suspended cases?—A. I have between four and six thousand.

S. W. CLARK,
Recorder General Land Office.

JANUARY 13, 1882.

Subcommittee met at the General Land Office. Present, Messrs. Morgan and Blair.

HENRY HARRISON, assistant chief of division of accounts, being duly sworn, testified as follows:

By Senator MORGAN:

Question. How long have you been connected with the General Land Office in the capacity of assistant chief of the division of accounts?—Answer. I was appointed in April, 1871, on the temporary list, and was afterwards promoted. I have been in the division of accounts since my appointment to office.

Q. What salary do you receive?—A. Sixteen hundred dollars a year.

Q. How long have you been receiving that amount of compensation?—A. Since last March.

Q. I wish you to give a general statement of the matters that come in the jurisdiction of the division of accounts, and of the general operations of that division.—A. First, we receive and examine returns and abstracts, and accounts-current (monthly and quarterly) from local land offices, and enter the same upon the dockets.

We adjust and forward to the First Comptroller of the Treasury each quarter, accounts of receivers of public moneys and accounts of receivers acting as disbursing agents, accounts of surveyors-general payable from the appropriations for salaries, contingent expenses, deposits on account of surveys, surveys of private land claims, and examination of public surveys in the field. We also adjust accounts of deputy surveyors, accounts for repayment of the purchase money for lands erroneously sold, accounts of swamp land indemnity, accounts for five per cent. upon net proceeds of sales of lands due certain States, adjusted yearly.

The accounts of deputy surveyors are adjusted upon their receipt at this office.

We also adjust accounts for reproducing plats for the General Land Office; accounts for publishing maps of the United States; accounts of special agents which are chargeable to the contingent expenses of the General Land Office.

We also adjust the accounts of special agents chargeable to the appropriation for contingent expenses of local land offices; accounts of special agents upon timber depredations; accounts of special agents for swamp lands and swamp land indemnity; accounts for the return of deposits on account of surveys not made; accounts of express companies, and accounts of railroad transportation, in accordance with section 5260 of Revised Statutes; and accounts of clerks detailed to investigate alleged fraudulent land entries, and charges against local land officers. The correspondence relating to the foregoing accounts and returns is written in the division, each clerk writing the letters of his own desk. Among our records we have those relating to adjustment of accounts, statements of accounts made to the Treasury Department, and records of all contracts and bonds.

We have also a record of duplicate certificates of deposit on account of surveys; records of all letters written in the division. A ledger account is kept with the several appropriations and daily balances are struck.

We also prepare the statistical tables for the Commissioner's annual report, and all statistical information relating to the disposal of the public lands upon the request of members of Congress and others.

We make the estimates for each fiscal year under each appropriation for the expenses of the general and local land offices, and for the salaries, fees, and commissions of registers and receivers, and for the salaries of the employés of the General Land Office, and make requisition for advances for salaries, fees, and commissions of registers and receivers, and contingent expenses of the general and local land offices, salaries and contingent expenses of offices of surveyors-general.

This is an outline of the business of the division of accounts.

Q. Have you a clerk for each of these subdivisions that you have mentioned?—A. There are twenty clerks employed in the division; one chief of division; adjusters of accounts, ten; bookkeeper, one; docket clerks, two; corresponding clerk, one; file clerk, one; and copyists, four.

Q. Is one bookkeeper sufficient to take charge of all the books?—A. The bookkeeper keeps the balance books. They contain the ledger accounts, with the different appropriations. That does not occupy all his time. He also keeps the record of duplicate certificates of deposit and a record of deposits for office work, and for work in office of surveyors-general, all of which have to be recorded in detail.

Q. Is your division behind in its work?—A. Yes, sir.

Q. About how far, on an average?—A. In the matter of accounts of receivers of public moneys, and receivers acting as disbursing agents, we are about two-quarters behind.

Q. Why are you behind in the matter of those accounts?—A. A year ago last fall we were instructed to suspend all the business of the division in order to get up statistical tables for the public land commissioner. That took about two months of very hard work, and the division remained in *statu quo* during that time. This, in connection with time spent in getting the files in order and preparing statistics for the annual report, account for the work getting behind.

Q. Are you catching up with the work now?—A. We are catching up rapidly.

Q. With your present force how long do you think it will be before you will get that subdivision up to date?—A. It will be about four months. I think we can bring everything up within that time with the present force, provided the work does not increase. It is, however, increasing. We noticed during the last quarter that the business is increasing materially.

Q. After you once get up to date, can you keep it up with your present force, provided there are no unusual interruptions?—A. We can, if the business does not increase.

By Senator BLAIR:

Q. How would it be in case of an increase of work?—A. If there is much of an increase of work we would have to have an increase of force. If it remains about as it is now we would have no trouble in keeping up with it.

By Senator MORGAN:

Q. Is there any other of the subdivisions of this office behind?—A. The surveyors' accounts are behind about two weeks. The repayment desk is up to date, and the bookkeeper of course is up to date, as he keeps *daily* balances with the appropriations. The business of the docket clerk is up to date. The corresponding clerk is necessarily behind all the time.

Q. How far behind is he generally?—A. I suppose he has on hand now twenty or thirty cases. This work is increasing with every day's mail. This clerk has charge of correspondence of a general nature, such as does not appertain to any particular desk.

Q. Are they generally requests for information?—A. They are.

Q. Can the corresponding clerk keep pace with the increase?—A. I think one corresponding clerk can keep pace with it for the present. This work is necessarily behind because the information wanted by correspondents is often obtained from other divisions, and they are more or less behind. It is impossible to keep this work up to date.

Q. What necessity do you find in your division for an increase of force, and what description of force do you require?—A. In regard to the clerks required, we ought to have one more adjuster of accounts, one more corresponding clerk, and one more copyist.

Q. In conducting the business of the division of accounts is it necessary that you should make original adjudications upon any disputed questions, except merely questions of the admissibility of accounts for payment? For instance, when a question has been settled in the preemption or mineral division, or in any other division, you accept the adjudication as being conclusive?—A. Yes; except when such division does not affect the payment of accounts.

Q. It requires no reinvestigation after these different divisions of your bureau have passed upon the questions submitted?—A. No, sir; except as before.

Q. Do you take the estimates and certificates of the surveyors-general in regard to work done by the deputy surveyors in the field as being conclusive?—A. No. Of course we give them a careful examination. All the vouchers and subvouchers, the contracts and bonds, and everything of the kind are examined and compared with great care.

Q. Are there any clerks in your division who are not regularly and fully employed?—A. No; not one.

Q. Are they industrious, as a rule, and faithful in the discharge of their public duties?—A. They are, indeed. I cannot speak in too high terms of the efficiency and industry of the clerks of this division.

Q. Do you have to work sometimes out of office hours in order to keep up with the public business?—A. That often happens. We work nights and Sundays frequently.

Q. When a case of reclamation is made upon the government for moneys paid upon an entry which has been set aside, is the justice and validity of that question passed upon before it reaches your division?—A. No, sir; I will show you by the following statements what is done in our division in such cases: Sections 2362 and 2363, U. S. Revised Statutes, and the act of Congress approved June 16, 1880, authorize the repayment of purchase money. Where an entry has been canceled for conflict, or where from any cause the entry has been erroneously allowed, and cannot be confirmed, the purchaser, his heirs or assigns, make application through the register and recorder of the local office to the Commissioner of the General Land Office for the return of the purchase money, and if the evidence which accompanies the application is satisfactory to the Commissioner of the Land Office that he is the proper party to receive the purchase money, an account is then stated in his favor and submitted to the Secretary of the Interior for his approval. When the account is returned approved by the Secretary, the Commissioner then certifies to the account and transmits the same to the First Comptroller of the Treasury for final settlement. Repayment accounts are also adjusted by virtue of authority in a proviso to the civil and diplomatic appropriation act of March 3, 1855, to refund the excess payment made under the graduation act of August 4, 1854, "to graduate and reduce the price of the public lands to actual settlers and cultivators." The accounts are adjusted in the same manner as other repayment accounts, except when the account has been approved by the Secretary of the Interior the Commissioner of the General Land Office directs the receivers of public moneys of the proper land district to refund the excess out of any money in their hands derived from the sales of public lands.

Q. Moneys received from the sales of public lands, and from all other sources in connection with the disposal of the public domains, do not go through this office?—A. No, sir. All such moneys are deposited, in accordance with instructions from the Treasury Department, by receivers. All money is deposited as above stated, and the accounts are sent here for adjustment, and are forwarded by this office to the Treasury for approval.

Q. The money is covered into the Treasury upon the account rendered from this division?—A. No, sir. Prior to that time it is deposited by the receivers, as directed by the Secretary of the Treasury. A warrant is issued by the Treasury Department showing such deposits to have been made, and we give credit to the receiver upon said warrant. We debit the receivers with all the moneys that they receive from every source whatever, and we credit them with the amount of the warrants received by the Treasury covering the amounts deposited by them.

Q. How do you ascertain the amount of money that they receive?—A. From weekly statements of moneys received, and monthly and quarterly accounts-current rendered to this office, and the amount deposited from the warrants received from the Treasury Department covering such deposits. We do not credit them with these deposits until we receive the warrants from the Treasury Department. If there is any difference between the balance found by the receivers and disbursing agents and the balance found by this office, we make a statement of the differences in our adjustment of the accounts.

By Senator BLAIR:

Q. How is this money deposited by the local land offices into the Treasury?—A. The Secretary of the Treasury directs how and where these moneys are to be deposited. Usually, when they have a thousand dollars or upwards on hand, or if the office is a very small one, they deposit monthly in a designated depository. They take duplicate certificates of deposit and forward the original to the Treasury Department.

Q. What are these depositories?—A. National banks that are designated as government depositories, designated local depositories, and assistant treasurers United States.

By Senator MORGAN:

Q. State the mode of adjusting the accounts of the receivers and receivers acting as disbursing agents.—A. There are two classes of accounts, viz, receivers and receivers acting as disbursing agents, each of which is adjusted under a separate bond. The penalty of the bond varies according to the business of the office. In a receiver's account he is charged with all the moneys received from disposals of public lands, and from the collection of certain fees and commissions prescribed by law. He is credited with the moneys he deposits to the credit of the United States Treasurer, and with any other voucher or security he may transmit which is receivable for public land. In adjusting a receiver's account it is the duty of the accountant to first ascertain the correct name of the officer; second, the name of the office; and, third, the date of the bond under which the account is rendered. It is then necessary to find whether there is a balance due either the United States or the receiver on any former adjustment of his quarterly accounts under the same bond. The detailed account of moneys received from the sale of public lands is next examined and proved, and the receiver is charged with the amount received under the various provisions of law. The fee statement is then examined, and he is charged with all the receipts from homestead, final proof, and timber-culture entries, and the fees on pre-emption, homestead, coal, Indian, and mining filings, &c. The credit items are next examined, and the receiver is credited with moneys he has deposited, and which have been covered into the United States Treasury by covering warrants, and with the certificates of deposit on account of surveys and the various kinds of scrip. The adjustment of the account is then balanced, and a statement of difference made between the account as rendered by the receiver and as adjusted by the accountant, if there be any. The accounts of a receiver close with the expiration of his bond. The accounts of a disbursing agent are thus adjusted: He is charged or credited with the balance which is brought forward from our adjustment of his previous quarter's account. He is debited with the amount of his advance for the quarter. This advance is made him upon requisition of this office, through the Secretary of the Interior, by the Treasury Department. The disbursing agent is not allowed to disburse any money he may receive from the sale of public land. He makes a quarterly estimate of the amount he will require for depositing public moneys, contingent expenses, and salaries, fees, and commissions of himself and the register. This office notifies the Secretary of the Interior of the amount required, and the advance is made as aforestated. The Register of the Treasury then issues to this office a certificate of the amount of the disbursing agent's quarterly advance. The credit items are next considered. The disbursing agent is credited with the amount of the expense of depositing public moneys, and with such contingent expenses as have been authorized by this office, and the salaries, fees, and commissions of register and receiver. The salary of a register or receiver is $500 per annum. In addition to this amount he is allowed one per cent. commission on the cash sales of his office, and one-half of the commissions on homestead, final proof, and timber-culture entries, and one-half of all fees except those received on homesteads and timber-culture entries. The salary, fees, and commissions of a register or receiver may amount to $3,000 in a fiscal year, which is the maximum amount as prescribed by law. The account is then balanced and the proper statement of difference made. The accounts of disbursing agents close with the fiscal year. After the adjustments are recorded they are sent, with the accounts and vouchers, to the First Comptroller of the Treasury for his action.

By Senator BLAIR:

Q. Is there any occasion whatever, so far as you know, in which a public officer is allowed to pay himself from the funds that he receives from the sales of public lands?—A. No, sir; I know of no such occasion.

Q. Everything that pertains to the salary and personal compensation of these public officers comes directly from the Treasury Department? —A. Yes, sir. These officers account to the Treasury for every dollar that they receive from any source whatever, except a fee of $1 for notices to contestants of the cancellation of pre-emption, homestead, or timber-culture entries, which goes to the register and is not reported to this office.

Q. Is the receiver entitled to retain in any instance compensation in the form of fees?—A. No, sir.

Q. His pay is liquidated in its exact amount by the law itself?—A. It is. The pay of register and receiver cannot exceed three thousand dollars a year, except as above in the case of the register.

Q. Three thousand dollars is the highest possible pay of what officers? —A. Registers and receivers of public moneys, except as above in the case of the register.

Q. What is the compensation of surveyors-general?—A. Their compensation is regulated by law. It is based upon the importance of their respective offices. Some of them transact a very much larger business than others.

By Senator MORGAN:

Q. I would like a list made showing the compensation paid to the several surveyors-general, and what rules govern the Commissioner of the General Land Office in ascertaining and prescribing such compensation?—A. The compensation is fixed by law.

List of surveyors-general, with their compensation.

Arizona, John Wasson	$2,500
Colorado, Albert Johnson	2,500
California, Theodore Wagner	2,750
Dakota, Cortez Fessenden	2,000
Florida, Malachi Martin	1,800
Idaho, William P. Chandler	2,500
Louisiana, J. A. Gla	1,800
Minnesota, J. H. Stewart	2,000
Montana, J. S. Harris	2,500
Nevada, E. S. Davis	2,500
Nebraska and Iowa, George S. Smith	2,000

New Mexico, H. M. Atkinson	$2,500
Oregon, J. C. Tolman	2,500
Utah, F. Salomon	2,500
Washington, W. McMicken	2,500
Wyoming, E. C. David	2,500

The above are the sums appropiated for payment of salaries for fiscal year ending June 30, 1882.

Q. Are the accounts with the States in reference to the five per cent. based upon the proceeds of sale of public lands?—A. Yes, sir. It is five per cent. upon the net proceeds of the sales of public lands. They are adjusted yearly.

Q. Who decides upon the rights of the States in such cases?—A. We adjust the accounts in accordance with the various acts of Congress relating to the subject, and transmit the same to the First Comptroller of the Treasury for his decision.

Q. If a dispute arises between a State and the General Land Office upon the question of right to the five per cent. from the proceeds of sales of certain lands, where is that dispute settled?—A. It would be referred to the Secretary of the Interior, and by him to the Commissioner of the General Land Office for adjudication. Any question in regard to payment would be referred to the First Comptroller of the Treasury.

Q. The question of the liability of paying this five per cent. would be settled by this office?—A. Any question of *payment* is passed upon by the First Comptroller of the Treasury.

Q. Have you ever known such a controversy to arise?—A. Yes; in the case of Minnesota, in regard to the five per cent. upon certain Indian lands, and a similar case in Nebraska.

Q. You first pass in this bureau upon the validity of the claim, and then the Treasury Department examines it and passes upon the amount to be allowed, examining at the same time the question of the validity of the claim for themselves?—A. Yes, sir.

Q. In case of a difference of opinion between the departments, it would be referred to the Attorney-General or else to Congress?—A. In some cases. When the First Comptroller decides questions of this nature, his decision is final. See Revised Statutes, section 191, page 30.

By Senator BLAIR:

Q. As a matter of fact the final decision of such cases is made by the First Comptroller of the Treasury?—A. It is, in relation to payment of moneys by the Treasury Department.

Q. If so, is there any power to overrule his decision?—A. No, sir; not that I know of.

Q. How many rooms have you in your division for its accommodation?—A. We have two large rooms and one small one.

Q. Has each of these clerks that you have mentioned a separate desk?—A. Yes, sir.

Q. Are the files of the division kept in the same rooms?—A. They are, and they are in very bad shape from the fact that we have not room enough to properly arrange them. We have a large number of records, perhaps thirty or forty volumes, that have to be piled on the floor. If we have to refer to any particular book we have to look over the whole pile.

Q. Are your files all contained in your rooms?—A. Yes, sir; none of them are outside except the dockets of the file clerk.

Q. Where are *they* kept?—A. In one of the rooms of the recorder's division.

Q. Are there many of those dockets?—A. There are three volumes.

We have to keep a clerk in there because we have not room for him in our own rooms. We also keep two clerks in the corridor for the same reason.

Q. Is that corridor a fit place for a clerk's office?—A. No, sir; it is not. The clerks are annoyed by drafts of air. It cannot be warmed properly. Not a safe place for important papers.

Q. Are those corridors open to the public?—A. They are—and are consequently no fit place for a clerk. He is constantly annoyed by people passing to and fro.

Q. This crowding that you speak of is a detraction from the efficient working of the clerk?—A. It undoubtedly is.

Q. How much more work do you think a clerk could perform with a reasonable room and facilities than he now does?—A. We could do one-fourth more work.

Q. Then there is annually wasted the amount of three hundred dollars out of every twelve hundred dollars by reason of this lack of suitable space and facilities?—A. I should not think that was too strong a statement.

Q. What is the aggregate pay of the General Land Office, and how is the money expended?—A. I will ascertain that and furnish a list.

NOTE.—The list referred to I handed to Mr. Anderson, together with a statement in regard to B. T. Reilley, and I think he took them with him.

HARRISON.

Q. Is there any reason why the detriment to the public service, occasioned by insufficient accommodations in your division, does not equally apply to the entire bureau?—A. There is no reason that I know of.

Q. And that the loss to the public service throughout the bureau is twenty-five per cent. of each man's salary upon an average?—A. I dislike to speak of other divisions in regard to that.

By Senator MORGAN:

Q. Do you preserve in your division all the accounts passed upon and settled?—A. No, sir; the accounts are all forwarded to the Treasury Department after they are approved and adjusted here. I mean the quarterly accounts. We keep the monthly accounts-current of receivers of public moneys, so that we can readily turn to any particular account, and they are all docketed. We keep transcripts of the adjustments of accounts upon our records.

Q. Every claim which is presented against the General Land Office and every statement of the receipt of public moneys is transcribed on your books?—A. Yes, sir.

Q. All papers transmitted to this office in reference to accounts and that are not sent to the Treasury Department are retained on file here?—A. Yes, sir.

Q. So that your files accumulate rapidly?—A. They do.

Q. Do you think it practicable, with the present force at the disposal of the General Land Office in this building, to conduct the public business for a year or two more without serious detriment to the public interest?—A. I think not.

Q. Do you consider that, as a rule, the rooms in the lower or ground story of this building are healthy?—A. They are certainly not, owing to their crowded state and poor ventilation.

Q. Is it not a matter of necessity in order to ventilate the rooms that some of the clerks are exposed to draughts of cold air?—A. It is.

Q. The only ventilation you have is by raising the windows?—A.

Yes; and of course the clerks whose desks are near the windows are subject to draughts of air. This causes annoyance and sickness, and is a serious drawback upon the efficiency of the clerks.

By Senator BLAIR:

Q. You might describe the interior of some of those rooms, what the distance is between the several clerks, and the generally discreditable appearance to a great government of one of those rooms where you do your work.

Sworn and subscribed to by me this —— day of January, 1882.

HENRY J. HARRISON,
Assistant Chief Division M, General Land Office.

JANUARY 18, 1882.

Subcommittee met at the room of the Committee on Public Lands of the Senate. Present, Messrs. MORGAN and BLAIR.

JAMES W. DONNELLY, chief of the division of accounts, being duly sworn, testified as follows:

By Senator MORGAN:

Question. How long have you occupied the position of chief of division of accounts?—Answer. Since July 1, 1880.

Q. Had you before that time been connected with the General Land Office?—A. Before that time I was bookkeeper of the surveying division. I entered upon my duties the 20th of October, 1876, and remained in that position up to and including June 30, 1880.

Q. Have you examined the testimony of Mr. Harrison, the assistant chief of the division of accounts, given before this subcommittee a few days since?—A. I have.

Q. Are there any alterations or additions in connection with that testimony that you wish to make? If so, please mention them?—A. I do not think that Mr. Harrison was full enough in his statement in regard to the increase of the work in our division.

