Ct. 935. It is manifest that if Mailler were the only defendant the court would be without jurisdiction, as in that event none of the parties to the action would be a resident of this district. It is equally clear that under the act, as interpreted by the courts, the fact that some of the defendants are residents of this district does not give the court jurisdiction of the defendant Mailler who is not a resident. The plaintiffs do not dispute this proposition, but they maintain that jurisdiction can be sustained under the provisions of section 740 of the Revised Statutes which provides that "if there are two or more defendants residing in different districts of the state, it [the suit] may be brought in either district and a duplicate writ may be issued." If this section be still in force it is conceded that the plea must be overruled, and, on the other hand, it is conceded that if it has been repealed the plea must be allowed. The question then is narrowed to the simple inquiry, has section 740 been repealed by subsequent legislation? The section has not been expressly repealed; it is not mentioned eo nomine either in the act of 1875, or in the act of 1888. The act of 1875 (18 Stat. 470), after enacting that "no civil suit shall be brought before either of said courts against any person by any original process or proceeding in any other district than that whereof he is an inhabitant, or in which he may be found at the time of serving such process," etc., repeals all acts and parts of acts in conflict therewith. The act of 1888 expressly provides that it shall in no way affect any jurisdiction or right mentioned in sections 641–643, 722, and title 24 of the Revised Statutes or section 8 of the act of March 3, 1875, or the civil rights act of March 1, 1875. The act of 1888 expressly repeals the last paragraph of section 5 of the act of March 3, 1875, section 642 of the Revised Statutes and "all laws and parts of laws in conflict with the provisions of this act." The question here involved has never been directly decided by the supreme court. In several cases, as in Shaw v. Mining Co., supra, section 740, is referred to, and is treated, apparently, as part of the existing law, but the question here discussed seems not to have been the subject of judicial investigation in that court. The nearest approach to an expression of opinion is found in Greeley v. Lowe, 155 U. S. 58, 15 Sup. Ct. 24, where the court, at page 72, 155 U. S., and page 27, 15 Sup. Ct., says:

"As no exception was made in that act [1875] of the cases provided for by sections 740, 741, and 742, Rev. St., it is at least open to some doubt as to whether suits will lie against nonresident defendants under those sections."

The question has, however, been squarely decided in East Tennessee, V. & G. R. Co. v. Atlanta & F. R. Co., 49 Fed. 608, where the court in a well-reasoned opinion reaches the conclusion (page 616):

"That the special cases for which provision was made by the act of May 4, 1858, embodied in sections 740, 741, and 742 of the Revised Statutes, relating to the locality of suits in the states containing more than one district, were not within the contemplation of congress when that act [1875] was enacted, and are not repealed by it. * * * The provisions of the act of August 13, 1888, amendatory of the act of 1875, in respect to the questions under discussion, are in no particulars different from the latter act. These recent statutes, therefore, are likewise within the range of the authority of U. S. v. Mooney, 116 U. S. 104, 6 Sup. Ct. 304, and, in the opinion of the court, clearly did not repeal sections 740, 741 and 742 of the Revised Statutes."

Repeal by implication is not favored. If the earlier law be not plainly in conflict with the later law it should stand. If effect may be given to both it is the plain duty of the court to uphold the earlier law. "No statute should be construed as repealing a prior one, unless so clearly repugnant thereto as to admit of no other reasonable construction." Cope v. Cope, 137 U. S. 682, 11 Sup. Ct. 222; Red Rock v. Henry, 106 U. S. 596, 1 Sup. Ct. 434. The court is unable to see that the language quoted from section 740 is inconsistent with the provisions of section 1 of the act of 1888. It provides for a contingency not mentioned in the act. If congress had incorporated it in the act of 1888 the first section would be consistent and harmonious. The act would then provide that no civil suit shall be brought against any person "in any other district than that whereof he is an inhabitant; but where the jurisdiction is founded only on the fact that the action is between citizens of different states, suit shall be brought only in the district of the residence of either the plaintiff or the defendant, but if there are two or more defendants residing in different districts of the state, it may be brought in either district." The construction contended for by the plaintiffs is not only in harmony with the statute of 1888, but also with the constitution, which provides (article 3, § 2), that "the judicial power shall extend * * * to controversies between citizens of different states." A contrary ruling would close the federal courts to citizens of different states if the defendants, though living within a mile of each other and even in the same city, happen to live in different judicial districts. The general theory underlying section 740, Rev. St., has, to some extent, been recognized by congress in subsequent legislation where judicial districts have been divided. In each of these instances, so far as the court has examined them, there is a provision to the effect that "if there are two or more defendants residing in different divisions of the district, such suits may be brought in either division." 21 Stat. 63, 155, 175; 27 Stat. 72. The situation is fairly stated by the language of the supreme court above quoted. There is, perhaps, "some doubt" whether section 740 is still in force, but it is thought that the doubt should be resolved against the theory of repeal by implication.

