

APPENDIX.

CREATION AND ADMINISTRATION OF FOREST RESERVES.

ACT OF MARCH 3, 1891 (26 STAT., 1095).

SEC. 24. That the President of the United States may, from time to time, set apart and reserve, in any State or Territory having public land bearing forests, in any part of the public lands wholly or in part covered with timber or undergrowth, whether of commercial value or not, as public reservations, and the President shall, by public proclamation, declare the establishment of such reservations and the limits thereof.

ACT OF JUNE 4, 1897 (30 STAT., 34-36).

The following sums * * * are hereby appropriated, for the objects hereinafter expressed, for the fiscal year ending June thirtieth, eighteen hundred and ninety-eight, namely:

* * * * *

For the survey of the public lands that have been or may hereafter be designated as forest reserves by Executive proclamation, under section twenty-four of the act of Congress approved March third, eighteen hundred and ninety-one, entitled "An act to re-

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thereto, which may be designated for survey by the Secretary of the Interior, one hundred and fifty thousand dollars, to be immediately available: *Provided*, That, to remove

Provisos.
President may re-
voke, etc., Executive
orders.

Executive orders and proclamations, or any part thereof, from time to time as he shall deem best for the public interests:

The surveys herein provided for shall be made, under the supervision of the Director of the Geological Survey, by such person or persons as may be employed by or under him for that purpose, and shall be executed under instructions issued by the Secretary of the Interior; and if subdivision surveys shall be found to be necessary, they shall be executed under the rectangular system, as now provided by law. The plats and field notes prepared shall be approved and certified to by the Director of the Geological Survey, and two copies of the field notes shall be returned, one for the files in the United States surveyor-general's office of the State in which the reserve is situated, the other in the General Land Office; and twenty photolithographic copies of the plats shall be returned, one copy for the files in the United States surveyor-general's office of the State in which the reserve is situated; the original plat and the other copies shall be filed in the General Land Office, and shall have the facsimile signature of the Director of the Survey attached.

Such surveys, field notes, and plats thus returned shall have the same legal force and effect as heretofore given the surveys, field notes, and plats returned through the surveyors-general; and such surveys, which include subdivision surveys under the rectangular system, shall be approved by the Commissioner of the General Land Office as in other cases, and properly certified copies thereof shall be filed in the respective land offices of the districts in which such lands

are situated, as in other cases. All laws inconsistent with the provisions hereof are hereby declared inoperative as respects such survey: *Provided, however,* That a copy of every topographic map and other maps showing the distribution of the forests, together with such field notes as may be taken relating thereto, shall be certified thereto by the Director of the Survey and filed in the General Land Office.

All public lands heretofore designated and reserved by the President of the United States under the provisions of the act approved March third, eighteen hundred and ninety-one, the orders for which shall be and remain in full force and effect, unsuspended and unrevoked, and all public lands that may hereafter be set aside and reserved as public forest reserves under said act, shall be as far as practicable controlled and administered in accordance with the following provisions:

No public forest reservation shall be established, except to improve and protect the forest within the reservation, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of citizens of the United States; but it is not the purpose or intent of these provisions, or of the act providing for such reservations, to authorize the inclusion therein of lands more valuable for the mineral therein, or for agricultural purposes, than for forest purposes.

The Secretary of the Interior^a shall make provisions for the protection against destruction by fire and depredations upon the public forests and forest reservations which may have been set aside or which may be hereafter set aside under the said act of March third, eighteen hundred and ninety-one, and which may be continued; and he may make such rules and regulations and establish such service as will insure the objects of such reservations, namely, to regulate their occupancy and use and to preserve the forests thereon from destruction; and any violation of the provisions of this act or such rules and regulations shall be punished as is provided for in the act of June fourth, eighteen hundred and eighty-eight, amending section fifty-three hundred and eighty-eight of the Revised Statutes of the United States. (See page 120.)

For the purpose of preserving the living and growing timber and promoting the younger growth on forest reservations, the Secretary of the Interior, under such rules and regulations as he shall prescribe, may cause to be designated and appraised so much of the dead, matured, or large growth of trees found upon such forest reservations as may be compatible with the utilization of the forests thereon, and may sell the same for not less than the appraised value in such quantities to each purchaser as he shall prescribe, to be used in the State or Territory in which such timber reservation may be situated, respectively, but not for export therefrom. (Before such sale shall take

place, notice thereof shall be given by the Commissioner of the General Land Office, for not less than sixty days, by publication in a newspaper of general circulation, published in the county in which the timber is situated, if any is therein published, and if not, then in a newspaper of general circulation published nearest to the reservation, and

^a Now Secretary of Agriculture. See act of Feb. 1, 1905 (33 Stat., 628), p. 105.

also in a newspaper of general circulation published at the capital of the State or Territory where such reservation exists);^a payments for such timber to be made to the receiver of the local land office of the district wherein said timber may be sold, under such rules and regulations as the Secretary of the Interior may prescribe; and the moneys arising therefrom shall be accounted for by the receiver of such land office to the Commissioner of the General Land Office, in a separate account, and shall be covered into the Treasury. Such timber, before being sold, shall be marked and designated, and shall be cut and removed under the supervision of some person appointed for that purpose by the Secretary of the Interior, not interested in the purchase or removal of such timber nor in the employment of the purchaser thereof. Such supervisor shall make report in writing to the Commissioner of the General Land Office and to the receiver in the land office in which such reservation shall be located of his doings in the premises.

Payments, how made. The Secretary of the Interior may permit, under regulations to be prescribed by him, the use of timber and stone found upon such reservations, free of charge, by bona fide settlers, miners, residents, and prospectors for minerals, for firewood, fencing, buildings, mining, prospecting, and other domestic purposes, as may be needed by such persons for such purposes; such timber to be used within the State or Territory, respectively, where such reservations may be located.

Cutting and removal. Nothing herein shall be construed as prohibiting the egress or ingress of actual settlers residing within the boundaries of such reservations, or from crossing the same to and from their property or homes; and such wagon roads and other improvements may be constructed thereon as may be necessary to reach their homes and to utilize their property under such rules and regulations as may be prescribed by the Secretary of the Interior. Nor shall anything herein prohibit any person from entering upon such forest reservations for all proper and lawful purposes, including that of prospecting, locating, and developing the mineral resources thereof: *Provided*, That such persons comply with the rules and regulations covering such forest reservations.

Use of timber, etc., by settlers, etc. The Secretary of the Interior may permit, under regulations to be prescribed by him, the use of timber and stone found upon such reservations, free of charge, by bona fide settlers, miners, residents, and prospectors for minerals, for firewood, fencing, buildings, mining, prospecting, and other domestic purposes, as may be needed by such persons for such purposes; such timber to be used within the State or Territory, respectively, where such reservations may be located.

Egress and ingress of settlers within reservations, etc. Nothing herein shall be construed as prohibiting the egress or ingress of actual settlers residing within the boundaries of such reservations, or from crossing the same to and from their property or homes; and such wagon roads and other improvements may be constructed thereon as may be necessary to reach their homes and to utilize their property under such rules and regulations as may be prescribed by the Secretary of the Interior. Nor shall anything herein prohibit any person from entering upon such forest reservations for all proper and lawful purposes, including that of prospecting, locating, and developing the mineral resources thereof: *Provided*, That such persons comply with the rules and regulations covering such forest reservations.

Prospecting, etc. The Secretary of the Interior may permit, under regulations to be prescribed by him, the use of timber and stone found upon such reservations, free of charge, by bona fide settlers, miners, residents, and prospectors for minerals, for firewood, fencing, buildings, mining, prospecting, and other domestic purposes, as may be needed by such persons for such purposes; such timber to be used within the State or Territory, respectively, where such reservations may be located.

Proviso. The Secretary of the Interior may permit, under regulations to be prescribed by him, the use of timber and stone found upon such reservations, free of charge, by bona fide settlers, miners, residents, and prospectors for minerals, for firewood, fencing, buildings, mining, prospecting, and other domestic purposes, as may be needed by such persons for such purposes; such timber to be used within the State or Territory, respectively, where such reservations may be located.

Compliance with rules. The Secretary of the Interior may permit, under regulations to be prescribed by him, the use of timber and stone found upon such reservations, free of charge, by bona fide settlers, miners, residents, and prospectors for minerals, for firewood, fencing, buildings, mining, prospecting, and other domestic purposes, as may be needed by such persons for such purposes; such timber to be used within the State or Territory, respectively, where such reservations may be located.

^aThe words in parentheses apply only to California, having been amended otherwise by act of June 6, 1900 (31 Stat., 661), which is quoted in full at p. 104.