Q. Why?—A. Because the act of March 3, 1879, amending section 2403 of Revised Statutes, made certificates of deposits for surveys assignable and receivable for any public lands entered under the homestead and pre-emption laws. The passage of this act caused a large increase in the business of our division. Prior to that time certificates of deposit were restricted to the use of the person making the deposit, and to the entry of a tract of land situated in the township for the survey of which the deposit was made.

In connection with these surveys it frequently happened that the settler would make a mistake. He might suppose that a township was north when it was south, for instance, and the certificate which was issued based upon such an error became perfectly worthless to the applicant. In order to correct those errors the act of March 3, 1879, was passed, providing for the assignment of certificates and their reception in payment of any public lands entered under the homestead or pre-emption laws. This led to an increase of deposits, during one fiscal year, from about $300,000 to something between $1,700,000, and $1,800,000.

These certificates are handled in the division five times. The duplicates are sent up to the General Land Office from the offices of the different surveyors-general.

They are examined in our office and made a matter of record.

They are then sent to the Secretary of the Treasury by letter, each certificate being described as in the record.

The receivers send the triplicates up monthly. They are examined again in our office and compared with the original record of the duplicates. When the receivers send up quarterly accounts they charge the government with the triplicates received in payment for public lands.

These triplicates, of course, have to be compared with their quarterly accounts.

After the accountants give them credit for the amount of these certificates of deposit they are then charged against the record of the duplicate upon the special-deposit ledger.

Receipts for public sales were, as a rule, prior to said act, cash, and one entry was sufficient to give them credit; whereas now it is different on account of this change in the law.

Q. Do you have to compare the certificate with the returns to see that they correspond?—A. Yes, sir.

Q. That, of course, adds considerably to the labor of the division, particularly in the book-keeping department?—A. Yes, sir. The increase of work is very large. As an illustration, I will mention one instance, where two pages of record sufficed, under the old system, to adjust an account; whereas now, under the present system, it takes forty pages to adjust the same account. In the Mitchell, Dakota office, the receipts were formerly cash; now they aggregate over $100,000 in certificates of deposit each quarter. Of necessity, each certificate must be described in the adjustment of the receiver's account by the General Land Office, no certificate being for more than $200.

Q. What other addition do you wish to make to the testimony of Mr. Harrison?—A. I would like to add to his enumeration of the duties of the division of accounts, that we also prepare and submit deficiency estimates of the different divisions for all branches of the service, in addition to the estimates enumerated by him. In the matter of the examination and adjustment of surveying accounts, the plats or field-notes are referred to Division E, which is the surveying division. The accounts come direct to the accounting division, and are sent in separate letters. The surveying division pass upon the validity of the survey. If the survey is accepted the case is referred to the accountants' division, and we examine the plats and field-notes for account. We examine carefully every mile of survey, and in a great many instances make changes in the figures.

Q. So that the accounts sent in for adjustment are subjected to your examination in all particulars?—A. Yes, sir.

Q. This brings in a volume of business to your office that was not expected or provided for?—A. This sudden increase in the volume of business affects every desk in the division.

Q. Is there any other statement that you wish to make in addition to the testimony of Mr. Harrison?—A. Only in relation to the allowance by statute for the salaries of the surveyors-general. If you desire it I will prepare and present a list:

Arizona, section 2210	$3,000
California, section 2210	3,000
Colorado, section 2210	3,000
Dakota, section 2208	2,000
Florida, section 2208	2,000
Idaho, section 2210	3,000
Louisiana, section 2208	2,000

Minnesota, section 2208	$2,000
Montana, section 2210	3,000
Nebraska and Iowa, section 2208	2,000
Nevada, section 2210	3,000
New Mexico, section 2210	3,000
Oregon, section 2209	2,500
Utah, section 2210	3,000
Washington, section 2209	2,500
Wyoming, section 2210	3,000

Q. Having added what you deem necessary to the statement made by Mr. Harrison, do you concur in the remaining statements he has made?—A. I do, with one or two minor exceptions.

Q. What recommendation have you to make in reference to the increase of force in your division, and the character of such increase?—A. I think that we ought to have two adjusters of accounts; one to be on receivers' accounts, and another on accounts of moneys collected from timber depredations. The latter accounts have never been kept, on account of lack of force.

Q. In whose charge have these accounts been heretofore?—A. They have been scattered all over the General Land Office, until I took charge of division of accounts.

Q. What has been done with these accounts?—A. Nothing, and nothing can be done until there is a clerk detailed especially for the purpose of keeping them.

Q. Explain the necessity for having this work done.—A. A large amount of money is annually appropriated by Congress for the suppression of timber depredations. I think it but just and proper that the General Land Office should show the benefit the government derives from these expenditures and the manner of making the expenditures.

Q. If Congress desired information upon this subject from your office would you be able to give it?—A. We would not. The question would have to be referred for answer to the Treasury Department, because the accounts have not been examined and recorded in our office up to date. In relation to the accounts of expenditures we have a perfect record of them, but the money covered into the Treasury has not been accounted for to us, and properly recorded in our office, by clerks of courts and others who are authorized by the Attorney-General to collect these moneys—never notify our office of collections and deposits. There ought to be some legislation upon this subject, requiring these officers to notify our office upon the points mentioned.

Q. Is there no law or regulation of the department requiring returns to be made to the General Land Office of moneys collected for timber-depredations?—A. There is, so far as our own officers or agents are concerned, but not so far as the officers connected with the judicial department or other departments of the government are concerned.

Q. What additional force do you require in your division?—A. We need two additional copyists. Mr. Harrison in his testimony says that an additional corresponding clerk is necessary, but in that I do not agree with him.

Q. What about the salaries of your subordinates?—A. I think that the accountants all ought to have an increase of salary. They ought to have at least $1,600 per year. Mr. Harrison, the assistant chief of the division, who is a very competent man, should have at least $1,800 per year.

Q. Does it require first-class accountants to keep up the work of your division in good shape?—A. It certainly does.

Q. Is the money sent to the General Land Office which is received from the sales of public lands?—A. The money is deposited in some United States depository, to the credit of the United States Treasurer, and the accounts come to our office for settlement. We forward the adjustment of the accounts to the First Comptroller. The money is covered into the Treausury by warrant. The warrant gives the officer proper credit. In our adjustment of accounts we show from where the money was received, whether from sales of Indian or public lands, fees, commissions, or otherwise. We charge the receiver with the gross amount received, and credit him with the amount deposited as shown by the warrant.

Q. Have you examined the diagram presented in the testimony of Mr. Harrison?—A. I have.

Q. Do you find it correct?—A. I do.

Q. What, in your experience, has been the effect upon the health and eyesight of the employés of your office in consequence of the condition of the rooms and the want of sufficient light and ventilation?—A. As a rule the effect has been very bad.

Q. Has your own health suffered?—A. I am satisfied that my own health has suffered. I have recently had quite a protracted spell of sickness. I sit almost in front of the register in my room, and my health has been injured by it. I have no doubt that as a rule the crowded condition of the office is deleterious to the health of the employés.

Q. Is it any serious obstruction to the transaction of the public business?—A. It is. It takes clerks away from their desks; clerks become ill, and there is a consequent loss of time to the government.

Q. In respect to the facility of getting about through these rooms and handling books and papers, you think that the office is much overcrowded?—A. Yes, sir; I think the office is very much over-crowded, not only in our division but in all the divisions.

Q. What, in your opinion, would be the effect of the removal of the Indian Office from the Patent Office building in respect to the capacity of the building to accommodate the Patent Office and the General Land Office?—A. The Indian Office is comparatively a small bureau. It would give us temporary relief for a few years. I think that the Land Office should have all the rooms on the lower floor of the building, now occupied by the Indian Office, if vacated by it. I do not think that the Indian Office has more than six rooms on said floor. They have three on each side of "G" street hall.

Q. You think that the General Land Office should have all the rooms in the building now occupied by the Indian Office?—A: I do; on that floor.

Q. Does the Indian Bureau occupy any up-stairs room?—A. They occupy two or three large rooms on the 7th-street front.

Q. With the relief of which you speak, do you think that the General Land Office could get along, with reasonable facilities for the transaction of the public business, for as long as five years?—A. I do not; inasmuch as the business of the Land Office is increasing every year, as our reports show.

Q. Are all your files kept in the rooms, or are some of them kept in the corridors?—A. They are all kept in rooms Nos. 133 and 135. There are cases of patent records that belong to the recorder's division kept in room No. 131, which is one of our rooms.

Q. How many rooms does your division occupy?—A. Three.

Q. Have you any clerks outside of your three rooms?—A. Yes, sir; we have two in the hall and one in one of the recorder's rooms.

Q. Is there not an inconvenience in having your clerks separated?—

A. There is; particularly in regard to the clerks working in the halls or corridor. They are at work upon certificates of deposit received from receivers, and amounting, in some accounts, to over $100,000. Of course these papers are very valuable to receivers as well as to the government. Occasionally one or both of the clerks have to leave their desks and attend to something in another part of the division, and he has got to carry those papers around with him, or leave them on his desk where they are liable to be taken by parties passing through the halls. There is no place of security for these papers except when they are in the presence of the clerks in charge of them or locked up in the safe. I have a safe in the division, located between rooms 133 and 135, where triplicate certificates of deposit are always kept when not in use.

Q. Is not the light very insufficient in the corridors for the prope rdispatch of the public business?—A. It is very insufficient. Records have to be carried to the windows for inspection.

Q. Are not these corridors also very insufficiently heated?—A. They are; the heat and ventilation are very variable.

Q. Depending upon the opening of outside doors to admit the passage of people through the hallways?—A. Yes, sir.

Q. I gather from your testimony, Mr. Donnelley, that you are of the opinion that there is urgent public necessity for an immediate relief to the General Land Office in providing more room for the accommodation of the employés and officers, and also better security for the files and papers?—A. There is.

By Mr. BLAIR:

Q. Are you and your clerks in room 131 inconvenienced by the recorder's clerks having access to the patent records in that room?—A. We are; it is of almost daily occurrence, and sometimes two or three times a day. We are compelled to rise from our chairs or move them when the cases are opened.

J. W. DONNELLEY.

J. W. LE BARNES, assistant law clerk of the General Land Office, being duly sworn, testified as follows:

By Senator MORGAN:

Question. How long have you occupied the position of assistant law clerk of the General Land Office?—Answer. About two years.

Q. How long were you in the Land Office previously?—A. About four years.

Q. How many persons are occupied in the division of the law clerk?—A. Three; the law clerk, myself, and one copyist.

Q. How much room have you for the accommodation of your business?—A. Sufficient at present for the number of persons employed.

Q. What is the extent of your library?—A. Several hundred volumes. Congress made an appropriation of a thousand dollars last year. Previously a few books had been purchased from time to time from the contingent fund.

Q. Is the appropriation made last year expended?—A. It is.

Q. Have you a copy of all the statutes of the land States, as they are termed?—A. Not all of them.

Q. Do they include the Territorial laws?—A. Nearly all of them. An endeavor is being made to get complete sets of both State and Territorial laws.

Q. Have you the circuit court reports and the district court reports of the United States?—A. No district court reports. The circuit court reports in small part. United States Supreme Court reports complete, and some complete State reports.

Q. Have you a good supply of elementary books relating to the subject of land laws and land decisions?—A. A very good supply, but not as complete as might be desired.

Q. Is your division behind in its work?—A. There is always an accumulation of work much beyond the amount that can be attended to. The committee understand, of course, that there is no work of a routine character in this division, and therefore no general class of cases in arrears as in the other divisions, although the deferred cases in the law clerk's division are chiefly those that have come from the other divisions.

Q. In what manner do these cases come before the law division?—A. Usually by special reference from the Commissioner, for an opinion upon legal questions, or for a full examination of the case and the preparation of the decision.

Q. Are these references to your division made before or after the cases have been acted upon in the other divisions to which they properly belong?—A. In both. Cases are referred in the original instance for a special examination of the law and the facts, and also after action by another division has been had and the Commissioner desires a re-examination or review. The law clerk is also freely consulted by the chiefs of divisions and clerks upon questions that arise in the course of business in their respective divisions. There are also varieties of miscellaneous matters and questions that are brought before the Commissioner personally, and in respect to which he desires the opinion or action of the law clerk.

Q. How far is your division behind in this work?—A. I suppose I have on my table cases that would take some months to examine if I had nothing else to do. There is no guide for the ascertainment of the work that may come into the division. There are large numbers of cases that would be so referred if they could be acted upon.

Q. How far behind is the principal law clerk?—A. He has cases that have been pending before him for several months that he has not been able to examine.

Q. There are a large number of cases that ought to be examined by the law division which are not referred to it because it is impossible to make any examination of them?—A. Yes, sir.

Q. Is there not quite a number of clerks in the several divisions that have under consideration questions of titles to lands, questions of surveys and other important matters, who are not skilled lawyers, and before they came into the General Land Office were not at all accustomed to investigate either titles or facts in a judicial way?—A. Yes, sir. This is a necessary incident to the organization of the Land Office, there being but a small number of clerks of the higher grades in proportion to the whole force allowed. Men who have neither legal knowledge or experience sometimes have to pass upon questions involving abstruse principles of law, and affecting great public and private interests. Questions of fact to be determined upon *ex-parte* testimony or the record of preliminary trials before local officers, are adjudged in many instances by men unacquainted with the rules of evidence. This, as I have said, is a necessity under the circumstances of the case, and is not a reflection upon the clerical force, which is of good general, capacity equal at least to that of any other bureau. The men employed are in a general way of the best material that can be obtained at the rate of compensation provided. But in a division where there are one or two men who have had some legal training, there are, perhaps, a dozen others who have not, but who are, nevertheless, required to act upon important questions of law and fact. The chief of a division is expected to review the work of the clerks under him, but he is so overwhelmed with his labors that he cannot make all the examination of the cases that is necessary to a proper decision, even if he is qualified to pronounce a legal judgment. He must take for granted that many propositions laid before him are correct.

Q. In your experience in the law department of the General Land Office, state whether you have found a conflict of opinion or decision growing out of the fact that there was no sufficient review of the grounds upon which such decisions were based?—A. That has been a very frequent occurrence, though it is of less frequency now than formerly. The present Commissioner found that he must sign decisions that he knew nothing about, and that there had never been any effective supervision over the decisions prepared for the signature of himself or his predecessors, and he organized a board for the purpose of reviewing the substance and legal accuracy of the decisions made in the several divisions of the office before they should be presented to him for his action. The former practice had been to cause the official letters to be read before signature, but rather for the purpose of correcting grammatical errors and faults of expression, than for inquiring into the correctness of the decisions themselves. The readers detailed for this purpose were not expected to be familiar with the principles upon which decisions were rendered in other divisions than their own, and it thus happened that the work of some of the most important divisions of the office was never subjected to review. The present Commissioner decided to change this practice, and to cause all the decisions of the office to be thoroughly scrutinized and examined. As one of the members of the board I have not, however, been able to attend to this work more than half the time since the board was organized, owing to the pressure of other work in the law division proper, to which the board is informally attached. In such cases some one else acts on the board in my place. The process of this supervision of the work of the bureau is this: Letters come in to the number of two or three hundred or more daily from the different divisions. A certain proportion of these may relate to the formal work of the office, or to such matters as can be readily seen to have been properly acted upon. Another large proportion require a more or less critical examination of the laws and precedent decisions upon which the pending decisions are founded. Some of the cases may also require an investigation of facts of record or a review of the testimony.

Q. These letters when they are signed by the Commissioner become in effect the rules of decision which govern in a great many cases?—A. They do, and it has never been possible for the Commissioner to know what decisions have been made except in particular cases that have been called to his personal attention.

Q. You and the other gentlemen composing the board of review have been detailed to do this work in addition to other duties?—A. Yes, sir.

Q. In reference to yourself, have you not quite as much to do as suffices to occupy your time?—A. I usually commence work before nine, and leave off at any indefinite period after business hours, besides working much at night and on Sundays and holidays. But there are many men in the Land Office who do that.

Q. Does the board of review examine thoroughly every case that comes before them after it has left the hands of the chiefs of the different divisions, so as to know the facts in the case?—A. That would be impossible, and the board is not expected to do so. It is presumed that the facts are correctly stated, and the decision is considered on the recital as made. But if a case indicates any discrepancy or incompleteness in the statement of facts, an explanation is called for. In my examinations in the law division I frequently go to the records, and if I have any doubt about a decision rendered on the weight of evidence, I call for the papers and read the testimony in the case.

The primary question before the board, however, is whether the decision is in accordance with the law as authoritatively construed. In most cases this can be determined from familiarity with the questions involved in the case under review. But there are always a certain number of cases to be laid aside every day for a more thorough investigation than can be given at the time of reading.

Q. Is there any accumulation in the hands of the board of cases laid by for further consideration?—A. There are quite a number of cases of that character in my hands. My associate on the board first reads the letters carefully and critically. He indicates his approval or notes his objections, as the case may be. They are then passed to me (when I am acting as a member of the board), and I examine the decisions both originally and in connection with the views and suggestions of the other member of the board.

Q. Who is your colleague on the board?—A. Mr. Conway, one of the oldest clerks in the office.

Q. Is he a lawyer?—A. Yes, sir.

Q. It seems to me that your entire time might be occupied in examining letters as they come in.—A. That is true.

Q. The object of the arrangement is to make it possible for the Commissioner of the General Land Office, through the boards selected by him, together with what the law clerk can do, to keep some supervision over the current work of the bureau?—A. Yes, sir; and the method adopted is, that if a case involves a new decision, or one on which the general views of the Commissioner are not known, or if a change in a former ruling is suggested, or is deemed necessary to the public interests, or if a case is one of peculiar importance, it is presented to the Commissioner personally. The board is not expected to present for his signature any decisions that are not unquestionably correct according to established principles and usages, and if there is any doubt about the correctness of the recognized precedents or practice the attention of the Commissioner is called to the matter.

Q. Do the members of the board of review receive any additional compensation for their work?—A. No, sir.

Q. Their labors are simply doubled without any additional compensation, and they have sufficient ordinary and legitimate business of their own offices to keep them employed constantly within working hours?—A. Yes, sir.

Q. In your experience in the General Land Office do you think the crowded condition of the rooms and the enormous mass of files and papers accumulated in them, and the want in many cases of ventilation and light, have an injurious effect upon the health of the employés?—A. I think these things have a very injurious effect upon the health of the employés. I have heard many of them complain, particularly in respect to injury to the eyes.

Q. Is there a great deal of work in the General Land Office that requires very exact penmanship and a very close use of the organs of vision?—A. Yes, sir; all the work in the bureau requires exactness; a large proportion of the clerical force of the office is at work on the tract-books, as the records of land entries are called. This work has to be done with accuracy; everything depends upon that, and the want of it has in times past caused many troublesome errors. From the inability of the clerical force allowed to keep that character of work up to date or to within a reasonable period, much trouble and annoyance has arisen, and a great deal of hardship has been occasioned to settlers. For instance, a man makes an entry upon a piece of land; he does not know that there are obstacles to his acquiring title to it; there may be some defect in his case which is ascertained as soon as it is reached, but his case may not be reached for a term of years; in the mean time he has gone on and settled, and improved his claim, only to find in the end that he has no title, and cannot acquire one, and somebody else gets his improvements. There have been many cases of that character.

By Senator BLAIR:

Q. I would like to have you describe as fully and minutely as you can the case of a litigation or a contested question from its inception to its final decision in the General Land Office. Say, for instance, a controversy between a railroad land-grant and homestead settlers?—A. A settler goes to the local land office and applies to make a homestead entry on a tract of land embraced within certain sections supposed to have been granted to a railroad company. He is told that the land belongs to a railroad. He says he understands that a prior right was on the land, and that this prior occupation excepted the land from the grant. The local officers find that there was a prior settlement, and they advise him that he must notify the railroad company that he intends to apply to enter that land. A date is fixed for a hearing and the parties appear. The railroad is represented by its attorney, and the opposite party either by himself or his counsel. It is determined by the register and receiver that the homesteader has a right to enter the land. The railroad company appeals from this decision; and the case comes up to the General Land Office. The railroad division, after a lapse of some years, perhaps, examines that case. It determines whether or not, in accordance with the practice of that division, the homestead party had a legal right to enter the land. Pending that determination additional evidence is frequently called for, and a variety of incidental questions involving correspondence between the General Land Office, the local office, and the party in interest arise. A decision is ultimately rendered that the homestead party had no right to enter the land. He appeals or desires to appeal. Ordinarily settlers are not able to employ counsel, and they have to depend on themselves. Their appeals, in a majority of instances, are dismissed for informalities by the office here. The party may be told, in the language of the office, that he must file a specification of errors. He does not know what that is, and his case is closed out against him.

Q. How is it with the opposing party, which is the railroad, as a matter of fact?—A. They are always represented by counsel, both at the local office and the General Land Office.

Q. How is it in regard to the ability of counsel usually employed by railroad companies?—A. Railroad companies never make the mistake of employing lawyers of inferior capacity. A railroad corporation has the ablest attorneys in its service that the country can produce. A settler has no attorney, or perhaps very indifferent counsel. He may be some local attorney without much practice or experience in the questions he is called to manage. When the case comes before the General Land Office a corporation is represented not only by able but by abundant counsel. The settler generally is wholly unable to employ a resident attorney, but relies on the merits of his case and the fidelity of the officers of the government to secure him his rights.