The act of 1888 makes no provision for cases where the plaintiff is a citizen of one state and the defendants are citizens of another state but reside in different districts. The last clause of section 740 provides for these cases, and if retained in the body of the law the federal courts will hold a class of causes which, under the constitution and the general theory of legislation since, appears to be within the scope of their jurisdiction. The court is of the opinion that the clause in question may with consistency be retained, that it is not in conflict with the law of 1888, and, therefore, that its repeal should not be declared. The plea is overruled. The defendant may answer within 20 days.

DURANGO LAND & COAL CO. v. EVANS et al.[1]

(Circuit Court of Appeals, Eighth Circuit. April 12, 1897.)

No. 854.

1. PUBLIC LANDS—BILL ATTACKING DECISION OF LAND DEPARTMENT.
It is not sufficient, in a bill which seeks to show that a decision of the land department was procured by fraud and imposition, to allege that an affidavit was filed in a land office containing false allegations as to facts in issue in the proceeding in which the decision was made, but, in order that the complainant in such a bill may have a re-examination of such issues, it must be alleged and proved that such false testimony has affected the decision, and led to a result that otherwise would not have been reached; it must be shown that some trick, artifice, or deceit was practiced, preventing a full and fair trial in the land department, or preventing the officers thereof from considering the issues, and reaching a proper decision.

2. SAME—PLEADING.
A bill which seeks to attack a decision of the land department, on the ground that the officers thereof have misconstrued or misapplied the law, must set out the evidence, and state what the department found the material facts to be, in such a manner that the court can separate the department's findings of fact from its conclusions of law; and unless the findings of fact are disclosed, or enough undisputed facts are disclosed to make it plain that error of law was committed, and the complainant was thereby deprived of its rights, such a bill cannot be sustained.

3. SAME—CONTEST IN LAND OFFICE—NOTICE.
It is not necessary that notice of a contest before the land department between claimants under conflicting entries of public land should be given to the predecessors in interest of such claimants, who have parted with all their title, when the present claimants of the land are notified, and take part in the proceedings.

Appeal from the Circuit Court of the United States for the District of Colorado.

This was a bill filed by the Durango Land & Coal Company, the appellant, in the circuit court of the United States for the district of Colorado, against Roger C. Evans, Reese G. Carlisle, John Tetard, Sprigg Shackleford, and Frank Adams, the appellees, to restrain them from prosecuting any suits at law against the appellant, with respect to certain coal lands which were alleged to be in the possession of the appellant; and to restrain them as well from making any conveyance, either by way of sale or mortgage, affecting the title to said lands. The bill further prayed that the appellees, who held the legal title to said lands under a patent theretofore issued by the United States, might be adjudged to hold the same in trust for the appellant, and that they might be compelled to transfer all their right, title, and interest in said lands to the appellant. The grounds upon which such relief was asked were thus stated in the complaint: It was averred, in substance, that on December 1, 1881, Byron McMaster made a cash entry of the lands in controversy, the same being situated in Gunnison county, Colo., by paying to the receiver of the land office of the United States, at Leadville, Colo., the price demanded therefor, as fixed by the laws of the United States; that, on or about said last named day, the usual duplicate final receipt for the money so paid was issued by said receiver to the said McMaster; that on or about December 26, 1882, said receiver's receipt was duly recorded in the official records of Gunnison county, Colo.; that on or about December 26, 1881, William A. Bell, as trustee, purchased the lands in controversy from said McMaster for value, and received a warranty deed therefor, without notice of any adverse claims thereto; that on or about January 1, 1882, said Bell leased said lands for the term of 99 years to the Colorado Coal & Iron Company, a corporation of Colorado; that said lessee entered into possession of said lands under said lease, opened and developed coal mines thereon, and expended in improvements about $250,000; that ever since said date the Colorado

[1] Rehearing denied May 24, 1897.

