WASHINGTON, MAY 28, 1866.

HON. JAMES SPEED,
Attorney General:

SIR—In pursuance of your invitation, we beg leave to submit our views upon the questions involved in the "Soscol" case, as submitted by the Hon. Secretary of the Interior for your consideration. It is proper for us to remark, that we pass the Secretary's preliminary statement of facts without comment, because we understand that, so far as your office is concerned, we are concluded by such statement, and that the application of law thereto, on the points indicated, is alone open to argument. Otherwise we should except to said statement as not sufficiently full and accurate.

The first point presented for your opinion is thus stated:

1. "At what date should the land within the limits of the tract known as the Soscol Rranch be held, deemed and considered part of the public domain of the United States, and as such open to settlement under the general pre-emption laws?"

We here cite the act of March 3, 1851, (Stat. at large, vol. 9, p. 633,) entitled "an act to ascertain and settle the private "land claims in the State of California," the 13th section of which reads in part, as follows: "That all lands, the claims to "which have been finally rejected by the commissioners in "manner herein provided, or which shall be finally decided "to be invalid by the District or Supreme Court * * * "shall be deemed, held and considered as part of the public "domain of the United States."

And again the act of March 3, 1853, (Stat. vol. 10, p. 244,) entitled "an act to extend pre-emption rights to certain "lands therein mentioned," reads in part as follows: "That "any settler, who has settled or may hereafter settle on lands "heretofore reserved on account of claims under French,

"Spanish or other grants, which have been or shall be here-
"after declared by the Supreme Court of the United States to
"be invalid, shall be entitled to all the rights of pre-emption
"granted by this act and the act of 4th September, 1841,
"entitled 'an act to appropriate the proceeds of the public
"lands and to grant pre-emption rights' after the lands shall
"have been released from reservation, in the same manner
"as if no reservation existed."

Now the question propounded for your opinion assumes that the tract at some date became subject to pre-emption, and narrows the inquiry as to the *precise date*. We submit, that the two acts before quoted leave no room for doubt, or for construction. When the Supreme Court decided the Vallejo claim to be invalid, *then* and *thereafter* the land "was to be deemed, held and considered as part of the public domain of the United States." Such decision was rendered on the 24th March, 1862, and at that date the Soscol tract fell, by operation of law, into the mass of public lands. What followed afterwards in pursuance of such decree was mere formality, and, so far as affects the present question, is to be considered as done, when ordered to be done by the highest tribunal. Such is the plain import of the laws quoted. The act of May 30, 1862, took effect upon these lands from date of its passage, and all pre-emptions incepted thereunder were fully under the protection of the statute.

Opposing counsel may refer you to the 6th sec. of the act of March 3, 1853, Stat. vol. 10, p. 246, in which lands "claimed under any foreign grant or title," are excepted from pre-emption. If it is sought to suggest such a construction of this act, as would continue the reservation *after* the "foreign grant or title" had been finally declared invalid, we beg leave to say, that the Supreme Court, in Clements *vs.* Warner, 24 Howard, p. 397, have conclusively refuted such presumption, of which decision we particularly invite an examination. Our case is much stronger than the one cited, inasmuch as we are supported by the two statutes first before recited, in which a specific time is fixed for the final termination of the reservation.

If it be necessary to refer to the laws under which pre-emption rights are claimed by our clients, we refer to the act of 3d March, 1853, chap. 145, Stat. vol. 10, p. 246, another act of the same date, chap. 143, vol. 10, p. 244, and the act approved May 30, 1862, sec. 7, Stat. vol. 12, p. 410.

The second and third interrogatories of the Hon. Secretary, are as follows:

2d. "If at or after such date," (that is, the date when the land became part of the public domain of the United States,) "but prior to the passage of the said act of March 3, 1863, a party commenced or continued a settlement in person upon a parcel of said land, and so complied with the terms and conditions of said laws, as to be entitled by virtue thereof on making the proof and payment thereby required, to enter such parcel and obtain a patent therefor, does said act preclude him from so doing if such parcel forms a part of a tract which at the time of said adjudication by the Supreme Court, had been reduced to possession by a *bona fide* purchaser from Vallejo or his assigns, who, within the period and in the mode prescribed by said act, made claim to such tract, accompanied by the required proof showing his *bona fide* purchase, settlement, and reduction into possession of said tract?"

3d. "Does said act withhold, restrict, or qualify the pre-emption right or privilege previously conferred upon such parties as had before the passage thereof, actually settled upon said land when it formed a part of the public domain, and if so, to what extent?"

Responding first to interrogatory 3d, we say, that the act of 3d March, 1853, referred to, does not withhold, restrict, or qualify the pre-emption right acquired before that date under prior laws.

