49TH CONGRESS, 1st Session. SENATE. REPORT No. 69.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 1, 1886.—Ordered to be printed.

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

REPORT:

[To accompany bill S. 1293.]

The Committee on Public Lands, to whom was referred the bill (S. 65) entitled "A bill to repeal all laws providing for the pre-emption of public lands, the laws relating to entries for timber culture, the laws authorizing the sale of desert lands in certain States and Territories, and for other purposes," has had the same under consideration and report the accompanying bill as a substitute therefor.

The following is a copy of the bill reported by the committee:

A BILL to repeal all laws providing for the pre-emption of the public lands, the laws allowing entries for timber culture, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2299, and section 2301, and chapter 4 of title 32, excepting sections 2276, 2283, 2286, and 2288, of the Revised Statutes of the United States, are hereby repealed: *Provided, however*, That this repeal shall not affect any valid rights heretofore accrued or accruing under said laws, but all bona fide claims lawfully initiated before the 1st day of July, 1886, may be perfected, upon due compliance with law, in the same manner, upon the same terms and conditions, and subject to the same limitation, forfeitures, and contests as if this act had not been passed; that all entries heretofore made under the pre-emption laws, on which final proof and payment have been made, and to which there are no adverse claims, and which have been sold to innocent purchasers, shall be confirmed and patented upon presentation of satisfactory proof to the proper Department officer of such sale: *And provided further*, That any person who has not heretofore had the benefit of the pre emption law, and who has failed, from any cause, to perfect title to a tract of land heretofore entered by him under the homestead law, may make a second homestead entry in lieu of the pre-emption privilege, hereby repealed; but this provision shall not apply to persons who shall perfect title to lands under the pre-emption or homestead laws under proceedings already initiated; *And provided further*, That all outstanding certificates of deposit on account of surveys heretofore issued under the provisions of sections 2401, 2402, and 2403 of the Revised Statutes, and acts supplemental thereto, shall be receivable as cash (except for fees and commissions), in the disposal of public lands, at the land-offices at which such certificates are now receivable in commutation of homestead and pre-emption rights: *And provided further*, That all certificates heretofore issued by the Commissioner of the General Land Office to soldiers, or the widows of such, or their minor children, under section 2306 of the Revised Statutes, may be located by the original beneficiaries, their heirs, legal representatives, or assigns, and upon such location patents shall issue in the name of the locator.

SEC. 2. That an act entitled "An act to amend an act entitled 'An act to encourage the growth of timber on the Western prairies,'" approved June fourteenth, eighteen hundred and seventy-eight, be, and the same is hereby, repealed: *Provided*, That this repeal shall not affect any valid rights heretofore accrued or accruing under said laws, but all bona fide claims lawfully initiated before the first day of July, eighteen hundred and eighty-six, may be perfected, upon due compliance with law, in the same manner, upon the same terms and conditions, and subject to the same limitation, forfeitures, and contests as if this act had not been passed.

SEC. 3. That an act to provide for the sale of desert lands in certain States and Territories, approved March third, eighteen hundred and seventy-seven, is hereby amended so as to read as follows:

"SECTION 1. That it shall be lawful for any citizen of the United States, or any person of requisite age who may be entitled to become a citizen, and who has filed his declaration to become such, to file a declaration, under oath, with the register and the receiver of the land district in which any desert land is situated, that he intends to reclaim a tract of desert land not exceeding one-half section, by conducting water upon the same, within the period of five years thereafter: *Provided, however*, That the right to the use of water by the person so conducting the same on or to any tract of desert land of three hundred and twenty acres shall depend upon bona fide prior appropriation; and such right shall not exceed the amount of water actually appropriated and necessarily used for the purpose of irrigation and reclamation; and all surplus water over and above such actual appropriation and use, together with the water of all lakes, rivers, and other sources of water supply upon the public lands, and not navigable, shall remain and be held free for the appropriation and use of the public for irrigation, mining, and manufacturing purposes, subject to existing rights. Said declaration shall describe particularly said half section of land, if surveyed, and if unsurveyed, shall describe the same as nearly as possible without a survey. At or after the expiration of the period of five years after filing said declaration, upon making satisfactory proof to the register and the receiver of the reclamation of not less than one-half of said tract of land in the manner aforesaid, and that he or she is a citizen of the United States, and has for such period of five years resided upon and cultivated said tract, and that no portion of the same has been alienated except as provided in section twenty-two hundred and eighty-eight of the Revised Statutes, a patent for the same shall be issued to him or her: *Provided*, That the party filing upon the lands under this section shall make his residence upon the same within twelve months after such filing, which residence shall thereafter be continuous; and any failure to reside upon said lands thereafter for a period of more than six months shall work a forfeiture of all rights under said filing and settlement: *Provided further*, That no person shall be permitted to enter more than one tract of land and not to exceed three hundred and twenty acres, which shall be in compact form.