Coal & Iron Company, or its transferee, the Colorado Fuel & Iron Company, or the complainant, the Durango Land & Coal Company, had been, and then were, in the open, actual, notorious, and continuous possession of said lands, and had been engaged during said period in mining and extracting coal therefrom; that during all of said period the complainant, or its predecessors in interest, had paid all taxes and assessments levied thereon; and that on or about the 8th day of January, 1885, the lands in controversy were duly conveyed by the aforesaid William A. Bell to the complainant, the Durango Land & Coal Company, which had purchased the same for value and in good faith, in reliance upon the title thus acquired by it from said Bell, under and by virtue of the aforesaid entry made by the said Byron McMaster.

The bill of complaint contained the following additional averments, stating the same in hæc verba: "(6) And your orator, further complaining of the said defendants, says that on or about, to wit, the 27th day of June, 1892, and nearly ten years after the said entry of and payment for said lands by the said McMaster, and after the said improvements had been made as aforesaid thereon, said defendant Roger C. Evans, fraudulently and wrongfully claiming, or pretending to claim, some interest in said lands adverse to the title of your orator, filed in the local land office of the United States at Leadville, in said state of Colorado, an affidavit to the effect that he (the said Evans) had, at some time previous thereto, filed a coal declaratory statement on said lands, and, among other things, alleged therein, upon information and belief, that said entry of the said McMaster was not made for his own use and benefit, and he (the said Evans) made application therein to enter said lands himself. But your orator alleges that at some time prior to the entry of said lands by the said McMaster, and on or about, to wit, the 21st day of October, 1880, the said Evans filed in the United States land office at Leadville, in said state of Colorado, a paper purporting to be a coal declaratory statement, in which he (the said Evans) stated, among other things, that he had discovered and developed coal mines on said lands, and had taken possession of said lands, which statements, your orator alleges, were willfully and knowingly false and untrue, in this, to wit: that he, (the said Evans) never discovered any coal thereon, and never took possession of said lands or any part thereof, and never made any improvements of any kind or description thereon; and therefore your orator says that the said pretended entry and filing of the said Evans were fraudulent and void, and that he (the said Evans) acquired no rights thereby. And your orator further alleges that the said Evans, after filing the said pretended coal declaratory statement, wholly and completely abandoned the said lands and all claims thereto, and absolutely failed to make or attempt to make any final proof of payment therefor within the time, and as required by the coal land laws of the United States, although he was duly notified by the said land office to appear and show cause why his said pretended filing should not be canceled. (7) And your orator alleges that on or about the 27th day of June, 1892, the said defendants, who, during all the time aforesaid, resided near said lands in controversy, and had personal observation and knowledge, at the time they transpired, of all facts hereinbefore stated relating to the said lands, and to the said entry of the said McMaster, and to the purchase of the said lands by the said Bell and your orator, and of the lease and of the operations and improvements carried on and made as aforesaid, conspired and confederated together, for speculative purposes and in bad faith, to deceive the land department of the United States, and to unlawfully and fraudulently obtain from the United States a pretended title to said lands, and to defraud your orator and said lessee of their rights therein, and to unlawfully and fraudulently obtain the benefit of the improvements so made as aforesaid, and to extort from them large sums of money; and, so conspiring and confederating together for said purposes, they, the said defendants, made, or procured to be made, and presented to and filed in the said United States land office, certain statements, applications, and affidavits, alleging, among other things, that said Evans had expended money in developing coal mines on said lands, and that he was at that time in actual possession of said lands, and that he made the entry for his own use and benefit, and not directly or indirectly for the use and benefit of any other party; whereas, in truth and in fact, * * * the said Evans had never opened or developed any coal mine or mines on said lands, and never discovered any coal thereon, and he was not