For 1st, the pre-emption right is an interest in land, *and descends, by statute*, to the heir, in whose favor an entry may be made and a patent issued. See section 2, act 3d March, 1843, Stat. vol. 5, p. 620.

This statute treats the pre-emption right as real property of the deceased, and its citation alone establishes the negative of the third question propounded to you.

Again, the statutes regulating pre-emption rights forbid the assignment of them, and in that regard, treat them as property.

But we will respectfully refer to judicial decisions of the same import, and executive decisions and practice, which long since, and uniformly, have pronounced pre-emption rights to be property, and to attach to the land from the commencement of a settlement thereon. The courts enforce this right, though the Executive Departments may have rejected it, and sold the land to which it has attached, to other parties according to other laws.

We refer to the following decisions of the Supreme Court of the United States:

United States *vs.* Fitzgerald, 15 Peters, 419; Cunningham *vs.* Ashley, 14 Howard, 377; Bernard's heirs *vs.* Ashley's heirs, 18 Howard, 43; Garland *vs.* Wynn, 20 Howard, 8; Clements *vs.* Warner, 24 Howard, 397; Lindsey et. al. *vs.* Hawes et. al., 1 Wallace, 534.

And other courts have almost uniformly held the same doctrine. We cite:

McAfee *vs.* Kim, 7 S. and M., Missp. Rep. 780; Finley *vs.* Williams, 9 Cranch, 164; Isaacs *vs.* Steel, 3 Scammon, 97; Bruner *vs.* Manlove, 3 Scammon, 339; Brown *vs.* Griswold, 11 Illinois, 520; Polk's Lessee *vs.* Wendall, 9 Cranch, 87; McArthur *vs.* Crowder, 4 Wheaton, 448.

Attorney General Mason, 25th April, 1846, expounding the right under the act of 4th September, 1841, pronounced an opinion which has ever since been followed by the Land Department, and said:

"The settler is entitled to protection against the claims or entries of others. From the moment, therefore, that he enters in person on land open to such claim, with the '*animus manendi*,' or rather with the intention of availing himself of the provisions of the act referred to, and does any act in execution of that intention, he is a settler. He must afterwards give his notice of intention, inhabit, improve, build his house, and make his proof and payment within the time

stipulated to perfect his right. But in every stage he is protected until he fails on his part to comply with the conditions of the law."

Where the contest was between pre-emptors and a railroad company, claiming under the State of Iowa, Attorney General Cushing said, (opinions, vol. 8, p. 394.) "The pre-emptor acquires inchoate or incipient title by entering on the land, and there performing certain acts, by means of which the land is appropriated to his individual use, and thus segregated, in fact, from the public domain. If in addition to these acts done on the land, the pre-emptor afterwards performs certain acts of notice and proof in the local land-office, then his previous equitable right is converted into a legal one."

In the case of Lytle *et al* vs. the State of Arkansas, (9 How., 333,) the Supreme Court held as follows:

"The claim of pre-emption is not that shadowy right which by some it is considered to be. Until sanctioned by law, it has no existence as a substantive right; but when covered by the law it becomes a legal right, subject to be defeated only by a failure to perform the conditions annexed to it. It is founded in an enlightened public policy, rendered necessary by the enterprise of our citizens."

In the case of the United States vs. Fitzgerald, the Supreme Court held "that no reservation or appropriation of a tract of land can be made after a citizen has acquired a right to it under a pre-emption law."

The Secretary of the Interior says, December 20, 1851: "Subsequent entries, however, which have been made by pre-emption, in virtue of settlements made prior to the grants, will be valid, because in those cases the right of pre-emption attached from the date of settlement, and became a vested right, which can be divested only by abandonment or a failure in the performance of its condition." Lester's land laws, p. 550.

The above authorities determine the nature of pre-emption rights. The question whether they are gratuities not bestowed till patent issues, or rights that attach to the land from the performance of the first acts of settlement by the pre-emption claimant, is no longer open. By judicial decision and by statute they are determined to be of the latter description.

The laws under which they accrue are therefore to be treated as grants of the land, taking effect with the first acts of the pre-emption claimants, and becoming complete on the performance by him of all the conditions of the grant. Hence the Courts, as in Cunningham vs. Ashley, and Lindsey *et al.* vs. Hawes *et al.* above cited, find that a patent is not necessary to consummate the right, but when complete in itself, it will be enforced by judicial authority, though the patent may have emanated to an opposing claimant of the land.

If then these rights are in the nature of grants of the land, it must be conceded that if two grants of the same land have been made, otherwise valid, the elder conveys the title, and not the later. And when a law is in the nature of a contract, and rights have vested under it, subsequent legislation cannot impair or divest the title so acquired. Fletcher *vs.* Peck, 6 Cranch, 67, 87, 134; New Jersey *vs.* Wilson, 7 Cranch, 164.

