Moreover, it is admitted that the petition for mandamus did not show the nature of the cause of action upon which the judgment was rendered, and the court below overruled the demurrer to the petition, thus holding that the existence of the judgment alone entitled the plaintiff to a mandamus. The rehearing is denied.

AMERICAN CENT. INS. CO. v. HEISERMAN.

(Circuit Court of Appeals, Eighth Circuit. May 13, 1895.)

No. 542.

1. APPEAL—DEMURRER TO EVIDENCE—WAIVER.
   The overruling of a demurrer to plaintiff's evidence is waived by defendant by proceeding to introduce his own evidence, and he cannot thereafter assign the same as error.

2. SAME—ERROR IN INSTRUCTIONS—FAILURE TO EXCEPT.
   Alleged error in giving instructions cannot be considered where either no exceptions were taken, or, if taken, the same do not appear upon the record.

In Error to the Circuit Court of the United States for the District of Kansas.

This was an action by Mary E. Heiserman against the American Central Insurance Company to recover upon a policy of fire insurance. There was verdict for the plaintiff, and judgment accordingly, and the defendant brings error.

E. F. Ware (Robert W. Neal, on the brief), for plaintiff in error.

J. R. Hallowell and Montgomery Hallowell filed brief for defendant in error.

Before CALDWELL, SANBORN, and THAYER, Circuit Judges.

CALDWELL, Circuit Judge. The first assignment is that the circuit court erred in not sustaining the defendant's demurrer to the evidence. This demurrer was interposed at the close of the plaintiff's evidence, and, when overruled by the court, the defendant proceeded to introduce its evidence. This was a waiver of the demurrer. The only other assignment not waived by counsel in the argument of the case is that the court wrongly instructed the jury on the measure of damages. But no exception was taken to the charge at the trial, or, if an exception was taken, that fact does not appear upon the record, and, not appearing of record, has no existence as a predicate for error. The judgment of the circuit court is affirmed.

UNITED STATES v. WINONA & ST. P. R. CO. et al.

(Circuit Court of Appeals, Eighth Circuit. May 6, 1895.)

No. 564.

1. LAND DEPARTMENT OF THE UNITED STATES—JUDICIAL POWER.
   The land department of the United States (including in that term the secretary of the interior, the commissioner of the general land office, and their subordinates) is a special tribunal, vested with judicial power to hear and determine the claims of all parties to the public lands which it is authorized to dispose of, and also with power to execute its judgments by conveyances to the parties it decides are entitled to them.

2. CERTIFICATION OF TITLE UNDER A RAILROAD LAND GRANT—EFFECT.
   A certification of land to the state for the benefit of a railroad company under the acts of March 3, 1857 (11 Stat. 195), of May 12, 1864 (13 Stat. 72), and of March 3, 1865 (13 Stat. 526), by the land department of the United States, has the same legal effect as a patent.

3. PATENT TO LAND—LEGAL EFFECT.
   A patent or certificate of title to land within its jurisdiction issued by the land department is a judgment of that tribunal and a conveyance of the legal title.

4. PATENT TO LANDS WITHOUT THE JURISDICTION OF THE LAND DEPARTMENT—EFFECT.
   A patent or certificate of the land department for land over which that tribunal has no power of disposition, and no jurisdiction to determine the claims of applicants for, is absolutely void, and conveys no title. Land the title to which had passed from the government to another before the claim on which the patent was based was initiated, land reserved from sale and disposition by the land department for military or other like purposes, land reserved by a claim under a Mexican or Spanish grant sub judice, and land for the disposition of which the acts of congress have made no provision, is of this character.

5. PATENT TO LAND WITHIN THE JURISDICTION OF THE LAND DEPARTMENT—EFFECT.
   A patent or certificate of the land department for land over which that department has the power of disposition, and the jurisdiction to determine the claims of applicants for, is impervious to collateral attack, and conveys the legal title, whether its decision upon the rights of the applicants is right or wrong.

6. CANCELLATION OF PATENTS ERRONEOUSLY ISSUED — POWER OF COURT OF EQUITY.
   A court of equity may, in a direct proceeding for that purpose, set aside a patent or certificate, or declare the legal title under it to be held in trust for one who has a better right to it, in cases in which the action of the land department over a matter within its jurisdiction has resulted from fraud, mistake, or erroneous views of the law.

7. CERTIFICATION OF LANDS THROUGH MISTAKE OF LAW—EFFECT.
   Under the act of March 3, 1857, as amended by the act of March 3, 1865, supra, the land department, through a mistake of law, certified to the state of Minnesota, for the benefit of a beneficiary of those acts, lands within the primary limits of its grant, which were subject to homestead entries and pre-emption filings at the time of the definite location of its line of railroad, which had been duly canceled by a proper officer of the land department before the certificates were made. *Held*, that the land department had jurisdiction of the subject-matter of the certificates; and, although its decision was erroneous, the certificates were not absolutely void, but merely voidable, and they conveyed the legal title to the state and its grantees.

8. BONA FIDE PURCHASERS.
   In a suit in equity brought by the United States under the act of March 3, 1887 (24 Stat. 556), to cancel such certificates, and to restore the title to