then, nor had he ever been, in the actual or other possession of said lands or any part thereof; and that he (the said Evans) did not make said entry for his own use or benefit. But your orator alleges that, on the contrary, the only coal ever discovered on said lands, or any part thereof, was discovered by your orator, its grantor, or said lessee or transferee; and that the only coal mines ever developed or existing or opened on said lands, or any part thereof, were opened, developed, and worked by your orator, or its grantor or lessee or transferee, as aforesaid; and that said Evans made said pretended entry for the joint use and benefit of himself and the other defendants herein, and under and in pursuance of a prior agreement made by and between them, to the effect that said lands and all pretended claims against your orator and said lessee or transferee should, upon entry and patent, be divided between them. And your orator is informed and believes, and so alleges, that said defendants, and each and every of them, were at said time, and are now, disqualified to enter the said coal lands, or any other coal lands, by reason of the fact that they and each of them had previously exhausted their right in that respect. (8) And your orator further alleges that, deceived, misled, and imposed upon by the said false and fraudulent statements, applications, and affidavits of the said parties as aforesaid, and without notice either to the said McMaster, or to the said Bell, or to the said lessee or transferee, and without any appearance on behalf of them or any of them therein, the said land department of the United States, contrary to law, and in violation of the statutes of the United States in such case made and provided, proceeded, or pretended to proceed, to a so-called 'hearing' or 'contest' to determine the respective rights of the said McMaster's and Evans' entry; that such proceedings were thereupon had in said pretended contest or hearing that the United States land department canceled, or pretended to cancel, the said entry of the said McMaster, and did, on or about the 31st day of December, 1894, allow, or attempt to allow, the said entry of the said Evans, and thereafter, and on or about the 28th day of February, A. D. 1895, issued to him a patent for said lands, or a portion thereof. And your orator alleges that the said action, finding, and decision of the United States land department were contrary to law, and without authority of law, and were in violation of the statutes of the United States and of the rights of your orator, its grantor and lessee, among other things, in this, to wit: that by reason of the acts and things done and performed by the said McMaster, his grantee, and the said lessee and transferee, as hereinbefore set forth, the said entry of the said McMaster should have been allowed, and a patent of the United States should have been issued to him by the said land department, and the said pretended entry of the said Evans should have been disallowed and canceled; that there was no evidence before the said land department at said hearing or contest showing that the said entry of the said McMaster was unlawful or invalid in any respect; and that there was no evidence in said pretended contest upon which the said pretended entry of the said Evans should or could legally have been allowed; that no notice of said pretended hearing or contest was ever given the said McMaster, or the said Bell, or said lessee, the Colorado Coal & Iron Company, or its transferee, the Colorado Fuel & Iron Company, and that neither they nor any of them appeared or were represented at said hearing or contest; that your orator, its grantor, and said lessee or transferee have been in continuous, notorious, and open possession of the said lands from about the —— day of November, 1881, up to and until about the 27th day of June, 1892, without any notice or knowledge of any adverse or other claim to said lands, or any portion thereof, on the part of the said defendants, or any of them; and that during said time, and long subsequent thereto, and up to a very recent date, your orator, its grantor, or said lessee or transferee, have made the said improvements and have paid the said taxes on said lands as aforesaid, —all of which was well known to the said defendants, and all of which facts were entirely disregarded by the said United States land department in said pretended hearing or contest; that neither the said Evans nor any of the other defendants ever discovered any coal on said lands, nor did they, or any of them, at any time take possession of the said lands, or any part thereof, nor did they, or any of them, ever at any time make, or attempt to make, any improvements of any nature on said lands, or any part thereof; that the said Evans did not make said pretended entry for his sole use and benefit, but the same was made

or attempted to be made for the joint use and benefit of all defendants herein, in pursuance of the prior agreement between them, and for the purpose of defrauding the United States government, and for the purpose of depriving your orator and said lessee of their rights in said premises, in violation of the statutes of the United States; that the said Evans had, at the time of his said pretended entry, exhausted all his rights, powers, and privileges to enter or take up coal lands under the laws of the United States; that the said Evans absolutely and completely abandoned any and all right, title, and claim which he might have had in or to said lands long prior to his said pretended entry, and absolutely failed to make final proof and payment for said lands within the time prescribed by the statutes of the United States in such case made and provided, and failed and omitted in his said pretended coal declaratory statement to show or claim that he had discovered any coal on said lands, or that he had opened a mine thereon, or that he had taken possession thereof; and that he (the said Evans) absolutely abandoned the said pretended filing on said lands long prior to his said pretended entry; and that after said abandonment the land department of the United States erroneously, and in violation of the statutes of the United States in such case made and provided, allowed him to renew the same, and to appear and be heard at said alleged contest or hearing, all of which facts were entirely disregarded and ignored by the said land department of the United States in said contest or hearing, wherein and whereby the said McMaster's entry was disallowed, and which facts, if properly considered, and the laws of the United States applicable thereto properly and legally construed by the said United States land department, would have resulted in the cancellation of the said pretended entry of the said Evans, and the allowance of the said McMaster's entry, and the issuance of a patent to him. Wherefore your orator says that for the reasons hereinbefore set forth, and for other and divers matters, facts, and things occurring in and at said pretended hearing or contest, the said land department erred, and violated the laws of the United States in such case made and provided, and more particularly the said act of congress above mentioned, in allowing the said Evans' entry, and in issuing said patent to him."

