

granted shall not extend beyond a period of twenty years: *Provided further*, That the Secretary of the Interior, at the expiration of said twenty years, may extend the right to maintain any pipe line constructed under this section for another period not to exceed twenty years from the expiration of the first right, upon such terms and conditions as he may deem proper. The right to alter, amend, or repeal this section is expressly reserved. (Mar. 11, 1904, c. 505, §§ 1, 2, 33 Stat. 65; Mar. 2, 1917, c. 146, § 1, 39 Stat. 973.)

See section 465 of this title.

§ 322. **Application of certain sections to Pueblo Indians.** The provisions of the Statutes of the United States governing the acquisition of rights-of-way through Indian lands, to wit, sections 311, 312, 313, 314, 315, 317, 318, 319, and 321 of this title and section 935 of Title 43, and the basic Acts of Congress cited in such sections are extended over and made applicable to the Pueblo Indians of New Mexico and their lands, under such rules, regulations, and conditions as the Secretary of the Interior may prescribe. (Apr. 21, 1928, c. 400, 45 Stat. 442.)

Chapter 9.—ALLOTMENT OF INDIAN LANDS

Sec.

- 331. Allotments on reservations; irrigable and nonirrigable lands.
- 332. Selection of allotments.
- 333. Making of allotments by agents.
- 334. Allotments to Indians not residing on reservations.
- 335. Extension of provisions as to allotments.
- 336. Allotments to Indians making settlement.
- 337. Allotments in national forests.
- 338. Survey and allotment work on Indian reservations. [Repealed.]
- 339. Tribes excepted from certain provisions.
- 340. Extension of certain provisions.
- 341. Power to grant rights-of-way not affected.
- 342. Removal of Southern Utes to new reservation.
- 343. Correction of errors in allotments and patents.
- 344. Cancellation of allotment of unsuitable land.
- 345. Actions for allotments.
- 346. Proceedings in actions for allotments.
- 347. Limitations of actions for lands patented in severalty under treaties.
- 348. Patents to be held in trust; descent and partition.
- 349. Patents in fee to allottees.
- 350. Surrender of patent, and selection of other land.
- 351. Patents with restrictions for lots in villages in Washington.
- 352. Cancellation of trust patents within power or reservoir sites.
- 352a. Cancellation of patents in fee simple for allotments held in trust.
- 352b. Same; partial cancellation; issuance of new trust patents.
- 353. Sections inapplicable to certain tribes.
- 354. Lands not liable for debts prior to final patent.
- 355. Laws applicable to lands of full-blooded members of Five Civilized Tribes.
- 356. Allowance of undisputed claims of restricted allottees of Five Civilized Tribes.
- 357. Condemnation of lands under laws of States.
- 358. Repeal of statutory provisions relating to survey, classification, and allotments which provide for repayment out of Indian moneys.

Section 331. Allotments on reservations; irrigable and nonirrigable lands. In all cases where any tribe or band of Indians has been or shall be located upon any reservation created for their use by treaty stipulation, Act of Congress, or Executive order, the President shall be authorized to cause the same or any part thereof to be surveyed or resurveyed whenever in his opinion such reservation or any part may be advantageously utilized for agricultural or grazing purposes by such Indians, and to cause allotment to each Indian located thereon to be made in such areas as in his opinion may be for their best interest not to exceed eighty acres of agricultural or one hundred and sixty acres of grazing land to any one Indian. And whenever it shall appear to the President that lands on any Indian reservation subject to allotment by authority of law have been or may be brought within any irrigation project, he may cause allotments of such irrigable lands to be made to the Indians entitled thereto in such areas as may be for their best interest, not to exceed, however, forty acres to any one Indian, and such irrigable land shall be held to be equal in quantity to twice the number of acres of nonirrigable agricultural land and four times the number of acres of nonirrigable grazing land: *Provided*, That the remaining area to which any Indian may be entitled under

existing law after he shall have received his proportion of irrigable land on the basis of equalization herein established may be allotted to him from non-irrigable agricultural or grazing lands: *Provided further*, That where a treaty or Act of Congress setting apart such reservation provides for allotments in severalty in quantity greater or less than that herein authorized, the President shall cause allotments on such reservations to be made in quantity as specified in such treaty or Act, subject, however, to the basis of equalization between irrigable and nonirrigable lands established herein, but in such cases allotments may be made in quantity as specified herein, with the consent of the Indians expressed in such manner as the President in his discretion may require. (Feb. 8, 1887, c. 119, § 1, 24 Stat. 388; Feb. 28, 1891, c. 383, § 1, 26 Stat. 794; June 25, 1910, c. 431, § 17, 36 Stat. 859.)