That in cases^a in which a tract covered by an unperfected bona fide claim or by a patent is included within the limits of a public forest reservation, the settler or owner thereof may, if he desires to do so, relinquish the tract to the Government, and may select in lieu thereof a tract of vacant land open to settlement not exceeding in area the tract covered by his claim or patent; and no charge shall be made in such cases for making the entry of record or issuing the patent to cover the tract selected:

Proviso. *Provided further*, That in cases of unperfected claims the requirements of the laws respecting settlement, residence, improvements, and so forth, are complied with on the new claims, credit being allowed for the time spent on the relinquished claims.

The settlers residing within the exterior boundaries of such forest reservations, or in the vicinity thereof, may maintain schools and churches within such reservation, and for that purpose may occupy any part of the said forest reservation, not exceeding two acres for each schoolhouse and one acre for a church.

Schools and churches. The jurisdiction, both civil and criminal, over persons within such reservations shall not be affected or changed by reason of the existence of such reservations, except so far as the punishment of offenses against the United States therein is concerned; the intent and meaning of this provision being that the State wherein any such reservation is situated shall not, by reason of the establishment thereof, lose its jurisdiction, nor the inhabitants thereof their rights and privileges as citizens, or be absolved from their duties as citizens of the State.

Civil and criminal jurisdiction. All waters on such reservations may be used for domestic, mining, milling, or irrigation purposes, under the laws of the State wherein such forest reservations are situated, or under the laws of the United States and the rules and regulations established thereunder.

Waters. Upon the recommendation of the Secretary of the Interior, with the approval of the President, after sixty days' notice thereof, published in two papers of general circulation in the State or Territory wherein any forest reservation is situated, and near the said reservation, any public lands embraced within the limits of any forest reservation which, after due examination by personal inspection of a competent person appointed for that purpose by the Secretary of the Interior, shall be found

^aThis paragraph was amended by act of June 6, 1900 (31 Stat., 614), quoted in full, p. 104; and repealed, except for rights already established, by act of Mar. 3, 1905, quoted in full at p. 106.

better adapted for mining or for agricultural purposes than for forest usage, may be restored to the public domain. And any mineral lands in any forest reservation which have been or which may be shown to be such, and subject to entry under the existing mining laws of the United States and the rules and regulations applying thereto, shall continue to be subject to such location and entry, notwithstanding any provisions herein contained.

The President is hereby authorized at any time to modify any Executive order that has been or may hereafter be made establishing any forest reserve, and by such modification may reduce the area or change the boundary lines of such reserve, or may vacate altogether any order creating such reserve.

President may modify any Executive order, etc.

ACT OF JUNE 6, 1900 (31 STAT., 661).

Chapter two of the laws of the first session of the Fifty-fifth Congress, being an act entitled "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-eight, and for other purposes," approved June fourth, eighteen hundred and ninety-seven, be, and the same is hereby, amended by striking out the following words where the same appear in said act, commencing with the word "Before," in line thirty-six, on page thirty-five of volume thirty of the United States Statutes at Large, and ending with the word "exists," in the forty-third line of said volume and page, as follows: "Before such sale shall take place notice thereof shall be given by the Commissioner of the General Land Office, for not less than sixty days, by publication in a newspaper of general circulation published in the county in which the timber is situated, if any is therein published, and if not then in a newspaper of general circulation published nearest to the reservation, and also in a newspaper of general circulation published at the capital of the State or Territory where such reservation exists," and insert in lieu thereof the following:

"Before such sale shall take place notice thereof shall be given by the Commissioner of the General Land Office, for not less than thirty days, by publication in one or more newspapers of general circulation, as he may deem necessary, in the State or Territory where such reservation exists: *Provided, however,* That in cases of unusual emergency the Secretary of the Interior may, in the exercise of his discretion, permit the purchase of timber and cord wood in advance of advertisement of sale at rates of value approved by him and subject to payment of the full amount of the highest bid resulting from the

Public lands. Appraisal and sale of dead, etc., timber. Vol. 30, p. 36 amended.

Notice of sale.

Provisos.

Emergency, etc., sales in advance of advertisement.

usual advertisement of sale: *Provided further,* That he may, in his discretion, sell without advertisement, in quantities to suit applicants, at a fair appraisal, timber and cord wood not exceeding in value one hundred dollars stumpage: *And provided further,* That in cases in which advertisement

Private sale where bid unsatisfactory, etc.

is had and no satisfactory bid is received, or in cases in which the bidder fails to complete the purchase, the timber may be sold, without further advertisement, at private sale, in the discretion of the Secretary of the Interior, at not less than the appraised valuation, in quantities to suit purchasers: *And provided further,*

California forest reservations excepted.

That the provisions of this act shall not apply to existing forest reservations in the State of California, or to reservations that may be hereafter created within said State."

ACT OF FEBRUARY 1, 1905 (33 STAT., 628).

The Secretary of the Department of Agriculture shall, from and after the passage of this act, execute or cause to be executed all laws affecting public lands heretofore or hereafter reserved under the provisions of section twenty-four of the act entitled "An act to repeal the timber-culture laws, and for other purposes," approved March third, eighteen hundred and ninety-one, and acts supplemental to and amendatory thereof, after such lands have been so reserved, excepting such laws as affect the surveying, prospecting, locating, appropriating, entering, relinquishing, reconveying, certifying, or patenting of any of such lands.

SEC. 2. That pulp wood or wood pulp manufactured from timber in the district of Alaska may be exported therefrom.

SEC. 3. That forest supervisors and rangers shall be selected, when practicable, from qualified citizens of the States or Territories in which the said reserves, respectively, are situated.

SEC. 4. That rights of way for the construction and maintenance of dams, reservoirs, water plants, ditches, flumes, pipes, tunnels, and canals, within and across the forest reserves of the United States, are hereby granted to citizens and corporations of the United States for municipal or mining purposes, and for the purposes of the milling and reduction of ores, during the period of their beneficial use, under such rules and regulations as may be prescribed by the Secretary of the Interior, and subject to the laws of the State or Territory in which said reserves are respectively situated.

Transfers care of forest reserves to the Department of Agriculture.

Exportation from Alaska.

Forest supervisors and rangers.

Mining and municipal rights of way.

SEC. 5. That all money received from the sale of any products or the use of any land or resources of said forest reserves shall be covered into the Treasury of the United States and for a period of five years from the passage of this act shall constitute a special fund available, until expended, as the Secretary of Agriculture may direct, for the protection, administration, improvement, and extension of Federal forest reserves.

NOTE.—The Department of Agriculture and the Department of the Interior have concurred in the opinion that the above law divides the jurisdiction over forest reserves as follows: All grants of rights or privileges within forest reserves, which do not affect the title to the land or cloud the fee, are under the jurisdiction of the Secretary of Agriculture. All grants which dispose of title to or give an easement running with the land are under the jurisdiction of the Secretary of the Interior.

ACT OF JUNE 6, 1900 (31 STAT., 614).

That all selections of land made in lieu of a tract covered by an unperfected bona fide claim, or by a patent, included within a public forest reservation, as provided in the act of June fourth, eighteen hundred and ninety-seven, entitled "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-eight, and for other purposes," shall be confined to vacant surveyed nonmineral public lands which are subject to homestead entry not exceeding in area the tract covered by such claim or patent: *Provided*, That nothing herein contained shall be construed to affect the rights of those who, previous to October first, nineteen hundred, shall have delivered to the United States deeds for lands within forest reservations and make application for specific tracts of lands in lieu thereof.

ACT OF MARCH 3, 1905 (33 STAT., 1264).

The acts of June fourth, eighteen hundred and ninety-seven, June sixth, nineteen hundred, and March third, nineteen hundred and one, are hereby repealed so far as they provide for the relinquishment, selection, and patenting of lands in lieu of tracts covered by an unperfected bona fide claim or patent within a forest reserve, but the validity of contracts entered into by the Secretary of the Interior prior to the passage of this act shall not be impaired: *Provided*, That selections heretofore made in lieu of lands relinquished to the United States may be perfected and patents issue

therefor the same as though this act had not been passed, and if for any reason not the fault of the party making the same any pending selection is held invalid another selection for a like quantity of land may be made in lieu thereof.

ACT OF MARCH 3, 1899 (30 STAT., 1095).^a

Forestry agents, superintendents, and supervisors, and other persons employed under this appropriation, shall be selected by the Secretary of the Interior wholly with reference to their fitness and without regard to their political affiliations, and allowed per diem, subject to such rules and regulations as he may prescribe, in lieu of subsistence, at a rate not to exceed three dollars per day each, and actual necessary expenses for transportation, including necessary sleeping-car fares * * *: *Provided further*, That forest agents, superintendents, supervisors, and all other persons employed in connection with the administration and protection of forest reservations shall in all ways that are practicable, aid in the enforcement of the laws of the State or Territory in which said forest reservation is situated, in relation to the protection of fish and game.