Q. Before what tribunal or what class of minds are these questions heard in the first instance?—A. Before the clerks having that matter in charge.

Q. Before ordinary clerks?—A. Yes, sir.

Q. Do these counsel have access, informally, to these clerks in private conversation and otherwise, and endeavor to press their views upon these clerks with such means as they see fit to exercise upon them?—A. I think it has usually been the fact that the views of railroad attorneys, and their constructions of the law, have been fully impressed upon the minds of clerks acting upon cases in which the corporations are interested. The regulations prohibit conferences between attorneys and clerks except upon permission. Such regulations have not always proved effective, although they are now more strictly enforced than formerly. Attorneys have, however, full access to chiefs of divisions.

Q. What is the nature of the hearings that then occur upon these questions before these clerks, and how are they conducted?—A. The attorney of the company goes in person to the General Land Office, examines the papers, and if necessary follows the case to whoever has it in charge or control, and argues and insists upon the superior or exclusive rights of his company to the land. There are no formal hearings. The pressure brought upon clerks is the pressure of the power and influence of the great corporations. If a case involving railroad interests adverse to a settler's right or to the public interests happens to come to the attention of the Commissioner before final decision, the attorneys usually find it out and interview the Commissioner on the subject. They also look very closely after cases that may in the same manner come before the law clerk for his opinion.

Q. Meanwhile all questions of fact are practically settled before this time by the clerk?—A. Yes; sir; he ascertains and states the facts.

Q. Upon these questions of fact necessarily arise the questions of law?—A. Yes, sir.

Q. In a case such as you have mentioned, the counsel for a railroad finds it important to have a favorable decision primarily upon questions of fact, as upon these facts the legal decisions are based?—A. Yes, sir. And in cases coming before the law clerk, as I have said, he is expected to pass upon the question of law as presented from the facts stated. But the practice of the law division is to be sure of the facts. When a case comes before me, for example, unless it is referred simply for an opinion upon some particular question, I go to the foundation of the case, and do not accept the statements of fact as conclusive without a verification by the record.

Q. Are many cases terminated without reaching you at all?—A. Until the present Commissioner came into office, legal questions relative to railroad grants, and to rights and interests arising thereunder, never came before the law clerk of the bureau unless in some merely incidental and comparatively unimportant cases. They were acted upon exclusively in the railroad division. Under the present practice such questions as are judged by the board of review to require the consideration of the law clerk, are referred to him. When cases are reserved by me as a member of the board, for further examination in the law division, I consult the record of the case, examine the tract-books, the original papers and correspondence, and the prior decisions, and, if the nature of the case requires it, the plats and field-notes of survey, or, as the circumstances may be, the records of Indian, private land claim, mineral, or other reservations, or adjudications. Then the legal questions are examined to ascertain if the decision is in accordance with law and governing decisions. Many instances have been found where there is doubt about that.

Q. Do you mean to say that you frequently find your own opinion overruled and controlled by the established decisions of the office?—A. Frequently. And in such case the established decisions govern, if they are decisions of the Secretary of the Interior, and if the decisions of the Secretary are found to have been correctly applied. If a decision is simply founded on a previous practice of the office, which the law clerk finds in his judgment to be wrong, the attention of the Commissioner is called to the point at issue for his determination. Some large classes of cases have thus arisen within the last few months, in respect to which it was the opinion of the law division that the former practice of the office was based upon material error in the construction of the laws and the application of legal principles and authoritative decisions. Some of these cases have been reached for final action by the Commissioner, and the former rulings have, upon a very full consideration, been reversed.

Q. After the Commissioner's decision is announced in any case that has been referred to the law clerk, is that decision formally prepared in the law division, or in the division where the case originated?—A. It may be prepared in either, according to the circumstances of the case.

Q. Are the cases that go before you for adjudication such as are not satisfactory to the corporations interested in them?—A. It is the other way. The cases in which the decisions that have been made are satisfactory to the corporations are the ones that usually come before the law clerk's division.

Q. How is that?—A. In reviewing the office decisions the cases that may be thought to have been erroneously decided, according to the views of the law division, are usually those where the decision is favorable to the corporation. It is not usual to make mistakes in favor of settlers.

Q. It is in the revision of this class of work, and the detection of what seems to you to be injustice towards the settlers, that the questions arise?—A. Yes, sir; and it is the same way where the interests of the United States are concerned.

Q. But for the scrutiny of the law clerk, as I understand you, the settler or the government would stand very little chance against a corporation?—A. I do not wish to make so broad a statement as that. It is true, however, that since matters relating to the administration of the land-grant system have to some extent been brought before the law clerk for his consideration, in the way I have mentioned, he has had occasion to raise some important questions, which appear to have been heretofore passed without sufficient scrutiny, and to which the attention of the Commissioner would not have been called in the usual routine course of official action.

FEBRUARY 15, 1882.

Subcommittee met at the room of the Committee on Public Lands of the Senate. Present: Messrs. Morgan and Blair.

A. G. McKinzie, chief of the timber division, being duly sworn, testified as follows:

By Senator Morgan:

Question. What is your position in the General Land Office?—Answer. I am chief of the timber division.

Q. How many clerks are there in that division?—A. There are three besides myself, which number constitutes the entire force of the division.

Q. I believe that division has been recently organized?—A. Yes; as a division.

Q. How much room do you occupy?—A. One small room.

Q. Is there any occasion for more room between your division than you now have?—A. There is.

Q. How much more room would be necessary to accommodate conveniently and properly the division?—A. As much room as two other clerks would probably occupy.

Q. Is the business of your division behind?—A. Not to any great extent.

Q. You have in your division only the consideration of questions relating to the protection of forests?—A. Yes sir. A certain class of entries of timber lands is passed upon by our division where depredations were committed prior to the passage of the act of July 15, 1880. When parties make application to enter lands, if they have committed trespass upon the lands we pass upon their right to enter and purchase.

Q. Applications to enter lands by persons who had depredated prior to the passage of that law go to you to ascertain whether they are entitled to the immunities of that act?—A. They do.

Q. Do the timber agents of the government report to your office?—A. They report directly to our office, and not to the local land offices.

Q. All penalties collected for trespasses on the timber lands are collected through the agency of the courts?—A. They are, except where the cases are compromised before suits are commenced by the Secretary of the Interior.

Q. Proposals for compromise in such cases go to your division?—A. They do.

Q. Is there very extensive waste on the public lands?—A. There appears to be considerable. Our agents report a great many cases of depredations, and we also have private letters from different sections of the country reporting extensive depredations. The registers and receivers, who formerly took cognizance of depredations on the public lands, do not now notice them except upon instructions from our office.

Q. Do the depredations seem to be increasing or decreasing?—A. It is hard to say, because we do not have the force to look the territory over thoroughly.

Q. Have you any system of inspection of the timber agents?—A. No, sir.

Q. You have to take what each one reports to you as being correct, so far as you can believe it?—A. Yes, sir; they are changed very frequently from one locality to another, and then they do not remain in the service very long. There are very few men adapted to that peculiar kind of service.

Q. Would it not be very easy for men who desire to commit depredations on the timber lands to find corrupt men as agents, and make arrangements with them so that it would be almost impossible to detect them?—A. That might be done to some extent, but it would soon be ascertained that such a thing was being done unless an entire community should participate in the fraud.

Q. In such case you would really obtain information from outside sources and other government officers?—A. We would get the information from private individuals and from other government officers, such as revenue and customs officers and district attorneys.

Q. Are they required to make reports of such depredations?—A. No, sir; they are not required to do so, but they very frequently report such cases to the Treasury Department, and the department have sent us down that information.

Q. Do you think that the existing laws and regulations upon that subject are a sufficient protection to the timber lands?—A. Perhaps the regulations so far as they go are the best that can be made under present laws, but the laws in many cases are so contradictory that we do not not know which department really has control of the final settlement of cases. The general act under which we work are sections 2461–'62–'63, of the Revised Statutes, which, in connection with sec. 4751, R. S., would seem to leave the control of trespass cases with the Secretary of the Navy; then there is a special law for California, Nevada, Oregon, and Washington Territory—act of June 3, 1878; there is a separate law for Colorado, Nevada, and all the other Territories except Washington, which was passed June 3, 1878. There is no one general law. We are also called upon to recommend for report to the Secretary of the Treasury, for compromise, a certain class of cases for stumpage value under section 3469 of the Revised Statutes while another class of cases is finally disposed of by the Secretary of the Interior upon our recommendation. So that the course to be taken in the disposition of cases of trespass coming before the timber trespass division for action is difficult and complicated.

By Senator BLAIR:

Q. In relation to railroads taking timber from the line of road; are there complaints against the railroad companies?—A. There is a railroad circular published by the department in relation to taking timber from the public lands adjacent to the line of road, for construction purposes, by railroads. Under the right-of-way act approved March 3, 1875, railroads can take timber for purposes of construction from the lands adjacent to the line of the road. In many instances timber is taken 150 miles from the line of the road for the purpose of construction.

Q. Are those cases difficult to determine what the law means?—A. It is difficult to determine what is meant by the term adjacent in the act.

Q. The decision of that question would naturally come within the jurisdiction of the Secretary of the Interior?—A. It would.

Q. What roads have appropriated lands remote from the line of road? —A. We have had trouble with the roads in New Mexico and Arizona and the Northern Pacific. In New Mexico they take the timber from one section of the country entirely to build different roads from that contemplated by the act. The act says they can take timber to construct the road from lands adjacent to the line of road, but they take timber from one particular line of road for the construction of other and different lines of road. The New Mexico and Southern Pacific take timber from that line of road and has built the El Paso and Rio Grande, also the Rio Grande, Mexico and Pacific, and all the timber used in constructing the Atlantic and Pacific for 150 miles, as near as we can ascertain, has been taken from along the line of the Mew Mexico and Southern Pacific.

Q. Are those roads now identical in interest?—A. They are all consolidated under one management, as I understand it.

Q. They were different original corporations, now merged in one?—A. Yes, sir.

Q. You mean that they are consolidated by some business arrangement, and not by any legislation?—A. It is by a business arrangement.

Q. Is there any peculiarity in the appropriation of timber by the Northern Pacific Railroad?—A. We have had a great many complaints from settlers in Washington Territory that the Northern Pacific takes much of its timber for construction from 100 to 150 miles from the line of the road; that the Northern Pacific people, in taking their timber, have cut it where they found a large body of it, on the head of a stream, for instance, where they would float it down, it being cheaper to float it 100 miles than to haul it 10. The people in those sections have complained very much regarding such wholesale cutting and removing of the timber.

Q. Are complaints of that character frequent?—A. Quite.

Q. What does the department do in such cases?—A. The department says that, under the circular, the roads have a right to take the timber. The authority is shown under section 3 of the circular.

Q. Does that circular authorize the roads to take this timber for the construction of any part of the line?—A. Yes, sir; this section was construed so that the roads might take timber from public lands, although it might as easily be obtained from their own lands.

Q. As a matter of fact, do you know whether any road takes its material from the ungranted public lands when the material could as easily be obtained from the lands granted to themselves?—A. I do not know it as a matter of fact. My understanding is that they do so.

Q. Is there any complaint of the public timber being taken by the railroads or by any parties in their interest, and sold and disposed of otherwise than for the construction of the road?—A. There is some.

Q. To what extent is that being done?—A. The appropriation of timber by other parties is quite large. It amounted to many millions of feet last year; the estimated value of which amounts to several hundred thousand dollars.

Q. In what particular part of the public domain did this occur?—A In New Mexico, Washington Territory, and the Gulf States there has been a great deal, as well as in Dakota; the Black Hills being the principal section.

Q. I understand you to say that your force is entirely insufficient to properly supervise the entire country?—A. Yes, sir; we have only fifteen agents.

Q. What was the expense last year, as near as you can judge, of these fifteen agents?—A. They averaged from $200 to $225 a month. That includes their pay per diem, actual and necessary expenses, and transportation.

Q. What amount of money was saved by the government last year by the operations of your division and of these agents?—A. The amount saved over and above the appropriation for "protection of timber upon the public lands," as near as can be ascertained, is $55,000.

Q. With a comparatively small increase in the number of agents and of expense in the field the saving could be made very much greater?—A. I presume it could.

Q. You have the system of doing business, and the employment of a few more men would no doubt result in a very great increase of valuable results, would it not?—A. It would.

George M. Lockwood, chief clerk of the Interior Department, being duly sworn, testifies as follows:

By Senator Morgan:

Question. What position do you hold in the Interior Department?—

Answer. I am chief clerk of the Interior Department and superintendent of the building.

Q. Please state to the committee, in your own way, what necessity, if any, exists in the Interior Department building for more room for the accommodation of the different bureaus.—A. The question of room is a most difficult one to confront. There is not a bureau or office of the department that is not clamoring for more room, and very justly. As it is now, in many instances, the force is separated from its working records, as the records have been put in the halls to make more space for clerks in the rooms.

Q. This state of affairs applies to all the bureaus?—A. It does, and especially to the Indian and Land Bureaus. In the Patent Office it is not so bad. Nevertheless, that bureau is hampered considerably for the lack of room as well as the other two. Aside from the question of injury to the service by a separation of the force and records, is the question of the health of the employés, who are so close together that it is frequently impossible to work to advantage. In the accounting division of the Indian Bureau, for instance, there are eight or ten people all crowded together in one room, and there is necessarily so much going on, in the nature of conversations, and passing to and fro, that the public business is seriously interfered with. Some of the employés of the Land Office are occupying part of the model-halls of the Patent Office, a place never intended to be used for such purposes. The necessity, however, of the accommodation of this force was upon us, and we had to do it. I consider it bad policy to have the records of any office located in the hall-ways, for various reasons. In the first place, they are damaged to a great extent by rats and other vermin. In many cases the original records and files of the Patent Office have been almost wholly destroyed, and cannot be replaced. There are numerous other reasons, which will occur to the committee, why there should be room for people to perform their duties and for the proper care of the records. I have made a computation of the number of square feet occupied by each employé of the department, in the Land, Patent, and Indian Offices, and the highest number, I think, was about eight, and the lowest about five, square feet

By Senator BLAIR:

Q. That is hardly room enough to be buried in?—A. Hardly.

By Senator MORGAN:

Q. Do you think that the Indian Bureau could be removed from the Interior Department building without serious inconvenience to the public service?—A. I think it could be, by keeping the Commissioner and chief clerk near the Secretary.

Q. If the Indian Bureau were removed from the Interior Department building, would there then be sufficient room for the accommodation of the other bureaus for some years, say five or ten?—A. Not by any means. That change would relieve about eleven rooms, but they could all be filled up without making any perceptible decrease of the crowded state of the department. It would not enable us to bring in a number of outside offices and further concentrate the work. The Pension Office is now occupying four buildings outside of the main office. The main building is on the corner of Twelfth street and Pennsylvania avenue. These outside offices have been partially fitted up for office purposes, but they are wholly unfit for such purposes. The force in this way is so diversified that they do not work to advantage. By a concentration of the force we can obtain the best results.

Q. I presume that you really occupy in the model-halls, that were designed for the Patent Office, more room than would be furnished by the eleven rooms which could be vacated by the Indian Bureau?—A. We have now in the model-hall a number of people, not one-fourth of whom could properly be accommodated in the rooms of the Indian Bureau.

By Senator BLAIR:

Q. What bureau would you remove from the Interior Department building if you were to arrange the force, under the direction of the Secretary of the Interior, to the best advantage?—A. The Indian Bureau. When you come to the other two bureaus occupying the building—I mean the Patent and the Land Offices—it is not practicable to split their force. That is to say, the business is of such a character that the force must be located contiguous to their records. You could not take all of their records nor any part of them away, to advantage, without taking a corresponding portion or all of the force. If a part of the force of the Land Office was located in another building it would necessitate the traveling back and forth of the force between the two offices to get at the records, which cannot be separated to accommodate any specific branch of the office.

Q. Even if the change spoken of was made, and eleven additional rooms were placed at the disposal of the Land and Patent Offices, it would be no substantial and permanent relief?—A. It would not. I have made some computations as to the space occupied by the Post-Office Department, and I have arrived at this conclusion: If that building were immediately put at our disposal it would not properly accommodate our whole force. We might then accommodate in the two buildings the Pension Office, the Bureau of Education, and the other bureaus which are now situated outside, but would then be crowded.

Q. Do you see any remedy for the crowded state of the department before the erection of a new building; and, if so, what?—A. The service of the Interior Department as at present organized certainly requires for its use a building as large as if not larger than the Post-Office Department.

By Senator MORGAN:

Q. You have said that it was impossible to separate the force connected with the Patent Office and the General Land Office into different buildings without material interference with the dispatch of the public business?—A. I have.

Q. Is it not equally impossible to separate the records of either of those offices without producing great embarrassment in looking up records to which you have to make constant reference?—A. Yes, sir. It is as important to have the records together as the force.

Q. The papers, both in the Patent Office and the General Land Office, are incapable of being separated without serious detriment to the transaction of business?—A. It is particularly so in regard to the Patent Office.

Q. In patent causes constant recurrence is had to the original records?—A. Yes, sir; it may be necessary to examine several hundred drawings in relation to a particular alleged invention. It may be claimed that the invention is new and original, and it may be necessary to examine the records for a long time back to establish whether it is or is not.

Q. Would the inconvenience in the transaction of the public business be so great in the Land Office?—A. It would not perhaps be so great, but still it would be serious. The plat-books I understand have to be referred to in all sorts of cases, and it would be impracticable and unwise to place them away from the working force, or to separate them.

Q. You are therefore clearly of the opinion that the force in both of those bureaus must be maintained in their integrity in order that the government should receive proper attention in the transaction of business, as well as private parties?—A. Yes, sir; it is possible that a portion of the mere copying force of the Land Office could be worked in some other locality without great disadvantage, but at the same time it would not be economy, speaking from a business point of view. As a measure of immediate and pressing relief it might be done, if we had a building immediately contiguous to the department.

Q. From my examination of the office and also of the Patent Office I was impressed with the idea that there was an enormous accumulation of papers and files in the building, which made it very dangerous in case of fire.—A. I do not see that the danger from fire is great except in the east and south attics of the building. The architect in charge of the reconstruction of the building has frequently reported the inflammable condition of the remaining unreconstructed portion of the building. There are two wings in the attics that are especially liable to take fire. A board of officers composed of the Quartermaster-General, the officer in charge of the public buildings and grounds, and another officer whom I cannot now recall, soon after the fire in the Interior Department building examined the remaining wings that were not burned at that time. They made a report, which is included in an executive document, setting forth the dangerous condition of the remaining portions of the building. The architect of the building, Mr. Cluss, has also frequently brought the matter to our attention. The north and west halls of the building, as reconstructed, are considered to be absolutely fire-proof.

Q. Is there any doubt entertained now that the fire in the building originated in defective flues, and the fact of having too much wood used in construction?—A. That was probably the cause of the fire. Wood was used in places that nobody knew or suspected. The other two wings ought to be reconstructed as soon as possible.

Q. Do you think there is any danger from fire in that building by having such enormous masses of paper exposed?—A. The danger from paper is not nearly so great as the danger from wood. The greatest apprehension now existing is in regard to the unreconstructed roofs and attics.

Q. From your knowledge of the condition of the files and old records of the various offices in that building, would you say that there had been great damage sustained by vermin and the molding of the papers?—A. I should.

Q. Has it been possible to prevent that?—A. Not wholly. We have done the best we could, by tinning the doors, using roach powder, &c., but it cannot be wholly prevented.

Q. You say that the rooms occupied for clerical purposes in many instances are unfit for use?—A. Many of the rooms which are occupied by the clerical force in the Interior Department building are not at all fit for occupation, and were never contemplated to be so occupied. They were designed for use as store-rooms, for fuel, &c., but the needs of the service were so pressing that even in the sub-basement we are working people where health is endangered every day. There is not sufficient light nor ventilation.

Q. The building, in other words, is excessively overcrowded with people, files, and furniture?—A. It is.

Q. That remark is true of every office and every room in the building, unless it be that of the Secretary of the Interior?—A. It is. In the appointment room we are working seven people. The desks are so close together that the employés can hardly get to their places, and if any one wishes to consult with the appointment clerk about the business of the office there is no privity. I am clearly of the opinion that the Patent Office should have the entire building for its own use. Its present needs would probably require most, if not all, of the space available for a working force, taking into consideration the fact that the rooms are only fit for store-rooms in many instances where they are now used by the employés, and that they should be used hereafter for the purposes for which they were originally designed.