See section 461 of this title.

§ 332. **Selection of allotments.** All allotments set apart under the provisions of sections 331 to 333, inclusive, of this title shall be selected by the Indians, heads of families selecting for their minor children, and the agents shall select for each orphan child, and in such manner as to embrace the improvements of the Indians making the selection. Where the improvements of two or more Indians have been made on the same legal subdivision of land, unless they shall otherwise agree, a provisional line may be run dividing said lands between them, and the amount to which each is entitled shall be equalized in the assignment of the remainder of the land to which they are entitled under said sections: *Provided*, That if any one entitled to an allotment shall fail to make a selection within four years after the President shall direct that allotments may be made on a particular reservation, the Secretary of the Interior may direct the agent of such tribe or band, if such there be, and if there be no agent, then a special agent appointed for that purpose, to make a selection for such Indian, which selection shall be allotted as in cases where selections are made by the Indians, and patents shall issue in like manner. (Feb. 8, 1887, c. 119, § 2, 24 Stat. 388.)

§ 333. **Making of allotments by agents.** The allotments provided for in sections 331 to 333, inclusive, of this title, shall be made by special agents appointed by the President for such purpose, and the superintendents or agents in charge of the respective reservations on which the allotments are directed to be made, or, in the discretion of the Secretary of the Interior, such allotments may be made by the superintendent or agent in charge of such reservation, under such rules and regulations as the Secretary of the Interior may from time to time prescribe, and shall be certified by such special allotting agents, superintendents, or agents to the Commissioner of Indian Affairs, in duplicate, one copy to be retained in the Indian Office and the other to be transmitted to the Secretary of the Interior for his action, and to be deposited in the General Land Office. (Feb. 8, 1887, c. 119, § 3, 24 Stat. 389; June 25, 1910, c. 431, § 9, 36 Stat. 858.)

§ 334. **Allotments to Indians not residing on reservations.** Where any Indian not residing upon a reservation, or for whose tribe no reservation has been provided by treaty, Act of Congress, or Executive order, shall make settlement upon any surveyed or unsurveyed lands of the United States not otherwise appropriated, he or she shall be entitled, upon application to the local land office for the district in which the lands are located, to have the same allotted to him or her, and to his or her children, in quantities and manner as provided in section 331 for Indians residing upon reservations; and when such settlement is made upon unsurveyed lands the grant to such Indians shall be adjusted upon the survey of the lands so as to conform thereto; and patents shall be issued to them for such lands in the manner and with the restrictions as provided in sections 348 and 349. And the fees to which the officers of such local land office would have been entitled had such lands been entered under the general laws for the disposition of the public lands shall be paid to them, from any moneys in the Treasury of the United States not otherwise ap-

propriated, upon a statement of an account in their behalf for such fees by the Commissioner of the General Land Office, and a certification of such account to the Secretary of the Treasury by the Secretary of the Interior. (Feb. 8, 1887, c. 119, § 4, 24 Stat. 389.)

Effective July 1, 1935, the permanent appropriation provided for in the last sentence of this section was repealed by Act June 26, 1934, c. 756, § 1, 48 Stat. 1225. See section 725 (b) of Title 31.

§ 335. **Extension of provisions as to allotments.** Unless otherwise specifically provided, the provisions of sections 331 to 334, inclusive, and 336, 341, 348 to 350, inclusive, and 381 are extended to all lands heretofore purchased or which may be purchased by authority of Congress for the use or benefit of any individual Indian or band or tribe of Indians. (Feb. 14, 1923, c. 76, 42 Stat. 1246.)