The bill further averred, in substance, that, since the issuance of said patent to the said Evans, he had conveyed to his co-defendants Carlisle, Tetard, and Shackleford a certain interest in the lands in controversy; that the defendant Adams claimed, or pretended to claim, some interest in or lien upon said lands under and by virtue of a mortgage executed by Evans; and that the said defendants were asserting and claiming a title to said lands under the entry of Evans, and were denying the validity of the title asserted by the complainant, which depended upon the validity of the entry made by said McMaster. The defendants filed a general demurrer to said bill, which, upon a hearing thereof, was sustained, and the bill was thereupon dismissed. The case comes to this court on appeal from the order sustaining said demurrer, and dismissing the bill of complaint.

Lucius M. Cuthbert and David C. Beaman (Henry T. Rogers and D. B. Ellis with them on the brief), for appellant.

John R. Smith and Sprigg Shackleford (S. D. Crump with them on the brief), for appellees.

Before SANBORN and THAYER, Circuit Judges, and LOCHREN, District Judge.

THAYER, Circuit Judge, after stating the case as above, delivered the opinion of the court.

The bill shows affirmatively that on October 21, 1880, Roger C. Evans filed a declaratory statement against the coal lands in controversy, under the provisions of sections 2347, 2348, and 2349 of the Revised Statutes of the United States; that Byron McMaster was permitted to make a subsequent cash entry of the same lands

on December 1, 1881; and that, in view of the conflicting claims thus created, a contest was inaugurated before the land department of the United States, which resulted in the cancellation of the entry made by McMaster, and in the issuance of a patent to Roger C. Evans. The allegations in the bill respecting these proceedings in the land department are very vague and unsatisfactory. The bill simply advises us that Evans filed an affidavit in the local land office at Leadville on June 27, 1892, charging that the entry by McMaster was not made for his own use, and that he (Evans) subsequently obtained a patent for the land in controversy. The further course of the proceeding before the land department, after the affidavit was filed, is not described with any detail or certainty, and but for a casual allusion, made in the brief of counsel for the appellant, to a decision rendered by the secretary of the interior, we should be in doubt whether the contest ever reached the secretary, or was terminated by the decision of some inferior officer of the land department. Enough appears, however, to justify us in presuming, as against the complainant company, that a contest was duly inaugurated by Evans against said company; that it had due notice of Evans' claims, and opportunity to defend; that it did defend; that the contest ran its course in the prescribed way through the department until it reached the secretary of the interior; and that a patent was ultimately awarded to Evans. Viewed in this aspect, the case at bar is one in which the complainant seeks to set aside and impeach the judgment of the land department; and the doctrine is too well settled to admit of any controversy that the decisions of that tribunal upon questions properly pending before it can only be annulled when such fraud or imposition is shown to have been practiced as prevented the unsuccessful party in a contest from fully presenting his case, or the officers composing the tribunal from fully considering it, or when such officers have themselves been guilty of fraudulent conduct, or when it is made to appear that, upon the case as established before the land department, the law applicable thereto was misconstrued or misapplied. If fraud is charged as a ground for annulling a decision of the land department, it is not enough that false testimony or forged documents have been employed; but it must be made to appear that such false testimony has affected the decision, and led to a result which otherwise would not have been reached. And inasmuch as the findings of the land department on questions of fact are conclusive, when the charge is that the land department has erred in the decision of a mixed question of law and fact, what the facts were, as laid before and found by the department, must be shown, so as to enable the court to see clearly that the law has been misconstrued.

These propositions have been so frequently stated and applied that it is hardly necessary to repeat them. Lee v. Johnson, 116 U. S. 48, 50, 6 Sup. Ct. 249; Quinby v. Conlan, 104 U. S. 420, 426; Marquez v. Frisbie, 101 U. S. 473, 476; Vance v. Burbank, 101 U. S. 514, 519; Smelting Co. v. Kemp, 104 U. S. 636, 640; Moore v. Robbins, 96 U. S. 530; Shepley v. Cowan, 91 U. S. 330, 340; Johnson v. Towsley, 13 Wall. 72; Sanford v. Sanford, 139 U. S. 642, 11