"SEC. 2. That all lands, exclusive of timber lands and mineral lands, which will not without irrigation produce some agricultural crop, shall be deemed desert lands within the meaning of this act, which fact shall be ascertained by proof of two or more credible witnesses under oath, whose affidavits shall be filed in the land office in which said tract of land may be situated.

"SEC. 3. That this act shall only apply to and take effect in the States of California, Oregon, Colorado, and Nevada, and the Territories of Washington, Idaho, Montana, Utah, Wyoming, Arizona, New Mexico, and Dakota; and the determination of what may be considered desert land shall be subject to the decision and regulation of the Secretary of the Interior: *Provided*, That this act shall not affect any valid right heretofore accrued under said act, but all bona fide claims heretofore lawfully initiated may be perfected, upon due compliance with the provisions of said act, in the same manner, upon the same terms and conditions, and subject to the same limitation, forfeitures, and contests as if this act had not been passed."

SEC. 4. That section twenty-two hundred and seventy-five of the Revised Statutes be amended so as to read as follows:

"Where settlement with a view to pre-emption or homestead has heretofore been made, and where settlement with a view to homestead shall hereafter be made, before the survey of the lands in the field, which are found to have been made on sections sixteen or thirty-six, those sections shall be subject to the pre-emption or homestead claim of such settler; and if they, or either of them, have been or shall be reserved or pledged for the use of schools or colleges in the State or Territory in which the lands lie, other lands of like quantity are appropriated in lieu of such as may be patented to pre-emptors or homestead settlers; and other lands are also appropriated to compensate deficiencies for school purposes where sections sixteen or thirty-six are fractional in quantity, or where one or both are wanting by reason of the township being fractional, or from any natural cause whatever."

SEC. 5. That section 2289 of the Revised Statutes be amended so as to read as follows:

"SEC. 2289. Every person who is the head of a family, or who has arrived at the age of twenty-one years, if a male, or at the age of eighteen years if a female, and is a citizen of the United States, or who has filed his declaration of intention to become such, as requested by the naturalization laws, shall be entitled to enter one quarter-section, or a less quantity, of unappropriated public lands of the minimum price of one dollar and twenty-five cents per acre, or eighty acres or less of such unappropriated lands, the price of which has been enhanced to double the minimum price, or two dollars and fifty cents per acre, to be located in a body, in conformity to the legal subdivisions of the public lands, and after the same have been surveyed. And every per-

son owning and residing on land may, under the provisions of this section, enter other land lying contiguous to his land, which shall not, with the land so already owned and occupied, exceed in the aggregate one hundred and sixty acres."

SEC. 6. That section 2288 of the Revised Statutes be amended so as to read as follows:

"SEC. 2288. Any person who has already settled on the public lands, either by pre-emption or by virtue of the homestead law, or any amendments thereto, and any person who shall hereafter settle on the public lands by virtue of the homestead law, or any amendments thereto, shall have the right to transfer, by warranty against his own acts, any portion of his pre-emption or homestead for church, cemetery, or school purposes, or for the right of way of railroads, canals, or ditches for irrigation or drainage across such pre-emption or homestead; and the transfer for such public purposes shall in no way vitiate the right to complete and perfect the title to their pre-emptions or homesteads."

SEC. 7. That any person entitled to enter a homestead under the provisions of chapter five of the Revised Statutes shall, by complying with all the provisions of said chapter relating to the entry of homesteads, be entitled to enter as a homestead one half-section or less of mountainous land, as defined by this section. All lands, exclusive of mineral lands, which are so mountainous and rough that they cannot be plowed and cultivated, shall be deemed mountainous lands within the meaning of this section, which fact shall be ascertained by proof of two or more credible witnesses, under oath, whose affidavits shall be filed in the land-office at which the lands are subject to sale. The Secretary of the Interior may provide for cross-examination of such witnesses, and for the production of proof on behalf of the United States, before the register and the receiver, as to the character of the lands sought to be entered, but the production of such proof shall not preclude the Secretary from requiring other and further evidence as to the character of said lands at the time of making final proof: *Provided*, That this act shall only apply to and take effect in the States of California, Oregon, Colorado, and Nevada, and the Territories of Washington, Idaho, Montana, Utah, Wyoming, Arizona, and New Mexico; and the determination of what may be considered mountainous land shall be subject to the decision and regulation of the Secretary of the Interior: *And provided further*, That any forty-acre tract of the public lands, three-fourths of which is mountainous land, as defined in this section, shall be deemed, for the purposes of this act, as mountainous land.