§ 336. **Allotments to Indians making settlement.** Where any Indian entitled to allotment under existing laws shall make settlement upon any surveyed or unsurveyed lands of the United States not otherwise appropriated, he or she shall be entitled, upon application to the local land office for the district in which the lands are located, to have the same allotted to him or her and to his or her children in manner as provided by law for allotments to Indians residing upon reservations, and such allotments to Indians on the public domain as herein provided shall be made in such areas as the President may deem proper, not to exceed, however, forty acres of irrigable land or eighty acres of nonirrigable agricultural land or one hundred sixty acres of nonirrigable grazing land to any one Indian; and when such settlement is made upon unsurveyed lands the grant to such Indians shall be adjusted upon the survey of the lands so as to conform thereto, and patent shall be issued to them for such lands in the manner and with the restrictions provided in sections 348 and 349. And the fees to which the officers of such local land office would have been entitled had such lands been entered under the general laws for the disposition of the public lands shall be paid to them from any moneys in the Treasury of the United States not otherwise appropriated, upon a statement of an account in their behalf for such fees by the Commissioner of the General Land Office, and a certification of such account to the Secretary of the Treasury by the Secretary of the Interior. (Feb. 28, 1891, c. 383, § 4, 26 Stat. 795; June 25, 1910, c. 431, § 17, 36 Stat. 860.)

Effective July 1, 1935, the permanent appropriation provided for in the last sentence of this section was repealed by Act June 26, 1934, c. 756, § 1, 48 Stat. 1225. See section 725 (b) of Title 31.

§ 337. **Allotments in national forests.** The Secretary of the Interior is authorized, in his discretion, to make allotments within the national forests in conformity with the general allotment laws, to any Indian occupying, living on, or having improvements on land included within any such national forest who is not entitled to an allotment on any existing Indian reservation, or for whose tribe no reservation has been provided, or whose reservation was not sufficient to afford an allotment to each member thereof. All applications for allotments under the provisions of this section shall be submitted to the Secretary of Agriculture who shall determine whether the lands applied for are more valuable for agricultural or grazing purposes than for the timber found thereon; and if it be found that the lands applied for are more valuable for agricultural or grazing purposes, then the Secretary of the Interior shall cause allotment to be made as herein provided. (June 25, 1910, c. 431, § 31, 36 Stat. 863.)

§ 338. **Survey and allotment work on Indian reservations.** [Repealed.]

This section (Act Apr. 4, 1910, c. 140, § 1, 36 Stat. 270) was repealed by Act May 29, 1928, c. 901, § 1 (64), 45 Stat. 991.

§ 339. **Tribes excepted from certain provisions.** The provision of sections 331 to 333, inclusive, 341, 348 to 350, inclusive, and 381 of this title shall not extend to the territory occupied by the Cherokees, Creeks, Choctaws, Chickasaws, Seminoles, and Osage, Miamies and Peorias, and Sacs and Foxes, in Oklahoma, nor to

any of the reservations of the Seneca Nation of New York Indians in the State of New York, nor to that strip of territory in the State of Nebraska adjoining the Sioux Nation on the south added by Executive order. (Feb. 8, 1887, c. 119, § 8, 24 Stat. 391.)

§ 340. **Extension of certain provisions.** The provisions of sections 331 to 333, inclusive, 341, 348, 350, and 381, of this title, are declared to extend to and are made applicable to the Confederated Wea, Peoria, Kaskaskia, and Piankeshaw tribes of Indians, and the Western Miami tribe of Indians, located in the northeastern part of the former Indian Territory and to their reservation, in the same manner and to the same extent as if said tribes had not been excepted from the provisions of said sections, except and as otherwise hereinafter provided. (Mar. 2, 1889, c. 422, § 1, 25 Stat. 1013.)