Q. It has been suggested that the model-halls of the Patent Office might be transformed into rooms for the accommodation of the clerical force, and that there was really no necessity for preserving a copy of all the models as is now the case. What is your view of that subject?—A. In respect to that subject my views are somewhat divided. So far as the necessity for models is concerned I do not believe that they are required in such large numbers as are now stored in the Patent Office. In the English Patent Office they have no models; everything there is represented by drawings. As opposed to this view, however, is the question of sentiment. These models constitute an immense national museum of curious things in the way of inventions, and it is a very attractive place to visitors. Any effort to dispense with it entirely would probably meet with a large measure of opposition, somewhat sentimental in its character perhaps.

Q. In respect to these models constituting a mere museum, could not they be divided, and those that are required for reference and current business be separated from those that are mere matters of curiosity?—A. I am clearly of the opinion that models that do not represent any patent could be segregated from the rest and stored elsewhere without material injury to the workings of the Patent Office or inventors.

Q. The use of these models for which patents have been issued is to prevent persons hereafter from getting patents as for original inventions in such cases?—A. That would be the object, and also to establish the state of an art.

Q. How many files referred to in the current business of the office, stored in the basement?—A. Many of them; nearly 7,000 volumes of land records and 6,000 pigeon-hole cases of files.

Q. Are any such records stored in the attic?—A. I think that in the attic over the main or F-street front the Patent Office has stored some classes of files in places where they should not be by any means, and where they are liable to be burned like a tinder-box.

Q. There seems to be no way to avoid these dangers in the disposition of the files except by going out of doors?—A. No, sir; we twist and turn to gain even *one* room, a drop in the bucket. When the office of Commissioner of Railroads was created and located in the Interior Department the question of *room* became paramount, and the force of the Patent Office had to be consolidated to make room for the Railroad Office, to the detriment of the public service. The Interior Department (the *home* department of the country) is year by year being augmented to such an extent by reason of natural growth and additional legislation that a great building to accommodate it should, to my mind, be immediately provided for by Congress. The service is now no doubt seriously impaired and individual rights embarrassed by reason of lack of space for the proper transaction of the business of the department.

Q. Is there a number of clerks of the different bureaus employed in the corridors of the building?—A. Not exactly. The ends of the halls where they intersect at the four angles have been cut off and occupied by a portion of the clerical force, interfering with proper light and ventilation, and used in a way never contemplated in the construction of the building.

Q. This overcrowded condition of the department building has been the cause of great anxiety to the gentlemen in charge of the different bureaus and divisions, and has led to a great deal of discussion?—A. Yes, sir; and it has given me a great deal of annoyance as superintendent of the building to so adjust the space in the building as to best accommodate all in the interest of the department in general. In other words, if a room by any means becomes vacant every bureau officer in the department makes a dead-set to get possession of it. The Commissioner of Indian Affairs obtained the consent of the Secretary of the Interior to use his (the Secretary's) ante-room adjoining his office for the clerks of the Indian Bureau. The change has not yet taken place, however, but the Patent Office driven out of a room in place of it.

Q. Now, in all of these discussions, has any plan been even suggested by which it is supposed to be possible to keep these various bureaus in the Interior Department building and give them sufficient space for two or three years to come, supposing that the current business would continue about as it is now?—A. All discussion so far as I have any knowledge has led but in one direction, and that is the necessity for additional room outside of that building for the force now employed there. That necessity is absolute and immediate. For instance, we have asked for an additional appropriation of ($25,000) twenty-five thousand dollars for the General Land Office, to enable them to bring up the land patents which are a year and a half behind in time, and sixteen thousand in number. The government has taken people's money, but failed to give them a title to their property. It is simply a question of time, as might be illustrated by the problem of employing one man one hundred days or one hundred men one day. The work has got to be done. The government has pledged itself to it. If we get that appropriation, then comes up the serious question of where we could work the force; and to that end I have been urging, as best I might, the continued renting and occupation by the government of the building now used by the Census Office, corner of Thirteenth street and Pennsylvania avenue.

JANUARY 26, 1882.

Subcommittee met at the room of the Committee on Public Lands.

J. W. LE BARNES continued his testimony as follows:

By Senator BLAIR:

Question. Will you please further illustrate the meaning of your last answer given to the committee on your previous examination?—Answer. It had been an early and uniform ruling of the Land Department that the grant to a railroad company took effect upon lands within the indemnity limits at the same time that it did upon lands within the granted limits.

At the October term of the Supreme Court in 1878 (100 U. S., 382), in the case of Michael Ryan *v.* The Central Pacific Railroad Company, successor to the California and Oregon Railroad Company, the court said that the right to select lieu or indemnity lands was only a float and attached to no specific tracts until the selection was actually made in the manner prescribed.

In the case before the court there had been an alleged Mexican grant, covering a tract of land embraced within the indemnity limits of the railroad grant.

At the date of the railroad grant the Mexican claim was pending for confirmation. It was subsequently declared invalid by the court and finally rejected. The land then became public land of the United States, subject to entry or location by the first legal applicant. The railroad company having a right to make a selection of indemnity lands, selected a tract of this land. Had the Mexican claim been on lands within granted limits, it would, as the court has ruled, have operated as a conclusive reservation from the grant. But being within the indemnity limits, and the grant, as a matter of fact, not being one of the large class of grants in which reserved lands are "excluded from the operations of the grant," it was, as the court found, subject to the railroad selection. The court also found that it was properly selected, and that the selection had been approved and the land patented to the company. After these proceedings had been had a settler went on the land and claimed the right to enter it, on the ground that it had been excepted out of the grant by reason of the prior Mexican claim. Had the former rulings of the Land Department been correct, that the title to indemnity lands passed with the grant, the settler's claim would have been valid, since the Mexican claim would have reserved the land from the grant to the railroad company. But the court held that the right of indemnity selection did not attach until the selection was made, and, as in this case, the selection had actually been made and the land conveyed to the company before the settler's claim was initiated, the right of the company was intact.

The principle of the decision was that where lands within indemnity limits were public lands at date of railroad selection, and were, as in the case in question, properly subject to such selection, the fact that there had once been an appropriation or reservation of the land made no difference as to rights accruing after such prior appropriation or reservation had ceased.

Soon after this opinion was pronounced, the Secretary of the Interior, in the case Blodgett *v.* The California and Oregon Railroad Company, (6 Copp., 37) applied the principle of the Ryan decision to a case where lands within railroad indemnity limits had not been selected in fact, but had been withrawn from sale or disposal for the future purpose of such selection.

In this case the Secretary held that the withdrawal had been authorized by statute, and that at the date of withdrawal the tract in controversy was public land, and therefore subject to the withdrawal. There had been a prior settler on the land who had abandoned it, and whose claim, the Secretary held, was not of such a character as to exclude the land from the withdrawal, and consequently a second settler who went on the land after the abandonment by the prior settler, and after a legal withdrawal had been made, could claim no rights by virtue of the former settlement.

The principle of this decision was that where lands were public lands at date of withdrawal, and were subject to withdrawal, and were legally withdrawn, a subsequent settler could not claim against the reservation made by such prior valid withdrawal.

The fundamental propositions in the case were that the land was unappropriated and unreserved public land at date of withdrawal, and was legally withdrawn at that time.

In applying these decisions to cases arising before the General Land Office, the principles stated by the Supreme Court in the Ryan case, and by the Secretary in the Blodgett case appeared, in the opinion of the law clerk of the bureau, to have been misunderstood.

The Supreme Court had held that a reservation existing at some time previous to the attachment of the railroad right, but extinguished and not existing at the date of such attachment, did not defeat the railroad right. The office held that a reservation which was in existence at the date of a withdrawal of lands within indemnity limits did not defeat the withdrawal, and accordingly rejected the claims of settlers who entered the land after the extinguishment of the prior reservation and before the attachment of the railroad right; and the decision in the Ryan case was cited as the authority for this ruling.

The Secretary held that where a prior valid settlement claim was not existing at date of withdrawal, the withdrawal prevented the acquisition of a subsequent settler's right. The office cited this decision as authority for ruling that where there *was* a valid settlement right existing at date of withdrawal, then no subsequent settler's right could be acquired.

Finding the decisions of the office thus in apparent contravention of the law as it exists in the statutes, and as expounded by the Supreme Court, and in contravention also of the cited rulings of the department, all decisions of this character were withheld and an explanation asked from the writers.

They stated that their decisions were in accordance with the practice of the office; that in their opinion such decisions were erroneous, but that they were not permitted to express their own judgments, and that they were required to write their decisions in the way they had done. The attention of the chief of the division was then called to what seemed to be an obvious misapprehension of the Ryan and Blodgett decisions, as thus shown. He stated that he had followed the practice which he had found existing.

The questions involved in the withheld decisions were then stated to the Commissioner. He directed me to rewrite the cases as I thought right, and to present to him the original decisions, together with those prepared by myself, for his consideration. I did so, and the matter was contested before him at intervals from July until December. He perceived that the practice of the office was not supported by the authorities cited for its support, but he was assured that the practice was nevertheless sanctioned by other and unpublished decisions of the Secretary. He required the production of such unpublished decisions, and one alleged to be of the character named was presented to him. I stated to the Commissioner my opinion that this decision did not have the meaning claimed for it, and could not be held to have such meaning, except by a forced construction of an ambiguity arising from an evident misapprehension by the writer of that decision of a former decision made by the Commissioner.

It was then insisted that the matter should be referred to the Secretary, which was done. The Secretary declined to consider the subject, whereupon the Commissioner felt at liberty to act, and he reversed the preceding practice of the office, and made the proper decision in this class of cases. But from April, 1879, to July, 1881, the incorrect application of the Ryan and Blodgett decisions had been made in a very large number of cases, in every one of which some poor man's home had been sacrificed.

For the long term of years previous to 1879 the practice had been the same, under the theory, as I have stated, that the rights of railroad companies to land within indemnity limits were held to have attached at the same time as to lands within granted limits.

The effect of the misapplication of the Ryan and Blodgett decisions was to continue the former practice after the principle upon which that practice was founded had been pronounced incorrect by the Supreme Court.

Q. Can you give any idea of the extent of the operation of this thing upon the settlers?—A. From April, 1879, to August, 1881, or a period of two years and a half, I suppose there must have been at least two or three hundred cases decided in that way, and perhaps very many hundred cases were so decided previous to the decision of the Supreme Court.

Q. These are cases where men who have made their improvements in good faith have been ousted from their property by the railroad companies without compensation?—A. Yes, sir; or by the land department for the benefit of the railroad companies.

Q. Has it been the custom of the railroad company, or those who obtain these improved lands by virtue of this construction of the law making grants to them to compensate the ousted parties for their improvements?—A. I have never heard that railroad companies compensated settlers for their improvements on lands decided by the department to belong to the railroads. There have been many classes of cases in which the railroad companies have obtained land in this way.

Q. If these men, who have been ousted by erroneous decisions of the Land Office, that is to say decisions of the Land Office contrary to the law as settled by the Supreme Court, would these injured parties have rights of action against the corporations, or against any party whatever for anything, or against the government, or would they have valid claims against the government?—A. That is a question I would not like to pass upon.

Q. Do any other instances of hardship in the operation of the land laws occur to you?—A. There are several lines of decisions bearing upon these points.

Q. I would like to obtain them. The committee are instructed by resolution to inquire into instances of hardship and abuse in the operation of the land laws, and to report any facts or information they may obtain for which there should be a modification of such laws in their opinion?—A. The Land Office, as of course the committee understand, is governed by the decisions of the Secretary of the Interior. The Commissioner makes at the present time very few original decisions involving the rights of settlers. The questions that come into the office pertaining to these contests have in the main been heretofore determined, and the office acts according to its understanding of the authoritative decisions of the Secretary. I could only answer your question, therefore, by referring to the decisions of the department. Besides, these decisions involve questions of law, and it is very difficult to state questions of law as matters of fact.

Q. I wish you to state any unjust or inequitable operation of the land laws such as might be remedied by statute, so that the entire system should work justice in different cases where it now works injustice?—A. It is not legislation that is wanted in all cases.

In reply to your general question I could refer to some lines of decisions which have caused injustice to settlers. In the case of Gates *vs.* California and Oregon Railroad Company it was held by the Secretary in 1878 (5 Copp., 150), that when a pre-emption settler was on land within railroad limits at the date of the attachment of the railroad right and afterwards abandoned his claim or transferred his improvements to another, the former pre-emption claim did not except the land from the grant, and that a subsequent settler purchasing this former settler's improvements, or otherwise occupying the land after the former settler had abandoned it, could not have his claim recognized.

The same rule had existed previous to the decision in the Gates case and prior to 1876, and had caused much complaint, as it was of wide application and affected great numbers of cases.

In 1876, Congress attempted to correct this, and some other rulings of the department, by positive legislation. The act of April 21, of that year (19 Stat., 35), was a mandatory act requiring the department to recognize the validity of subsequent entries where land had been covered by former claims of the date of withdrawal of lands for railroad grants. This act did not have the effect which was shown by the Senate debates to have been expected by the legislative mind. The Gates decision was rendered without reference to the act of 1876, and was afterwards modified upon such fact being shown. But the unmodified decision appears to have been the rule usually followed in the Land Office down to a recent date. The regulations adopted by departmental concurrence or instructions, and the rulings made under the act of 1876, had the effect in all cases to make the relief contemplated by that act difficult of availability, and in most cases to render the act inoperative. It was held, for example, that the act could have no prospective effect because its language implied a past tense. Then it was held that it could have no retroactive effect because that would be unconstitutional. Again, if a case arose, that in the view of the office could be recognized as coming within the provisions of the act, the claim was rejected, unless the party was careful to state that he claimed the benefit of the act. He was not allowed to have the benefit of the act unless he expressly claimed it. A great many cases have been adjudicated in this way, and the parties who had an absolute legal right to their land under the indemnity provisions of the acts granting lands for railroad purposes, and had such right irrespective of the act of 1876, were defeated in their claims under the construction given to an act designed for their protection.

A case was adjudicated under this act to which the act had no application, and this case was then brought before the State court of Kansas as a test case to determine the validity of the act. In this case, according to the findings of the court, the original settler was proven to have voluntarily abandoned his claim in 1868. In 1869 the railroad right attached. In 1871 a second settler made an entry of the land. This entry was canceled, and in 1875 the land was patented to the railroad company. In 1878 the second settler's entry was reinstated by the Secretary of the Interior under the act of 1876, and patent was issued to the settler. Then the case was brought before the court. The court found that the first settler's claim was invalid, and accordingly held that the second settler had no rights against the railroad grant, which had become effective after the abandonment of the first settler's claim. The court thought that under the circumstances recited, the reinstatement of the second settler's entry was a mistake in law, and observed that as the railroad company's title had vested in this particular tract in 1869, this vested title could not be disturbed by a subsequent act of Congress.

The act of 1876 provided that where valid homestead or pre-emption claims existed at date of withdrawal of lands under railroad grants, and these claims were afterwards abandoned, the claims of subsequent settlers on such lands should be confirmed. In the case before the court the prior settlement claim was found to be invalid. In sustaining the title of the railroad company in this case the court neither expressed nor implied an opinion that the act of 1876 would not be operative in a case coming within the provisions of that act, but only that the act was not operative in a case not coming within its provisions. Yet, upon the rendition of the judgment of the court in that case, as thus made up and stated, all cases depending in the Land Office to which the act of 1876 did apply, were suspended at departmental instance, and none have since been acted upon.

It had always been understood by the public that lands appropriated by pre-emption or homestead settlers at date of attachment of railroad rights were excepted out of the grants, and that the companies were allowed to select other lands as indemnity. Such are the terms of granting acts. The Supreme Court has said that any appropriation of public land excepts such land from a subsequent grant unless the act making the grant expressly provides for including the land so appropriated; and further, that it makes no difference what afterwards becomes of the land. Once excepted from a grant it is always excepted from that grant, and, if released from the prior appropriation, it reverts to the government and does not inure to the grant. The railroad grants do not, in any case, include lands covered by pre-emption or homestead claims, but both are expressly excluded therefrom.

In view of these well-understood principles and facts, large numbers of settlers purchased the improvements of former settlers, or took possession of the land after it had been abandoned by the former settler, and naturally and properly expected that upon due compliance with the laws in respect to settlement, residence, and cultivation, or payment for the land, as the case might be, they could obtain title to the land. They found upon the adjudication of their claims by the land department, which was perhaps several years after their settlements had been established, that it was held that they had no right to the land, and their homes and improvements went to the railroads. They were compelled to buy the land of the railroad or leave it. This was generally the case where the prior claim was a pre-emption claim, and in some classes of cases where the prior claim was a homestead entry, although in respect to all other than railroad interests it is the invariable rule that homestead entries segregate the land. The difference in rulings between homestead and pre-emption claims, as affected by railroad grants, appears to have been based upon a theory once invented that some elemental distinction exists in the legal nature of rights acquired under these different laws, although settlement and cultivation are the substantial conditions of both, and although land that may be entered under one of these forms of disposal may equally be entered under the other. The railroad-granting acts make no such distinctions, but the exceptions to the grants are the same both in homestead and in pre-emption cases. Mr. Secretary Chandler, during his brief term of office, reversed a number of rulings in these and other respects that had worked great hardship and injustice to settlers, but the old practice was afterwards re-established. Recently, however, in one or two important particulars, some of these rulings have been modified. This is the case in regard to the Gates decision, to which I have referred.

It should perhaps be stated that this decision was founded upon a phrase in a Supreme Court decision in a school-land case (Water and

Mining Company *vs.* Bugby), which was held by the Secretary to have reversed former explicit declarations of principle made by the court. But in a later case, Mining Company *vs.* Consolidated Mining Company, (103 U. S., 103), the court stated that it did not say anything in the Bugby case that conflicted with the principle it had formerly declared. The Secretary had held that a pre-emption claim which may have existed to a tract of land at the time of the attachment of a railroad grant, if subsequently abandoned, even though in all respects legal and *bona fide*, would not except the land from the grant, but that upon the failure of such claim the land would inure to the grant as of the date when the grant became effective. This ruling was opposed to the views of the Supreme Court as expressed in Wilcox *vs.* Jackson (13 Pet., 498, 513), Leavenworth, Lawrence and Galveston Railroad Company *vs.* The United States (92 U. S., 733, 749), Newhall *vs.* Sanger (92 U. S., 761), &c. After much controversy the rule in the Gates case has been relaxed, and land covered by valid pre-emption claims at date of railroad grant or withdrawal have within a quite recent period been again deemed subject to the claims of subsequent settlers.

Q. So that defect seems to be remedied, so far as the office is concerned, now, but it has been operating unjustly from the dates of the original grants in most instances?—A. The decisions have been irregular. Sometimes they were one way and sometimes the other, but they have very generally been against the settler.

Q. What other instance of hardship to settlers do you recall?—A. Referring to the general principle that homestead entries segregate the land so that it cannot be taken by any other form of disposal, I may mention a decision by the Secretary in 1879, known as the Kniskern case (6 Copp., 50), which is one of the classes of cases in which the principle stated is not applied in contests between settlers and railroad grants. In this case a soldier's homestead entry had been made on a tract of land in Minnesota, under the act of 1864 (R. S., sec. 2294), which permitted soldiers in actual service to make their affidavits of intention to claim the land before a commanding officer. Thousands of soldiers availed themselves of this privilege, hoping, perhaps, to return from the field and have a farm to go to, or in any event to provide a home for family or parents. They did not always return. Their families could not always move out on the wild land. So that in most instances the required residence and improvement was wanting, and the entries were canceled in due course of time. While existing on the records, however, such entries operated to reserve the land under the general rules of law applicable to all homestead entries. The public knew no difference between these soldiers' homestead entries and homestead entries of any other class. Neither did the department until 1879. Then it was held, in the Kniskern decision, that the soldier's entry in that particular case was *prima facie* invalid in its inception, and therefore that it did not operate to except the land from a railroad grant. All the lands that had been covered by these entries had been re-entered by other persons after the homestead entry had been canceled. The soldier's entry was a homestead claim, and homestead claims as well as rights were excepted from the grants. For fifteen years settlers had been educated by practice and precedent to believe that second entries made after the cancellation of the first would be respected. They knew that neither themselves nor others could legally go on the land until the former entry had been adjudged invalid. They did not know that railroad companies had rights that citizens did not possess. Secretary Chandler had ruled in a printed decision in this class of cases that they had not. But the settlers were undeceived by the decision in the Kniskern case; and those to whom that decision applies lose their improved farms, which go to the railroad.

In the application of the Kniskern decision by the Land Office it is made to practically govern a much larger class of cases than that of the precise one decided. In all cases that have arisen since this decision was rendered, and in which the basis of the present settler's claim was the exception from the railroad grant of lands embraced in a former soldier's homestead entry, this office has volunteered to order hearings for the benefit of the railroad companies, and has required the present settler to affirmatively prove the validity of the former entry. The Secretary ruled only on a case where the entry was, as held, *prima facie* invalid under the exceptional circumstances of that case. In the opposite class of cases, where the homestead entry was *prima facie* valid, the office has ordered an inquiry by trial before the local officers, and the production of witnesses, and has thrown the burden of proof on the party claiming under the *prima facie* valid right.