SEC. 8. That in all cases under the pre-emption and homestead acts, all contests or protests on the part of the Government or any individual concerning the land to be entered shall be instituted within ninety days after the duplicate receiver's receipt is issued, and not afterwards: *Provided*, That whenever it shall appear upon the face of the papers returned to the Commissioner's office that a clerical error has been committed, said Commissioner shall have power to suspend such entry, upon proper notification to the claimant, through such local land office, until such error has been corrected: *Provided, further*, That after final proof of the claimant and the issuing of the duplicate receiver's receipt, if it shall come to the knowledge of the Commissioner, before the patent has issued for the same, that fraud has entered into the title so acquired by the claimant, unless it shall appear that the land has been sold and conveyed to a bona fide purchaser for a valuable consideration, the Commissioner shall suspend the issuing of the patent for the same, and file with the United States Attorney-General notice of such suspension of the patent, with his reasons therefor; and it shall be the duty of the Attorney-General to commence proceedings at once in the proper court, by a scire facias, bill, or information, to set aside such title. This section shall apply to all cases of suspended entries under the United States pre-emption and homestead acts: *Provided*, That when two years have elapsed, or shall hereafter elapse, from the date of the issuance of the receiver's receipt upon the entry of any tract of land under the homestead or pre-emption laws, and when during such period no contests shall have been instituted or protest or objection filed against the validity of such entry, the entryman shall be entitled to a patent conveying the land by him entered, and the same shall be issued to him; but this provisio shall not be construed to require the delay of two years from the date of said entry before the issuing of a patent therefor.

SEC. 9. Suits by the United States to vacate and annul any patent heretofore issued shall only be brought within five years from the passage of this act, and suits to vacate and annul patents hereafter issued shall only be brought within five years after the date of the issuance of such patents.

SEC. 10. That hereafter no public lands of the United States not heretofore offered at public sale, except abandoned military or other reservations, isolated and disconnected fractional tracts authorized to be sold by section 2455 of the Revised Statutes, and mineral and other lands the sale of which at public auction has been authorized by acts of Congress of a special nature having local application, shall be sold at public sale or be subject to private entry.

SEC. 11. That an act entitled "An act to provide additional regulations for home-

stead and pre-emption entries on public lands," approved March 3, 1879, section 2301 of the Revised Statutes, and section 2 of an act entitled "An act relating to the public lands of the United States," approved June 15, 1880, are hereby repealed.

The most important provisions of the bill are those which repeal the pre-emption law and the timber-culture act. Rights which have become vested under each of these laws are protected by provisions for the perfection of claims lawfully initiated under them before the passage of the bill.

The provisions of the bill repealing the pre-emption law are carefully guarded so as not to affect special provisions of existing laws under which certain abandoned Indian reservations, such as the Ute and Osage reservations are being disposed of in accordance with treaty stipulations under the pre-emption system.

In the report made by the writer, from the Committee on Public Lands, at the second session of the Forty-eighth Congress the reasons which induced the committee to recommend the repeal of the pre-emption law and the timber-culture act were stated at length. Your committee quote from that report as follows:

REPEAL OF THE PRE-EMPTION LAW.

The policy of the Government in administering the public domain for many years was to sell the public lands as rapidly as possible, and to obtain as much revenue as possible therefrom. Under the practice of offering lands at public sale under the proclamation of the President, and then placing them upon the market subject to private entry, nearly all the best lands in the market, as far as they were surveyed, were secured and controlled by companies or single proprietors, who purchased them for purposes of speculation. Under such a state of things it was found impossible to restrain settlers within the limits of surveyed lands. They pressed beyond the surveyed limits to find Government lands suitable for homes. From time to time prior to the year 1840 it was found necessary for Congress to pass special laws conferring the privilege of pre-emption upon such settlers; but these laws were all of a temporary nature, in fact relief bills applying to classes of settlers. The right of pre-emption was conferred upon all qualified settlers by the pre-emption act of 1841, but the right was confined to surveyed lands. In 1853 the right of pre-emption was extended to unsurveyed lands. The pre-emption law was the first general law for the disposal of the public lands in the interest of actual settlers, and was a great improvement upon any previous legislation providing for the sale of the public domain. It has greatly aided in the marvelous development of the Western States and Territories. The homestead law, which was passed in 1862, contained in the provision for the commutation of a homestead entry the essential features of the pre-emption law, and we have had since that date a dual system for the sale of the public lands suitable for agricultural purposes to actual settlers, employing two sets of machinery, two agencies of adjustment and duplicate records, and the only result to be obtained by continuing the two systems is to permit one person to acquire 160 acres of land under each of the acts.

Your committee is of the opinion that the time has come when the right of a person to acquire title from the Government to the agricultural lands should be restricted to 160 acres.

Another reason for the repeal of this law is the alarming increase of fraudulent claims under it in late years, owing to the greater demand for, and increased value of, the lands, the discontinuance of public sales, and the withdrawal of lands from private entry.