§ 341. **Power to grant rights of way not affected.** Nothing in sections 331 to 334, inclusive, 336, 348 to 350, inclusive, and 381 shall be so construed as to affect the right and power of Congress to grant the right of way through any lands granted to an Indian, or a tribe of Indians, for railroads or other highways, or telegraph lines, for the public use, or to condemn such lands to public uses, upon making just compensation. (Feb. 8, 1887, c. 119, § 10, 24 Stat. 391.)

§ 342. **Removal of Southern Utes to new reservation.** Nothing in sections 331 to 333, inclusive, 341, 348 to 350, inclusive, and 381, of this title, shall be so construed as to prevent the removal of the Southern Ute Indians from their present reservation in southwestern Colorado to a new reservation by and with the consent of a majority of the adult male members of said tribe. (Feb. 8, 1887, c. 119, § 11, 24 Stat. 391.)

§ 343. **Correction of errors in allotments and patents.** In all cases where it shall appear that a double allotment of land has been wrongfully or erroneously made by the Secretary of the Interior to any Indian by an assumed name or otherwise, or where a mistake has been made in the description of the land inserted in any patent, said Secretary is authorized and directed, during the time that the United States may hold the title to the land in trust for any such Indian, and for which a conditional patent may have been issued, to rectify and correct such mistakes and cancel any patent which may have been thus erroneously and wrongfully issued whenever in his opinion the same ought to be canceled for error in the issue thereof, and if possession of the original patent cannot be obtained, such cancellation shall be effective if made upon the records of the General Land Office; and no proclamation shall be necessary to open to settlement the lands to which such an erroneous allotment patent has been canceled, provided such lands would otherwise be subject to entry: *And provided,* That such lands shall not be open to settlement for sixty days after such cancellation: *And further provided,* That no conditional patent that has been or that may be executed in favor of any Indian allottee, excepting in cases hereinbefore authorized, and excepting in cases where the conditional patent is relinquished by the patentee or his heirs to take another allotment, shall be subject to cancellation without authority of Congress. (Jan. 26, 1895, c. 50, 28 Stat. 641; Apr. 23, 1904, c. 1489, 33 Stat. 297.)

§ 344. **Cancellation of allotment of unsuitable land.** If any Indian of a tribe whose surplus lands have been ceded or opened to disposal has received an allotment embracing lands unsuitable for allotment purposes, such allotment may be canceled and other unappropriated, unoccupied, and unreserved land of equal area, within the ceded portions of the reservation upon which such Indian belongs, allotted to him upon the same terms and with the same restrictions as the original allotment, and lands described in any such canceled allotment shall be disposed of as other ceded lands of such reservation. This provision shall not apply to the lands formerly comprising Indian Territory. The Secretary of the Interior is authorized to prescribe rules and regulations to carry this law into effect. (Mar. 3, 1909, c. 263, 35 Stat. 784.)

§ 345. **Actions for allotments.** All persons who are in whole or in part of Indian blood or descent who are entitled to an allotment of land under any law of Congress, or who claim to be so entitled to land under any allotment Act or under any grant made by Congress, or who claim to have been unlawfully denied or excluded from any allotment or any parcel of land to which they claim to be lawfully entitled by virtue of any Act of Congress, may commence and prosecute or defend any action, suit, or proceeding in relation to their right thereto in the proper district court of the United States; and said district courts are given jurisdiction to try and determine any action, suit, or proceeding arising within their respective jurisdictions involving the right of any person, in whole or in part of Indian blood or descent, to any allotment of land under any law or treaty (and in said suit the parties thereto shall be the claimant as plaintiff and the United States as party defendant); and the judgment or decree of any such court in favor of any claimant to an allotment of land shall have the same effect, when properly certified to the Secretary of the Interior, as if such allotment had been allowed and approved by him, but this provision shall not apply to any lands held August 15, 1894, by either of the Five Civilized Tribes, nor to any of the lands within the Quapaw Indian Agency: *Provided*, That the right of appeal shall be allowed to either party as in other cases. (Aug. 15, 1894, c. 290, § 1, 28 Stat. 305; Feb. 6, 1901, c. 217, § 1, 31 Stat. 760; Mar. 3, 1911, c. 231, § 291, 36 Stat. 1167.)

