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1841, September 4 - 5 Stat. 453 - Preemption Act of 1841

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BY AUTHORITY OF CONGRESS.

THE
Public Statutes at Large
OF THE
UNITED STATES OF AMERICA,

FROM THE
ORGANIZATION OF THE GOVERNMENT IN 1789, TO MARCH 3, 1845.

ARRANGED IN CHRONOLOGICAL ORDER.

WITH
REFERENCES TO THE MATTER OF EACH ACT AND TO THE SUBSEQUENT ACTS
ON THE SAME SUBJECT,

AND
COPIOUS NOTES OF THE DECISIONS

OF THE
Courts of the United States

CONSTRUING THOSE ACTS, AND UPON THE SUBJECTS OF THE LAWS.

WITH AN
INDEX TO THE CONTENTS OF EACH VOLUME,
AND A
FULL GENERAL INDEX TO THE WHOLE WORK, IN THE CONCLUDING VOLUME.

TOGETHER WITH
*The Declaration of Independence, the Articles of Confederation, and
the Constitution of the United States;*

AND ALSO,
TABLES, IN THE LAST VOLUME, CONTAINING LISTS OF THE ACTS RELATING TO THE JUDICIARY,
IMPOSTS AND TONNAGE, THE PUBLIC LANDS, ETC.

EDITED BY
RICHARD PETERS, ESQ.,
COUNSELLOR AT LAW.

The rights and interest of the United States in the stereotype plates from which this work is printed, are hereby recognised, acknowledged, and declared by the publishers, according to the provisions of the joint resolution of Congress, passed March 3, 1843.

VOL. V.

BOSTON:
CHARLES C. LITTLE AND JAMES BROWN.
1846.

hereby authorized to have the Sixth Census documents bound in a plain and substantial manner, the cost of which shall not exceed fifty cents per volume; and that the amount thereof shall be paid out of any money in the Treasury not otherwise appropriated.

Sixth census documents to be bound.

SEC. 3. *And be it further enacted*, That it shall and may be lawful for the marshal of the State of Maryland, and he is hereby required, under the direction of the Secretary of State, to cause the number of inhabitants within Montgomery county, in the State aforesaid, to be again taken according to the directions of the act to which this is a supplement, and the same to be returned before the first day of December next, and when so taken and returned shall be considered as the correct enumeration of the inhabitants of the said county: *Provided*, That nothing herein contained shall be deemed to release such marshal and his assistants from the penalties contained in the act aforesaid: *And provided further*, That no persons be included in the returns made under the present act, unless such persons shall have been inhabitants of the district for which such returns shall be made on the first day of June, one thousand eight hundred and forty: *And provided, also*, That the said corrected return shall not delay the printing of the Census: and that the said corrected return be printed by itself separately.

The number of inhabitants of Montgomery co., Maryland, to be again taken.

Proviso.

Proviso.

Proviso.

APPROVED, September 1, 1841.

CHAP. XVI.—*An Act to appropriate the proceeds of the sales of the public lands, and to grant pre-emption rights. (a)*

STATUTE I.

Sept. 4, 1841.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the thirty-first day of December, in the year of our Lord one thousand eight hundred and forty-one, there be allowed and paid to each of the States of Ohio, Indiana, Illinois, Alabama, Missouri, Mississippi, Louisiana, Arkansas, and Michigan, over and above what each of the said States is entitled to by the terms of the compacts entered into between them and the United States, upon their admission into the Union, the sum of ten per centum upon the nett proceeds of the sales of the public lands, which, subsequent to the day aforesaid, shall be made within the limits of each of said States respectively: *Provided*, That the sum so allowed to the said States, respectively, shall be in no wise affected or diminished on account of any sums which have been heretofore, or shall be hereafter, applied to the construction or continuance of the Cumberland road, but that the disbursements for the said road shall remain, as heretofore, chargeable on the two per centum fund provided for by compacts with several of the said States.

Act of May 29, 1830, ch. 208.

Certain States to be paid 10 per cent. on nett proceeds of sales of public lands therein, &c.

Proviso.