The law can be made, and, in spite of the vigilance of the officers of the general and local land offices, is made, the means of acquiring the public lands fraudulently. It has been said that the fault is in the execution of the law and not in the law itself, but your committee is of the opinion that the law itself contains such inherent defects that fraudulent entries, and the fraudulent procuring of title under it, cannot be wholly prevented. So long as it was the practice of the Government to offer the public lands at public sale, and large tracts of valuable lands were subject to private entry, and lands were of comparatively little value, there was little inducement to evade the pre-emption law and to secure the public lands under it for speculation, although, undoubtedly, frauds under this law, as well as under all other laws for the disposal of the public domain, were more or less frequent from the date of its passage. It was natural, also, that less attention should have been given in the administration of the law

to the question of the good faith of the settler, and less strictness should have been required in the proofs of the performance of the conditions of the act at a time when the policy of the Government was to sell as much of the public lands and get as much revenue out of the public domain as possible, than after the policy of the Government changed and the public lands began to be administered with a view to securing their settlement and occupation—to their becoming the homes of American citizens, and not as sources of revenue to the Government.

We adopt the following, quoted from Report 1544 from the House Committee on the Public Lands at the first session of the present Congress, to accompany the bill under consideration:

"Whole townships of the public domain have been acquired under this law by capitalists who do not reside within hundreds of miles of the land, and never did. They have secured them through paid agents in their employ, who receive so much for their services when they make the proof necessary to entitle them to a patent from the Government, and assign their claims to their employers. This is done, of course, through perjury and subornation of perjury. For each one of these agents or claimants is required to make settlement on the pre-emption claim under the law, and he must make oath before the register or receiver of the land district in which the lands are situate, on which he claims to have settled for the purpose of pre-empting, and that he has never had the benefit of any right of pre-emption; that he has not settled upon and improved such land to sell the same on speculation, but in good faith to appropriate it to his own exclusive use, and that he has not directly or indirectly made any agreement or contract in any way or manner with any person whatsoever by which the title which he might acquire from the Government of the United States should inure, in whole or in part, to the benefit of any person except himself. And yet it is well known that this oath is daily taken by parties who make it under contracts such as we have indicated above. They file with the register of the proper land district their declaration, make their proof, affidavit, and payment required by the law, and receive their title, and transfer the same to the parties with whom they made the contract before they attempted to make the pre-emption.

"The Commissioner, in his last annual report, speaking of this law, says:

"'In my last annual report I renewed the recommendation frequently made by my predecessors that the pre emption law be repealed. Continued experience demonstrates the advisability and necessity of such repeal. The objection that much good has heretofore resulted from the pre-emption system, and that it should not be discontinued because abused, appears to us without good foundation under the changed conditions created by the homestead laws.'"

Your committee is therefore of the opinion that the pre-emption law should be repealed, saving vested rights and permitting all bona fide claims initiated under the law before the passage of this bill to be perfected in the same manner as if the law had not been repealed.

REPEAL OF THE TIMBER-CULTURE LAW.

Section 2 of the bill, as it is proposed by the committee to amend it, provides for the repeal of the act of June 14, 1878, known as the timber-culture act. The Secretary of the Interior and the Commissioner of the General Land Office have, in two successive annual reports, recommended the repeal of this law. It is the opinion of your committee that the law is a failure; that the beneficial results which were expected from the operations of the law have not been secured.

The law is mainly taken advantage of by those who have exhausted their rights under the pre-emption and homestead laws. Claims in great numbers are taken under this law without the intention upon the part of the claimant to comply with its provisions, and held against settlers under homestead and pre-emption acts for speculative purposes, and even in cases where an attempt is made to comply with the conditions of the act the compliance is perfunctory, the objects of the settler being to secure title to the lands and not the cultivation of timber, and the timber cultivated is of no real value. In short, the law appears to be of no practical value.

The Secretary, in his last annual report, recommended the repeal of this law in the following forcible language:

"In my last annual report I called attention to the abuses flowing from the operations of this act. Continued experience has demonstrated that these abuses are inherent in the law, and beyond the reach of administrative methods for their correction. Settlement on the land is not required. Even residence within the State or Territory in which the land is situated is not a condition to an entry. A mere entry of record holds the land for one year without the performance of any act of cultivation. The meager act of breaking 5 acres, which can be done at the close of the year as well as at the beginning, holds the land for the second year. Comparatively trivial acts hold it for a third year. During these periods relinquishments of the entries are sold to homestead or other settlers at such price as the land may command.

"My information leads me to the conclusion that a majority of entries under the timber-culture act are made for speculative purposes, and not for the cultivation of timber. Compliance with law in these cases is a mere pretense, and does not result in the production of timber. On the contrary, as one entry in a section exhausts the timber-culture right in that section, it follows that every fraudulent entry prevents a bona fide one on any portion of the section within which the fraudulent entry is made. My information is that no trees are to be seen over vast regions of country where timber-culture entries have been most numerous.

"Again, under the operation of the pre-emption, homestead, and timber-culture laws, any one person may enter 160 acres in each class of entry, making a total of 480 acres which may be taken by one person."