§ 346. **Proceedings in actions for allotments.** The plaintiff shall cause a copy of his petition filed under section 345 of this title, to be served upon the district attorney of the United States in the district wherein suit is brought, and shall mail a copy of same, by registered letter, to the Attorney General of the United States, and shall thereupon cause to be filed with the clerk of the court wherein suit is instituted an affidavit of such service and the mailing of such letter. It shall be the duty of the district attorney upon whom service of petition is made as aforesaid to appear and defend the interests of the Government in the suit, and within sixty days after the service of petition upon him, unless the time should be extended by order of the court made in the case to file a plea, answer, or demurrer on the part of the Government, and to file a notice of any counterclaim, set-off, claim for damages, or other demand or defense whatsoever of the Government in the premises: *Provided*, That should the district attorney neglect or refuse to file the plea, answer, demurrer, or defense, as required, the plaintiff may proceed with the case under such rules as the court may adopt in the premises; but the plaintiff shall not have judgment or decree for his claim, or any part thereof, unless he shall establish the same by proof satisfactory to the court. (Feb. 6, 1901, c. 217, § 2, 31 Stat. 760.)

§ 347. **Limitations of actions for lands patented in severalty under treaties.** In all actions brought in any State court or United States court by any patentee, his heirs, grantees, or any person claiming under such patentee, for the possession or rents or profits of lands patented in severalty to the members of any tribe of Indians under any treaty between it and the United States of America, where a deed has been approved by the Secretary of the Interior to the land sought to be recovered, the statutes of limitations of the States in which said land is situate shall be held to apply, and it shall be a complete defense to such action that the same has not been brought within the time prescribed by the statutes of said State the same as if such action had been brought for the recovery of land patented to others than members of any tribe of Indians. (May 31, 1902, c. 946, § 1, 32 Stat. 284.)

§ 348. **Patents to be held in trust; descent and partition.** Upon the approval of the allotments provided for in sections 331 to 334, inclusive, and 336 of this title, by the Secretary of the Interior, he shall cause patents to issue therefor in the name of the allottees, which patents shall be of the legal effect, and declare that the United States does and will hold the land

thus allotted, for the period of twenty-five years, in trust for the sole use and benefit of the Indian to whom such allotment shall have been made, or, in case of his decease, of his heirs according to the laws of the State or Territory where such land is located, and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever: *Provided*, That the President of the United States may in any case in his discretion extend the period. And if any conveyance shall be made of the lands set apart and allotted as herein provided, or any contract made touching the same, before the expiration of the time above mentioned, such conveyance or contract shall be absolutely null and void: *Provided*, That the law of descent and partition in force in the State or Territory where such lands are situate shall apply thereto after patents therefor have been executed and delivered, except as herein otherwise provided: *And provided further*, That at any time after lands have been allotted to all the Indians of any tribe as herein provided, or sooner if in the opinion of the President it shall be for the best interests of said tribe, it shall be lawful for the Secretary of the Interior to negotiate with such Indian tribe for the purchase and release by said tribe, in conformity with the treaty or statute under which such reservation is held, of such portions of its reservation not allotted as such tribe shall, from time to time, consent to sell, on such terms and conditions as shall be considered just and equitable between the United States and said tribe of Indians, which purchase shall not be complete until ratified by Congress, and the form and manner of executing such release shall also be prescribed by Congress: *Provided, however*, That all lands adapted to agriculture, with or without irrigation so sold or released to the United States by any Indian tribe shall be held by the United States for the sole purpose of securing homes to actual settlers and shall be disposed of by the United States to actual and bona fide settlers only in tracts not exceeding one hundred and sixty acres to any one person, on such terms as Congress shall prescribe, subject to grants which Congress may make in aid of education: *And provided further*, That no patents shall issue therefor except to the person so taking the same as and for a homestead, or his heirs, and after the expiration of five years' occupancy thereof as such homestead; and any conveyance of said lands so taken as a homestead, or any contract touching the same, or lien thereon, created prior to the date of such patent, shall be null and void. And the sums agreed to be paid by the United States as purchase money for any portion of any such reservation shall be held in the Treasury of the United States for the sole use of the tribe or tribes of Indians; to whom such reservations belonged; and the same, with interest thereon at 3 per centum per annum, shall be at all times subject to appropriation by Congress for the education and civilization of such tribe or tribes of Indians or the members thereof. The patents aforesaid shall be recorded in the General Land Office, and afterwards delivered, free of charge, to the allottee entitled thereto. And if any religious society or other organization was occupying on February 8, 1887, any of the public lands to which sections 331 to 334, inclusive, 336, 341, 348 to 350, inclusive, and 381 are applicable, for religious or educational work among the Indians, the Secretary of the Interior is authorized to confirm such occupation to such society or organization, in quantity not exceeding one hundred and sixty acres in any one tract, so long as the same shall be so occupied, on such terms as he shall deem just; but nothing herein contained shall change or alter any claim of such society for religious or educational purposes heretofore granted by law. And in the employment of Indian police, or any other employees in the public service among any of the Indian tribes or bands affected by sections 331 to 334, inclusive, 336, 341, 348 to 350, inclusive, and 381, and where Indians can perform the duties required, those Indians who have availed themselves of the provisions of the said sections and become citizens of the United States shall be preferred.