A recent case of this kind will illustrate what I have just said. Julia D. Graham made homestead entry in 1877 on a tract of land in Minnesota, which, at date of attachment of railroad right to public lands in the same township, had been embraced in a soldier's homestead entry. The soldier's entry was valid on its face and the right of Miss Graham to enter the land was not contested by the railroad company. But a hearing was nevertheless ordered. The company was notified but declined to appear. Miss Graham was unable, on account of sickness, to go to the place of trial, and there was, therefore, no appearance by either party, and no trial was had. Whereupon this office decided that Miss Graham's entry should be held for cancellation, on the ground that she had had an opportunity to prove the validity of the former entry, but had failed to do so.

She asked for a new trial to give her an opportunity of presenting the required proof. Her application for a new trial was treated as an appeal. She was informed that her appeal was defective and she was allowed fifteen days to amend it by filing a specification of errors. Not having been heard from at the expiration of this period, the former decision, holding her entry for cancellation, was declared final and the land awarded to the railroad. At this point the case happened to come before the law clerk of the Land Office and was personally submitted to the Commissioner, who reversed the action in favor of the railroad and sustained the homestead entry. So in this individual instance the wrong was remedied, but the practice indicated by the preceding recital has been the uniform rule of this office since the Kniskern decision.

The award of land to railroad companies when no claim has been made by the companies is an incident to the exceptional practice of the office in favor of railroads that does not exist in respect to any other class of grants. In the case of school-land grants, for example, the office acts upon the facts of record and the law applicable thereto in adjudicating settlement claims on the school sections, notifying the State of its decisions, when the State may appeal if it so desires. A contest between the State and settler is never assumed but must be instituted in fact if the State desires to contest. But in the case of railroad grants settlement claims are treated as contests. The settler is required to especially notify the railroad company of his application to enter or to make proof. Notice by publication, which in all other cases of settlement proof is notice to the world, is not sufficient notice to a railroad. If the company does not appear, or does not, in fact, desire to contest, it makes no difference. It is regarded as a contestant in any event, and the strict rules governing contests is applied to the settler, who, I have reason to believe, in a very many cases, even where the settlement claim would appear to be irrefutable, driven by practices of the office, and the terms and requirements of official letters, as well as by delays and appeals, into compounding with the railroad by purchasing from the company the land to which he has an apparent right under the law.

The grant for the Saint Paul and Pacific extension lines in Minnesota after its renewal by Congress was transferred by the State to certain companies, except so far as the lands embraced in the grant were not occupied by actual settlers on March 1, 1877. The right to lands so occupied was not transferred by the State to the companies, but was expressly withheld, and the governor was authorized by act of the legislature to release all such lands to the United States in favor of the settlers. The releases were duly executed by the governor, but are not accepted by the department, unless the lands are also relinquished by the railroad companies, who have nothing to relinquish. The State officers have repeatedly complained of the action of the department in this respect. One case has been brought to my notice where, even after both the State and the railroad company had relinquished in favor of the settler, the Land Office, by the decision as prepared for the Commissioner's signature, refused to allow the settlement claim, and questioned the power of the State to withhold from a railroad company any lands granted to the State by Congress and made subject to the disposal of the State legislature, although the Supreme Court of the United States had expressed different views.

The final renewal by Congress of the grant for the Saint Paul and Pacific extension lines (now the Western and the Saint Paul, Minneapolis, and Manitoba Railroads) (18 Stat., 203) was made upon the express condition that the rights of actual settlers and their grantees, who, on June 22, 1874, were residing on the formerly granted lands, or who otherwise had legal rights in any of such lands, should "be saved and secured to such settlers, or such other persons, in all respects the same as if said lands had never been granted to aid in the construction of the said lines of railroad." This grant had twice before been forfeited and renewed. A change of route had been authorized, and the original grant had been increased from six to ten sections per mile. The condition affixed to the last renewal was followed by another condition that any company taking the benefit of the act should, before acquiring any rights under it, file an acceptance, under seal, of the condition above recited. This acceptance was never filed. The department thereupon held the act inoperative, and rejected the claims of settlers who had settled in good faith on the formerly granted lands prior to June 22, 1874. But it does not appear to have regarded the rights of the railroad companies to have been in any wise impaired thereby, as 136,000 acres of public land have been certified or patented to one of these companies, and 500,000 acres to the other, since the inoperative act was passed. The department in terms declared the act inoperative for any purpose, but practically the act appears to have been inoperative only as to the settlers whose rights were protected by it while remaining in full force and effect as to the corporations that acquired no rights under it. The further claims of these companies to an additional amount of land, aggregating 1,800,000 acres beyond the amount already received, also continues to be recognized as valid on the ground that the effect of forfeiture by legislative resumption and control of granted property, and a new disposal of it upon special conditions, can be avoided by the failure of the grantee to accept the conditions upon which the renewal of his forfeited right depends.

The strict rules governing contests between individuals in cases where adverse rights have intervened or are claimed in consequence of the laches of a previous settler are applied to cases of settlement claims within railroad limits, notwithstanding the liberal clauses of exception to such grants. The following are examples of this practice, which is of wide application, and governs in large numbers as well as in great varieties of cases.

Leandro Serrano with his family settled on land in California in 1835, before the acquisition of the territory by the United States. The tract was a part of a rancho, which, after the Mexican cession, was claimed by Serrano under a former grant. The grant failed. Serrano died. His widow continued to reside on the land. The township was not surveyed until 1874. In 1877, Mrs. Serrano applied to enter the land under the pre-emption law. In 1879 (6 Copp., 93), her application was rejected, and the land was awarded to the Southern Pacific Railroad Company, the line of whose road had been run in 1875 past the land occupied by her. At that period Mrs. Serrano had lived on the land for forty years. The grant to the company could legally take no land not "free from pre-emption or other claims or rights." Such were the terms of the granting act. But it was held that as Mrs. Serrano had not filed the formal notice of her claim under the pre-emption laws within three months after the survey of the township she had forfeited her claim. The Supreme Court had said in Johnson *vs.* Towsley that failure to file a pre-emption declatory statement within a specified period did not forfeit the right of the settler in the absence of another, or a subsequent settler. The rule of the department in all other cases, is that the time of filing a pre-emption notice is a question between the government and the settler only, unless a valid adverse claim has intervened. In this case, the railroad grant, which, under the express terms of the granting act, did not, and could not attach to the land covered by Mrs. Serrano's settlement, was held to be a valid adverse claim. This ruling restored a practice which had existed prior to the decision of 1871, in Johnson *vs.* Towsley, under which former practice settlers who from any cause, however innocent, had not put their claims on record by a day certain found their lands given to railroad companies, if within railroad limits, even where the companies had no right and had made no claim to such lands. This restored practice was continued until within the past two or three months. On October 3 last, a departmental decision was made in the case of Martin Trepp *vs.* The Northern Pacific Railroad Company, in which the Serrano decision was applied to a settler who had occupied the land for ten years, and who was a settler before the withdrawal of any lands for the railroad company.

In this case the land had not been claimed by the railroad company, and the right of the company could not have attached to it on account of the prior settlement, and had not in fact attached to any lands at that point, because it had not only not constructed its road at that point, but it had not even definitely located its line, and the time allowed for making the location and constructing the road under the grant had expired by limitation of law. Yet it was decided that the land occupied by Trepp belonged to the railroad company, on the ground that Trepp had not filed his pre-emption declaratory statement within three months after the township survey.

This decision seemed to the law clerk of the General Land Office, Mr. Edmonds, not to be in accordance with correct principles, and he felt it his duty to call it to the attention of the Secretary, who could not, Mr. Edmonds thought, have been personally cognizant of the nature of the decision to which his name was appended. This proved to be the fact, and the Secretary, upon a full statement of the law and authorities applicable to the case, reversed the decision. This action, if not again reversed, will save the rights of many settlers whose claims were at that time awaiting rejection on the Serrano precedent.

Again, a young man not quite twenty-one years of age goes upon public land to make a home for himself, or perhaps for his old parents. When he gets ready to make proof, his homestead or pre-emption claim is rejected as void *ab initio* because he lacked a few days, it may be, of his legal majority when his application to make entry was filed, although he may have complied with all provisions of law for a sufficient length of time after arriving at the age of twenty-one years to be entitled to the land if his declaration of intention to claim it had not been prematurely made. If within railroad limits, the defect of a premature notice or application is held not remediable, and the land goes to the railroad. In like manner, if he settled on the land before coming of age, but did not apply to make entry until afterwards, his rights are held to go back only to the date of his majority, and if that was subsequent to attachment of railroad right the railroad takes the land, although I do not know of any railroad grant in which it is said or implied that technical defects in a settler's claim shall defeat the indemnity clauses of the granting acts, which are designed to except from the grants lands settled upon in good faith with a view to the future acquirement of title thereto under the settlement laws of the United States, and which give to the companies other land in lieu of lands so appropriated or claimed.

It frequently occurs that a settler, not a native-born citizen of the United States, has neglected to declare his intention to become a citizen before applying to make entry under the settlement laws. This innocently happens in many instances from a reliance on a father's supposed naturalization, which cannot afterwards be proven. But from whatever cause the neglect arises, it has not until recently been held that the absence of proof of declaration at date of filing a pre-emption or homestead claim invalidated the claim if citizenship was acquired before the entry was perfected. Now it does, and the effect of the more recent ruling, which was made in a railroad case, has been to destroy an equitable construction of the law that had been recognized for a long term of years, in the practice of the department, as founded on judicial precedents.

I have stated a class of cases in which pre-emption claims within railroad limits are ruled against the settler more strictly than homestead claims. There is another class of cases in which homestead claims are ruled against the settler more strictly than pre-emption claims.

A pre-emption settler is allowed credit for his settlement before filing the final notice of his claim in the local land office. The homestead settler was not allowed this credit until the passage of the act of Congress of May 14, 1880, which remedied the previous ruling.

The practical operation of the distinction that had been maintained was that if a settler on unsurveyed land filed a declaratory statement within three months after the survey of the land, he might then change his filing to a homestead entry, and be allowed credit for his previous settlement. But if he made a homestead entry without going through the formality of first filing a pre-emption declaratory statement, he could not be allowed such credit. A very large number of settlers have lost their farms in this way, since, while their actual settlements were made before a railroad grant took effect, their formal homestead entries were not made until afterwards, and it was held that the railroad grant prevented a homestead entry from being made, unless by change from pre-emption filing.

Secretary Chandler (Southern Pacific Railroad Company *v.* Wiggins *et al.*, 4 Copp, 123) had ruled that the filing was not necessary; that it was the pre-emption right, and not the mere declaration of the right, that was the basis of the homestead entry; but this ruling does not appear to have been remembered.

The act of May 14, 1880, did not help the settler within railroad limits in this respect. The Secretary of the Interior on November 19, 1880, in the case of Detwiler, decided that it did; but on May 26, 1881, the General Land Office, in the case of Sorensen, *et al. v.* Central Pacific Railroad Company, overruled the Secretary, and continued the former rulings adverse to the settler, where railroads are concerned. In that case the settlers, Sorensen, Anderson, and Jensen, settled on the land respectively in 1863 and 1866, or from three to six years prior to the withdrawal of lands for the railroad company. The township was surveyed in 1878. Seven days afterwards the settlers made their homestead entries. They could not have entered the land earlier because it was not surveyed, and entries cannot be made on unsurveyed land.

These settlers had lived on their lands from fifteen to eighteen years each. Their settlements were made when there was no railroad, and no survey for a railroad line, and when no railroad right existed. The lands to which their settlement rights attached were excepted from the railroad grant by the explicit terms of the granting act, and they applied to make their entries at the earliest time the law allowed.

But it was held by the Land Office that their settlement rights could not be recognized, because they had asserted their claims under the homestead laws instead of under the pre-emption law, and the Secretary was instructed that his decision in the Detwiler case was erroneous, because the railroad grant was an adverse claim that prevented the retroactive effect of the act of May 14, 1880.

The doctrine that a railroad grant is an adverse claim to lands excepted from the grant, is illustrated in a still more recent case of the same character, where no grant had ever taken effect. Samuel H. Bratton settled on land in California in 1870. He continued so to reside, and placed valuable improvements on the land. He was qualified to make an entry under the settlement laws, and he complied with all the requirements in respect to residence, improvement, and cultivation. The land was unsurveyed. In 1871, after Bratton's settlement was established, the grant to the Pacific and Texas Railroad Company was made. A map showing a preliminary line, as it is called, was soon after filed in the General Land Office, and a withdrawal of lands for a distance of thirty miles on each side of this inchoate line was ordered for the benefit of the grant.

Upon the survey of the township embracing Bratton's settlement, which was in December, 1880, his land was found to be in an odd numbered section within the limits of the withdrawal.

Immediately upon the filing of the township plat in the local land office, Bratton appeared and made homestead entry of the land. A few months later he made final proof and received final certificate. The case was recently reached in the General Land Office, when Mr. Bratton's entry was declared illegal. It was admitted that his proofs were satisfactory, and it was held that if he had filed a pre-emption declaratory statement before he made the homestead entry he might the next moment have changed that filing to a homestead entry and thus have saved his land. But failure to do this was fatal. The land belonged to the railroad company. And this decision was rendered in the face of the following facts:

1st. A controlling decision that the preliminary filing of the pre-emption declaratory statement was unnecessary.

2d. That Bratton's settlement antedated both the grant and the withdrawal.

3d. That the grant to the Texas and Pacific Railroad Company expressly excepted lands that were "occupied" at date of definite location.

4th. That there had never been any definite location of the line of this road.

5th. That no road had ever been constructed.

6th. That the time within which the road might have been legally located and constructed had expired, and there had been no renewal of the grant by Congress.

The 16th and 36th sections of public land are granted to the public land States for the support of common schools. The acts organizing the Territories reserve such sections, and the acts of admission make the grant. The courts hold the grants to be present grants, but that the lands need to be identified before the grant can attach, and that until the survey of the land is made there are no 16th and 36th sections. In other words, that the grants cannot operate on unsurveyed land. There is evidence in the official records that the Secretary of the Interior in 1871, or prior thereto, instructed this office to direct the local land officers not to withdraw any lands within railroad limits until after the public surveys had been extended over such lands. There is no evidence that this order was ever revoked, but it appears to have passed into oblivion. The great withdrawals of unsurveyed land for the uncompleted Pacific railroads were made in 1871, and thereafter, notwithstanding the existence of this order.

The principle of the judicial rule is therefore not applied in the practice of the Land Department to railroad grants. These are for alternate sections designated usually by odd numbers. Necessarily there are no odd-numbered sections and no even-numbered sections and no sections at all until a survey has been made by which sections are defined. A settler on unsurveyed land does not know whether his land will fall within an odd or even-numbered section, nor even whether it will be found to be within the limits of a railroad grant or not. He has a right to settle anywhere on land not granted, and as under the rule of the Supreme Court in school-grant cases the unsurveyed lands would not be subject to the grant, his settlement would be protected if upon survey it was found to fall within the granted sections, and the railroads would be entitled to receive other land in lieu of the land so lost to the grant. By failure to apply to railroad grants the judicial rule above stated, all settlers whose lands have been found upon survey to be within railroad sections and where the settlement was made after the period when the railroad right would have attached if the land had been surveyed, have been denied the right to prove their claims under the settlement laws of the United States and their lands have been awarded to the railroads. I do not find any instance in which the question appears ever to have been considered whether these settlers did not possess rights entitled to protection, but their claims have, on the contrary, been summarily rejected.

Settlers on unsurveyed lands within the indemnity limits of railroad grants have in like manner been ruled out of their homes and property when the survey has brought them within the indemnity sections, although, as I have previously stated, the courts find no right in a railroad company to indemnity selections until the right of selection has been acquired and the selection made.

Among the exceptions to railroad grants are lands in a state of reservation for any purpose at date of grant or attachment of railroad right. But it was the practice of the Land Department for a period of twenty-five years to award to the railroads the lands thus excepted from their grants whenever the reservation ceased. In all these cases settlers in great numbers had gone on the lands after their restoration to the public domain, but the lands, together with the settlers' improvements, were, by departmental decisions, turned over to the railroads.

In 1875, the Supreme Court set aside patents that had been issued to the Leavenworth, Lawrence and Galveston Railroad Company for several hundred thousand acres of land in Kansas, which had been embraced in an Indian reservation at the date of the railroad grant. At the same time the court decreed null and void the title that had been given to the Western Pacific Railroad Company for lands which at date of grant were embraced within the limits of a Mexican claim that was afterwards adjudged invalid. The court said in these cases that the reservation was an absolute exclusion of the land from the railroad grants, and that it made no difference what afterwards became of it. When the reservation ceased the land reverted to the public domain, and did not go to the grant.

The legal principles stated by the court have met with a limited concurrence in the practice of the Land Department.

They have not generally been applied to other classes of reservations than the particular classes involved in the cases before the court. For example, mineral reservations have not been brought under the rule of the court, but lands reserved as mineral have, upon the extinguishment of the reservation, been uniformly awarded to the railroads.

The case in Newhall *vs.* Sanger (92 U. S., 761) was that of the claimed Moquelemas grant, a Mexican private land claim, which was *sub judice* at date of railroad grant. All that portion of the land within the claimed limits of the Mexican grant which fell within railroad sections had been patented to the railroad company upon the final adjudication that the Mexican claim was invalid. The case before the court was a test case, and the decision of the court holding the railroad title null and void was a judicial determination of the legal status of all the land involved in this controversy. But the department refuses to accept the judgment of the court as conclusive except as to the single track that was actually in the particular case before the court, and holds that each individual settler on the same land must obtain a separate decree in his own case before a patent can be issued to him for the land to which he is entitled by the law as settled by the court.

In a published decision made by the Land Office in May last the authoritative decisions of the Supreme Court were ignored, and land which at date of railroad grant was embraced within the exterior limits of a Mexican claim but was excluded therefrom on final survey, was awarded to the railroad and the valid claims of *bona fide* settlers on the land were rejected. The settlers appealed, but they were subsequently compromised with by the railroad company and their appeals were caused to be withdrawn in order, as I suppose, that the office decision should stand as a precedent to govern future adjudications in similar cases.

Other cases have come to my notice in which lands excepted from railroad grants by reason of having been reserved at date of grant have been declared to inure to the railroads, where such decision was arrived at in the manner shown by the following examples:

A decision was made holding a settler's claim in California for cancellation for conflict with the superior right of the Central Pacific Railroad Company. The settler had been on the land for many years, but his entry was subsequent to the withdrawal for the railroad. Upon being notified of the decision the settler asked for a reconsideration, stating that at date of railroad grant his land was within the exterior limits of a Mexican claim which excepted it from the grant. The office letter written in reply asserted that the survey of the Mexican claim showed that the tract in question was not within it and consequently no case had been made out by him, and as the time for appeal had expired the former decision was declared final and the case closed. This letter happening to come before me, I perceived that the point raised by the settler had been avoided. He had claimed that the land had been embraced within the exterior limits of the Mexican claim, that is to say, within the out boundaries of the claim as existing before adjudication and final survey, while the office had not gone behind the adjudicated limits, although the difference between the two is well known and needs always to be considered. In this case the official maps showed the settler's land to have been, as stated by him, within the exterior limits of the claim as the same existed at the date of the railroad grant. His right to the land was therefore complete and the decision awarding to the railroad company was equally an error of law and fact.

In the case of the Cherokee Indian Reservation in Arkansas a report was twice made to the Secretary, once in 1866, and again in 1879, that the land was public land, and his instructions were requested in respect to bringing it into market. On each occasion the same proceedings were had. The Land Office asked the Indian Office if the Indian claim had been extinguished. The Indian Office replied that the land had been ceded by the Indians as long ago as 1828, and that the title of the United States was complete. The correspondence being submitted to the Secretary, he ordered the land brought into market in the usual manner. In 1866, the order failed of execution for want of an appropriation to make the survey. In 1879, this difficulty being removed, a new order was obtained in the manner related, the survey was made, the odd-numbered sections were held as subject to settlement and entry, and the even-numbered sections were declared to have inured to the Little Rock and Fort Smith Railroad Company under the Secretary's decision that the land was public land. The matter incidentally coming before the law clerk of the Land Office in 1881, it was discovered that the lands were reserved in 1828, that the reservation had not been extinguished, and that these facts were clear upon the official records, but had not been stated to the Secretary when his order to bring the land into market was obtained.

In another case, that of the Mille Lac Indian Reservation in Minnesota, the Secretary was asked if the title to the land was in the United States or in the Indians. He replied that the Indians had ceded the land by treaty. Thereupon a railroad company seeking to obtain these lands was informed that the land would go to the railroad under the Secretary's decision whenever the Indians were removed. The facts in this case were that all the lands formerly occupied by these Indians were ceded by them as stated, but that the treaty of cession created an absolute reservation of the particular land in question for the indefinite use of the Indians. Under the grant for the railroad, lands in reservation were excepted from the operations of the grant, and consequently, whether the Indians were removed or not, the railroad could have no right or claim to any of said land. The reply of the Sectetary to the question submitted to him had been treated as a decision upon a point not submitted to him.