As in the case of the pre-emption law, no vested rights under the timber-culture law will be destroyed by the bill if it is passed. All claimants under the law who have taken the initiatory steps to secure title at the date of the passage of the bill will be authorized, notwithstanding the repeal of the law, to comply with its conditions and perfect their title.

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There is a rapidly growing sentiment in this country that all the laws providing for the disposal of the public lands suitable for agricultural purposes, except the homestead law, should be repealed, and that the public domain should hereafter be reserved for homes for settlers under that law.

Your committee is of the opinion that this should be in the future the policy of the Government in administering the public domain.

The agricultural lands are being rapidly taken up. The most valuable and desirable lands, even in the Territories most remote from the densely populated portions of the Union, are already occupied. Under the present pre-emption, homestead, and timber-culture laws one person may become the owner of 480 acres of the public domain, and under the several laws authorizing the disposal of the public lands—agricultural, timber, and mineral lands—one person can acquire title from the Government to 1,120 acres.

If settlers are hereafter restricted to the right to acquire title to 160 acres of the public land, suitable for agricultural purposes, it will be, comparatively speaking, but a few years until all the lands suitable for homes in all the States and Territories will be exhausted. Upon this subject of the future disposal of the public lands the honorable Commissioner of the General Land Office, in his report for the year 1884, has presented some very valuable facts and suggestions which are quoted with approval by the honorable Secretary of the Interior in his report, and which we here reproduce. The Commissioner says:

"The surveyed public lands of the United States have largely been disposed of, or appropriated by various claims under general laws, or pledged for the satisfaction of educational, internal improvement, or other public grants. The total area surveyed from the commencement is 938,940,125 acres. The estimated area unsurveyed, exclusive of the Territory of Alaska, is 506,495,454 acres. This estimate is of a very general nature, and affords no index to the disposable volume of land remaining, nor to the amount available for agricultural purposes. It includes Indian and other public reservations, unsurveyed private land claims, the sixteenth and thirty-sixth sections reserved for common schools, unsurveyed lands embraced in railroad, swamp land, and other grants, and the great mountain areas, and areas of unsurveyed rivers and lakes. Deducting these, and areas wholly unproductive and unavailable for ordinary purposes, and the volume of remaining land shrinks to comparatively small proportions. The time is near at hand when there will be no public land to invite settlements or afford citizens of the country an opportunity to secure cheap homes.

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"In the early history of the country, when the broad expanse of the public domain was unsettled, a liberal system of laws was adopted providing for an easy acquisition of individual titles, and even down to later periods the object apparently sought to be accomplished in the purpose of the laws and the policy of their administration was for the United States to hasten the disposal of its lands. With this purpose in view and abundant areas everywhere open to settlement, no special safeguard against appropriations in fraud of law appears to have been thought of or deemed necessary. On the contrary, the prevailing tendency of legislation has been to remove restrictions rather than to impose them, and acts have been passed primarily for the relief or benefit of actual settlers which have been availed of to the defeat of settlements by the facility afforded for the aggregation of land titles in speculative or monopolistic possession.

"The numerous methods of disposal now existing, and the laxity of precautionary provision against misappropriations, are resulting in a waste of the public domain without the compensations attendant upon small ownerships for actual settlement and occupation.

"It is my opinion that the time has fully arrived when wastefulness in the disposal of public lands shall cease, and that the portion still remaining should be economized for the use of actual settlers only. An act reserving the public lands, except mineral lands and timber reserves, for entry exclusively under the homestead laws, and amending the homestead law so as to prevent the present easy evasion of wise restrictions and essential requirements, would be a measure meeting this end, and answering a pronounced public demand."

The practical exhaustion of our public domain will force upon the attention of the people of this country new, important, and difficult questions, and, in the opinion of your committee, the time when our rapidly increasing population, instead of being able to take up homesteads upon the public lands and make homes for themselves, shall be compelled to find homes in our over-crowded cities, should by wise legislation be postponed as long as possible.

The present Commissioner of the General Land Office, in his annual report, renews the recommendations of his predecessors for the repeal of the pre-emption system and the timber-culture law. Concerning the first he says:

The pre-emption system no longer secures settlements by pre-emptors. If it did, or could be amended to do so, it would be useless to any good purpose, because supplanted by the more effective homestead law, if a home is the real object designed to be secured. If a home is not the object, the sooner the facility for obtaining land without making a home upon it, which is offered by this system, is removed from the statutes the better for the settlement interests of the country and the future of its institutions.

And again he says:

The pre-emption system serves the speculative interest, the timber interest, the cattle interest, the coal-mining interest, and the water-controlling interest, all at the cost or to the exclusion of actual settlers, according as the purpose of its use is speculation or monopoly.