ACT OF FEBRUARY 8, 1905 (33 STAT., 706).

In carrying out the provisions of the national irrigation law, approved June seventeenth, nineteen hundred and two, and in constructing works thereunder, the Secretary of the Interior is hereby authorized to use and to permit the use by those engaged in the construction of works under said law, under rules and regulations to be prescribed by him, such earth, stone, and timber from the public lands of the United States as may be required in the construction of such works, and the Secretary of Agriculture is hereby authorized to permit the use of earth, stone, and timber from the forest reserves of the United States for the same purpose, under rules and regulations to be prescribed by him.

ACT OF MARCH 3, 1905 (33 STAT., 872).

* * * * *
To enable the Secretary of Agriculture to experiment and to make and continue investigations and report on forestry, forest reserves, forest fires, and lumbering; to advise the owners of woodlands as to the proper care of the same; to investigate and test American timber and timber trees; to seek, through investigations and

^a Reenacted, except for the "per diem" provision, by clauses in all subsequent acts appropriating money for "protection and administration of forest reserves."

the planting of native and foreign species, suitable trees for the treeless regions; to erect necessary buildings: *Provided*, That the cost of any building erected shall not exceed five hundred dollars;

Administer forest reserves.

for all expenses necessary to protect, administer, improve, and extend the National forest reserves, and officials of the Forest Service designated by the Secretary of Agriculture shall, in all ways that are practicable, aid in the enforcement of the laws of the States or Territories in the prevention and extinguishment of forest fires and the protection of fish and game, and all persons employed in the forest reserve and national park service of the United States shall have authority to make arrests for the violation of the laws and regulations relating to the forest reserves and national parks, and any person so arrested shall be taken before the nearest United States commissioner, within whose jurisdiction the reservation or national park is located, for trial; and upon sworn information by any competent person any United States commissioner in the proper jurisdiction shall issue process for the arrest of any person charged with the violation of said laws and regulations; but nothing herein contained shall be construed as preventing the arrest by any officer of the United States, without process, of any person taken in the act of violating said laws and regulations.

Arrests by forest officers.

For ascertaining the natural conditions upon and for utilizing the National forest reserves—and the Secretary of Agriculture may, in his discretion, permit timber and other forest products cut or removed from the forest reserves of the United States, except the Black Hills Forest Reserve in South Dakota and the Forest Reserves in Idaho, to be exported from the State, Territory, or the District of Alaska, in which said reserves are respectively situated—for the employment of local and special fiscal and other agents, clerks, assistants, and other labor required in practical forestry, in the administration of forest reserves, and in conducting experiments and investigations in the city of Washington and elsewhere; and he may dispose of photographic prints at cost and ten per centum additional, and other property or materials under his charge in the same manner as provided by law for other bureaus; for collating, digesting, reporting, illustrating, and printing the results of such experiments and investigations; and for the purchase of all necessary supplies, apparatus, and office fixtures; for freight and express charges, and traveling and other necessary expenses.

Without warrant.

Exportation of forest reserve timber.

And the employees of the Forest Service outside of the city of Washington may, in the discretion of the Secretary of Agriculture, without additional expense to the Government, be granted leaves of absence not to exceed fifteen days in any one year.

Fifteen days' leave of absence.

ACT OF MARCH 3, 1899 (30 STAT., 1095).

Provided further, That any person who made actual, bona fide settlement and improvement and established residence thereon in good faith, for the purpose of acquiring a home, upon lands more valuable for agriculture than for any other purpose, within the boundaries of the Black Hills Forest Reservation, in the State of South Dakota, prior to September nineteen, eighteen hundred and ninety-eight, may enter, under the provisions of the homestead law, the lands embracing his or her improvements, not to exceed one hundred and sixty acres; and if the lands are so situated that the entry of a legal subdivision, according to existing law, will not embrace the improvements of such settler or claimant, he or she may make application to the surveyor-general of the State of South Dakota to have said tract surveyed at the expense of the claimant by metes and bounds and a plat made of the same and filed in the local and office, showing the land embraced in his original settlement which he desires to enter, not to exceed one hundred and sixty acres, and thereupon he shall be allowed to enter said land, as per said plat and survey, as a homestead; and the Secretary of the Interior shall make the necessary rules and regulations to carry this act into effect: *Provided*, That in any case where, upon investigation by a special agent of the Interior Department and after due and proper hearing, it shall be established that an entry interfered with the general water supply, or was detrimental in any way to the public interests, or infringed upon the rights and privileges of other citizens, the Secretary of the Interior shall have authority to cause said entry to be modified or amended or in his discretion to finally cancel the same.

Black Hills Forest reservation, S. Dak.

Certain settlers granted homestead entries.

Surveys.

Proviso. Not to prejudice public interests.

ACT OF JUNE 27, 1902 (32 STAT., 402).

Chippewa Indian lands.

Forester of Department of Agriculture to select 200,000 acres.

Provided further, That in cutting the timber on two hundred thousand acres of the pine lands, to be selected as soon as practicable by the Forester of the Department of Agriculture, with the approval of the Secretary of the Interior, on the following reservations, to wit,

Chippewas of the Mississippi, Leech Lake, Cass Lake, and Win-
 nibigoshish, which said lands so selected shall be known and hereinafter described as "for-
 estry lands," the purchaser shall be required to leave standing
 five per centum of the pine timber thereon for
 the purpose of reforestation, as hereinafter
 provided, said five per centum to be selected and reserved in such
 manner and under such rules and regulations
 as may be prescribed by the Forester of the
 Department of Agriculture and approved by
 the Secretary of the Interior: *Provided further,*
 That there shall be reserved from sale or set-
 tlement the timber and land on the islands in Cass Lake and in
 Leech Lake, and not less than one hundred and sixty acres at the
 extremity of Sugar Point, on Leech Lake, and the peninsula
 known as Pine Point, on which the new Leech Lake Agency is
 now located, which peninsula approximates seven thousand acres,
 and in addition thereto ten sections in area on said reservations
 last aforesaid, to be selected by the Forester of the Department of
 Agriculture, with the approval of the Secretary of the Interior, in
 lots not less than 320 acres each in contiguous areas; and noth-
 ing herein contained shall interfere with the
 allotments to the Indians heretofore and here-
 after made. The islands in Cass and Leech
 lakes, and the land reserved at Sugar Point and Pine Point penin-
 sula shall remain as Indian land under the control of the Depart-
 ment of the Interior.

Each and every purchaser of timber hereunder shall be re-
 quired and shall enter into an agreement to cut
 clean and remove all merchantable pine
 timber, whether green or dead, standing or
 fallen, on each tract, subdivision or lot
 covered by his purchase, except on the forestry lands as herein-
 before provided, within such time as the Sec-
 retary of the Interior may direct, and under
 such rules and regulations as he may prescribe,
 and to cut no timber other than pine, except
 such as may be absolutely necessary in the
 economical conduct of the logging operations
 and to burn or remove a sufficient amount of the
 tops and refuse to prevent danger from fire to
 the timber left standing, under rules and regulations to be pre-
 scribed by the Secretary of the Interior, and,
 when practicable, to employ Indian labor in
 the cutting, handling, and manufacture of said timber. * * *

After the merchantable pine timber on any tract, subdivision, or
 lot shall have been removed, such tract, sub-
 division, or lot shall, except on the forestry
 lands aforesaid, for the purposes of this act,
 be classed and treated as agricultural lands,

and shall be opened to homestead entry in accordance with the
 provisions of this act: *Provided,* That on the forestry lands afore-
 said, as soon as the merchantable pine timber
 now thereon shall have been removed from
 any tract, subdivision, or lot, as herein pro-
 vided, such tract, subdivision, or lot shall, without further act,
 resolution, or proclamation, forthwith become and be part of a
 forest reserve, the same as though set apart by proclamation of
 the President in accordance with the act of Congress approved
 March 3, 1891, and subsequent laws amending and supplementing
 the same, and shall be managed and protected in accordance with
 their provisions and the rules and regulations made and to be
 made in furtherance thereof: *And provided further,* That on said
 forestry lands aforesaid, said pine timber
 shall be cut clean, except as to the five per
 centum as hereinbefore provided, and re-
 moved under the supervision and direction
 of the Forester of the Department of Agriculture, in accordance
 with rules and regulations to be prescribed by him and approved
 by the Secretary of the Interior, and the said Forester shall have
 power at all times to patrol and protect said lands and forests, and
 to enforce all rules and regulations made by him as aforesaid.