Provided further, That whenever the Secretary of the Interior shall be satisfied that any of the Indians of the Siletz Indian Reservation, in the State of Oregon, fully capable of managing their own business affairs, and being of the age of twenty-one years or upward, shall, through inheritance or otherwise, become the owner of more than eighty acres of land upon said reservation, he shall cause patents to be issued to such Indian or Indians for all of such lands over and above the eighty acres thereof. Said patent or patents shall be issued for the least valuable portions of said lands, and the same shall be discharged of any trust and free of all charge, incumbrance, or restriction whatsoever; and the Secretary of the Interior is authorized and directed to ascertain, as soon as shall be practicable, whether any of said Indians of the Siletz Reservation should receive patents conveying in fee lands to them under the provisions of this Act. (Feb. 8, 1887, c. 119, § 5, 24 Stat. 389; Mar. 3, 1901, c. 832, § 9, 31 Stat. 1085.)

§ 349. **Patents in fee to allottees.** At the expiration of the trust period and when the lands have been conveyed to the Indians by patent in fee, as provided in section 348, then each and every allottee shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside; and no Territory shall pass or enforce any law denying any such Indian within its jurisdiction the equal protection of the law: *Provided*, That the Secretary of the Interior may, in his discretion, and he is authorized, whenever he shall be satisfied that any Indian allottee is competent and capable of managing his or her affairs at any time to cause to be issued to such allottee a patent in fee simple, and thereafter all restrictions as to sale, incumbrance, or taxation of said land shall be removed and said land shall not be liable to the satisfaction of any debt contracted prior to the issuing of such patent: *Provided further*, That until the issuance of fee-simple patents all allottees to whom trust patents shall be issued shall be subject to the exclusive jurisdiction of the United States: *And provided further*, That the provisions of sections 331 to 334, inclusive, 336, 341, 348 to 350, inclusive, and 381 shall not extend to any Indians in the former Indian Territory. (Feb. 8, 1887, c. 119, § 6, 24 Stat. 390; May 8, 1906, c. 2348, 34 Stat. 182.)

§ 350. **Surrender of patent, and selection of other land.** The Secretary of the Interior is authorized, in his discretion, and whenever for good and sufficient reason he shall consider it to be for the best interest of the Indians, in making allotments under sections 331 to 333, inclusive, of this title, to permit any Indian to whom a patent has been issued for land on the reservation to which such Indian belongs, under treaty or existing law, to surrender such patent with formal relinquishment by such Indian to the United States of all his or her right, title, and interest in the land conveyed thereby, properly indorsed thereon, and to cancel such surrendered patent: *Provided*, That the Indian so surrendering the same shall make a selection, in lieu thereof, of other land and receive patent therefor, under the provisions of said sections and sections 348 and 349. (Oct. 19, 1888, c. 1214, § 2, 25 Stat. 612.)