Several of the Pacific railroad granting acts contain provisions indicating the intention of Congress to allow these companies the exceptional privilege of taking lands in the future that were embraced in Indian reservations at date of grant, if the reservations should afterwards become extinguished. This is practicable when grants are *in futuro*, but not practicable when grants are *præsenti*. Present grants can take only what is capable of being granted at date of grant. Future grants can take whatever the granting power may please to bestow in the future as well as what may be liable to be granted in the present. In the administration of these grants they are apt to be treated as future grants for the purpose of taking lands released from Indian reservations, but as present grants for other purposes.

In all the railroad grants provision is made for the acquirement of settlement rights on the granted lands prior to the date of the definite location of the roads. In the case of Hogland *vs.* Northern Pacific Railroad Company (5 Copp., 107) this uniform provision, which constitutes an exception from the grants of all lands so settled upon between the date of the grant and the date of definite location, was set aside. This was a test case involving the claims of settlers on the relinquished lands of the Wahpeton and Sisseton bands of Sioux Indians in Dakota. The former Indian reservation was materially reduced under the provisions of the treaty of 1867. The relinquished lands were restored to the public domain in 1873. At the date of railroad grant the lands were in reservation, and accordingly would never thereafter have inured to the grant in the absence of the special provision referred to. Whether the right of the railroad would in fact attach to the released lands or not might depend upon the happening of subsequent events, but alternate sections within a certain distance, in this case forty miles, on each side of the road, were, upon the filing of a map of general route, withdrawn from disposal and reserved for the benefit of the grant. Necessarily one reservation excludes another, and lands in reservation for one purpose cannot be reserved for another purpose at the same time. It is a well-established rule of the public-land laws that only lands that are technically public lands can be withdrawn. That is to say, a withdrawal can operate only on lands that at date of withdrawal are free from any other appropriation or reservation of any character. After one withdrawal or reservation ceases another may be made, but the first reservation must be extinguished and the lands must revert to the public domain before a second reservation can be made of it. Therefore, when lands have been released from one reservation and have become public lands, rights may attach to such lands by appropriation under general laws or otherwise, as the case may be, before a second reservation is made. The second reservation, if made, is in every respect a new proceeding, taking effect only from its date and only on lands capable of being reserved, and cannot impair rights previously acquired. If lands released from one reservation are not again reserved, they remain public lands until appropriated or reserved in some manner authorized by law.

In the case of the Wahpeton and Sisseton reservation many settlers went on the lands after the removal of the Indians but before the reservation had been formally extinguished. Necessarily they could acquire no legal rights while the reservation existed, but when that ceased the lands became public lands of the United States, subject to settlement and entry as other public lands. As any citizens of the United States could legally enter upon those lands the moment the reservation was extinguished, it follows that the settlements existing on the lands at date of the extinguishment became legal on the instant the lands became public. Being already on the ground, the settlers' rights attached simultaneously with the restoration. Eleven days after the restoration, and consequently eleven days after the legal rights of the settlers were acquired, the line of the Northern Pacific Railroad was definitely located past these lands. The settlers in due time applied to make their entries, which were allowed by the land office. The railroad company appealed and the Secretary awarded the lands to the company, on the following propositions: At the time of railroad grant and withdrawal the Indian right was not extinguished, but it was extinguished at date of definite location, and thereupon the grant and withdrawal became operative and the lands inured to the road; that the settlers having gone on the land while it was in reservation, were mere trespassers, and could acquire no rights by virtue of their illegal settlements, and that the withdrawal prevented them from acquiring any rights after the extinguishment of the reservation. That was to say, that a grant which in any event did not operate until definite location, did in fact operate eleven days before; that a withdrawal that could not operate on any lands not subject to withdrawal at the time the withdrawal was made, nevertheless operated on lands that were not included in the withdrawal; that settlement rights acquired after land became public land were invalid because such rights could not have been acquired before the land became public, and that a withdrawal that did not embrace the lands to which settlement rights had attached prevented the attachment of such rights.

An equivalent construction of law is found in the decision of the Secretary of June 11, 1879 (Commissioner's Annual Report, 1879, p. 109), in which it was held that an act of Congress passed in 1868 took effect in 1864, and was modified in 1866, and that therefore the time fixed by law for the completion of the road did not expire until three years after the period specifically named in the statute.

Under all forms of appropriations of public lands, except in the case of railroad grants, the appropriation is not deemed to have taken effect until the lands have been designated by survey, selection, or otherwise, and lawfully segregated from the public domain. When withdrawals are made, the ordinary rule is that the withdrawal is not operative until the numbers of the sections to be withdrawn, or the plats of survey showing such sections, are received at the local land offices and marked upon the records, and notice thus given to the world of the appropriation or reservation. Until this is done the lands appear to be public lands, and may be entered by any legal applicant. But in case of railroad grants requiring the definite location of the line of the road to precede the attachment of the railroad right, such definite location has been assumed in a large number of instances from the date of original surveys for the road in the field, before the finality of the line of route so surveyed was assured, and before the plats of the final surveys had been communicated to the local officers. In these cases, settlers who were unaware that they had settled within definite railroad limits found that this office held the railroad right as antedating any public record and any notice other than the original surveys of the line in the field that might or might not have become finalities. The official statement of the date of attachment of railroad rights found in the Commissioner's annual reports, shows that in a large number of instances the grant is held to have taken effect from the date of survey in the field, while in other instances the data on which the date of definite location is assumed is admitted to be of an indefinite and uncertain character. But in all these cases the rights of settlers and of the government have been concluded from the assumed and premature dates. Congress has twice attempted to correct this ruling by general law. As early as 1854 an act was passed (10 Stat., 269, now section 2281 Revised Statutes) providing that all settlers on public lands which had been or might thereafter be withdrawn from market in consequence of proposed railroads, and who had settled thereon prior to withdrawal, should be entitled to pre-emption at the ordinary minimum to the lands settled on and cultivated by them. This act governs all grants made since 1854, unless the granting act expresses a different intention. No subsequent grant does express a different intention, but, on the contrary, the intention to protect settlers is a prominent feature in every grant.

Although observed for a few years after its passage, this act subsequently fell into disuse in the practice of the Land Office, and of late years the only effect given to it is to regulate the price of lands settled upon prior to withdrawal, when, if the settlement was also prior to survey in the field, the claim happens to be allowed. But it does not appear to be remembered that the statute secures the right of pre-emption entry up to date of withdrawal against any departmental ruling that the period of definite location can antedate the final act of withdrawal that makes the location a certainty and attaches the grant to it, or operates as a reservation for the benefit of the grant. The first section of the act of April 21, 1876 (19 Stat., 35), commanded the department to recognize homestead and pre-emption rights initiated before withdrawal, and directed that patents should be issued to the settlers in such cases. But this provision of law was set aside also, and the previous ruling, that railroad rights attached from some date prior to withdrawal, was adhered to. (Turner *v.* Atchison and Topeka Railroad Co., 5 Copp, 167.) The total number of settlers' claims that have been determined unjustly, and in contravention of these statutes, upon an erroneous basis of the time of attachment of railroad rights, must reach far into the thousands; and although this process has been going on for more than thirty years it still continues, cases being pending at the present time in which a proper decision turns upon the date when the right of the railroad company legally attached to the granted lands, and in all these cases the uncertain and premature date, and not the act of Congress, governs in the adjudication of the settlers' claims.

But these are cases where the definite location of the line of the road precedes, or is held to precede, the withdrawal. Where the withdrawal precedes definite location, it is the withdrawal and not the definite location that concludes the settlers' rights.

The premature withdrawal of lands embraced in railroad grants has always been a source of hardship to settlers. All lands within railroad limits were formerly withdrawn as soon as the granting acts were passed and before anything had been done to attach the grant to any lands, and when no withdrawal was authorized or contemplated by law. In some cases lands have been withdrawn before the act making the grant had passed Congress. This was the case, for example, with the grants in the northern peninsula of Michigan. A withdrawal is a reservation of the land. The effect of a withdrawal prior to definite location is to enable land to be awarded to the railroad companies that was settled upon after withdrawal and before any right to the land was acquired by the railroad. The indemnity provisions of the granting acts, as repeatedly interpreted by both Federal and State courts, are intended expressly to prevent the exclusion of the granted land from settlement after the grant is made and before it becomes effective. Any withdrawal of land before this latter period defeats the benefit intended by the indemnity provisions to be preserved to the government and the settlers, while it secures to the companies advantages not contemplated by the law. Withdrawals of lands within granted limits have in the majority of cases been made prematurely, and this has been done in various ways, but the wrong has legally ceased, as to the future, when the time arrived that the lands might lawfully have been withdrawn. But withdrawals within indemnity limits have been a continuous injustice of the gravest character and of broad extent. With one or two single exceptions, I know of no railroad grant where the law required, authorized, or contemplated a withdrawal of indemnity lands. Yet these withdrawals have been made in every case of indemnity limits. In the case of grants to the Northern Pacific, Southern Pacific, Atlantic and Pacific, Texas and Pacific, New Orleans, Baton Rouge and Vicksburg, and similar grants, not only was the withdrawal of indemnity lands not authorized either expressly or by implication, but it was impliedly forbidden in each case by the express provision that all other lands on the line of the roads than the lands granted by the act should be open to homestead and pre-emption entry. The lands granted by the acts were lands within the granted limits. For certain losses within granted limits lien selections were to be made within the indemnity limits, but the lands within indemnity limits are not granted. They are lands that are substituted for granted lands. The distinction is recognized, for illustration, by the price at which the lands are held. Alternate reserved sections within the limits of railroad grants are $2.50 per acre. Were the lands within indemnity limits granted lands, that would be the price of the alternate reserved sections in the indemnity limits. But that is not the price of lands in the indemnity limits, these being held at the ordinary minimum of $1.25 per acre.

The language of the Texas and Pacific act reads:

> And when the map is so filed, the Secretary of the Interior immediately thereafter shall cause the lands within forty miles [granted limits] on each side of said designated route within the Territories, and twenty miles [granted limits] within the State of California, to be withdrawn from pre-emption, private entry, and sale: provided, however, that the provisions of the act of September, eighteen hundred and forty-one, granting pre-emption rights, and the acts amendatory thereof, and of the act entitled "An act to secure homesteads to actual settlers on the public domain," approved May twenty, eighteen hundred and sixty-two, and the amendments thereto, be and the same are hereby extended to *all other lands of the United States* on the line of said road, when surveyed, except those hereby granted to said company.

Similar provisions exist in the grants to the other roads I have named. Yet withdrawals, not only of lands within the granted limits, but of lands within the indemnity limits also, were made in all these cases, as in other cases under the various grants to States and corporations, and all the lands within such indemnity limits have from date of withdrawal, and in many cases from an earlier period, been held in reservation, and the right of settlement thereon denied, and in every instance of an actual subsequent settlement, and in a majority of instances of prior actual settlement, the lands within these limits so occupied by settlers have been awarded to the railroads.

This continues to be done notwithstanding the decision of the Supreme

Court that no rights exist under railroad grants to lands within indemnity limits until the selection is actually made.

The public disadvantage of indemnity withdrawals is two-fold. The lands are kept from settlement, except by purchase from the railroad company, to which they do not belong, and the companies are relieved from the necessity of completing their roads within proper time. The withdrawal secures immunity against loss of right of selection through a failure to construct or complete the roads by keeping the lands in reservation until they are built. As in the case of the passage of the act of April 21, 1876, decisions and rulings were at once made, having the effect of defeating the act; so in case of the decision of the Supreme Court, to which I have before referred as defining the legal character of lands with indemnity limits, decisions and rulings were at once made having the effect to defeat the application of that decision. The court had not considered the withdrawal as an element in the case. There was no withdrawal in the law, and the court ruled upon the law. But the Secretary soon formulated the Blodgett decision, which gave the same effect to withdrawal within indemnity limits that the court did to a selection within those limits. The idea was also then conceived that a withdrawal not effective upon lands covered by some appropriation at date of withdrawal, became effective when the appropriation expired, without the necessity of a new withdrawal to embrace the lands not previously withdrawn.

On April 6, 1870, John Crickmore filed pre-emption declaratory statement No. 5347 for the W. ½ of the NW. ¼, and the SE. ¼ of the NW. ¼ of section 19, township 4 south of range 4 east, Concordia, Kansas, alleging settlement April 4, 1870. The land was within the indemnity limits of the grant to the Saint Joseph and Denver City Railroad Company. The right of the road to lands within the granted limits was held by the department to have attached March 21, 1870, but the withdrawal was not made until April 15, 1870. Under the decisions of the Supreme Court no railroad right attached to lands within indemnity limits at this period nor for some years afterwards, but under the rulings of the department settlers could acquire no rights after the withdrawal. Crickmore settled eleven days before the withdrawal, and therefore at the date of his settlement the land was public land and his settlement was a legal appropriation of it. He afterwards removed from the land, and on December 20, 1871, it was re-entered by Ira Haworth, under the homestead laws. Haworth's entry was authorized by law, and the register and receiver were at that time authorized by the rulings and decisions of the office to permit such entries to be made. On March 24, 1873, Haworth's entry was held for cancellation for conflict with the rights of the railroad company. In this decision it was stated under rulings similar to the "Gates" decision to which I have referred that while Crickmore's claim was valid prior to the date of the withdrawal, and might have been perfected by himself, Haworth could gain no rights by virtue of such fact. On September 6, 1873, this decision was affirmed by the Secretary on Haworth's appeal. On April 21, 1876, Congress passed the act requiring the department to recognize the validity of second entries where the first were valid prior to withdrawal. This was Haworth's case, as shown by the Commissioner's decision and by the record. There were a large number of settlers in Haworth's neighborhood whose cases were similar to his. The newspaper cuttings filed with the papers show that much public interest had attached to Haworth's contest, and the intercession of Senators and Representatives from Kansas and the offices of the President had been solicited at various points throughout the controversy. The parties were all poor men, and had not been able to employ legal assistance. But upon the passage of the act of 1876, their hopes revived. By combining their means they employed an attorney, and Haworth's application for a reinstatement of his entry came up in 1878 in proper form with full proof of the validity of Crickmore's former claim, and Haworth's own compliance with law.

Up to this point the railroad company had not appeared. The contest had been carried on alone between the settler and the department. Now, the company came in, and by its attorney resisted the reinstatement of Haworth's entry.

The question before the office was whether Haworth's claim was confirmed by the provisions of the second section of the act of April 21, 1876. If the prior pre-emption claim was a valid claim at the date of railroad withdrawal April 15, 1870, then Haworth's claim was confirmed by that act. The prior pre-emption claim was admitted in 1873 to have been valid at date of withdrawal, and no new state of facts had appeared in the case. Yet Haworth's application was rejected.

The grounds stated for this rejection were that at the date of Crickmore's settlement and filing, which was prior to withdrawal, the right of the road had attached to the land, and hence the pre-emption claim was illegal although existing at date of withdrawal, and therefore that Haworth's entry based on this claim could not be confirmed, although the act of Congress declared that such entries should be confirmed.

The authority cited for this decision was a former decision of the Secretary's of January 21, 1879, in the case of Turner *v.* Atchison, Topeka and Santa Fé Railroad Company (5 Copp, 167). That decision was a defeat of the act of 1876, but upon different grounds than appeared in the Haworth case. The argument of the Secretary reduced to a syllogism was this: The act of 1876 confirms second entries on lands within the limits of railroad grants only where the original claim was valid at date of withdrawal.

A valid claim at date of withdrawal is one that was in existence at the date of prior definite location.

Therefore, an act of Congress confirming entries based on valid claims existing at date of withdrawal, confirms only entries based on claims existing at date of such prior definite location.

In the Turner case the prior pre-emptor had a valid claim at the date of withdrawal of granted lands, but this claim, it was held, had not been initiated until after the date recognized as that of the definite location of the road. Hence it was argued that the title of the company to the granted lands vested on the date so fixed, and inferentially, therefore, that it could not be affected by any subsequent act of the granting power. The rule in Leavenworth, Lawrence and Galveston Railroad Company *v.* The United States (92 U. S., 733), Railroad *v.* Smith (9 Wall., 95), and Schulenberg *v.* Harriman (21 Wall., 44), was given as the authority for this proposition. In each of these cases the grant was of a different character than the grant involved in the case before the Secretary.

In this case the title of the company did not vest under the statute until patents were issued after the construction of the road by sections, and I know of no judicial decision to a contrary effect. In the former cases title vested in the State in advance of construction according to the rule there laid down. In the cases cited the grant carried the title. In the case acted upon the grant did not carry the title, but the right to receive the title might be acquired by the performance of precedent conditions. The rule of law appropriate to the one case was applied to the other as if there were no difference between them, and the error of law here stated was the foundation of the Turner decision.

But the Turner decision had no application to the Haworth case. The Haworth case was a different case from the Turner case, as that case was stated by the Secretary. In the Turner case the land in question was treated by the Secretary as having been within the granted limits while in the Haworth case the land was admittedly in the indemnity limits.

The Secretary held in the manner related that the right of the road in the Turner case attached to land in the assumed granted limits at a date prior to withdrawal. In the Haworth case this office, assuming to follow the rule laid down in the Turner case, asserted that the right of the road attached to land in the admitted indemnity limits prior to withdrawal also. But the Supreme Court (100 U. S., 382) had some months previously declared that this construction was erroneous, and that the railroad right did not attach to land within indemnity limits until after selection. The office decision in the Haworth case was therefore in contravention of the decision of the Supreme Court, and was not authorized by the Turner decision as claimed. As a matter of fact, the two cases were actually alike, both relating to land known in the land office to be in the indemnity limits. But the record shows that this fact was not found in the Secretary's decision in the Turner case, and the office was bound by what the Secretary decided on the facts as found by him, and not by what he did not decide on a state of facts not found by him. The decision rejecting Haworth's claim was dated March 11, 1879, and the usual sixty days were allowed for appeal. But on March 21, 1879, before the time for appeal had expired, and probably before Haworth had received notice of the decision, the land was patented to the railroad company. I have stated the errors of law and fact in this case at some length because a large number of cases have been decided in the same way, and the settlers compelled to purchase of the railroad companies invalid titles to the land to which they had acquired, by their settlements and compliance with law, the right to receive valid titles from the United States; and a very large number of other cases of the same character are still pending.

The classes of cases to which I have thus far referred, and the incidental examples recited, are merely illustrations of the methods I have found adopted and followed in the practiced administration of the railroad land grant system.

There are many other classes of cases of injustice to settlers and to the government that might be named.

Q. You referred to the appropriation under railroad grants of reserved mineral lands. Have you any further statement to make in this respect? —A. Mineral lands are reserved in two ways; first, upon the returns of the surveyors-general showing upon the plats of survey, and from the field notes of the deputy-surveyors that lands are mineral in character; second, upon the reports of the local land officers, or from other information, showing the mineral character of lands not previously so reported. When mineral lands are reserved in any manner the reservation is noted on the tract-books of the General Land Office, and on the records of the local offices. Lands reserved as mineral are held for disposal, exclusively, under the mineral laws. The uniform legislative policy of Congress is to preserve mineral lands for entry in this manner. All acts making grants of land for railroad, education, or other purposes within mineral regions of country, withhold the mineral lands from such grants. All reserved lands are also excepted by special provisions of the granting acts. It has never been held (and the question appears never to have been considered by the land office) that reserved mineral lands are excepted from railroad grants, but such lands have uniformly been awarded to the corporations upon the release of the reservation, although the granting acts make no provision for such reversal.

Q. How is the release from reservation accomplished, and at whose instance?—A. A hearing is ordered, usually at the instance or by the procurement of the companies, to determine the character of the land. If there happens to be no mineral claimant at the time of hearing, there is no opposition. Ex-parte testimony is taken and reported, and the adjudication is made that the land is non-mineral in character. That releases the land from the reservation, and it is then awarded to the railroad notwithstanding it was excepted from the grant by reason of the reservation existing at date of grant. I have heard of some sharp practice in connection with these adjudications. A complaint was made in the case of the California and Oregon Railroad Company where the agent of the company advertised that he would offer proof on a certain day in respect to the non-mineral character of certain tracts of land. On the day appointed the mineral occupants were present to contest. The agent met these people, as they allege, ascertained the tracts of land claimed by them, and assured them that he would offer no evidence in respect to such land. The claimants say they then went home, and that the next day the agent offered ex parte testimony alleging that the land was non-mineral in character.

The local officers reported accordingly; the cases were hurried through the land-office; the non-mineral adjudication declared; and, before the miners knew that any proceedings had been had, their mineral claims had been awarded to the railroad.

Q. Was there anything done about this?—A. Not to my knowledge.

Q. Are there any other roads where lands reserved as mineral have, upon the application of the companies, been adjudicated as non-mineral?—A. It is the case of all the roads that pass through mineral country, such as the Central Pacific and its branches, and other Pacific roads. The adjudication is usually made upon the application of the companies. Frequently, however, there are agricultural claimants on the land, who contest the mineral claims, when, after contest, perhaps protracted several years, the railroad steps in at the final adjudication and captures the land. I have known of cases where the land was excepted from the grant both on account of its reserved condition and because of its actual occupation and improvement by settlers, and yet the decisions gave the land to the railroads.