*Forestry lands to be
 forest reserve.*

*Cutting on forestry
 lands under rules of
 Forester.*

*Forester to select
 agricultural land.*

*25,000 acres to be-
 come part of the forest
 reserve.*

but shall become and be a part of the forest reserve hereinbefore
 created.

There shall be appointed by the Secretary of the Interior one
 superintendent and such assistants as he may deem necessary,
 whose compensation shall be fixed by the Sec-
 retary of the Interior, and for the superintend-
 ent shall not exceed six dollars per day, and
 for the assistants shall not exceed four dollars
 per day each, while actually employed, and whose duties shall be

to supervise the cutting and scaling of the timber sold under the provisions of this act, and to see that the rules and regulations prescribed by the Forester and the Secretary of the Interior are complied with, and generally to perform such services in and about the sale of the pine timber on said lands, and the cutting of the same therefrom, and the care and protection of all timber on said lands, as may be required of them by said Forester and said Secretary.

* * * * *

All the expenses incurred in carrying out the provisions of this act, as to the examining and listing of said lands, and the selling, cutting, and scaling of said timber, shall be paid by the Secretary of the Interior out of the proceeds of the sale of said timber: *Provided*, That no expense arising out of the forestry provision shall be charged to the Indians.

ACT OF FEBRUARY 7, 1905 (33 STAT., 702).

Part of the Yosemite National Park added to the Sierra Forest Reserve.

The tracts of land in the State of California known and described as follows:

* * * * *

are hereby reserved and withdrawn from settlement, occupancy, or sale under the laws of the United States, and set apart as reserve forest lands, subject to all the provisions of the act of Congress approved October first, eighteen hundred and ninety, entitled "An act to set apart certain tracts of land in the State of California as forest reservations:" *Provided*, That all those tracts or parcels of land described in section one of the said act of October first, eighteen hundred and ninety, and not included within the metes and bounds of the land above described, be, and the same are hereby, included in and made part of the Sierra Forest Reserve: *And provided further*, That the Secretary of the Interior may require the payment of such price as he may deem proper for privileges on the land herein segregated from the Yosemite National Park and made a part of the Sierra Forest Reserve

Secretary of the Interior authorized to charge.

accorded under the act approved February fifteenth, nineteen hundred and one, relating to rights of way over certain parks, reservations, and other lands, and other acts concerning rights of way over public lands; and the moneys received from the privileges accorded on the lands herein segregated and included in the Sierra Forest Reserve shall be paid into the Treasury of the United States, to be expended, under the direction of the Secretary of the Interior, in the management, improvement, and protection of the

forest lands herein set aside and reserved, which shall hereafter be known as the "Yosemite National Park."

ACT OF MARCH 3, 1905 (33 STAT., 1070).

That before the opening of the Uintah Indian Reservation the President is hereby authorized to set apart and reserve as an addition to the Uintah Forest Reserve, subject to the laws, rules, and regulations governing forest reserves, and subject to the mineral rights granted by the act of Congress of May twenty-seventh, nineteen hundred and two, such portion of the lands within the Uintah Indian Reservation as he considers necessary, and he may also set apart and reserve any reservoir site or other lands necessary to conserve and protect the water supply for the Indians or for general agricultural development, and may confirm such rights to water thereon as have already accrued: *Provided*, That the proceeds from any timber on such addition as may with safety be sold prior to June thirtieth, nineteen hundred and twenty, shall be paid to said Indians in accordance with the provisions of the act opening the reservation.

RIGHTS AND PRIVILEGES WITHIN FOREST RESERVES.

ACT OF MARCH 3, 1891 (26 STAT., 1101).^a

* * * * *

SEC. 18. That the right of way through the public lands and reservations of the United States is hereby granted to any canal or ditch company formed for the purpose of irrigation and duly organized under the laws of any State or Territory, which shall have filed, or may hereafter file, with the Secretary of the Interior a copy of its articles of incorporation, and due proofs of its organization under the same, to the extent of the ground occupied by the water of the reservoir and of the canal and its laterals, and fifty feet on each side of the marginal limits thereof; also the right to take, from the public lands adjacent to the line of the canal or ditch, material, earth, and stone necessary for the construction of such canal or ditch: *Provided*, That no such right of way shall be so located as to interfere with the proper occupation by the Government of any such reservation, and all maps of location shall be subject to the approval of the department

^aThis act was amended by act of May 11, 1898, sec. 2 (30 Stat., 404), quoted in full at p. 115.

of the Government having jurisdiction of such reservation, and the privilege herein granted shall not be construed to interfere with the control of water for irrigation and other purposes under authority of the respective States or Territories.

SEC. 19. That any canal or ditch company desiring to secure the benefits of this act shall, within twelve months after the location of ten miles of its canal, if the same be upon surveyed lands, and if upon unsurveyed lands, within twelve months after the survey thereof by the United States, file with the register of the land office for the district where such land is located a map of its canal or ditch and reservoir; and upon the approval thereof by the Secretary of the Interior the same shall be noted upon the plats in said office, and thereafter all such lands over which such rights of way shall pass shall be disposed of subject to such right of way. Whenever any person or corporation, in the construction of any canal, ditch, or reservoir, injures or damages the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage.

SEC. 20. That the provisions of this act shall apply to all canals, ditches, or reservoirs, heretofore or hereafter constructed, whether constructed by corporations, individuals, or association of individuals, on the filing of the certificates and maps herein provided for. If such ditch, canal, or reservoir, has been or shall be constructed by an individual or association of individuals, it shall be sufficient for such individual or association of individuals to file with the Secretary of the Interior, and with the register of the land office where said land is located, a map of the line of such canal, ditch, or reservoir, as in case of a corporation, with the name of the individual owner or owners thereof, together with the articles of association, if any there be. Plats heretofore filed shall have the benefits of this act from the date of their filing, as though filed under it: *Provided*, That if any section of said canal, or ditch, shall not be completed within five years after the location of said section, the rights herein granted shall be forfeited as to any uncompleted section of said canal, ditch, or reservoir, to the extent that the same is not completed at the date of the forfeiture.

SEC. 21. That nothing in this act shall authorize such canal or ditch company to occupy such right of way except for the purpose of said canal or ditch, and then only so far as may be necessary for the construction, maintenance, and care of said canal or ditch.

ACT OF MAY 11, 1898 (30 STAT., 404).

* * * * *
SEC. 2. That the rights of way for ditches, canals, or reservoirs heretofore or hereafter approved under the provisions of sections eighteen, nineteen, twenty, and twenty-one of the act entitled "An act to repeal timber-culture laws, and for other purposes," approved March third, eighteen hundred and ninety-one, may be used for purposes of a public nature; and said rights of way may be used for purposes of water transportation, for domestic purposes, or for the development of power, as subsidiary to the main purpose of irrigation.

ACT OF JANUARY 21, 1895 (28 STAT., 635).^a

The Secretary of the Interior be, and hereby is, authorized and empowered, under general regulations to be fixed by him, to permit the use of the right of way through the public lands of the United States, not within the limits of any park, forest, military or Indian reservation, for tramroads, canals, or reservoirs, to the extent of the ground occupied by the water of the canals and reservoirs and fifty feet on each side of the marginal limits thereof; or fifty feet on each side of the center line of the tramroad, by any citizen or any association of citizens of the United States engaged in the business of mining or quarrying or of cutting timber and manufacturing lumber.

ACT OF MAY 14, 1896 (29 STAT., 120).

The act entitled "An act to permit the use of the right of way through the public lands for tramroads, canals, and reservoirs, and for other purposes," approved January twenty-first, eighteen hundred and ninety-five * * * is hereby amended by adding thereto the following:

SEC. 2. That the Secretary of the Interior be, and hereby is, authorized and empowered, under general regulations to be fixed by him, to permit the use of right of way to the extent of twenty-five feet, together with the use of necessary ground, not exceeding forty acres, upon the public lands and forest reservations of the United States, by any citizen or association of citizens of the United States, for the purposes of generating, manufacturing, or distributing electric power.

^a Amended by act of May 14, 1896 (29 Stat., 120), quoted below.

ACT OF MARCH 3, 1899 (30 STAT., 1233).

In the form provided by existing law, the Secretary of the Interior may file and approve surveys and plats of any right of way for a wagon road, railroad, or other highway over and across any forest reservation or reservoir site when in his judgment the public interests will not be injuriously affected thereby.

ACT OF FEBRUARY 23, 1899 (30 STAT., 908).