We therefore conclude that the act of 3d March, 1863, cannot, by any possibility, be properly regarded as withholding, restricting, or qualifying a pre-emption right acquired before its passage, and that the 3d interrogatory must necessarily be answered negatively.

2d. The second interrogatory goes beyond this ground, and inquires whether the executive department can issue the patent upon the pre-emption right so acquired. Why not issue the patent? It cannot, as we have shown above, be properly issued to any other party. No act of Congress forbids its issuing to the pre-emptor; many acts of Congress authorize it so to issue. But does the act of 3d March, 1863, *by implication*, repeal all laws authorizing such patents to issue? Evidently not.

First, there is no express repeal found in its terms, and it must be received and construed "*in pari materia*" with the pre-emption laws; its general effect and its title both characterizing it as a pre-emption law.

The act itself is incomplete if standing alone. It does not authorize any patent to be issued to claimants under it, but they must rely upon the general land laws.

The act recognizes, by express mention in its first section, one of the laws—that of 30th May, 1862; which confer rights upon the pre-emption claimants in this case.

The act also recognizes, and the claimants under it are required to resort to, the extended machinery of the surveying system, and the organization of the local and general land-offices which exist under other land laws.

The act itself, as if to exclude the supposition that it could have been intended to override and supercede other laws, or to impair existing rights of pre-emption, expressly subjects the adjudications under it to confirmation by the Commissioner of the General Land-Office; and when that officer has refused to confirm an adjudication, because a prior right has attached to a portion of the land, we respectfully suggest that the case of a Vallejo claimant is ended, and no other officer has a right to reverse or control his action.

All these items show that this act of 3d March, 1863, has been passed in full view of the existence and continued virtue of all the general land laws; and all these laws, whether of a public or private nature, are to be construed as "*in pari materia.*" This view was taken by Attorney General Wirt, in his opinion of 31st December, 1826, and we believe has since been followed by the Land Department. He said:

"The laws upon the subject of the public lands are all *in pari materia*, and are all to be construed together; and an authority to an individual to make an entry of any of their land is not to be considered as an insulated act, to be expounded strictly upon its own letter; but as having relation to the general system and to be expounded according to the meaning of Congress, to be collected from the language of the particular law, as compared with the whole system and from the reason and nature of the case. Gilpins ed., p. 577.

So also in his opinion of February 21, 1823, Mr. Wirt says: "It occurs to me that the petition and report of the committee on which the act is founded may throw some light on its construction; and however unallowable this might be in the construction of a legislative act of a general and public nature, yet, with respect to a private act, which is in truth rather of the nature of a *contract of indemnity* than an act of legislation, I should hold it allowable to look into the circumstances which led to that contract and formed its basis."

These opinions were advanced before the rules of construction, by which these private acts were to be expounded, had been judicially settled by the Courts of the nation. But subsequently in Choutard *vs.* Pope, 12 Wheaton, 586, the Supreme Court more than sustained the views advanced by Mr. Wirt. As the principle enunciated in this decision controls the present case, for convenience sake we quote therefrom. Mr. Justice Johnson delivered the opinion of the Court:

"The rights of the complainants in the land in litigation depend upon the construction of the act of Congress of May 8, 1820, passed for the relief of the legal representatives of Henry Willis. The words of that act, under which the complainants suppose themselves entitled to relief, are these: 'That the legal representatives of Henry Willis be and they are hereby authorized to enter without payment, in lieu, &c., in any land office, &c., in the States of Mississippi or Alabama, &c., a quantity of land not exceeding thirteen hundred acres,' &c. Under the operation of these words, assuming the right to appropriate any unpatented land in the two States, the complainants have asserted the privilege of entering a tract of land, which covers the site surveyed and laid off for the town of Clayborne in the State of Alabama. The proper officers have refused to issue the ordinary evidence of title, and have gone on to sell out the town lots according to law. This bill is filed against the Register of the Land-Office and the purchaser of one of the town lots, to compel them to make title to complainants.

"On behalf of the United States, it is contended, that the literal meaning of the terms of the act is limited and restrained by the context, and by considerations arising out of the general system of land laws of the United States, into which this act is ingrafted; and that, so construed, the right is limited to that description of lands, which are liable to be taken up at private sale.