SEC. 2. *And be it further enacted*, That after deducting the said ten per centum, and what, by the compacts aforesaid, has heretofore been allowed to the States aforesaid, the residue of the nett proceeds, which nett proceeds shall be ascertained by deducting from the gross proceeds all the expenditures of the year for the following objects: salaries and expenses on account of the General Land Office; expenses for surveying public lands; salaries and expenses in the surveyor general's offices; salaries, commissions, and allowances to the registers and receivers; the five per centum to new States, of all the public lands of the United States, wherever situated, which shall be sold subsequent to the said thirty-first day of December, shall be divided among the twenty-six States of the Union and the District of Columbia, and the Territories of Wisconsin, Iowa, and Florida, according to their respective federal representative population as ascertained by the last census, to be applied by the Legislatures of the said States to such purposes as the said Legislatures may direct: *Provided*, That the distributive share to which the

After deducting said 10 per cent. &c. residue to be divided among the States, &c. of the Union; how.

To be applied as the Legislatures may direct. Proviso.

(a) See notes to the act of May 29, 1830, chap. 208.

Proviso.	District of Columbia shall be entitled, shall be applied to free schools, or education in some other form, as Congress may direct: <i>And provided, also</i> , That nothing herein contained shall be construed to the prejudice of future applications for a reduction of the price of the public lands, or to the prejudice of applications for a transfer of the public lands, on reasonable terms, to the States within which they lie, or to make such future disposition of the public lands, or any part thereof, as Congress may deem expedient
Nett proceeds of sales of public lands, payable at the Treasury half yearly, to whom.	SEC. 3. <i>And be it further enacted</i> , That the several sums of money received in the Treasury as the nett proceeds of the sales of the public lands shall be paid at the Treasury half yearly on the first day of January and July in each year, during the operation of this act, to such person or persons as the respective Legislatures of the said States and Territories, or the Governors thereof, in case the Legislatures shall have made no such appointment, shall authorize and direct to receive the same.
Money due and payable by this act to be first applied to payments of debts due U. S.	SEC. 4. <i>And be it further enacted</i> , That any sum of money, which at any time may become due, and payable to any State of the Union, or to the District of Columbia, by virtue of this act, as the portion of the said State or District, of the proceeds of the sales of the public lands, shall be first applied to the payment of any debt, due, and payable from the said State or District, to the United States: <i>Provided</i> , That this shall not be construed to extend to the sums deposited with the States under the act of Congress of twenty-third June, eighteen hundred and thirty-six, entitled "an act to regulate the deposits of the public money," nor to any sums apparently due to the United States as balances of debts growing out of the transactions of the Revolutionary war.
Length of continuation of this act.	SEC. 5. <i>And be it further enacted</i> , That this act shall continue and be in force until otherwise provided by law, unless the United States shall become involved in war with any foreign Power, in which event, from the commencement of hostilities, this act shall be suspended during the continuance of such war: <i>Provided, nevertheless</i> , That if, prior to the expiration of this act, any new State or States shall be admitted into the Union, there be assigned to such new State or States, the proportion of the proceeds accruing after their admission into the Union, to which such State or States may be entitled, upon the principles of this act, together with what such State or States may be entitled to by virtue of compacts to be made on their admission into the Union.
Proviso.	SEC. 6. <i>And be it further enacted</i> , That there shall be annually appropriated for completing the surveys of said lands, a sum not less than one hundred and fifty thousand dollars; and the minimum price at which the public lands are now sold at private sale shall not be increased, unless Congress shall think proper to grant alternate sections along the line of any canal or other internal improvement, and at the same time to increase the minimum price of the sections reserved; and in case the same shall be increased by law, except as aforesaid, at any time during the operation of this act, then so much of this act as provides that the nett proceeds of the sales of the public lands shall be distributed among the several States, shall, from and after the increase of the minimum price thereof, cease and become utterly null and of no effect, any thing in this act to the contrary notwithstanding: <i>Provided</i> , That if, at any time during the existence of this act, there shall be an imposition of duties on imports inconsistent with the provisions of the act of March second one thousand eight hundred and thirty-three, entitled, "An act to modify the act of the fourteenth of July one thousand eight hundred and thirty-two, and all other acts imposing duties on imports," and beyond the rate of duty fixed by that act, to wit: twenty per cent. on the value of such imports, or any of them, then the distribution provided in this act shall be suspended and shall so continue until this cause of its suspension shall be removed, and when removed,
Not less than \$150,000 to be appropriated annually for surveys.	
Proviso.	
Act of March 2, 1833, ch. 53.	

if not prevented by other provisions of this act, such distribution shall be resumed.