The Secretary of the Interior * * * is hereby authorized, under such rules and regulations as he from time to time may make, to rent or lease to responsible persons or corporations applying therefor suitable spaces and portions of ground near, or adjacent to, mineral, medicinal, or other springs, within any forest reserves established within the United States, or hereafter to be established, and where the public is accustomed or desires to frequent, for health or pleasure, for the purpose of erecting upon such leased ground sanitariums or hotels, to be opened for the reception of the public. And he is further authorized to make such regulations, for the convenience of people visiting such springs, with reference to spaces and locations, for the erection of tents or temporary dwelling houses to be erected or constructed for the use of those visiting such springs for health or pleasure. And the Secretary of the Interior is authorized to prescribe the terms and duration and the compensation to be paid for the privileges granted under the provisions of this act.

Sec. 2. All funds arising from the privileges granted hereunder shall be covered into the Treasury of the United States as a special fund, to be expended in the care of public forest reservations.

ACT OF FEBRUARY 15, 1901 (31 STAT., 790).

The Secretary of the Interior * * * is authorized and empowered, under general regulations to be fixed by him, to permit the use of rights of way through the public lands, forest and other reservations of the United States, and the Yosemite, Sequoia, and General Grant national parks, California, for electrical plants, poles, and lines for the generation and distribution of electrical power, and for telephone and telegraph purposes, and for canals, ditches, pipes and pipe lines, flumes, tunnels, or other water conduits, and for water plants, dams, and reservoirs used to promote irrigation or mining or quarrying, or the manufacturing or cutting

of timber and lumber, or the supplying of water for domestic, public, or any other beneficial uses to the extent of the ground occupied by such canals, ditches, flumes, tunnels, reservoirs, or other water conduits or water plants, or electrical or other works permitted hereunder, and not to exceed fifty feet on each side of the marginal limits thereof, or not to exceed fifty feet on each side of the center line of such pipes and pipe lines, electrical, telegraph, and telephone lines and poles, by any citizen, association, or corporation of the United States, where it is intended by such to exercise the use permitted hereunder or any one or more of the purposes herein named: *Provided*, That such permits shall be allowed within or through any of said parks or any forest, military, Indian, or other reservation only upon the approval of the chief officer of the Department under whose supervision such park or reservation falls and upon a finding by him that the same is not incompatible with the public interest: *Provided further*, That all permits given hereunder for telegraph and telephone purposes shall be subject to the provisions of title sixty-five of the Revised Statutes of the United States, and amendments thereto, regulating rights of way for telegraph companies over the public domain: *And provided further*, That any permission given by the Secretary of the Interior under the provisions of this act may be revoked by him or his successor in his discretion, and shall not be held to confer any right, or easement, or interest in, to, or over any public land, reservation, or park.

Licenses must not be incompatible with the public interest.

Telegraph and telephone.

Licenses revocable and confer no easement.

NOTE.—For mining and municipal rights of way see act of February 1, 1905 (33 Stat., 628), on page 105 of this appendix.

TRESPASS AND FIRE LAWS.

REVISED STATUTES, SEC. 2461.

SEC. 2461. If any person shall cut, or cause or procure to be cut, or aid, assist, or be employed in cutting, or shall wantonly destroy, or cause or procure to be wantonly destroyed, or aid, assist, or be employed in wantonly destroying any live-oak or red-cedar trees, or other timber standing, growing, or being on any lands of the United States which, in pursuance of any law passed, or hereafter to be passed, have been reserved or purchased for the use of the United States, for supplying or furnishing there-

from timber for the Navy of the United States; or if any person shall remove, or cause or procure to be removed, or aid, or assist, or be employed in removing from any such lands which have been reserved or purchased, any live-oak or red-cedar trees, or other timber, unless duly authorized so to do, by order, in writing, of a competent officer, and for the use of the Navy of the United States; or if any person shall cut, or cause or procure to be cut, or aid, or assist, or be employed in cutting any live-oak or red-cedar trees, or other timber on, or shall remove, or cause or procure to be removed, or aid, or assist, or be employed in removing any live-oak or red-cedar trees or other timber, from any other lands of the United States, acquired, or hereafter to be acquired, with intent to export, dispose of, use, or employ the same in any manner whatsoever, other than for the use of the Navy of the United States; every such person shall pay a fine not less than triple the value of the trees or timber so cut, destroyed, or removed, and shall be imprisoned not exceeding twelve months.

Penalty.

NOTE.—The penalty here imposed applies to all timber on public lands.

Rulings with regard to timber trespass on public land.

U. S. v. Briggs, 9 How., 351.

Homestead settlers may sell timber cut for cultivation purposes, but not otherwise.

Shiver v. U. S., 159 U. S., 491.

Stone v. U. S., 167 U. S., 178.

Ignorance of the law is no defense.

U. S. v. Murphy, 32 Fed. Rep., 376.

It is error for the court to instruct the jury that the Government has always tacitly permitted the pioneer settlers to cut timber from the public domain.

U. S. v. Mock, 149 U. S., 273.

Persons may not carry off timber or other property from public lands and sell it for profit.

U. S. v. Mock, 149 U. S., 273.

ACT OF JUNE 3, 1878 (20 STAT., 88).

SEC. 1. All citizens of the United States and other persons, bona fide residents of the State of Colorado, or Nevada, or either of the Territories of New Mexico, Arizona, Utah, Wyoming, Dakota, Idaho, or Montana, and all other mineral districts of the United States, shall be, and are hereby, authorized and permitted to fell and remove, for building, agricultural, mining, or other domestic purposes, any timber or other trees growing or being on the public lands, said lands being mineral, and not subject to entry under existing laws of the United States, except for mineral entry, in either of said States, Territories, or districts of which such citizens

May cut timber in mineral districts.

or persons may be at the time bona fide residents, subject to such rules and regulations as the Secretary of the Interior may

Secretary of the Interior to regulate.
Not to extend to railroads.

prescribe for the protection of the timber and of the undergrowth growing upon such lands, and for other purposes: *Provided*, The provisions of this act shall not extend to railroad corporations.

SEC. 2. It shall be the duty of the register and the receiver of any local land office in whose district any mineral land may be

Duty of land officers.
situated to ascertain from time to time whether any timber is being cut or used upon any such lands, except for the purposes authorized by

this act, within their respective land districts; and, if so, they shall immediately notify the Commissioner of the General Land Office

Trespass.
of that fact; and all necessary expenses incurred in making such proper examinations shall be

paid and allowed such register and receiver in making up their next quarterly accounts.

SEC. 3. Any person or persons who shall violate the provisions of this act, or any rules and regulations in pursuance thereof made

by the Secretary of the Interior, shall be

Penalty.
deemed guilty of a misdemeanor, and, upon

conviction, shall be fined in any sum not exceeding five hundred dollars, and to which may be added imprisonment for any term not exceeding six months.

ACT OF JUNE 3, 1878 (20 STAT., 90).

* * * * *

SEC. 4. After the passage of this act it shall be unlawful to cut, or cause or procure to be cut, or wantonly destroy, any timber

growing on any lands of the United States [in any public-land States], or remove, or caused to be removed, any timber from said public

lands with intent to export or dispose of the same; and no owner, master, or consignee of

any vessel, or owner, director, or agent of any railroad, shall knowingly transport the same,

or any lumber manufactured therefrom; and any person violating the provisions of this section shall be guilty of a misdemeanor, and,

on conviction, shall be fined for every such offense a sum not less than one hundred nor more than one thousand dollars:

Provided, That nothing herein contained shall prevent any miner or agriculturist from clearing his land in the ordinary working of his

mining claim, or preparing his farm for tillage, or from taking the timber necessary to support his improvements, or the taking of timber for the use of the

Farmers, miners, and officers of the U. S. allowed proper timber use.

United States; and the penalties herein provided shall not take effect until ninety days after the passage of this act.

NOTE.—The words in brackets in above section are inserted in place of the words "in said States and Territory," as ordered by amending act of Aug. 4, 1892.

SEC. 5. Any person prosecuted in said States and Territory for violating section 2461 of the Revised Statutes of the United States who is not prosecuted for cutting timber for export from the United States, may be relieved from further prosecution and liability therefor upon payment, into the court wherein said action is pending, of the sum of two dollars and fifty cents per acre for all lands on which he shall have cut or caused to be cut timber, or removed or caused to be removed the same: *Provided*, That nothing contained in this section shall be construed as granting to the person hereby relieved the title to said lands for said payment; but he shall have the right to purchase the same upon the same terms and conditions as other persons, as provided hereinbefore in this act: *And further provided*, That all moneys collected under this act shall be covered into the Treasury of the United States.

Compromise for timber cut for use in same State or Territory.

No title granted to party relieved.

Fines to be covered into U. S. Treasury.