We quote the following from the said report, referring to the repeal of the timber-culture act:

The failure of the timber-culture law to accomplish the purpose for which it was intended (encouragement of the growth of timber on western prairies), and some of the abuses that have resulted from its practical operation, are fully set forth in the accompanying reports.

The records of this office exhibit successions of entries, relinquishments, contests, and re-entries of the same tracts in farming districts, showing that speculation in the land and not cultivation of timber is the foundation of the mass of claims under this act. The requirements to be complied with during the first few years are necessarily slight. The ground is to be prepared and seeds planted. During this period (the infancy of the entry) its speculative object is achieved. This is a sale of the entryman's relinquishment. One claimant gives place to another for a consideration; the land remains uninhabited, unimproved, and uncultivated, except that a little breaking is done for a pretext, to be used as evidence of "good faith" to defeat a contest before this Department, until finally some seeker of a home upon the soil is found to pay the price demanded by the last holder of the "tree claim," when upon a bona fide homestead being established the citizen or immigrant who has bought his way to an honest entry of public land may commence the work of putting out trees for his own benefit. The act thus results in a double imposition—an imposition on the Government, and an imposition on actual settlers.

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The reports herewith submitted show the impracticability of the act and its inutility for other than evasive and fraudulent purposes. The proportion of totally fraudulent entries under this act is estimated at 90 per cent. I therefore most earnestly recommend its repeal.

AMENDMENTS TO THE DESERT-LAND LAW AND HOMESTEADS ON MOUNTAINOUS LAND.

The act entitled "An act to provide for the sale of desert lands in certain States and Territories," approved March 3, 1877, commonly known as the "desert-land act," was designed by Congress for the purpose of securing the settlement and reclamation of the desert lands in the States and Territories to which it was made applicable. Properly

guarded and executed in accordance with the intention of Congress the measure would have proved to be one of great public utility.

Experience has demonstrated, however, as will appear by reference to the official reports of the officers of the Government charged with its execution, that instead of securing, to the extent expected, the settlement and reclamation of desert land, the act has been used as a means of securing, by collusive entries and by evasions of the requirements of the law, possession of large quantities of the public lands, of obtaining, fraudulently in some cases, title to agricultural lands, and retarding bona fide settlement of the public domain.

Influenced by these considerations, at the second session of the Forty-eighth Congress your committee, in reporting upon House bill No. 7004, which, owing to the shortness of the session and the great amount of business before the committee, necessarily received a hasty consideration recommended the repeal of the act. After a more deliberate consideration and careful and protracted examination your committee are of the opinion that the law can be and should be amended so as to secure the beneficial results intended to be accomplished by it, and to prevent the abuses which have arisen and are possible under it, and to accomplish this in the bill reported by the committee they have proposed certain amendments to the law. These amendments are, in brief—

(1) The restrictions of the right to purchase lands under the act to citizens of the United States and to one-half section of land;

(2) Requirement of actual residence and cultivation for a period of five years from the date of entry;

(3) A provision against alienation of the land, similar in all respects to the one in the case of a homestead entry;

(4) A requirement that at least one-half of the claim shall be actually reclaimed by bringing water upon it within five years from the date of the entry.

The provisions of the act are extended to the State of Colorado.

These provisions, should they receive the sanction of Congress, in the opinion of your committee, will prevent the speculations and abuses which have been possible under the existing law, and the act when so amended will still, on account of the amount of land which may be entered under its provisions, induce to some extent the settlement and reclamation of desert lands.

The provision of the bill concerning "mountainous" land, which is found in section 7 of the bill, needs no extended explanation. It is restricted to the mountainous regions, and only authorizes the entry of a homestead of 320 acres upon lands of the character described under the provisions of the homestead act.

The bill is unusually guarded as to the manner of determining the character of the lands sought to be entered, and, as the maximum number of acres of arable land which, in any case, could be acquired under the provisions of the bill would be but 80, and in most cases must be much less, there does not appear to be any valid objection to the measure. The necessity for some provision other than those contained in the present homestead law to induce the settlement and reclamation of desert lands and the settlement of that portion of the public domain generally known as grazing or pasturage lands, must be evident to any one who is familiar with the vast arid region lying west of the Rocky Mountains. This region is thus described in the volume of the report of the Public Land Commission, entitled "The Public Domain:"

Agriculture depends upon irrigation in Nevada, New Mexico, Arizona, Colorado, Wyoming, Idaho, Southern California, Montana, Eastern Oregon, a portion of the

western part of Dakota and Eastern Washington Territory; also in other portions of the public domain. The desert-land act, however, applies to the localities above named, and the lands therein are so called by law, and are so disposed of unless the contrary be shown. This vast arid region, estimated to contain 700,000,000 of acres, contains water supply sufficient to irrigate 30,000,000 of acres. What artesian wells may do is a question for the future.