Sec. 7. *And be it further enacted*, That the Secretary of the Treasury may continue any land district in which is situated the seat of government of any one of the States, and may continue the land office in such district, notwithstanding the quantity of land unsold in such district may not amount to one hundred thousand acres, when, in his opinion, such continuance may be required by public convenience, or in order to close the land system in such State at a convenient point, under the provisions of the act on that subject, approved twelfth June, one thousand eight hundred and forty.

Certain land districts and land offices may be continued.

Sec. 8. *And be it further enacted*, That there shall be granted to each State specified in the first section of this act five hundred thousand acres of land for purposes of internal improvement: *Provided*, that to each of the said States which has already received grants for said purposes, there is hereby granted no more than a quantity of land which shall, together with the amount such State has already received as aforesaid, make five hundred thousand acres, the selections in all of the said States, to be made within their limits respectively in such manner as the Legislatures thereof shall direct; and located in parcels conformably to sectional divisions and subdivisions, of not less than three hundred and twenty acres in any one location, on any public land except such as is or may be reserved from sale by any law of Congress or proclamation of the President of the United States, which said locations may be made at any time after the lands of the United States in said States respectively, shall have been surveyed according to existing laws. And there shall be and hereby is, granted to each new State that shall be hereafter admitted into the Union, upon such admission, so much land as, including such quantity as may have been granted to such State before its admission, and while under a Territorial Government, for purposes of internal improvement as aforesaid, as shall make five hundred thousand acres of land, to be selected and located as aforesaid.

Grant of land to States for internal improvements. Proviso.

Grant to new States that shall hereafter be admitted.

Sec. 9. *And be it further enacted*, That the lands herein granted to the States above named shall not be disposed of at a price less than one dollar and twenty-five cents per acre, until otherwise authorized by a law of the United States; and the nett proceeds of the sales of said lands shall be faithfully applied to objects of internal improvement within the States aforesaid, respectively, namely: Roads, railways, bridges, canals and improvement of water-courses, and draining of swamps; and such roads, railways, canals, bridges and water-courses, when made or improved, shall be free for the transportation of the United States mail, and munitions of war, and for the passage of their troops, without the payment of any toll whatever.

Said lands not to be sold for less than \$1.25 per acre.

Nett proceeds to be applied to internal improvements.

Such roads, &c. to be free for transportation of U. S. mail, &c.

Sec. 10. *And be it further enacted*, That from and after the passage of this act, every person being the head of a family, or widow, or single man, over the age of twenty-one years, and being a citizen of the United States, or having filed his declaration of intention to become a citizen, as required by the naturalization laws, who since the first day of June, A. D. eighteen hundred and forty, has made or shall hereafter make a settlement in person on the public lands to which the Indian title had been at the time of such settlement extinguished, and which has been, or shall have been, surveyed prior thereto, and who shall inhabit and improve the same, and who has or shall erect a dwelling thereon, shall be, and is hereby, authorized to enter with the register of the land office for the district in which such land may lie, by legal subdivisions, any number of acres not exceeding one hundred and sixty, or a quarter section of land, to include the residence of such claimant, upon paying to the United States the minimum price of such land, subject, however, to the following limitations and exceptions: No person shall be entitled

After the passage of this act, certain persons authorized to enter 160 acres at the minimum price.

to more than one pre-emptive right by virtue of this act; no person who is the proprietor of three hundred and twenty acres of land in any State or Territory of the United States, and no person who shall quit or abandon his residence on his own land to reside on the public land in the same State or Territory, shall acquire any right of pre-emption under this act; no lands included in any reservation, by any treaty, law, or proclamation of the President of the United States, or reserved for salines, or for other purposes; no lands reserved for the support of schools, nor the lands acquired by either of the two last treaties with the Miami tribe of Indians in the State of Indiana, or which may be acquired of the Wyandot tribe of Indians in the State of Ohio, or other Indian reservation, to which the title has been or may be extinguished by the United States at any time during the operation of this act; no sections of land reserved to the United States alternate to other sections granted to any of the States for the construction of any canal, railroad, or other public improvement; no sections or fractions of sections included within the limits of any incorporated town; no portions of the public lands which have been selected as the site for a city or town; no parcel or lot of land actually settled and occupied for the purposes of trade and not agriculture; and no lands on which are situated any known salines or mines, shall be liable to entry under and by virtue of the provisions of this act. And so much of the proviso of the act of twenty-second of June, eighteen hundred and thirty-eight, or any order of the President of the United States, as directs certain reservations to be made in favor of certain claims under the treaty of Dancing-rabbit creek, be, and the same is hereby, repealed: *Provided*, That such repeal shall not affect any title to any tract of land secured in virtue of said treaty.