R. S., sec. 4751, repealed for public land States.

Amendment, Aug. 4, 1892, c. 375, s. 2, v. 27, p. 318.

And section 4751 of the Revised Statutes is hereby repealed, so far as it relates to the public land States.

NOTE 1.—This section relieves the trespasser from criminal but not from civil liability at common law.

U. S. v. Scott, 39 Fed. Rep., 900.

NOTE 2.—The other sections of this act, which is known as the "Timber and stone act," provide for purchase of timber from the public domain.

ACT OF JUNE 4, 1888 (25 STAT., 166).

Section fifty-three hundred and eighty-eight of the Revised Statutes of the United States be amended so as to read as follows: "Every person who unlawfully cuts, or aids or is employed in unlawfully cutting, or wantonly destroys or procures to be wantonly destroyed, any timber standing upon the land of the United States which, in pursuance of law, may be reserved or purchased for military or other purposes, or upon any Indian reservation, or lands belonging to or occupied by any tribe of Indians under authority of the United States, shall pay a fine of not more than five hundred dollars or be imprisoned not more than twelve months, or both, in the discretion of the court."

Penalty for trespass.

ACT OF MAY 5, 1900 (31 STAT., 169).

SEC. 1. Any person who shall willfully or maliciously set on fire any timber, underbrush, or grass upon the public domain, or shall * * * leave or suffer fire to burn unattended near any timber or other inflammable material, shall be deemed guilty of a misdemeanor, and upon conviction thereof in any district court of the United States having jurisdiction of the same, shall be fined in a sum not more than five thousand dollars or be imprisoned for a term of not more than two years, or both.

Setting fires to timber on the public domain. Feb. 24, 1897, c. 313, v. 29, p. 594, amended by May 5, 1900, c. 349, v. 31, p. 169.

Penalty.

NOTE.—Act of Feb. 24, 1897, is amended by the above section by omitting, where indicated by stars, the words "carelessly or negligently."

SEC. 2. Any person who shall build a * * * fire in or near any forest, timber, or other inflammable material upon the public domain shall, before * * * leaving said fire, totally extinguish the same. Any person failing to do so shall be deemed guilty of a misdemeanor, and upon conviction thereof in any district court of the United States having jurisdiction of the same, shall be fined in a sum not more than one thousand dollars, or be imprisoned for a term not more than one year, or both.

Leaving fire unextinguished on the public domain.

Penalty.

NOTE.—Act of Feb. 24, 1897, is amended by the above section by omitting, where indicated by stars, the words "camp fire or other" and "breaking camp or" respectively.

SEC. 3. That in all cases arising under this act the fines collected shall be paid into the public school fund of the county in which the lands where the offense was committed are situated.

NOTE 1.—By virtue of power granted to the Secretary of the Interior under act of June 3, 1878 (20 Stat.

at Large, 88), said Secretary provides, in his "rules and regulations governing the use of timber on the public mineral lands" (29 L. D., 571): "Sec. 9. Persons felling or removing timber under the provisions of this act must utilize all of each tree cut that can be profitably used, and must dispose of the tops, brush, and other refuse in such manner as to prevent the spread of forest fires."

NOTE 2.—Act of June 4, 1888, amending Revised Statutes, sec. 5388, provides penalty for unlawful destruction of timber on reservations of all kinds.

Disposal of tops, brush, and other refuse.

NOTE 3.—In addition to the wanton destruction of public timber by fire or otherwise being a criminal offense, the United States has all the common law civil remedies, whether for the prevention or redress of injuries, which private individuals possess.

NOTE 4.—Fires on forest reserves are provided against in act of June 4, 1897 (30 Stat., 34), and the regulations of the Secretary of Agriculture, page 65.

ACT OF JANUARY 24, 1905 (33 STAT., 614).

The President of the United States is hereby authorized to designate such areas in the Wichita Forest Reserve as should, in his opinion, be set aside for the protection of game animals and birds and be recognized as a breeding place therefor.

SEC. 2. That when such areas have been designated as provided for in section one of this act, hunting, trapping, killing, or capturing of game animals and birds upon the lands of the United States within the limits of said areas shall be unlawful, except under such regulations as may be prescribed from time to time, by the Secretary of Agriculture; and any person violating such regulations or the provisions of this act shall be deemed guilty of a misdemeanor, and shall, upon conviction in any United States court of competent jurisdiction, be fined in a sum not exceeding one thousand dollars or be imprisoned for a period not exceeding one year, or shall suffer both fine and imprisonment, in the discretion of the court.

SEC. 3. That it is the purpose of this act to protect from trespass the public lands of the United States and the game animals and birds which may be thereon, and not to interfere with the operation of the local game laws as affecting private, State, or Territorial lands.

Forest officers empowered to arrest.

All persons employed in the forest reserve and national park service of the United States shall have authority to make arrests for the violation of the laws and regulations relating to the forest reserves and national parks, and any person so arrested shall be taken before the nearest United States commissioner, within whose jurisdiction the reservation or national park is located, for trial; and upon sworn information by any competent person any United States commissioner in the proper jurisdiction shall issue process for the arrest of any person charged with the violation of said laws

and regulations; but nothing herein contained shall be construed as preventing the arrest by any officer of the United States, without process, of any person taken in the act of violating said laws and regulations.

GENERAL DECISIONS.

RESTRAINT OF UNAUTHORIZED GRAZING IN FOREST RESERVATIONS.

UNITED STATES *v.* DASTERVIGNES ET AL.

(Circuit court, N. D. California. August 18, 1902. 118 Fed. Rep., 199.)

1. FORESTS—REGULATION—RULES—DELEGATION OF LEGISLATIVE AUTHORITY.

The act of Congress approved June 4, 1897 (30 Stat., 35), authorized the Secretary of the Interior, in his superintendence of all forest reservation, to "make such rules and regulations and establish such service as will insure the objects of such reservation, namely, to regulate their occupancy and use and to preserve the forests thereon from destruction." *Held*, that the authority given the Secretary is not unconstitutional as a delegation of legislative authority.

2. SAME—USE OF PUBLIC LANDS.

The pasturing of sheep on the Stanislaus Forest Reservation having been forbidden by rule of the Secretary of the Interior under authority of act June 4, 1897 (30 Stat., 35), user can not give a right of pasturage there.

3. SAME—USER.

Inasmuch as laches can not be invoked against the Government, user of Government lands for pasturage gives no right so to do.

4. SAME—RESTRAINING USE—BILL—ALLEGATIONS.

A bill seeking to restrain defendants from pasturing sheep on a certain forest reservation alleged that defendants drove several bands of sheep upon the reservation. *Held*, that a demurrer on the ground that there was a misjoinder of defendants was of no merit, since, while it did not appear that the defendants committed several acts of trespass, it appeared there was a joint offense, and, even if the acts were several, they might all be included in one equitable action, the law and testimony applicable to each defendant being the same.

5. SAME—ALLEGATIONS—DAMAGES.

Where a bill to restrain the pasurage of sheep on a certain forest reservation alleged that the grasses, herbage, and undergrowth were injnred by the tramping, traveling, and driving of the sheep, the allegations as to damage were sufficient to warrant continuance of a restraining order pendente lite.

DASTERVIGNES ET AL. v. UNITED STATES.

(Circuit court of appeals, ninth circuit. March 2, 1903. 122 Fed. Rep., 80.)

1. CONSTITUTIONAL LAW—DELEGATION OF LEGISLATIVE POWER—ACT AUTHORIZING REGULATIONS FOR FOREST RESERVATIONS.

The provisions of the sundry civil appropriation act of June 4, 1897, relating to forest reservations (30 Stat., 35 [U. S. Comp. St., 1901, p. 1540]), which authorizes the Secretary of the Interior to "make such rules and regulations and establish such service as will insure the objects of such reservations, namely, to regulate their occupancy and use and to preserve the forests thereon from destruction," and which itself prescribes the penalty for violation of such regulations, is not unconstitutional as delegating legislative power to an administrative officer, but is a valid delegation of power to make administrative regulations in relation to details necessary to carry out the purpose of the act.

2. FOREST RESERVATIONS—VALIDITY OF REGULATIONS—EXCLUSION OF SHEEP.

Rule 13, made and promulgated by the Secretary pursuant to such authority, which prohibits the pasturing of sheep and goats on public lands in the forest reservation, except in cases where permits for their limited grazing may be granted by the land department with the approval of the Secretary, is a proper and legitimate exercise of the authority conferred, which gives the Secretary the right to exclude from the reservations any class of live stock found to be destructive of the purpose for which they were created; and such rule can not be said to create an unjust or illegal discrimination against the owners of the sheep, which constitute a class of live stock differing from any other in respect to pasturage, and which has uniformly been recognized as a proper subject for special legislation and regulation.