Within this area lie the grazing or pasturage lands of this region * * * estimated at more than 350,000,000 of acres. June 30, 1883, the United States owned (estimated) within the subdivisions above enumerated more than 500,000,000 of acres of land known as the "arid region." Along streams, near springs, or by the side of water-holes, or in valleys, can be found thousands of farms and homes using the existing water supply. These have been taken under the homestead, pre-emption, and other settlement laws, but it may be safely said that such lands with water supply immediately adjacent have long since been entered.

There is great misapprehension among most people who have never seen this arid region as to the character of these lands. The desert lands not lying within the immediate vicinity of a sufficient water supply for irrigation are absolutely worthless without a large expenditure of labor and investment of capital, and the pasture lands, as compared with other portions of the public domain suitable for grazing only, are of but little value. It requires many acres of this mountainous region to make the equivalent in value for grazing purposes of one acre on the plains of Dakota, Kansas, or Nebraska.

A section of these arid lands, and these pasturage lands, which are too rough and barren for cultivation, is not the equivalent in value of a forty-acre tract of arable land in the more favorably situated portions of the public domain, and, as the existing water supply, as is stated above, has already been appropriated by settlers under the pre-emption, homestead, and desert-land acts, the further settlement of that vast region and reclamation of the desert lands, without some such amendment of the homestead and desert-land laws as are proposed by this bill, will be postponed indefinitely. There are still many places where, if sufficient inducement were offered to settlers, they would be able, by taking claims in the same vicinity and uniting their efforts, to bring water from a distance for the purposes of irrigation and reclamation of their lands and to make themselves homes. And there are numerous places in the mountainous regions where a settler would not be able to make a living upon 160 acres, but where a few acres of arable land suitable for a site for a residence and for raising vegetables, can be obtained, which with a section of mountainous land suitable for grazing would make a comfortable home for a family.

Your committee believe that the measures proposed by this bill for the disposal of such lands should receive the sanction of Congress.

AMENDMENTS TO THE HOMESTEAD LAW.

The first amendment proposed to the homestead law is by the second proviso of the first section of the bill, which is as follows:

And provided further, That any person who has not heretofore had the benefit of the pre-emption law, and who has failed, from any cause, to perfect title to a tract of land heretofore entered by him under the homestead law, may make a second homestead entry in lieu of the pre-emption privilege hereby repealed; but this provision shall not apply to persons who shall perfect title to lands under the pre-emption or homestead laws under proceedings already initiated.

This proviso is intended to give qualified persons who have not received the benefit of the homestead law, and who have entered land under that law intending to secure title through the same by a compliance with its conditions, and for any reason have failed to secure title and have thus lost their right to a homestead, and who would be entitled

to take a pre-emption claim if the law were to remain in force, the right to take another homestead. This provision meets an objection which has been urged against the repeal of the pre-emption law, viz, that that law permits persons who have lost their right to take a homestead to secure a home out of the public domain.

The second amendment is proposed by section 5 of the bill. Aside from verbal changes in the present section of the Revised Statutes to make it conform to the repeal of the pre-emption law, the proposed amendment changes the existing law only so as to allow a female possessing the other qualifications now required to enter a homestead claim at the age of eighteen years. Some slight and unimportant changes of sections 2205 and 2289 of the Revised Statutes are proposed, to make them conform to the changed conditions of things arising from the repeal of the pre-emption law.

By far the most radical and important proposed change of the homestead law is the repeal of section 2301 of the Revised Statutes.

This section is the one which authorizes the commutation of a homestead entry. It is proposed to lay the ax at once at the root of the abuses which have grown up under the pre-emption system and abandon the idea of obtaining a revenue from the sale of agricultural lands, and place every practicable obstacle in the way of the acquisition of such lands for speculative purposes, and henceforth to reserve them for actual bona fide settlers under the homestead law.

The first section of the bill contains the following proviso:

And provided further, That all outstanding certificates of deposit on account of surveys heretofore issued under the provisions of sections 2401, 2402, and 2403 of the Revised Statutes, and acts supplemental thereto, shall be receivable as cash (except for fees and commissions), in the disposal of public lands, at the land offices at which such certificates are now receivable in commutation of homestead and pre-emption rights.

The amount of such certificates outstanding on the 1st of January, 1885, arising from deposits made since July 1, 1880, was about $400,000. Such certificates were issued under sections 2401 *et seq.* of the Revised Statutes, as amended by acts of March 3, 1879 (now 20 Stat., 352), and August 7, 1882 (now 22 Stat., 327), providing that settlers in unsurveyed townships may make deposits for the expenses of the survey of such townships. The certificates are receivable from the settlers who made the deposit in part payment for their lands, and are also made assignable by indorsement, and when so assigned are receivable in payment for lands entered by settlers under the pre-emption and homestead laws in the land district in which the deposit was made. Certificates issued prior to August 7, 1882, are so receivable in any land office.