"Such is the opinion of this Court. That the legislature had distinctly in view its general provisions for disposing of the unappropriated lands of the United States, is distinctly shown in every line of the act under consideration. First, the party is referred to the Land-Office to make his entry; he is then confined to the locations designated by the surveys made by the United States. After which it goes on to enact that 'the Register or Registers of the Land-Offices aforesaid shall issue the necessary certificate or certificates, on the return of which to the General Land-Office a patent or patents shall issue.' Here the whole organization of the Land-Office is brought into review; and if then the term *enter* can be shown to be restricted and confined in its application to a particular class, or description of lands, it will follow that when used in laws relating to the appropriations of lands it must lose its general and original signification and be confined to what might be called its technical or legislative meaning. * * * *
In the second and third sections of the act of April 20, 1820, entitled 'An act making further provision for the sale of public lands,' will be found conclusive evidence, that the right to enter is identified with the right to purchase at private sale, and confined to the appropriating of such lands, as may be legally appropriated by *entry* at the Register's Office; from which are excluded all lands previously appropriated, whether by public sale or by being withdrawn from the mass of land offered for sale."

It is not needed that we should trace the analogy between this case and the Soscol cases. Suffice it to say, that the rule of construction indicated has been, without exception, adhered to both by the courts and the Executive Departments. Pre-existing inceptive pre-emption rights have always been excepted, in practice, from the operation of all school, railroad, or other grants for public purposes, although many of them were grants "in place," and no specific exceptions were made in the granting acts.

The Court, in the foregoing case has not only stated a principle of construction that sustains our views, but has expounded the word "*entry*" as found in our land laws to be equivalent to "purchase at private sale." But a private sale of a tract to which the pre-emption right of another party had attached, has always been held to be invalid, and against law. See the decisions of the Supreme Court, hereinbefore cited.

Let us at the same time observe that it is only a declaration that "it may and shall be lawful * * * for individuals, &c., *to enter*, according to the lines of the public surveys," &c., &c., that is found in the act of 3d March, 1863, which privilege, so granted, is, in the hands of the favored parties, only a privilege to "purchase at private sale," and does not reach or extend to land settled upon by pre-emption claimants, before the application to purchase at private sale is made.

3d. There are other general principles wholly forbidding that construction of this Soscol pre-emption act which would supercede and nullify the general laws conferring pre-emption rights.

The most general proposition is, that "the law does not favor repeal by implication, and though two acts are seemingly repugnant, they shall, if possible, have such construction that the latter may not repeal the former by implication." Dwaris on statutes, p. 530.

Subordinate to this, we submit two other propositions: "If the law admits of two interpretations, that is to be adopted which is agreeable to the fundamental or primary law." Prof. Leiber, quoted in Sedgwick's treatise, p. 288.

Attorney General Legare says: (opinion of July 11, 1842, op. vol. 4, p. 71,) "Statutes must be so construed as to avoid the divesting of any rights of third parties."

Mr. Cushing (vol. 6, p. 700) said: "We are not bound to suppose that Congress intended a violent invasion of a private right and interest in any portion of the land described, and lawfully acquired under previous laws, for such act would be in apparent disregard of the Constitution of the United States."

Again, the Soscol act of 3d March, 1863, grants special privileges to "certain" persons, and it is a principle of law that privileges or favors are to be so construed as not to injure the non-privileged or unfavored. Attorney General Black said, with great force of common sense, when interpreting an act under which a claim to land was set up: (opinion of November 22, 1858, addressed to the Secretary of the

Interior,) "In every doubtful case, we know very well what we ought to do as soon as we ascertain which party is entitled to the benefit of the doubt." * * * "It is well settled that all public grants of property, money, or privileges, are to be construed most strictly against the grantee. Whatever is not given expressly, or very clearly implied from the words of the grant is withheld." Quoting further from the remarks of the Attorney General in that case, one might readily suppose that he was talking of this very Soscol pre-emption act of March 3, 1863, when he says: "We all know the fact, and are not bound to seem ignorant of it, that gifts like this are often caused by private solicitation and personal influence. The bills, almost universally, are drawn up by their special friends, and may be made ambiguous on purpose to disarm their opponents or put suspicion asleep. If you let the grantees have the advantage of the ambiguity which they themselves put into their own laws, many of them will get a meaning which Congress never thought of. Acts which were supposed to have but little in them when they passed, will expand to very large dimensions afterwards. An ingenious construction will make that mischievous which was intended to be harmless."

This reasoning of the Hon. Attorney General was sustained by the Supreme Court of the United States when the law on which he was commenting came up for construction in that tribunal—Litchfield *vs.* Dubuque & Pacific R. R. Company, 23 Howard, p. 88—where the Court said, among other similar remarks, quoting a decision of an Engligh court, "if the words admit of different meanings it would be right to adopt that which is more favorable to the interests of the public," and that this "*rule* is intended to prevent parties from inserting ambiguous language for the purpose of taking, by ingenious interpretation, that which cannot be obtained by express terms."

It is very certain that in the act of 3d March, 1863, there are no express terms to deprive pre-emption settlers of their rights to land within the boundaries specified, or taking away the power of the department to issue patents to pre-

emptors. If the settlements, surveys, and improvements of such pre-emption settlers are thereby conveyed to the Vallejo claimants, there are no apt words found in the law to effect that result. It can only be done by a forced construction of the law, giving it a meaning and effect "that Congress never thought of," and which will render sadly mischievous what the legislative body intended to be harmless, so far as these third parties to this bill are concerned.