§ 351. **Patents with restrictions for lots in villages in Washington.** The Secretary of the Interior is authorized, whenever in his opinion it shall be conducive to the best welfare and interest of the Indians living within any Indian village on any of the Indian reservations in the State of Washington, to issue a patent to each of said Indians for the village or town lot occupied by him, which patent shall contain restrictions against the alienation of the lot described therein to persons other than members of the tribe, except on approval of the Secretary of the Interior; and if any such Indian shall die subsequent to June 25, 1910, and before receiving patent to the lot occupied by him, the lot to which such Indian would have been entitled if living shall be patented in his name and shall be disposed of as provided for in section 372 of this title. (June 25, 1910, c. 431, § 10, 36 Stat. 858.)

§ 352. **Cancellation of trust patents within power or reservoir sites.** The Secretary of the Interior, after notice and hearing, is authorized to cancel trust patents issued to Indian allottees for allotments within any power or reservoir site and for allotments or such portions of allotments as are located upon or include lands set aside, reserved, or required within any Indian reservation for irrigation purposes under authority of Congress: *Provided*, That any Indian allottee whose allotment shall be so canceled shall be reimbursed for all improvements on his canceled allotment, out of any moneys available for the construction of the irrigation project for which the said power or reservoir site may be set aside: *Provided further*, That any Indian allottee whose allotment, or part thereof, is so canceled shall be allotted land of equal value within the area subject to irrigation by any such project. (June 25, 1910, c. 431, § 14, 36 Stat. 859.)

§ 352a. **Cancellation of patents in fee simple for allotments held in trust.** The Secretary of the Interior is hereby authorized, in his discretion, to cancel any patent in fee simple issued to an Indian allottee or to his heirs before the end of the period of trust described in the original or trust patent issued to such allottee, or before the expiration of any extension of such period of trust by the President, where such patent in fee simple was issued without the consent or an application therefor by the allottee or by his heirs: *Provided*, That the patentee has not mortgaged or sold any part of the land described in such patent: *Provided also*, That upon cancellation of such patent in fee simple the land shall have the same status as though such fee patent had never been issued. (Feb. 26, 1927, c. 215, 44 Stat. 1247.)

§ 352b. **Same; partial cancellation; issuance of new trust patents.** Where patents in fee have been issued for Indian allotments, during the trust period, without application by or consent of the patentees, and such patentees or Indian heirs have sold a part of the land included in the patents, or have mortgaged the lands or any part thereof and such mortgages have been satisfied, such lands remaining undisposed of and without incumbrance by the patentees, or Indian heirs, may be given a trust patent status and the Secretary of the Interior is, on application of the allottee or his or her Indian heirs, hereby authorized, in his discretion, to cancel patents in fee so far as they cover such unsold lands not encumbered by mortgage, and to cause new trust patents to be issued therefor, to the allottees or their Indian heirs, of the form and legal effect as provided by sections 348 and 349 of this title, such patents to be effective from the date of the original trust patents, and the land shall be subject to any extensions of the trust made by Executive order on other allotments of members of the same tribe, and such lands shall have the same status as though such fee patents had never been issued: *Provided*, That this section and section 352a of this title shall not apply where any such lands have been sold for unpaid taxes assessed after the date of a mortgage or deed executed by the patentee or his heirs, or sold in execution of a judgment for debt incurred after date of such mortgage or deed, and the period of redemption has expired. (Feb. 26, 1927, c. 215, § 2; Feb. 21, 1931, c. 271, 46 Stat. 1205.)

§ 353. **Sections inapplicable to certain tribes.** The provisions of sections 337, 351, 352, 372, 373, 403, 406, 407, and 408 shall not apply to the Osage Indians, nor to the Five Civilized Tribes, in Oklahoma. Where deeds to tribal lands in the Five Civilized Tribes have been or may be issued, in pursuance of any tribal agreement or Act of Congress, to a person who had died, or who dies before the approval of such deed, the title to the land designated therein shall inure to and become vested in the heirs, devisees, or assigns of such deceased grantee as if the deed had issued to the deceased grantee during life. (June 25, 1910, c. 431, §§ 32, 33, 36 Stat. 863.)