The fourth section of the act of July 2, 1864 (13 Stat., 356), increasing the grant of lands to the Union Pacific, Central Pacific, and other railroad companies, provided, as the act reads in the printed statutes, that "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 any lands returned and denominated as mineral lands.*" Finding in the practice of the office that the claims of bona fide settlers on lands that had been "returned and denominated as mineral," but which had afterwards been adjudged to be non-mineral in character, had been uniformly rejected since 1864, and the lands awarded to the railroads, I asked for a reference to any departmental decisions authorizing the practice. There were none. To the question, what was done with the provisions of the act of 1864, protecting the rights of such settlers, the answer was, "we have never paid any attention to that." This state of facts brought on an inquiry, during which it was developed that some years ago an error had been found in the printed statute, and a certified copy of the original act had been obtained from the State Department and placed on file in the Land-Office, and that the certified copy showed that the language of the original act read, "or the improvements of any bona fide settler *on* any lands returned and denominated as mineral," instead of "or the improvements of any bona fide settler, *or* any lands returned and denominated as mineral." It appears that no formal announcement of the discovery of the alleged error was ever made. It was not stated in any decision that a comparison had been made between the law as printed and the original roll on file in the State Department, but the office for years had made its decisions upon occult information contradicting the published laws.

Among the evidences adduced that the printed statute was erroneous, was the quotation, in a recent decision of the Supreme Court, of the section containing the disputed phrase, in which the language of the law was given as it appears in the original roll and not as it appears in the statute as printed. All the former quotations of this section, by the court, and there were several, gave the law as printed. It was so quoted in this decision as pronounced, and was so originally printed, but the change was afterwards made, without explanation or indication of authority, in the published volume of the court reports. Admitting the error to exist in the printed statute, and remarking only upon the method or want of method by which it was made known or acted upon without being made known, it will still be perceived that the change could make no difference in the class of cases in which the claims of settlers to lands "returned and denominated as mineral," are involved, since under either reading of the law such settlers would equally be protected. But their just claims have been rejected in every such case.

Q. Do you know of any other instances where the agent of a railroad has misled and deceived claimants to land as stated by you some time since?—A. I do not know whether there have been any other complaints of that character or not. I only know that the railroads get lands that have been reserved as mineral, and incidentally learned of the particular complaint I have mentioned.

Q. You were saying the other day that in quite a number of instances the lands granted and patented to railroads had exceeded the quantity which, under the law making those grants, it was possible for them to receive. Will you now explain what roads have thus received more land than they were entitled to, and to what extent this has been done?—A. In the early days of the railroad land-grant system it was the practice to certify outright to the companies, or to the States for the benefit of the companies, all the public lands within the granted limits, so called, and to patent in bulk all or the greater part of the alternate sections within indemnity limits, without waiting for any road to be built. Some millions of acres were in this manner certified or patented many years ago for roads that have not yet been constructed, and in other cases where the roads were afterwards commenced, but where the work of construction has long since ceased.

In many of these and other cases the amount of land certified or patented indicates that no inquiry could have been made into the scope and effect of the several grants, their conditions, exceptions, or legal limitations.

It is not known, so far as I am aware, how much land any railroad company is or was entitled to receive under its grant.

Railroad grants in general are subject to various and frequently large reductions from the area of the number of alternate sections embraced within the limits of the grants. Some of the exceptions and reservations that lead to this reduction are absolute under the terms of the granting acts. Others have been made debatable from the very liberal views that have been taken of the rules of statutory construction applicable to public grants in railroad cases.

But under the loose practices inaugurated in the beginning, the process of awarding lands to railroad companies without regard to the amount they might legally be entitled to receive, has gone on after the probable amount accruing to a grant has been reached, and in some instances after the possible maximum has been exceeded.

The following are some examples of this character:

The Cedar Rapids and Missouri River Railroad is a completed road under the grants available for its construction. The total length of the road as certified by the governor of the State is $271\frac{6}{10}$ miles. The grant embraced the public lands within three alternate sections per mile on each side of the road, or, in other words, it comprehended six sections of land or so much of six sections as may have been liable to the grant, for each mile of the road.

Leaving out of question all elements which diminished the volume of the grant, it will be seen that $271\frac{6}{10}$ miles multiplied by six sections per mile gives $1,629\frac{6}{10}$ sections, which at 640 acres per section makes a total of 1,042,944 acres as the extreme possible area that could physically have been embraced in the grant. The amount of land actually certified or patented under this grant to the present date is 1,141,690.77 acres, or an absolute excess of 108,490.77 acres over and above the greatest possible amount with which the company could be credited under any circumstances. And of this excess 1,197.24 acres were patented during the year ending June 30, 1881.

A superficial estimate shows that the overlapping limits of conflicting roads alone diminish this grant by not less than 25 per cent., and therefore that the excess of lands thus conveyed by the United States in this case, over the amount entitled to be received, is upwards of 300,000 acres. If an accurate adjustment should ever be made I think the actual excess would be found much greater.

The Sioux City and Saint Paul Railroad Company of Iowa is credited with $56\frac{1}{6}$ miles of constructed road. The grant was for ten sections per mile, or a nominal total of 359,520 acres, without taking into account the exceptions and deductions incident to the grant.

The amount of land actually certified or patented to the State under this grant is 407,910.21 acres, or a known excess over the possibilities of the grant of 48,390.21 acres.

It is estimated that the volume of the grant was diminininished not less than 37,000 acres, possibly not less than 100, 000 acres, more by reason alone of overlapping grants.

The Saint Paul and Sioux City Railroad Company of Minnesota is credited in the Land Office reports with a total granted area of 1,010,000 acres, reduced by partial estimates for necessary reductions to 850,000 acres. Amount patented or certified, 1,200,358 acres, or a known excess over possible maximum of 190,358 acres, and a known excess over a liberal estimate to the road of 350,358 acres, of which 33,218.91 acres have been patented since 1875.

The total computed area of the grant for the first division of the Saint

Paul and Pacific Railroad in Minnesota is 1,248,638.95 acres. Total amount certified or patented, 1,251,046.14 acres, or an excess over all of 2,407.27 acres; 2,597.26 acres were patented in 1880. The legal and actual reductions to which this grant is subject do not appear ever to have been considered.

In the same manner and under similar conditions the Iowa Falls and Sioux City Railroad Company in Iowa is credited with a total nominal area of 1,226,163.15 acres. Amount certified or patented, 1,252,025.41, or an excess over all, not computing reductions, of 25,861.36 acres; 100,929.70 acres have been patented to this company since 1875.

The Winona and Saint Peter Railroad Company is credited with a total nominal area of 1,410,000 acres. Estimated area actually inuring to the grant, 710,000 acres. The amount of land certified or patented up to June 30, 1881, on account of this grant was 1,668,007 acres, or an excess over the amount of land included within the geographical limits of the grant of 258,007 acres, and an excess over the estimated amount the road would be likely to receive of 958,007 acres; 2,929.52 acres were patented to this company in 1879.

There is another class of cases in which the maximum possible area has not been exceeded, but in which the maximum probable area, as shown by the estimate, has been exceeded. The following are examples of this class:

The Lake Superior and Mississippi Railroad Company is credited with an estimated probable area of 800,000 acres. Amount of land actually certified or patented, 860,564.09, or an excess over probable area of 60,564.09 acres.

The West Wisconsin Railroad Company is credited with 800,000 acres as a probable estimate.

It has received 802,816.89 acres, or an excess over probable estimate of 2,816.89 acres.

The Alabama and Chattanooga Railroad has 246 miles of constructed road within the State of Alabama. If there were no reductions from any cause the total area of the grant would be 944,640 acres. It was originally estimated that the quantity of land the company would actually receive would be 461,456 acres. The amount already certified or patented is 601,970 acres, or 140,514 acres more than this estimate, of which about 50,000 acres have been patented during the present fiscal year. I do not know the basis on which the estimate was made, nor whether the road has received more or not as much as entitled. As in all other cases, the reductions to which the grant is subject have never been computed.

There is still another class of cases in which it would not appear from the estimates and reports that the grants have been satisfied, but whether they actually have been satisfied or not, or whether they have been more than satisfied, is wholly unknown. In all these cases, as well as in those which I have particularly mentioned, there are many legal questions yet to be settled, and some important elements of fact to be determined, and a large mass of detail to be gone through with, before the amount of land any company has received beyond the legal volume of its grant can be ascertained, or before it can be known what lands or what quantity of lands any company may still be entitled to receive.

This work has never been done in any instance to my knowledge, but lands have continued to be patented as if doubt and uncertainty did not exist.

A number of grants are considered as having been adjusted, but these are cases in which the companies got all the land there was within both the granted and indemnity limits to the full amount of the geographical area of the assumed grants, without regard to the legal deductions necessary to be made, owing to prior grants, reservations, disposals, or appropriations, and apparently without reference to legal questions that may have existed, and which in many cases did exist, going to the foundation of their rights.

Q. How do you account for the conduct of your office in certifying and patenting lands in the way you have mentioned?—A. I do not account for it.

Q. Are you able to give any explanation of it?—A. No, sir.

Q. How many railroads are there within your knowledge that have received excessive amounts of land in the way you have stated?—A. I have mentioned particular cases to which my attention has been directed, where the maximum possible quantity has been exceeded. I do not know whether there are any others of that class or not. Of the second class, where the estimated probable quantity has been exceeded, there are quite a number of cases. The few I have mentioned are illustrative of the class. Where the grants would appear to have been adjusted, that is to say accurately satisfied, it is inevitable that a great excess exists, since, as I have stated, the exceptions, reservations, and deductions have not been taken into account. Where the grants would appear to have been approximately satisfied, which is the case with the majority of the old grants on completely constructed lines, a greater or less excess is, I think, from the same reasons, equally certain to be found if a proper adjustment is ever made. The printed reports are not accurate and they do not afford the requisite data on which an opinion can be formed in any case except where a clear excess over possible quantity is shown. Even the possible quantity is not always ascertainable from the reports alone. The length of constructed road is not given, and is frequently not known from any official sources. The official certificates of construction required before any land could be legally conveyed are wanting in some instances; and in some cases such certifications are not wholly reliable. Wagon roads have been officially reported by State authorities as constructed where in fact no road had been built. Whether a railroad or wagon road has been built on the line of definite location is not always apparent, nor is the right of a company claiming by assignment always shown. The compliance of the companies with the conditions of the granting acts does not appear to have been held essential to the issue of patents under the grants, and whether companies holding under a State have complied with the provisions of the legislative acts by which they receive the State's title is, I think, generally unknown.

Q. Do you understand that a road is entitled under any grant whatever to a patent of lands any faster than the road itself is constructed and accepted?—A. No, sir; not where patents are required for a transfer of title. In such cases the construction of the road is in every instance a condition precedent to the issue of patents and to the acquirement of the right to receive patents. Patents are required to pass the title of the United States in all cases of grants to corporations, and in many cases of grants to States, particularly where the grants have been renewed after expiration, or new lands are granted by virtue of authorized changes of location. In every case of railroad grant where patents are required, the provision of law is specific that patents shall issue only after actual construction in accordance with the terms and conditions of the act, and only as fast as such construction is proven in the manner provided. The title to indemnity lands is never conveyed by the granting act, and the right to receive title to indemnity lands cannot be acquired without actual construction and the specific ascertainment of losses for which indemnity is authorized. The doctrine of present grants cannot be applied to indemnity lands under any form of grant, however erroneously it may be misapplied in respect to what are termed granted lands. All grants to corporations, and all grants requiring patents for the conveyance of title, whether the grant is to a State or corporation, are of the latter character. I do not understand, however, that the requirement of a patent establishes the character of the grant. It is the character of the grant that makes the requirement of a patent necessary. Where patents are required under railroad grants there is no legal title in the State or corporation until after patent issues, and I know of the existence of no equitable title in such cases until after actual construction as provided in the granting acts. Under many of the earlier grants to States a conveyable title vested in the State, without patent, for a distance of twenty miles.

Then after twenty miles of road was constructed a conveyable title vested in the granted lands for another twenty miles, and so on. But the State had no conveyable title to any lands, and could sell no lands at a greater distance along the line of the proposed road than twenty miles from the beginning, and, thereafter, for twenty miles beyond the point of constructed road. Necessarily the State could transfer only what it received, but as a matter of fact, under the premature certifications and patents of this department, the corporations that became the transferees of the State, did sell and profess to convey the lands along the whole line of the proposed roads, and throughout the indemnity limits, without regard to legal restrictions.

Q. Are there any instances where the roads had not been constructed or only partially?—A. Yes, sir; the rule in early days was to certify and patent the lands in all cases in advance of construction. In some cases the roads were completed after the time allowed for construction had expired, and frequently on changed lines of location for which there were no grants. In some cases the roads have never been constructed. In other cases construction has been partial only. Of the latter class of cases I have investigated in part the case of the Mobile and Girard Railroad in Alabama, and found the following facts:

The lands granted were embraced in three alternate sections in width on each side of the line of the road, or a total of six sections per mile, exclusive of lands previously sold, pre-empted, reserved, or otherwise appropriated. Indemnity selections were authorized within a distance of fifteen miles from the line of the road to compensate for certain losses in granted limits. Among the conditions of the grant as usual in grants of this character, were the following:

1. The lands were to be exclusively applied to the construction of the road.
2. They were to be disposed of only as the work progressed.
3. They were to be subject to disposal by the legislature of the State for the purpose mentioned.
4. No more than 120 sections included within a continuous length of 20 miles of the road could be disposed of by the State in advance of construction.
5. When the governor should certify to the Secretary of the Interior that 20 consecutive miles of the road had been completed, another 120 sections of the granted lands within a continuous length of 20 miles might be sold, and so on until the road was finished.

6. The road was to be completed within ten years from the date of the act.

7. If the road was not completed within ten years no further sale of the granted lands was to be made, but the lands then unsold were to revert to the United States.

The map of the definite location of the road was filed June 1, 1858.

No record is found in this office of any certificate from the governor as to the completion of any part of the road, and this office has no official information that any part of the road has been built.

The unofficial information derived from the maps of the country and other sources is that the road from Girard to Union Springs, a distance of fifty-four miles, was completed within the prescribed period of ten years; that after the expiration of said ten years the road was extended to Troy, a distance of thirty miles from Union Springs, making the total length of constructed road at the present time eighty-four miles; that construction ceased in 1870 when the road reached Troy, since which period no work has been done in the direction of the further extension of the road, and it is understood that no further extension is contemplated. From Girard to Union Springs the grant conveyed little more than the right of way, as the road passed through the old Creek Indian cession, and nearly all the lands had been appropriated many years before, having been embraced in what are known as permanent Indian reservations. Between Union Springs and Troy the land had been nearly all taken up prior to the grant. The total amount of public land found subject to the grant between Girard and Union Springs was 1,601.38 acres, and between Union Springs and Troy 9,327.88 acres. There had been little loss to the grant between the date of the granting act and the definite location of the road, but the total amount of public land within the indemnity limits was only 1,396.21 acres between Girard and Union Springs, and 9,397.84 acres between Union Springs and Troy. The total possible amount of land, therefore, which could have inured to this State on account of the construction of the road between Girard and Troy was 21,723.31 acres. As a matter of fact all the public lands of the United States within the granted limits of this road from Girard to Mobile, a distance of about 300 miles, were certified, and all or nearly all the public lands within the indemnity limits were patented to the State, the total amount as certified and patented being 504,131 acres, or an excess over the amount earned by construction of 482,408 acres.

An act of the legislature of the State of February 1, 1858, provided for transferring the grant to the company upon certain conditions, among which was the filing of a bond for the faithful application of the lands to the purpose of their donation, and for the performance of the provisions and conditions of the act of Congress making the grant. I learn that there is no evidence in the archives of the State showing that such bond was ever filed or executed.

The lands referred to were certified or patented to the State in 1860. The lists were not indorsed over to the company until 1879.

Q. Have you any means of knowing whether these lands are still held by the company or by any parties in interest under the company?—A. Reports have been made to this office officially, touching the existence of certain contracts and arrangements affecting this transfer, and it appears that 9[illegible],000 acres of land were in fact conveyed by the company's deed for services in securing to the company the apparent title to said lands. A further amount of 164,000 acres were sold by the company at a nominal price, and it has been officially reported that the timber from these lands is being used for the construction of railroads in Georgia. I have no further information in respect to the sold or unsold lands.

Q. Is the corporation itself still in existence and operating any part of the road, or has it been absorbed by some other road?—A. That is not known to this office.

Q. Are there other grants in Alabama similarly situated?—A. There are other grants in Alabama and in other States where lands were certified or patented in advance of construction and where the roads have not been completed.

Q. Are there any cases where the grants have been not to State but to corporations, and the corporations have received patents from the government beyond the amount of land that they were entitled to?—A. There are some cases of that kind.

Q. How is it in respect to the great lines of railroad running across the continent—the Union and Central Pacific, the Northern Pacific, Southern Pacific, and other Pacific railroads?—A. The railroads that received subsidies in bonds, such as those embraced in the Union and Central Pacific systems, and where the roads are completed and the lands earned by construction, have not generally applied for or received the quantity of land to which they are entitled. Much complaint is made on this account. Some years ago Congress passed an act requiring all railroad companies to pay the cost of surveying and conveyancing before patents should be issued. The complaint is that advantage is taken of this act to let the legal title remain in the United States until the lands are sold and fully paid for, the companies thus avoiding the payment of State and county taxes on all the land to which their right to receive the legal title has been acquired, and by a mortgage sustained by the Supreme Court as in the nature of a disposal, they avoid the provisions of the granting act requiring the lands to be sold to settlers after three years from construction at $1.25 per acre, and at the same time actually sell the lands at the corporation price and receive interest on deferred payments, and in some cases lease the land and receive the rents.

Q. Does anything else occur to you to state in connection with the subject of railroads?—A. In all the classes of cases I have mentioned where the roads have received actually or probably more than they were entitled to receive, as also where the roads have not been constructed or only in part, the lands, remaining out of those originally reserved for the benefit of the grants, are still held in reservation. Settlements are excluded from these lands. Where the rights of prior settlers are denied by the rulings of the department, or where applications to enter are made by new settlers, the parties are compelled to treat with the corporations for the possession of their old homes or the acquirements of new ones, although the legal rights of the corporations under the grants may have long since been satisfied, or have ceased by limitation.

Q. Will you mention some instances of this character?—A. The grant for the Gulf and Ship Island Railroad of Mississippi was made in 1856. It expired by limitation in 1866. There is no known corporation in existence. No road has been built and no lands applied for. But all the public lands of the United States within alternate sections, for a breadth of thirty miles on the line of the originally projected road, and for a total length of one hundred and seventy miles, embracing whatever public lands there may be within a territorial area of 1,600,000 acres, were withdrawn from settlement and entry in 1860, and have ever since been held in reservation. The Coosa and Tennessee Railroad of Alabama has never been constructed; 67,784.96 acres of land were, however, certified or patented under the grant. The remaining public lands within a gross area of 72,000 acres in the granted limits, and 280,000 acres in indemnity limits, are still held in reservation for the benefit of this grant under a withdrawal made in 1858.

The Coosa and Chattooga Railroad was never constructed. Its proposed length was 40 miles. No lands certified or patented. Grant expired in 1856. All public lands in odd-numbered sections along the line of road, 30 miles in width, reserved since 1858.

There is no official report of the construction of any portion of the Pensacola and Georgia Railroad in Florida; 150 miles reported unofficially. Proposed length of road, 408 miles. A million and a quarter acres of land certified or patented in advance of construction. Probable excess so conveyed over amount entitled for constructed road, 1,000,000 acres. Grant expired in 1866. Lands withdrawn in width 12 miles in granted and 18 miles in indemnity limits along the whole length of the contemplated road in 1857. Remaining lands still in reservation.

The grant for the Saint Louis and Iron Mountain Railroad of Missouri was made in 1866; expired in 1871. Road not built under the grant, but grant abandoned by company for a different location. Lands still in reservation, and so held since 1870, for 20 miles on each side of the originally proposed line.

The grant for the North Louisiana and Texas Railroad expired in 1866. No road officially reported; 94 miles reported unofficially; 353,211 acres of land certified or patented in advance of construction, or over 300,000 acres more than would have accrued for length of road actually built. Lands withdrawn in 1857 along a line 160 miles in length; 12 miles in width being within granted and 18 miles in width in indemnity limits. Remaining lands still held in reservation.

There are a large number of other roads where lands have been held in reservation for periods ranging from ten to twenty five years where the rights of the States or of the corporations have been satisfied, or forfeited, or extinguished, or where rights were never acquired under the granting acts.