We further suggest that in the reasonable and practical construction of the act of 3d March, 1863, which would effect what was intended by Congress, there is not any such confliction in applying it simultaneously with the pre-emption laws to the Soscol Ranch lands as is assumed in the 2d interrogatory above.

It was designed merely to bestow upon the individuals therein described the privilege of entering at private sale certain public lands, without those lands having first been offered at public sale, as would otherwise have been requisite under the general land laws; and the authority it gives them, is to be exercised at a date subsequent to its passage, but within a period of time limited in duration. No interest in or right to any parcel of land was bestowed, but a privilege of purchasing, which privilege of course can only be exercised in subordination to the rights of parties legally acquired before the application to purchase has been made.

Like other pre-emption laws, it requires possession and settlement at a certain period antecedent to the entry, but the privilege of entering does not exclude, but is subordinated, to rights existing at the date of such application.

If it be legitimate, however, to suppose that two men may have been in actual possession of the same land and improvements at the same time, one holding under the pre-emption laws, and the other under Vallejo's Mexican grant, the fact must be kept in view that the Vallejo purchaser, when the decree of the Supreme Court was rendered, became a trespasser. Unless intending to claim a pre-emption right, he was a wrong doer, occupying public land contrary to law, (act 3d March, 1807, Stat. vol. 2, p. 445,) and we respectfully

submit that the possession of the pre-emptor, authorized and protected by law, is clothed with a better equity and a better legal right, than that of another party who was but a trespasser and a wrong doer.

This act of 3d March, 1863, deals with the tract as public land, and according to the facts existing at the date of its passage. Observe that it does not confirm the Vallejo title! Such confirmation would have been very different in its effects, or intended effects. Nor did it confirm the Vallejo purchaser's possession. Had it assumed to do this, a conflict of two adverse possessions might have ensued, and the possession of one party might have been assumed to be equal to that of the other. But it did not purport to do that much. The individual was merely allowed, after proving certain facts, to make an entry of the land. So far from being intended to override other existing rights, this policy was devised to avoid that result. A right of entry may well exist in B if a prior and better right does not exist in A; but if A insists upon his right, that of B can only be exercised in subordination to it. This is both law and common sense, and this is exactly what the cautious provisions of the act of 3d March, 1863, are intended to effect. The true interpretation of the act of 1863, is to give the Vallejo claimants a right to enter their lands, in so far as that right does not conflict with rights previously acquired under prior laws.

The above reasons we deem sufficient to show that the 2d and 3d interrogatories must be answered negatively. But we have one further remark to submit in reference to them. It is this: If there was doubt in regard to the meaning and effect of the act of 3d March, 1863, if it can be construed as having repealed the pre-emption laws so far as they could otherwise be applied to the Soscol tract, the department which has charge of the public lands has construed it otherwise. Upon that construction our clients have paid to the United States large sums of money for surveys, and other large sums for fees upon the taking of the proof of their claims, and filing their declaratory notices.

As prescribed by section 4 of the said act of 3d March,

1863, the Commissioner of the General Land-Office has, by instructions dated March 10, 1864, allowed the notices and proofs required of our clients to be made and presented to the officers. Our clients have acted upon that construction, and we now respectfully submit that the construction thus given should be adhered to until it has been overruled by the Supreme Court.

The action of the Executive Departments is not final as respects the rights of the present contestants, for when the executive officers have made their decisions the parties can resort to the courts. This fact constitutes the best reason why the construction of a statute should not be changed by the Executive Departments whilst administering the rights of individuals under it. At every change of ruling, the litigants are thrown back, general confusion ensues, and nothing has been affected toward a final determination, although a great deal of labor has been performed, great cost incurred, and great delay occasioned.

More especially when parties have been induced to invest their money, by the action of the Executive Department encouraging them to do so, it is bad policy to change the construction of the law, and turn off our clients without a trial, when the executive authority has no power to restore one dime of our money, without a special act of Congress for the purpose.

It is in this branch of our case that the report of facts is not so full, as we have desired, in behalf of our clients, to have it, and hence, we respectfully submit herewith a copy of a letter addressed by the Commissioner of the General Land-Office to one of our number, under date of April 13, 1866. That letter discloses the fact that the Land Department had had surveys of a very large proportion of the Soscol tract executed under the laws of the United States for surveying the public lands, in October and November, 1862, and that money had been deposited in the Treasury by the pre-emption settlers to pay for those surveys long before the act of 1863 was passed. It shows, too, that over 69,000 acres were surveyed under said act of 1862, and only about 10,000 acres under the act of 1863.