The effect upon these certificates of the repeal of the pre-emption law and on the provision of the homestead law authorizing commutation of homestead entries, would be to restrict their use to existing pre-emption claims. This would greatly depreciate their value and make it necessary for the Government to make other provision for their payment.

The committee propose, in lieu of the right to use these certificates in payment for the pre-emption entries and commuted homestead entries, which would be destroyed by the passage of the bill recommended by them, to authorize such certificates to be used in payment for all lands hereafter sold for cash. This would include only lands sold at private entry, mineral and timber lands.

If the homestead law and the provision for commutation of homestead entries are repealed, some such provision as proposed by the committee

must be made for the gradual absorption of these outstanding certificates, or an appropriation of money must be made for their redemption. When, at the last session of Congress, House bill 7004, by which it was proposed to repeal the pre-emption law and to require eighteen months' residence to entitle a homestead claimant to commute his homestead entry, was under consideration, the Commissioner of the General Land Office, in a letter addressed to the writer of this report, said:

> It does not occur to me that there would be any objection to extending the use of these certificates so as to make them receivable in payment for public lands generally. I think with such provision the value of outstanding certificates would not be impaired.

By section 10 of the bill it is proposed to repeal all laws authorizing the sale of agricultural lands at public sale and private entry, and by section 11 it is proposed to repeal an act entitled "An act to provide additional regulations for homestead and pre-emption entries on public lands," approved March 3, 1879, and an act entitled "An act relating to the public lands of the United States," approved June 15, 1880, and section 2301 of the Revised Statutes.

The effect of the repeal of said section 2301 of the Revised Statutes has already been stated. The acts mentioned have proved not only to be of no practical value, but the first imposes needless burdens upon the settler and the last has been made the effectual means of fraud against the Government, and, in the opinion of your committee, both acts should be repealed.

Some minor provisions of the bill may be considered together. The first of these is the following provision contained in the first section of the bill:

> That all entries heretofore made under the pre-emption laws, on which final proof and payment have been made, and to which there are no adverse claims, and which have been sold to innocent purchasers, shall be confirmed and patented upon presentation of satisfactory proof to the proper Department officer of such sale.

This clause, your committee believe, is but a declaration of the law which would govern the judicial determination of cases of the character mentioned were the Government subject to the jurisdiction of the courts for the purpose of determining the right to a patent, and the law which controls cases in which rights of different claimants under the Government are called in question in judicial proceedings. This general rule which protects bona fide purchasers is expressly recognized in the section of the pre-emption law (now section 2262 of the Revised Statutes) which provides for proof of compliance with the provisions of that law in the following language:

> And if any person taking such oath swears falsely in the premises he shall forfeit the money which he may have paid for such land, and all right and title to the same; and any grant or conveyance which he may have made, except in the hands of bona fide purchasers, for a valuable consideration, shall be null and void, except as provided in section 2288.

It is proposed to apply the same rule to the Government in the matter of pre-emption claims, where there are no claims to the lands adverse to the entryman, that regulates the transferring of private property from one individual to another, and which protects a purchaser of such property in good faith, for a valuable consideration, and to confirm titles and direct patents to be issued in cases of entries under the pre-emption act, where final proof and payment have been made, and where the land has passed into the hands of innocent purchasers, and where the Commissioner of the General Land Office or the Secre-

tary of the Interior shall be satisfied from proof that the purchasers are bona fide purchasers for valuable consideration.

By section 10 of the bill it is proposed to limit the time within which contests may be instituted to be heard and determined in the land offices in case of entries under the homestead and pre-emption laws to a period of ninety days after final proof, and the issue of the receiver's duplicate receipt; to authorize the Commissioner of the General Land Office to suspend entries in cases of clerical errors until the error is corrected, and in cases where it appears to him before patent has been issued that fraud has entered into the title of the entryman under said acts to suspend patent and refer the matter to the Attorney-General, whose duty it is made to commence proceedings in the proper court to set aside the entry.

Section 11 provides for a statute of limitations as to suits by the United States to vacate land patents. The period is fixed at five years, which, considering the length of time which necessarily elapses from the date of entry to the issuing of patent, is thought by the committee to be an ample limitation.

These several provisions are intended to relieve the officers of the Government charged with the execution of the land laws from the present pressure of business, to fix certain general rules for the disposition of contested cases, to authorize the suspension of the issue of patents in cases where the authority to do so at present is wanting or is questionable, to hasten the issuance of patents to persons entitled to them, and to provide for a speedy judicial determination of the rights of the United States and homestead and pre-emption claimants in cases where fraud, as against the Government, is charged.

The necessity for further legislation on these subjects will not be questioned by any one who is familiar with the crowded condition of the business of the General Land Office and the utter impossibility, with the present force and under existing laws and regulations, and with the limited judicial powers which by existing laws are conferred upon the Commissioner of the General Land Office and the Secretary of the Interior in matters of entries under the land laws, of disposing of the pending business within any reasonable period of time.