So much of proviso of act 22d June 1838, ch. 119, &c. as directs reservations, &c. repealed.

When more than one settler, right of pre-emption in the first.

Proof of settlement, &c. to be made to register and receiver.

Oath required by persons claiming the benefit of this act.

SEC. 11. *And be it further enacted*, That when two or more persons shall have settled on the same quarter section of land, the right of pre-emption shall be in him or her who made the first settlement, provided such persons shall conform to the other provisions of this act; and all questions as to the right of pre-emption arising between different settlers shall be settled by the register and receiver of the district within which the land is situated, subject to an appeal to and a revision by the Secretary of the Treasury of the United States.

SEC. 12. *And be it further enacted*, That prior to any entries being made under and by virtue of the provisions of this act, proof of the settlement and improvement thereby required, shall be made to the satisfaction of the register and receiver of the land district in which such lands may lie, agreeably to such rules as shall be prescribed by the Secretary of the Treasury, who shall each be entitled to receive fifty cents from each applicant for his services, to be rendered as aforesaid; and all assignments and transfers of the right hereby secured, prior to the issuing of the patent, shall be null and void.

SEC. 13. *And be it further enacted*, That before any person claiming the benefit of this act shall be allowed to enter such lands, he or she shall make oath before the receiver or register of the land district in which the land is situated, (who are hereby authorized to administer the same,) that he or she has never had the benefit of any right of pre-emption under this act; that he or she is not the owner of three hundred and twenty acres of land in any State or Territory of the United States, nor hath he or she settled upon and improved said land to sell the same on speculation, but in good faith to appropriate it to his or her own exclusive use or benefit; and that he or she has not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title which he or she might acquire from the Government of the United States, should enure in whole or in part, to the benefit of any person except himself or herself;

and if any person taking such oath shall swear falsely in the premises, he or she shall be subject to all the pains and penalties of perjury, and shall forfeit the money which he or she may have paid for said land, and all right and title to the same; and any grant or conveyance which he or she may have made, except in the hands of bona fide purchasers, for a valuable consideration, shall be null and void. And it shall be the duty of the officer administering such oath to file a certificate thereof in the public land office of such district, and to transmit a duplicate copy to the General Land Office, either of which shall be good and sufficient evidence that such oath was administered according to law.

Persons swearing falsely, perjury.

Duty of the officer administering the oath.

SEC. 14. *And be it further enacted*, That this act shall not delay the sale of any of the public lands of the United States beyond the time which has been, or may be, appointed by the proclamation of the President, nor shall the provisions of this act be available to any person or persons who shall fail to make the proof and payment, and file the affidavit required before the day appointed for the commencement of the sales as aforesaid.

Sale of lands not delayed by this act.

SEC. 15. *And be it further enacted*, That whenever any person has settled or shall settle and improve a tract of land, subject at the time of settlement to private entry, and shall intend to purchase the same under the provisions of this act, such person shall in the first case, within three months after the passage of the same, and in the last within thirty days next after the date of such settlement, file with the register of the proper district a written statement, describing the land settled upon, and declaring the intention of such person to claim the same under the provisions of this act; and shall, where such settlement is already made, within twelve months after the passage of this act, and where it shall hereafter be made, within the same period after the date of such settlement, make the proof, affidavit, and payment herein required; and if he or she shall fail to file such written statement as aforesaid, or shall fail to make such affidavit, proof, and payment, within the twelve months aforesaid, the tract of land so settled and improved shall be subject to the entry of any other purchaser.

Persons who have or may settle certain lands with intent to purchase under this act, required to file with the register a statement, &c.

SEC. 16. *And be it further enacted*, That the two per cent. of the nett proceeds of the lands sold, or that may hereafter be sold, by the United States in the State of Mississippi, since the first day of December, eighteen hundred and seventeen, and by the act entitled "An act to enable the people of the western part of the Mississippi Territory to form a constitution and State government, and for the admission of such State into the Union on an equal footing with the original States," and all acts supplemental thereto reserved for the making of a road or roads leading to said State; be, and the same is hereby relinquished to the State of Mississippi, payable in two equal instalments; the first to be paid on the first of May, eighteen hundred and forty-two, and the other on the first of May, eighteen hundred and forty-three, so far as the same may then have accrued, and quarterly, as the same may accrue, after said period: *Provided*, That the Legislature of said State shall first pass an act, declaring their acceptance of said relinquishment in full of said fund, accrued and accruing, and also embracing a provision, to be unalterable without the consent of Congress, that the whole of said two per cent. fund shall be faithfully applied to the construction of a railroad, leading from Brandon, in the State of Mississippi, to the eastern boundary of said State, in the direction, as near as may be, of the towns of Selma, Cahaba, and Montgomery, in the State of Alabama.