It does not show the exorbitant fees paid by our clients to the Register and Receiver before those officers had taken their proofs, which fees were demanded and paid in gold, under protest, and if ever properly accounted for will bring a large sum of money into the Treasury of the United States. But it does, with the copy of the Commissioner's instructions of March 10, 1864, and his decision of January 13, 1866, validate our statements that a construction has been placed upon the act of 3d March, 1863, and that under that construction our clients have paid their money as authorized and required by law.

The fourth interrogatory of the Hon. Secretary of the Interior is as follows:

"Is a *bona fide* purchaser of a tract of said land from said Vallejo or his assigns bound, in order to bring himself within said act, to prove an actual, personal settlement on such tract at the date of said adjudication by the Supreme Court; or is a settlement at that date on such tract by another person, as the tenant of such purchaser, sufficient, although such purchaser be a non-resident of California?"

The 4th section of the act of March 3, 1863, (stat. 12, p. 808,) reads: "That all claims within the purview of this act "shall be presented to the Register and Receiver, &c., accom- "panied by proof of *bona fide* purchase from Vallejo, of "*settlement*, and the extent to which the tracts claimed had "been reduced into possession at the time of said "adjudication."

The inquiry then is addressed to the meaning of the requirement of "*settlement*." Our opponents claim that the common law definition of the term is, "reduced to possession;" and hence, in the act in question, they, in effect, treat it as mere surplussage. But even though this definition was correct, it would then be evident, that the common law definition of settlement is not the meaning of the word in the fourth section of this act, which requires proof of possession and settlement *both*.

We deny, however, that such is the common law definition of "settlement; but claim on the contrary that it means a

settled place of abode." Bouvier's Law Dictionary, vol. 2, p. 519, gives it as "the right which a person has of being considered as resident of a particular place." It is synonimous with domicil, or "the place where a person has fixed his ordinary dwelling with a present intention of remaining." Id. vol. 1, p. 342. The word comes into the English language from the Latin "*sedes*" or "*sedeo*," and means not only a personal residence, but a permanent personal residence. In England, as far back as Elizabeth, a person must personally reside in a parish forty days with the intention of making it his permanent home, before he could gain a "settlement" in such parish. Webster gives the definition of the word to "settle" as to "fix one's habitation or residence." Burrill's Law Lexicon defines "settlement" to be "a settled place of abode." There are other meanings of the word, "as to settle accounts," &c.; but when the term refers to settlement in a parish, in a country, or in fact a *settlement on land* in any manner, it then means a *permanent, personal residence*, and nothing less. It had this meaning in its original form in the Latin vernacular. It had the same definition when incorporated into the English language, and has retained it to this day. It had this meaning in the civil law; it had it in the common law, and has it in all statute laws. A man is settled, wherever he locates his residence.

But the special Bill of March 3, 1863, attaches a peculiar significance to the requirement of "settlement." Although strictly speaking, the title is no part of an act, yet the rule is well established, that "the title, when taken in connection with other facts, may assist in removing ambiguities, where the intent is not plain." United States vs. Fisher, 2 Cranch 386. 1 Kent's Comm. 516.

Now the special act is entitiled, "an act to grant the *right of pre-emption* to certain purchasers on the Suscol Ranch in the State of California;" and hence we claim that the settlement called for in the body of the bill, must be construed as a *pre-emption settlement*. To suppose otherwise would be to place an unnatural construction upon the act, and to argue, that Congress, in the most important part of a solemn statute,

deliberately uses words without meaning. For in any other view, proof of "settlement" could mean nothing, as evidence of "reduction to possession" would then satisfy the law. Now a pre-emption settlement is not simply the enclosing a tract of land, nor its cultivation, nor the leasing of the same. It means all of these and much more. *It requires the presence and continuous personal residence of the settler upon the tract claimed.* It embodies the idea of the claimants' permanent home, together with those continuous acts of agricultural improvements, with which a man would naturally, and according to his means and station, enrich his farm and residence.

The word "settlement" then, *understood in connection with the subject matter*, which is a grant of the right of pre-emption to land, and construed with the words following it, viz.: "reduced to possession" means only the personal taking up of an abode. It is equivalent to the words in the general pre-emption law, "has made a settlement in person."

So the word "possession" may mean either actual or constructive possession, but in the law under discussion, where it is immediately collocated with settlement, and preceded by the words "reduced to" and "reduced into," means only and exclusively *actual possession.* It is good English to say "a *settler reduced land into his own* possession," but it is not good English to say, a settler upon a tract of land reduced the land around him into the possession of a stranger.