Sup. Ct. 666. Tested by these rules, we think the allegations of the bill were insufficient to warrant the relief prayed for, and that the demurrer thereto was properly sustained. Inasmuch as no patent had been issued when the contest was inaugurated, the land department had power to cancel the entry of McMaster, and to determine which of the two entrymen had the superior right to the land. The questions adjudicated, therefore, were within the jurisdiction of the land department, and its decision cannot be assailed for want of power to hear and decide the case. Mortgage Co. v. Hopper, 29 U. S. App. 12, 12 C. C. A. 293, and 64 Fed. 553, and cases there cited. Turning, then, to the allegations of the bill which attempt to show that the decision of the land department was procured by fraud and imposition, it will be observed that the only fraudulent acts alleged are that certain affidavits were filed in the land office by Evans and his associates, alleging that Evans had expended money in developing coal mines on the land in controversy; that he was in actual possession of the lands at the time; that he made his alleged entry for his own use; and that all of such statements contained in the affidavits were false. Aside from a general allegation of conspiracy among the defendants to fraudulently and unlawfully obtain a patent for the lands in dispute, the foregoing are the only specific fraudulent acts which the bill charges or describes; but, obviously, the issues tendered by these affidavits were the very issues which the land department was appointed to try and determine, and they were each issues of fact, concerning which the finding of the land department is final and conclusive, unless such finding was induced by fraud. In the contest pending before the department, the complainant company had an opportunity to show, as it now contends, that all the aforesaid statements were false; and, within the doctrine above stated, it was its duty to have made such showing before the land department, and it will not be excused for failing to do so unless it alleges and proves that some trick, artifice, or deceit was practiced, which prevented it from obtaining a full and fair trial of the issues, or which prevented the officers of the land department from considering the same, and reaching a proper decision. It must be apparent, we think, from a careful reading of the complaint, that no such fraud is alleged, and that, if the circuit court had entered upon a hearing of the issues presented by the bill, it would simply have retried the very case which was tried by the land department.

The question whether the bill discloses that, upon the case as presented to the officers of the land department, those officers misconstrued or misapplied the law, remains to be noticed. A fundamental defect in the bill in this respect is that it fails to set out the evidence which was laid before the land department, or to state what the department found the material facts to be, in such a manner that the court can separate the department's findings of fact from its conclusions of law, and see clearly wherein a mistake of law has been made. It is alleged in one paragraph of the bill "that there was no evidence before the said land department at said hearing or contest showing that the said entry of the said McMaster was

unlawful or invalid in any respect, and that there was no evidence in said pretended contest upon which the said pretended entry of the said Evans should or could legally have been allowed." These allegations, however, merely state the opinion of the pleader with reference to the evidence which was laid before the department, and for that reason they are merely conclusions of law. To enable a court to decide whether the conclusions so stated are right or wrong, all the testimony with respect to which the aforesaid opinion is expressed should have been set out, inasmuch as the question whether there is any evidence tending to establish a given fact is a question of law, which can only be determined after all the testimony has been considered and examined.

Our attention is also directed to other allegations of the bill, which charge, in substance, that, at the time of his entry on the lands in controversy, Evans had exhausted his power to take up coal lands under the laws of the United States; that he completely abandoned all his right, title, and interest to the lands long prior to his pretended entry; and that he failed to show in his declaratory statement that he had discovered any coal on said lands, or had opened a mine thereon. These allegations are made without any apparent reference to the contest before the land department, or to the evidence with respect to such allegations which may have been laid before the department in the course of the contest, or to the findings of the department with respect thereto. The allegations are made precisely as they might be if the issues tendered were open to consideration in the case at bar, entirely unaffected by the findings and decision of the land department. This theory is erroneous. The contest having been tried and determined before a special tribunal constituted for that purpose, its judgment can only be overturned for errors of law, by showing that it misconstrued or misapplied the law applicable to the case made before the land department, and the bill of complaint does not advise us what evidence was produced before the department relative to Evans' qualifications to enter coal lands, or relative to his acts of abandonment. This court cannot say that the law was misconstrued by the officers of the land department, unless their findings upon questions of fact are disclosed, or enough undisputed facts are disclosed, which were proven before the department, to make it plain that an error of law was committed, and that the complainant company was thereby deprived of its rights. Marquez v. Frisbie, 101 U. S. 473, 476; Sanford v. Sanford, 139 U. S. 642, 647, 11 Sup. Ct. 666. No decision by the land department would have any weight, or afford any protection to a successful litigant in that department, if, without any statement of what the facts were as presented to the department, the whole controversy could be opened in the courts by general allegations, such as are found in the present bill, that the successful litigant had exhausted his right to enter land, or was otherwise disqualified, or had abandoned his entry. These are matters which were properly cognizable before the land department when the contest was pending. The presumption is that all such questions were brought to the attention of the department, and were duly considered and properly decided. The