3. SAME—INJUNCTION AGAINST PASTURAGE OF SHEEP—GROUNDS.

A bill filed by the United States to enjoin the pasturage of sheep in a forest reservation, in violation of the regulations

prescribed by the Secretary of the Interior, alleged that the sheep pastured within the reservation were committing great and irreparable injury to the public lands therein, and to the undergrowth, timber, and water supply. Affidavits filed in support of such allegations recited that the sheep of defendants destroyed undergrowth, young and growing trees and seedlings, and ate and destroyed the roots of the vegetation and grasses, leaving the ground bare and subject to disastrous washings by the rains, to the irreparable injury of the reservation. *Held*, that such allegation and showing constituted a sufficient ground for the granting of a preliminary injunction.

EQUITY—SUFFICIENCY OF BILL—MULTIFARIOUSNESS.

A bill by the United States against a number of defendants, to enjoin them from pasturing sheep in a forest reservation, is not subject to the objection of misjoinder and multifariousness where it alleges that defendants are pasturing two bands of sheep in the reservation, and contains no averments which show or indicate any separate or distinct rights or different interests as between the several defendants.

(See also *United States v. Tygh Valley Land and Live Stock Co.*; 6 Fed. Rep., 693.)

DEPARTMENT OF JUSTICE,
Washington, D. C., November 17, 1898.

THE SECRETARY OF THE INTERIOR.

SIR: Section 5388 of the Revised Statutes, as amended by the act of June 4, 1888 (25 Stat., 166), provides as follows:

Every person who unlawfully cuts, or aids or is employed in unlawfully cutting, or wantonly destroys or procures to be wantonly destroyed, any timber standing upon the land of the United States which, in pursuance of law, may be reserved or purchased for military or other purposes, or upon any Indian reservation, or lands belonging to or occupied by any tribe of Indians under authority of the United States, shall pay a fine of not more than five hundred dollars or be imprisoned not more than twelve months, or both, in the discretion of the court.

The act of June 4, 1897, entitled "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1898, and for other purposes," provides (28 Stat., 5):

The Secretary of the Interior shall make provisions for the protection against destruction by fire and depredations upon the public forests and forest reservations which may have been

set aside or which may be hereafter set aside under the said act of March 3, 1891, and which may be continued; and he may make such rules and regulations and establish such service as will insure the objects of such reservations, namely, to regulate their occupancy and use and to preserve the forests thereon from destruction; and any violations of the provisions of this act or such rules and regulations shall be punished as is provided for in the act of June 4, 1888, amending section 5388 of the Revised Statutes of the United States.

Under the authority thus conferred, the Secretary of the Interior, on June 30, 1897, promulgated certain rules and regulations for the purpose of regulating the occupancy and use of the forest reservations and to preserve the forests thereon from destruction, among which was the following:

13. The pasturing of live stock on the public lands in forest reservations will not be interfered with, so long as it appears that injury is not being done to the forest growth, and the rights of others are not thereby jeopardized. The pasturing of sheep is, however, prohibited in all forest reservations, except those in the States of Oregon and Washington, for the reason that sheep grazing has been found injurious to the forest cover, and therefore of serious consequence in regions where the rainfall is limited. The exception in favor of the States of Oregon and Washington is made because the continuous moisture and abundant rainfall of the Cascade and Pacific coast ranges make rapid renewal of herbage and undergrowth possible, etc.

In view of the foregoing, you request my opinion whether a criminal prosecution will lie to punish a person who grazes sheep in a forest reservation in violation of the regulation quoted.

I recognize the existence of the salutary rule that Congress can not delegate its legislative power so as to authorize an administrative officer, by the adoption of regulations, to create an offense and prescribe its punishment. But here the statute proclaims the punishment for an offense which, in general terms, is defined by law, the regulation dealing only with a matter of detail and administration necessary to carry into effect the object of the law. The protection of the public forest is entrusted to the Secretary of the Interior. Section 5388 makes it an offense, punishable by fine and imprisonment, for any person wantonly to destroy any timber on a public reservation. In furtherance of this policy the act of June 4, 1897, directs the Secretary to make provision for the protection of the forests, and authorizes him to regulate the use and occupancy of the forest reservations and to preserve the forests thereon from destruction, making for such purpose proper rules and regulations. Any violation of such rules and regulations is, by the statute, made an offense, punishable as provided in section 5388.

By this law the control of the occupancy and use of these reservations is handed over to the Secretary for the purpose of preserving the forests thereon, and any occupancy or use in violation of the rules and regulations adopted by him is made punishable criminally. It seems to me Congress has a right to do this. Suppose Congress had provided that the occupation or use of a forest reservation by any person, without permission of the Secretary, should be a misdemeanor. Would not this be a valid exercise of legislative power? The present statute does no more. The regulation is reasonable and necessary. It restrains no one in the enjoyment of any natural or legal right. To use the language of Mr. Chief Justice Fuller in *In re Kollock* (165 U. S., 526, 533):

The regulation was in execution of, or supplementary to, but not in conflict with, the law itself, and was specifically authorized thereby in effectuation of the legislation which created the offence.

Your question, therefore, is answered in the affirmative.

Very respectfully,

JOHN K. RICHARDS,
Solicitor-General.

Approved:

JOHN W. GRIGGS,
Attorney-General.

JOSEPH DENT v. THE UNITED STATES.

(Supreme court of Arizona. 76 Pac. Rep., 455.)

Appeal from the district court for the fourth judicial district, before Justice R. E. Sloan.

On rehearing.

The appellant was convicted of the crime of pasturing sheep upon the public lands in a forest reservation in violation of the rules of the Secretary of the Interior, promulgated under authority of the act of Congress of June 4, 1897 (30 Stat. L., 35), which act provides that any violation of such rules shall be punished by fine or imprisonment. The former opinion of the court will be found in 71 Pac., 920.

Opinion by Kent, C. J.

A rehearing having been granted at this term of court, this case has been again argued by counsel. Since we rendered our decision at a former term, the case of the United States v. Dastervignes (122 Fed., 30) has been reported. In that case the circuit court of appeals for the ninth circuit has held that the act in question did not delegate legislative power to the Secretary and was not unconstitutional. Inasmuch as under the act creating the circuit

courts of appeal such court exercises appellate jurisdiction over this court in criminal cases, such as the one at bar, we feel that a decision of that court, although made in a civil and not a criminal case, expressly holding that the act in question is constitutional and a valid delegation of power, is binding upon us in this case; and if it be true that inasmuch as the sole question involved in this case is the constitutionality of the act, an appeal will not lie in this case from our decision to the circuit court of appeals—a question which it is not proper for us to determine—we still feel that the determination of the circuit court of appeals is binding upon us. An appeal does not lie from our decision in this case to the Supreme Court of the United States, and yet if such court had determined the question of the constitutionality of the act, such determination would be binding upon us.

Inasmuch as the circuit court of appeals is a court exercising appellate jurisdiction over us in criminal cases of this character, we are in like manner bound by its determination upon this question, although the record may prevent an appeal being taken to such court in the particular case before us. Indeed if it be true that no appeal lies to any court from our decision in capital cases or in criminal cases where the constitutionality of a Federal statute is the sole question involved, but the right of review of our decisions in criminal cases is confined to the appellate jurisdiction of the circuit court of appeals in minor criminal cases, and when less important questions are involved, this somewhat anomalous condition of the law should not prevent our recognizing the binding force of a determination of such circuit court of appeals upon such constitutional question, since if the record in this case presented other questions for review, thereby giving it jurisdiction, such court undoubtedly would have the right to, and would review in connection therewith our determination upon the constitutional question involved. Therefore, if it be that the correctness of our determination upon the constitutional question can not be passed upon by such court in this particular case, it is perhaps for that reason all the more incumbent upon us to follow in the path marked out for us by that court.

Farnsworth v. Montana, 129 U. S., 104;
Cross v. United States, 145 U. S., 571;
Chapman v. United States, 164 U. S., 436;
In re Heath, 144 U. S., 92;
Carter v. Roberts, 177 U. S., 496;
Holt v. Indiana Co., 80 Fed., 1;
Texas & P. R. Co. v. Blook, 60 Fed., 979;
Hubinger Co. v. Ry. Co., 98 Fed., 897;
Davis v. Burke, 97 Fed., 501.

As we feel that we are in any event controlled by the decision in the Dastervignes case, we do not think it necessary to state to what extent we have changed our views from our original holding

in the light of a further examination of the question and the fuller discussion afforded us upon the reargument.

Judgment will be entered affirming the judgment entered in the lower court in favor of the United States.