The existing withdrawals for the Northern Pacific Company cover an area of from eighty to one hundred miles in width, over a line of unconstructed road thirteen hundred miles in length, a large proportion of which has not been definitely located. The original withdrawals for this road were made in 1870, 1871, 1872, and 1873. Later withdrawals have been made on changed lines of location.

The Atlantic and Pacific Railroad, with fourteen hundred miles of unconstructed road has, in addition to its withdrawal of a belt one hundred miles in width through the Territories of New Mexico and Arizona, a withdrawal of sixty miles in width along the line of the Southern Pacfic coast in California. The Southern Pacific Railroad Company has a like withdrawal overlapping the coast withdrawal for the Atlantic and Pacific road. The respective grants are computed as of the same date by departmental construction, and although the lands embraced in one grant were excluded from the other by the terms of the granting act, no difficulty appears to be found in awarding to the Southern Pacific Company the lands embraced in the withdrawal for the Atlantic and Pacific. But an objection is found to the recognition of the rights of settlers on the same lands. Practically the withdrawal for one company is regarded as invalid as against the claim of another company, while it is held in full force and effect as against the settlers. Lands within the limits of the withdrawals for both the Southern Pacific, and Atlantic and Pacific across the State of California, aggregating 120 miles in width, where no road has been built, and none is being constructed, are still retained in reservation. The withdrawals for the Southern Pacific were made in 1867 and 1871, and for the Atlantic and Pacific in 1872.

The California and Oregon, and Oregon and California Railroads are not completed. The grant was to be null and void upon failure to complete construction as required by law, and all lands then unpatented were to revert to the United States. The grants have expired, but the withdrawn lands remain in reservation. Original withdrawals from 1867 to 1871.

The grant for the New Orleans, Baton Rouge and Vicksburg Railroad was made in 1871. Expired by limitation in 1876. No road ever constructed under this grant. Line of road not definitely located. Total length of proposed road 300 miles. Lands withdrawn in 1871–'73 on a preliminary line and still retained in reservation.

The Texas and Pacific Railroad grant is similarly situated; no road constructed; line not definitely located; lands withdrawn in 1871 from El Paso, in Texas, to Pacific Ocean, 60 miles in width, and still in reservation. I give the foregoing as examples and not as a complete list.

Q. Do you understand that it is held that where a road has failed to be constructed within the time specified in the charter, and the construction of the road has been abandoned, an act of Congress is necessary to restore these reserved lands and put them in the market again for the settler?—A. That would depend upon the nature of the grant. Where the grants are held by the Supreme Court to be present grants it would be deemed necessary as to lands within the originally granted limits, at least if the line of definite location was established before the time allowed for the construction of the road had expired. Where the grants are not grants in præsenti this would not legally be necessary.

Q. Do you understand that in all these reservations that you have enumerated these grants are in *præsenti* or in *futuro*?—A. Some are of one class and some of the other. The Florida and Alabama grants of 1856 and 1857, for example, and generally the ancient grants, are of the class called grants in præsenti. The grants of later date are chiefly grants in futuro, according to the definition of the law writers and the rule of the courts.

Q. Are there any of them that do not require legislation?—A. I do not understand that legislation is necessary to revest in the United States a title that has not been divested out of the United States. This is the case with all the corporation and some of the other grants where the conditions precedent to the investiture of title or estate in the grantee have not been complied with. It is also the case in regard to the land within indemnity limits in every class of grant. In each one of the cases I have mentioned, and in all other cases of the same character, all the indemnity withdrawals have, I think, been acts of the executive department, without statutory authority. A withdrawal ordered by Congress can only be revoked by order of Congress. A withdrawal made by the department without authority from Congress can be unmade by the department without further authority.

Q. Have the lands in such cases been restored to the public domain by the Secretaries yet; and if not, why not?—A. They have not been restored. Why not, especially in case of indemnity withdrawals and of other withdrawals, under abandoned grants, or grants that never became effective, or when construction has definitely ceased, I am unable to say.

Q. Is there any reason why they should not have been?—A. I know of none.

Q. Is there any call for those lands by homestead and pre-emption settlers?—A. Constantly; and their being kept from occupation and settlement is complained of. There is authority of law (act April 21, 1876, sec. 3; 19 Stat., p. 35) for the acceptance of pre-emption and homestead entries within the limits of any land grant subsequent to the expiration of such grant, but this authority has never been exercised. In regard to the legislation required to restore to the public domain lands held in indemnity, or other withdrawals, where the lands ought to be restored, I think it exceedingly desirable that Congress should by general law direct such restoration. This would relieve the executive officers from embarrassment and make the path of duty clear. I think that whatever else may be done or left undone in respect to railroad grants, Congress should direct a restoration to entry, under the settlement laws, of all lands heretofore withdrawn, without express authority of law, under any railroad, wagon-road, or similar grant, with provision for the protection of the rights of present settlers, the same as if the withdrawals had never been made, and that all withdrawals of lands made either with or without authority of law on preliminary lines, where the roads were not definitely located within the time allowed for their construction, and have not been constructed, should also be revoked. The theory of indemnity withdrawals by departmental authority is, that it is the duty of the executive department to protect the grants. My iadividual theory is, that the protection which the department is authorized to extend to the grant is the protection provided by law, and that where the law stops the executive department should stop also.

Q. Have the laws generally been literally construed in favor of the railroad?—A. Yes, sir. The principle of law applicable to public grants—that they ought to be construed strictly against the grantees—has not been observed, although the exceptions to the grant are very strictly ruled against.

Q. That is to say, that the grants have been construed very liberally to the grantee and against the settler?—A. Yes, sir. It is a common rule of construction that if there are words in a granting act which of themselves import a present grant, then the grant is in præsenti, although the general words of present grant may be restrained by particular words in subsequent parts of the same act. Among the important decisions which would appear to have followed this rule are the decisions of the Secretary in the case of the Northern Pacific Railroad grant (Commissioner's annual report, 1879, p. 109), and in the case of the Atlantic and Pacific Railroad grant, accepting the opinion of the Attorney-General of October 26, 1880 (7 Copp., 166). The authorities relied upon in these and similar decisions and opinions are the authorities in cases where no condition except the designation of the granted land was necessary to vest the estate in the grantee, as in the case of Greene's Heirs, 2 Wheaton, 196, and Schulenberg *vs.* Harriman, 21 Wall., 44. In the cases to which these authorities were applied there were several conditions precedent to be performed before the estate could vest, among which was the construction of the road.

In like manner all granting acts in which the words "to the amount of" so many sections in width or per mile appear, are held to be grants of quantity without regard to the limitations of the act. In the case of the Burlington and Missouri River Railroad Company (98 U. S., 334), the Supreme Court held the grant to be one of quantity, on the theory that there were no exterior limits to the grant. This decision has been held to govern in cases where there were exterior limits to the grant In 1879 a list of indemnity selections made by the California and Oregon Railroad Company in lieu of lands sold or disposed of previous to the grant, was submitted to the Secretary of the Interior for his approval on the theory that under the Burlington and Missouri River decision words of quantity necessarily created a grant of quantity. The difference in the two cases was that the grant for the California and Oregon road had exterior limits, but the list was approved, and this approval was treated as an authoritative ruling that the decision of the court in the one class of cases governed in another and dissimilar class.

The indemnity clauses of granting acts were formerly held to allow indemnity for all lands within the granted sections. In 1875 (92 U. S., 733–749), the Supreme Court said that the purpose of the indemnity provision was to give lands beyond the granted limit "for those lost within it by the action of the government between the date of the grant and the location of the road." In the Burlington and Missouri River case the court said the same thing, and has several times very clearly stated the theory and purpose of indemnity provisions. But in 1880 the Attorney-General concurred in different views of the law that had been expressed by the circuit court for Wisconsin, and advised a return to the practice that had obtained before the promulgation of the Supreme Court decisions. The Secretary accepted the opinion of the Attorney-General as a superior authority to that of the court, and the old practice of awarding to railroad companies indemnity lands in lieu of lands that had not been granted by Congress was revised (16 Op. Attorneys-General, 514; Commissioner's annual report, 1881, p. 158).

In accepting the advisory opinion of the Attorney-General the Secretary broadened the purview of that opinion in a material respect. The Attorney-General restricted his specification of the prior losses for which indemnity might be allowed, to losses occurring by reason of lands that had been "sold or pre-empted." The Secretary referred to this phrase as if reading "sold, pre-empted or *otherwise disposed of.*" Under the latter head all prior disposals of every character, such as locations by military bounty-land warrants, agricultural college scrip, and miscellaneous appropriations, aggregating in all a much larger area in some instances than disposals by sale or pre-emption would be included.

A former Attorney-General had said that where there was doubt then certainty existed, since what was doubtful was not granted. The modern rule appears to be that where there is doubt then certainty exists, because what is doubtful is granted. The difference in the two rules as applied to the allowance of indemnity for losses occurring before grant is a difference of more than half the volume of the grants to States and of a considerable percentage of the volume of the grants to corporations, the grants being thus constructively enlarged to this extent beyond the Congressional limit. It is, besides, a difference of one or two hundred million dollars to settlers who buy these lands of the railroad companies. If the rule of the Supreme Court were followed by the department, more than four-fifths of all the railroad and similar grants could at once be closed up, the remaining lands restored to settlement, and the titles to any unsold lands heretofore improvidently conveyed to the railroads in excess of the legal volume of their actual grants be recovered by the United States.

There is another very important matter in respect to railroad grants. Changes of location constitute a serious question. Where a grant takes effect upon the designation of the line of the road that is to be constructed, the lands withdrawn from the market upon that line are deemed appropriated for the use of the road so designated. Private rights are determined upon that basis. People make settlements, investments of money, and business arrangements in view of that particular line of road. Then a change in the line of location is not infrequently made, and in many instances when the road is built there is a wide divergence from the original line. The practice of the department has been to give the companies the land just the same as though they had built the road on the line to which the grant attached.

Q. Has the department given the roads the same land after they have changed their original location?—A. Yes, sir.

Q. Have the roads got any other lands along the actual location?—A. I am unable to say. In the grants I have had occasion to examine I have found features peculiar to the administration of that grant in addition to the features common to the administration of railroad grants generally. I am not acquainted with the special features of all the grants, nor of the special practices of the office under all or even under many of them. Changes of location have been of various sorts. They are of two general classes—those authorized by Congress and those allowed by departmental action. Again, locations have been assumed and the rights of settlers concluded on the line so established, and afterwards an entirely different line has been located, on the theory that the first was preliminary only.

The variation of constructed line from line of original location in Minnesota reached some 25 miles through the central portion of the State, and the change from amended line ran up to between 15 and 20 miles at points of greatest divergence. In the Territories the several changes of location have been of great extent in length of lines, reaching as high in breadth as from 20 to 50 miles in Dakota, upwards of 150 miles in Idaho, and frequent and broad divergencies extending from 25 to 50 miles in width were made in Washington. A withdrawal was made for a branch line of considerable length in that Territory that was not authorized to be constructed and to which no grant attached. This withdrawal subsisted for several years, and its subsequent release by the company was deemed to justify further changes. A solid area, 100 miles wide, remains withdrawn across the southern and central part of the Territory, with a further withdrawal of 40 miles in width in the State of Oregon for the same distance and the same road.

The sixth section of the act granting lands to the Northern Pacific Railroad Company, for example, was construed by the department to authorize a withdrawal of lands along a preliminary line. This section provided that after the general route should be designated the Secretary of the Interior should cause the lands to be surveyed for a distance of 40 miles on each side of the line throughout its whole extent. This was taken as the authority for a withdrawal of 20 miles on each side in the States and 40 miles on each side in the Territories on a line that might not become, and never did become, the line of the road. This withdrawal was held to fix the character of all the lands embraced within its limits. In 1873 all entries that had been made and allowed on lands that had been withdrawn in this manner in 1870 were ordered to be canceled under a decision by the Secretary, and the rights of all subsequent settlers were determined on the basis that the land had been lawfully reserved for the railroad company. The alternate or government sections were increased in price to $2.50 per acre. Then, after private rights and interests had centered on the supposed line of general route, this line was changed, the reservation floated to the new line, and that made to establish the character and price of lands and the standard of private interests along another broad belt of territory. The preliminary line of the road has been run at different times over different portions of the States and Territories through which it passed, and in all these cases the same processes of withdrawal and reservation, with the attending incidents, have been experienced. Then the line of definite location, where established, is still a different line than that of any of the preliminary lines, and the line of construction differs from that. With every change of location new lands are withdrawn, and the formerly reserved lands fall outside of the new withdrawal. In these cases the settlers on the former $2.50 lands, finding themselves on $1.25 land, applied for the repayment of the excess purchase money. The laws provide for the repayment of purchase money where lands are erroneously sold, but as the laws must be strictly construed the applications of the setters were denied, and Congress was obliged to pass a bill for their relief. I believe that no act was asked to authorize any change in the location of the grant.

The terms of the granting act comprehended a grant of twenty miles on each side of the constructed road in States, and forty miles in Territories. Nobody misunderstood either the policy or the intention of the law. It had become established by legislative precedent. A preliminary location of the general route of the western portion of this road was designated along the northern bank of the Columbia River. The withdrawals made in 1870 were of forty miles granted limits on the Washington Territory side of the line and twenty miles across the river on the Oregon side. Two years later an additional withdrawal was made for twenty miles more in Oregon, making forty miles in all, granted limits, so called, in the State of Oregon. This additional withdrawal was made on a verbal construction of the law, which was in the language customary to all granting acts where a distinction is made between the amount of land granted in States and the amount granted in Territories. As the line of the road on the Columbia River passed through a Territory it was held that the grant in the State should be regarded as equal in quantity to the grant in the Territory. The additional withdrawal was made in 1872, and this withdrawal was held to have attached in 1870. The claims of settlers who between the years 1870 and 1872 went on odd-numbered sections of public lands within a distance of twenty miles beyond the limits of the withdrawal of 1870 have been rejected by this office for the last ten years on the ground that a reservation created in 1872 took effect two years before it was made. These men have been obliged to look to the railroad company for prospective titles to their settlements, as have all subsequent settlers on these lands, although it is not claimed that any right of the company has ever attached to any lands in the State of Oregon, even within the limits of the withdrawal of 1870, since the line of the originally projected route along the course of the Columbia River never became definitely fixed.

In 1864 a withdrawal of lands in California was made under the grant to the Central Pacific Railroad Company along the line of the Western Pacific Railroad, which afterwards became a part of the main line of the Central Pacific. In 1867 a withdrawal was made for the California and Oregon Railroad Company. In 1870 a part of the lands at the intersection of the two roads was, upon the adjustment of the line of the Central Pacific, released from the withdrawal of 1864, and restored to the public domain. The lands so restored fell within the indemnity limits of the California and Oregon road, but were not withdrawn for this road. Settlers went on these restored lands. Their applications to make entry were allowed by the local officers and approved by this office. In a decision made in 1879, on appeal by the railroad company, the Secretary reversed the action of this office, rejected the settler's claim, and held the land as subject to the right of selection by the California and Oregon Railroad Company, although such lands had not been selected when the settlement claims were established, and had not been reserved for such selection by withdrawal, but were public lands of the United States open to entry when the entries were made. I do not know whether the error of law in the Secretary's decision arose from error in the findings of fact or not, but it has governed the land office in similar cases under this and other grants.

A withdrawal of lands was made in 1862 for the Leavenworth, Pawnee and Western Railroad Company of Kansas.

A provision in the granting act (12 Stat., p. 493, sec. 12) required an acceptance of the act by the company, under seal, to be filed in the Interior Department. This must have been done before the act could become operative. It was a condition precedent to the taking effect of the act. It was not done. A map of location was also to be filed. An old Territorial map, with pencil lines drawn through it, was deposited before any survey of the line had been made or other act performed to indicate an actual and responsible selection of the line of route. Under this state of facts the withdrawal mentioned was made. Nothing more was ever done by this company, which constructed no road, and did not definitely locate any line, and whose actual corporate existence is a matter of some doubt. In 1866 (14 Stat., 79) the Union Pacific Railroad Company, eastern division, which had been authorized to construct this road, was required to designate the general route of the road and to file a map within a certain date. The company did so, and a new withdrawal of lands was made under the act of 1866. Then all questions affecting the status of the lands inuring to the grant were settled, not on the basis of the proper designation of the line of route under the act of 1866, and the definitive withdrawal made under that act, but on the basis of the premature and irregular withdrawal of 1862, made on a line that never existed, and under an act that did not go into effect. The claims of all settlers who settled between 1862 and 1866 on lands withdrawn in 1862, where the lands afterwards fell within the withdrawal of 1866, were rejected in favor of the company, whose rights were not acquired until 1866. Meanwhile, lands in the alternate even-numbered sections, within the limits of the old withdrawal, were held to have been increased in price to $2.50 per acre, and were disposed of accordingly. These proceedings affected and determined the titles and price of lands for a breadth of forty miles across the entire length of the State of Kansas.

In 1856 (11 Stat., 9) a grant of lands was made to the State of Iowa, which was transferred by the State to the Iowa Central Air Line Railroad Company. This company constructed no road, but became insolvent; $775{,}717\frac{61}{100}$ acres of land were, however, approved to the State for the benefit of the road. In 1860 the legislature of Iowa resumed control of the grant and transferred it to the Cedar Rapids and Missouri River Railroad Company on certain conditions.

In 1864 (13 Stats., 96) Congress recognized this transfer, and made a new grant to the company of the same lands and the same amount of lands as originally granted to the State. It also authorized a change in the location of the road, and the construction of a branch line. But as the former company had built no road, and it was uncertain whether the road would be constructed, large numbers of settlers had gone on the lands within the limits of the original grant of 1856. Congress therefore provided that the conveyance of lands under this grant should not embrace any lands within such original limits which had been sold or pre-empted, or to which a pre-emption right or homestead settlement had attached, or on which a *bona fide* settlement and improvement had been made under color of title from the United States or the State of Iowa; and to allow for deficiencies in the grant it was provided that if the amount of land originally intended to be granted under the act of 1856 could not be found within the limits prescribed by that act, then selections to make up such amount might be made within a distance of twenty miles from the new line of road. The original grant was for alternate odd-numbered sections within six miles on each side of the road, with the right to select indemnity in odd-numbered sections within fifteen miles. The new act increased the indemnity limits as stated. It was also provided that whenever the modified main lines should be established or the connecting line located the company should file a map definitely showing such modified line and connecting branch. When this should be done the Secretary of the Interior was to reserve, and cause to be certified to the company as the work progressed, the lands to which it would be entitled under the grant. The map of definite location required to be filed in the General Land Office as a condition precedent to the reservation of any lands for the benefit of the grant was never filed. There was therefore never any authority of law for the withdrawal of any lands under this grant. A general withdrawal of all the public lands in Iowa was, however, made in June, 1864, for the benefit of railroad grants. It was stated that this withdrawal was made at the request of the Iowa delegation in Congress. No act of Congress authorized it. In August, 1864, this withdrawal was modified so as not to inhibit pre-emption and homestead entries. In June, 1865, the modification was annulled, and all entries made under it were suspended. In July, 1866, an order was made to restore to market all lands in the State that had previously been withdrawn. In September, 1866, the execution of this order was suspended. In August, 1867, the order was again issued, and the restoration was made by public notice. In 1875 the department decided the restoration to have been illegal, and all pending entries made under it were canceled. Where patents had been issued, but not delivered, they were called for and withheld.

These proceedings, which were wholly of departmental authority, affected the lands within the limits of the grant to the Cedar Rapids and Missouri River Railroad Company equally with all other lands in the State. Then in the adjudication of the claims of settlers it was held by this office that the right of this company under the grant of 1864 attached to all the lands embraced in the original grant to the State, from the date of the original grant in 1856; and the rights of settlers who had gone on the lands between 1856 and 1864, and which were legally protected by the statute, and for which protection additional indemnity selections were allowed to the company, were rejected. It was further held that the right of indemnity selection provided for by the act of 1864 was an absolute grant, that it embraced both odd and even numbered sections within the limits of twenty miles, and that it took effect upon the date of the passage of the act. Under the statutory provision requiring a map of definite location to be filed before any lands could be reserved the rights of settlers who settled before such map was filed, and in default of the filing of the map, before actual selection of the land for the company after the construction of the road, were protected in their settlements. Under the rulings of this office these rights were not recognized, but the lands and improvements of such settlers were decreed to the railroad. These proceedings went on until the lands taken from the settlers had aided in swelling the grant far beyond its maximum limits.

Cases of this kind have been decided in this manner down to the present time, and others are still pending.

What is true of this grant is also true of several other grants in the State of Iowa, except as to the amount of land received by the companies in excess of the amount to which they were entitled. That is a matter I have not investigated. But the decisions affecting the rights of settlers were, I believe, of the same character as here stated.

Q. Where lands are awarded to railroad companies in the way you have mentioned in your testimony do the companies receive money from the settlers for the sake of quieting the settlers' titles?—A. Yes, sir; I have heard of settlers paying as much as fifty dollars an acre for land awarded to the railroads in this way.