The two per cent. of the nett proceeds of lands sold in Mississippi since 1st December 1817, &c. relinquished to Mississippi.

1817, ch. 23.

Proviso.

SEC. 17. *And be it further enacted*, That the two per cent. of the nett proceeds of the lands sold by the United States, in the State of Alabama, since the first day of September, eighteen hundred and nineteen, and reserved by the act entitled "An act to enable the people of the Alabama Territory to form a constitution and State government, and for

The two per cent. of the nett proceeds of lands sold in Alabama, &c. relinquished to Alabama.

1819, ch. 47.

Proviso.

the admission of such State into the Union on an equal footing with the original States," for the making of a road or roads leading to the said State, be, and the same is hereby, relinquished to the said State of Alabama, payable in two equal instalments, the first to be paid on the first day of May, eighteen hundred and forty-two, and the other on the first day of May, eighteen hundred and forty-three, so far as the same may then have accrued, and quarterly, as the same may thereafter accrue: *Provided*, That the Legislature of said State shall first pass an act, declaring their acceptance of said relinquishment, and also embracing a provision, to be unalterable without the consent of Congress, that the whole of said two per cent. fund shall be faithfully applied, under the direction of the Legislature of Alabama, to the connection, by some means of internal improvement, of the navigable waters of the bay of Mobile with the Tennessee river, and to the construction of a continuous line of internal improvements from a point on the Chattahoochie river, opposite West Point, in Georgia, across the State of Alabama, in a direction to Jackson in the State of Mississippi.

APPROVED, September 4, 1841.

STATUTE I.

Sept. 9, 1841.

[Obsolete.]

CHAP. XVII.—*An Act making appropriations for various fortification, for ordnance, and for preventing and suppressing Indian hostilities.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums be, and the same are hereby, appropriated, to be paid out of any money in the Treasury not otherwise appropriated, namely:

West-head battery.

For repairs of West-head battery, Governor's island, Boston harbor, five thousand dollars;

South-east battery.

For repairs of Southeast battery, Governor's island, Boston harbor, five thousand dollars;

Fort Independence, &c.

For repairs of Fort Independence and sea-wall of Castle island, Boston harbor, sixty-five thousand dollars;

Fort Warren.

For Fort Warren, Boston harbor, one hundred and five thousand dollars;

Fort at New Bedford.

For repairs of old fort at New Bedford harbor, five thousand dollars;

Fort Adams.

For Fort Adams, Newport harbor, forty-five thousand dollars;

Ft. Trumbull.

For fortifications in New London harbor—rebuilding of Fort Trumbull, Connecticut, thirty-five thousand dollars;

Ft. Griswold.

For repairs of old Fort Griswold, New London harbor, Connecticut, ten thousand dollars;

Fort Niagara.

For completing repairs of Fort Niagara, and erecting and repairing necessary buildings therein, New York, twenty thousand dollars;

Fort Ontario.

For completing repairs of Fort Ontario, Oswego, New York, and erecting necessary buildings therein, fifteen thousand dollars;

Fort Schuyler.

For Fort Schuyler, New York harbor, seventy thousand dollars;

Fort Wood.

For repairs of Fort Wood and sea-wall, Bedlow's island, New York harbor, fifty thousand dollars;

Ft. Columbus, Castle William and South battery.

For permanent walls for Fort Columbus, Castle William and South battery, Governor's island, New York harbor, twelve thousand dollars;

Castle William, Governor's island.

For repairs of sea-wall of Castle William and other parts of Governor's island, seven thousand dollars;

Ft. Delaware. Proviso.

For Fort Delaware, Delaware river, provided the title to the Pea Patch island shall be decided to be in the United States, including twenty-two thousand seven hundred and seventy dollars carried to the surplus fund, January first, eighteen hundred and forty-one, fifty thousand dollars;

Forts at Annapolis.

For repairing forts at Annapolis harbor, Maryland, five thousand dollars;