SCHOOL LANDS IN FOREST RESERVES.

Where a forest reservation includes within its limits a school section surveyed prior to the establishment of the reservation, the State, under the authority of the first proviso to section 2275, Revised Statutes, as amended by the act of February 28, 1891, may be allowed to waive its right to such section and select other land in lieu thereof.

The decision herein of December 27, 1894, 19 L. D., 585, recalled and vacated.

Instructions of December 19, 1893, 17 L. D., 576, modified. (State of California, 28 L. D., 57.)

By the act of June 21, 1898, a grant, *in presenti*, of school lands is made to the Territory of New Mexico; and under the provisions of section 2275, Revised Statutes, as amended by the act of February 28, 1891, said Territory may relinquish its claim to such school sections as it may be entitled that are included within the limits of a forest reserve, and select other lands in lieu thereof. (Territory of New Mexico, 29 L. D., 365.)

MINERAL LANDS WITHIN FOREST RESERVES.

COAL LANDS.

The words, "the existing mining laws of the United States," are to be construed, in legislative enactments, as embracing sections 2347 to 2352, inclusive, of the Revised Statutes, commonly known as the "coal-land law," unless an intention to the contrary is expressed. (T. P. Crowder, 30 L. D., 92.)

Coal lands are mineral lands within the meaning of the act of June 4, 1897, and as such are subject to entry, when found in forest reservations, the same as other mineral lands within such reservations. (T. P. Crowder, 30 L. D., 92.)

TIMBER CUTTING ON MINING CLAIMS.

Timber cut from one mining claim may be used on another mining claim only when the two form a group or are part of a group. A group of mining claims, in considering timber regulations in forest reserves, is defined as a set of claims, all contiguous, or such that one can pass from any one of the claims to another without leaving the group. All claims forming a group must be of the same kind—either placer or lode.

Timber may be cut on one mining claim and used on another only when there is a good showing that the claims were located in good faith and with no attempt to connect denuded lode claims with others covered by a desirable stand of timber. (Ruling by the Secretary of the Interior October 31, 1902, in the case of the Mount Baker Mining Company.)

If the claims are not contiguous, and though separated by only a short distance, not greater even than one-half mile, timber can not be procured from one for use on the other, except by purchase, upon application submitted to the Secretary. (Ruling by the Secretary of the Interior October 12, 1901, in the case of the Cash Mine Company.)

Wagon roads for benefit of mining claims are not considered part of assessment work when outside the boundaries of a mining claim and leading from claim to claim over a forest reserve, and can be built only under permit from the Secretary of the Interior. (Commissioner of the General Land Office to Forest Supervisor F. N. Haines, July 14, 1902.)

RIGHT TO CHARGE FOR PERMITS IN FOREST RESERVES.

DEPARTMENT OF JUSTICE,
Washington, D. C., May 31, 1905.

The SECRETARY OF AGRICULTURE.

SIR: I have received your letter of the twenty-ninth ultimo, stating that application has been made to you for a permit to occupy a certain tract of land situated within the Alexander Archipelago Forest Reserve, at Grace Harbor, Dall Island, Alaska, for the purpose of conducting a fish saltery, oil, and fertilizer plant, which has already been built there and is of great importance to the locality.

You say, further, that:

"It is unquestionably best for forest-reserve interests, if it can be done, that leases or permits should at times be granted for a term of years, and also that, when the privilege granted is of actual money value to the permittee, a reasonable compensation should be required from him. I receive many applications of this nature in which the applicant expresses himself as willing to pay a reasonable rental."

You therefore request my opinion upon questions stated by you as follows:

1. Have I, as secretary in charge of forest reserves, legal authority to grant a permit or lease under act of June 4, 1897, for the "use and occupation" of forest-reserve land for the purpose set forth above?

2. Have I legal authority to grant this permit or lease for a period longer than one year?

3. Have I legal authority to require a reasonable compensation or rental for such permit or lease within the forest reserve?

The act of Congress approved June 4, 1897 (30 Stat., 34), concerning the forest reservations, authorizes you to—

Make such rules and regulations, and establish such service as will insure the objects of such reservations, namely, *to regulate their occupancy and use*, and to preserve the forests thereon from destruction.

This act also provides that:

For the purpose of preserving the living and growing timber, and promoting the younger growth on forest reservations, the Secretary of the Interior, under such rules and regulations as he shall prescribe, may cause to be designated and appraised so much of the dead, matured, or large growth of trees found upon such forest reservations as may be compatible with the utilization of the forests thereon, and may sell the same for not less than the appraised value in such quantities to each purchaser as he shall prescribe.

The act of Congress approved February 1, 1905, transferring to your Department jurisdiction over forest reserves, provides:

SECTION 5. That all money received from the sale of any products or the use of any land or resources of said forest reserves shall be covered into the Treasury of the United States and for a period of five years from the passage of this act shall constitute a special fund available until expended, as the Secretary of Agriculture may direct, for the protection, administration, improvement, and extension of Federal forest reserves.

It appears that while no charge as such has been made on account of the granting of the privilege of using and occupying forest reservations, the permittees have been required, as a condition to the issuance of permits, to agree "to assist forest officers in the execution of their duties by furnishing information and actual help in cases of emergency," and "to do all in their power to prevent forest fires and to assist in fighting the same without waiting to be called on to do so by the proper officer," which service on the part of the persons securing permits is said to have been rendered unhesitatingly for years, without objection on the part of Congress or anyone else.

"In *Decatur v. Paulding* (14 Pet., 497) it was held that, in general, the official duties of the head of one of the Executive Departments, whether imposed by act of Congress or by resolution, are

not mere ministerial duties. The head of an Executive Department of the Government in the administration of the various and important concerns of his office is continually required to exercise judgment and discretion. He must exercise his judgment in expounding the laws and resolutions of Congress under which he is from time to time required to act." (*Riverside Oil Company v. Hitchcock*, 190 U. S., 316, 324.)

Obviously any action you may take under the authority conferred by the act of 1897, above quoted, is not merely formal or ministerial in its nature. The jurisdiction which Congress has entrusted to you is essentially discretionary. It would therefore seem that when, in the exercise of that discretion, you determine that the granting of a permit to use and occupy a reservation for a specified purpose is consistent, according to your judgment, with insuring the objects for which the reservation was created, then your decision in the premises is definitive and subject to review in no other way than by the Congress from which your power to act was derived. Answering your first question, therefore, I have to advise you that, in my opinion, you possess authority to grant a permit for such a purpose as that set forth in the application referred to by you.

The legislation expressly referring to forest reservations is silent with reference to the period for which the permits may be granted, and my attention has not been called to any other statutory provision which can be said to limit your action in this connection.

In granting the permits you are to "insure the objects of such reservations," in accordance with the language of the statute, and since in some instances the fixing of a term of years as the period of duration may be "best for the forest reserve interests," I am of the opinion that in such cases you are authorized to grant the privilege for a longer term than one year, and consequently answer your second question in the affirmative. Most assuredly, however, as has been suggested, the permits should not be given for a longer period than, under the circumstances of each case, would seem reasonable. They should also be limited to terminate whenever the reservation for any reason ceases to exist, and upon breach of any of the conditions under which the privilege is granted.

Under the act of 1897 you are simply directed so to regulate the occupancy and use of these reservations as to insure the objects thereof and preserve the forests thereon from destruction. The act contains nothing inconsistent with the making of a reasonable charge on account of the use of the reserves under the permit granted by you. By the act of 1905 you are to cover into the Treasury money received from the "use of any land or resources" of the reservations, which "shall constitute a special fund * * * for the protection, administration, improvement, and extension of the Federal forest reserves." Any sums of money realized in this connection would thus tend to preserve the forests and insure the

objects of the reservations, and it might therefore be contended that Congress, in authorizing you to regulate their use and occupation, considered the incidental question of charging for their use a proper subject to be left for your judgment and discretion. That such was the Congressional intent finds support in the fact that services somewhat analogous to compensation have been required for several years, without any indication of a disapproval thereof on the part of Congress.

Furthermore, your power to prohibit absolutely the use or occupation of any forest reserve, when such action is deemed by you essential to insure its objects and preserve the forests from destruction, would probably be unquestionable, and that the authority to prohibit carries with it the right to attach conditions to a permission is well established. (22 Opins., 13, 27.)

In answer to your third question, therefore, I have to advise you that, in my opinion, you are authorized to make a reasonable charge in connection with the use and occupation of these forest reserves, whenever, in your judgment, such a course seems consistent with insuring the objects of the reservation and the protection of the forests thereon from destruction.

Respectfully,

W. H. MOODY, *Attorney-General*.

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