Much light is reflected upon this statute of 3d March, 1863; by an examination of those provisions of the act of 30th May, 1862, which is referred to in the first section of the Soscol act of March 3, 1863, as follows: "That the actual cost of such survey and platting shall first be paid into the surveying fund by *settlers*, according to the requirements of the 10th section of the act of Congress approved 30th May 1862," &c. By turning to that section (10) we find it enacts, "That when the *settlers* in any township or townships shall desire a survey made of the same," &c., the survey may be made as therein provided.

This law gives no right to non-residents, who claim lands

in the possession of others, to have surveys of townships made; but the "settlers in a township, or townships, may have a survey made of *the same*," that is, the same township, or townships, where they are settlers. So, under the first section of the so called Soscol act, the only parties entitled to a survey are *settlers in the ranch*, and all others are excluded by necessary implication. The benefits of the act are, by all these limiting words and clauses, confined to purchasers from VALLEJO, actual settlers on the ranch, and in personal possession, December, 1861.

It is also worthy of remark, that the privileges granted by this law are bestowed on "individuals." The word individual means a single one of the human species, a single person.

These "individuals," claimants under the act, are to establish three facts: 1st, bona fide purchase; 2d, settlement; and 3d, possession, at the date of the adjudication of the Supreme Court. We see no distinction in the manner in which the "individual" is required, by the terms of the law, to connect himself with the land in respect of purchase, settlement, and possession. All these acts and facts are required and prescribed alike, respecting each claimant in person. This word, "individual," thus helps the demonstration, that the law will not accept proof of purchase by one person, settlement by a second, and possession by a third, as securing a right of entry under it; but all these facts must be proved as pertaining to one and the same individual, and that individual only is invested with the privilege of entering the land so purchased, settled, and possessed by him. Thus it is clearly shown, by all the context, that the words, "settlement" and "possession" in this law means settlement and possession in person, and nothing less or different.

If it were necessary to go so far back as to look at the statements made to the legislative body to induce the passage of the law, we should see that all those statements represent the law as having the effect we are now claiming for it.

See House Report, No. 20, also, Senate Report, No. 95, 3d session, 37th Congress, (the same report having been made

to each House,) the opening words, and some of the concluding sentences of which we now quote. "The Soscol Ranch is *settled upon and occupied* by an enterprising body of agriculturists * * * claiming their lands under the Soscol Grant." * * * * * * * *

"The entire rancho has passed out of the hands of the original grantee, into the possession of a multitude of small holders, &c. * * * * * *All these settlers upon* the rancho hold by a purchase of M. G. VALLEJO."

* * * * * * * * * * *

"There are many circumstances which tended to give *to the settlers upon the Soscol Rancho* confidence in the title which they purchased. * * * * * * *

* * * * "The bill reported by this committee respects the *occupancy* of the numerous holders under this title, *recognizing it as a pre-emption.*"

* * * * "It has been the uniform practice of Congress to respect and protect the *improvements of Settlers*, &c."

Here we have all in a nut shell. The object and intent of the bill is to respect the *occupancy* of persons in possession, and *protect the improvements of settlers*, recognizing *the right of each as a pre-emption right.*

The object of the law is no wider than this, and we have above demonstrated that the *words* of the law, and all its clauses construed together, have the meaning, when properly interpreted, which effects this object and nothing else, and nothing more.

To give to this act of 3d March, 1863, such construction and meaning as is claimed by our opponents, would introduce confusion into the administration of the land laws in California. It would disturb the foundation of rights thus far successfully asserted by thousands of settlers upon other tracts of land, to which private claims have been rejected by the Supreme Court, and give rise to just complaints against the administration of the Government of the United States.

In conclusion, we discard the idea that any one person, a non-resident of California, it may be an alien enemy, if the argument against us is carried into practical administration,

is invested by the act of Congress of March 3, 1863, with the privilege to enter five or ten thousand acres of this land, to the exclusion of citizens seeking homes upon the public lands. A construction of this law, leading to that result would be hostile to the spirit of every act of Congress in regard to the public lands that has been passed in the 19th century—hostile to all that careful policy that has provided for their survey into small tracts, required them to be offered at public sale in half quarter sections, and limited the quantity that can be purchased under the homestead and the pre-emption laws to 160 acres.

We submit that the issue made up by all the four questions of the Hon. Secretary is this: Does the act of 3d March, 1863, confer authority upon a non-resident of California (it may be an alien) to enter lands of the late Soscol Ranch held in his constructive possession, to the extent of five or ten thousand acres, or even more, and which he had purchased of a party who it is now ascertained never had title to an acre of it, to the exclusion of the right of a citizen to enter 160 acres who has made his settlement and improvements, and complied with the pre-emption laws of the United States, before such non-resident or alien has made application at the proper land-office to enter any land.

If it be possible that the Congress of the United States in the year of our Lord 1863, has passed a law which is intended to oust the citizen of his legal possession, and confer his dwelling and improvements on a non-resident of the State in which he dwells, we should expect to find in the law some words of strong and plain import, conveying that meaning, and to discover some strong reasons of policy leading to the enactment. We find neither of these. On the contrary, to assume that Congress intended such a result, is to assume that Congress intended the foulest wrong to the citizen settler, and to accomplish that wrong had departed from a policy before that time cherished for more than sixty years, a policy which had, from the earliest history of the Government, at successive sessions of the legislative body, and by a continuous line of departmental and judicial decisions, grown

into a beneficent and harmonious system, accelerating the settlement and sale of the public lands, and fostering, shielding, and rewarding the citizens, whose toil and self-sacrifice upon the frontiers, have defended the thickly settled portions of the land from the devastating incursions of hostile Indians, and wonderfully promoted the prosperity of the whole nation.

We have the honor to be,

Very respectfully, your ob't serv'ts,

HENRY BEARD,
VAN ARMAN, BRITTON & GRAY,
F. P. STANTON,
Attorneys for Settlers.

PHILADELPHIA, May 30, 1866.

I have carefully examined the decision of the Commissioner of the General Land-Office of the 13th January last, in the Soscol case; also the above argument of Hon. F. P. Stanton and others, in the same case. I fully and clearly concur in all the views set forth in said decision and argument. The general pre-emption law of 1841 was drawn by me as a Senator of the United States, and member of the Committee of Public Lands, and of the Judiciary Committee. I was a member of the Committee of Public Lands of the United States Senate for nearly ten years; and as Secretary of the Treasury of the United States, on appeal or reference from the Commissioner of the General Land-Office, as well as under special acts of Congress, decided several thousand pre-emption cases, not one of which decisions has ever been overruled by the Supreme Court of the United States. I have also argued a great many land grant and pre-emption cases in the Courts of Louisiana and Mississippi, and also in the Supreme Court of the United States.

R. J. WALKER.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND-OFFICE, April 13, 1866.

HENRY BEARD, Esq., *Washington, D. C.*

SIR:—In reply to your letter of inquiry under date of the 7th instant relative to the Soscol Ranch case, I have to say as follows:

1. 69,303 $\frac{82}{100}$ acres of said Ranch had been surveyed in the field under contracts and instructions given prior to March 3, 1863, and the surveys thereof were paid out of monies deposited anterior and subsequent to March 3, 1863, under the provisions of the act of Congress approved May 30, 1862.

2. 10,527.26 acres were surveyed since the 3d March, 1863, and the surveys have been paid out of moneys deposited after that date.

3. The townships subdivided in the field since 3d March, 1863, are:

T.	3,	N.,	R.	2,	W.,	embracing	5,363.44	acres	surveyed	Nov. 24 and 25, 1863.
"	5,	"	"	2,	"	"	1,596.91	"	"	" 26, 1863.
"	5,	"	"	4,	"	"	1,937.60	"	"	Dec. 1 and 2, 1863.
"	5,	"	"	3,	"	"	1,579.26	"	"	Nov. 26 to 30, 1863.

and being an additional survey to that of Tp. 5, N. R., 3, W. executed by Ephraim Dyer, prior to the 3d March, 1863, from Jan. 21 to 23, 1863, embracing 18,593.56 acres, and paid for out of $594.00 deposited June 13, 1863, by Mr. Dingley, to cover the surveys made in January, same year.

The townships subdivided prior to March 3, 1853, are as follows:

Tp.	3,	N.,	R.	3,	W.,	embracing	17,989.05	acres	surveyed	Nov. 19 and 21, 1862.
"	3,	"	"	4,	"	"	651.29	"	"	November 21, 1862.
"	4,	"	"	2,	"	"	2,143.92	"	"	November 3, 1862.
"	4,	"	"	3,	"	"	23,152.90	"	"	Oct. 14 to 25, 1862.
"	4,	"	"	4,	"	"	6,768.80	"	"	Nov. 5 and 6, 1862.

The expenses of the examination in the field of these five townships were paid out of money deposited October 9, 1863, and the subdivisional work in the field having been executed by E. H. Dyer, Dep. Surveyor in 1862, was paid out of the moneys deposited by the following persons:

December 18, 1862,	W. Aspinwall,	$825	00
" "	J. B. Ramsey,	50	00
" "	W. H. Patterson,	720	00

In conclusion I have to observe that these last five townships surveyed in 1862, having been examined by T. G. Dewoody under his contract of November 23, 1863, and found to have been properly executed in the field he adopted the same as the record under the act of Congress of March 3, 1863, Dewoody indicating on the plats the improvements of the settlers as an eye sketch.

Respectfully, &c., &.,

J. M. EDMUNDS, *Commissioner.*

ERRATA.—On 12th page, 3d line of 2d paragraph, read *conflict* instead of *confliction.*