§ 354. **Lands not liable for debts prior to final patent.** No lands acquired under the provisions of sec-

tions 331 to 334, inclusive, and 336 shall, in any event, become liable to the satisfaction of any debt contracted prior to the issuing of the final patent in fee therefor. (June 21, 1906, c. 3504, 34 Stat. 327.)

§ 355. **Laws applicable to lands of full-blooded members of Five Civilized Tribes.** The lands of full-blooded members of any of the Five Civilized Tribes are made subject to the laws of the State of Oklahoma, providing for the partition of real estate. Any land allotted in such proceedings to a full-blood Indian, or conveyed to him upon his election to take the same at the appraisement, shall remain subject to all restrictions upon alienation and taxation obtaining prior to such partition. In case of a sale under any decree, or partition, the conveyance thereunder shall operate to relieve the land described of all restrictions of every character. (June 14, 1918, c. 101, § 2, 40 Stat. 606.)

§ 356. **Allowance of undisputed claims of restricted allottees of Five Civilized Tribes.** No undisputed claims to be paid from individual moneys of restricted allottees, or their heirs, or uncontested agricultural and mineral leases (excluding oil and gas leases) made by individual restricted Indian allottees, or their heirs, shall be forwarded to the Secretary of the Interior for approval, but all such undisputed claims or uncontested leases (except oil and gas leases) shall be paid, approved, rejected, or disapproved by the Superintendent for the Five Civilized Tribes of Oklahoma: *Provided, however,* That any party aggrieved by any decision or order of the Superintendent for the Five Civilized Tribes of Oklahoma may appeal from the same to the Secretary of the Interior within thirty days from the date of said decision or order. (Feb. 14, 1920, c. 75, § 18, 41 Stat. 426.)

§ 357. **Condemnation of lands under laws of States.** Lands allotted in severalty to Indians may be condemned for any public purpose under the laws of the State or Territory where located in the same manner as land owned in fee may be condemned, and the money awarded as damages shall be paid to the allottee. (Mar. 3, 1901, c. 832, § 3, 31 Stat. 1084.)

§ 358. **Repeal of statutory provisions relating to survey, classification, and allotments which provide for repayment out of Indian moneys.** Any and all provisions contained in any Act passed prior to March 7, 1928, for the survey, resurvey, classification, and allotment of lands in severalty under sections 331 and 334 of this title, which provide for the repayment of funds appropriated proportionately out of any Indian moneys held in trust or otherwise by the United States and available by law for such reimbursable purposes, are hereby repealed: *Provided further,* That the repeal hereby authorized shall not affect any funds authorized to be reimbursed by any special Act of Congress wherein a particular or special fund is mentioned from which reimbursement shall be made. (Mar. 7, 1928, c. 137, § 1, 45 Stat. 206.)

Chapter 10.—DESCENT AND DISTRIBUTION; HEIRS OF ALLOTTEE

Sec.

- 371. Descent of land.
- 372. Ascertainment of heirs of deceased allottees; settlement of estates; sale of lands; deposit of Indian moneys.
- 373. Disposal by will of allotments held under trust.
- 374. Attendance of witnesses.
- 375. Determination of heirship of deceased members of Five Civilized Tribes.
- 376. Oaths in investigations; witnesses.
- 377. Payment or deduction of cost of determining heirs.
- 378. Partition of allotment among heirs; patents.
- 379. Sale of allotted lands by heirs.

Section 371. Descent of land. For the purpose of determining the descent of land to the heirs of any deceased Indian under the provisions of section 348, of this title, whenever any male and female Indian shall have cohabited together as husband and wife according to the custom and manner of Indian life the issue of such cohabitation shall be, for the purpose aforesaid, taken and deemed to be the legitimate issue of the Indians so living together, and every Indian child, otherwise illegitimate, shall for such purpose be

taken and deemed to be the legitimate issue of the father of such child: *Provided,* That the provisions of this section and sections 331, 336, and 397 of this title shall not be held or construed as to apply to the lands commonly called and known as the "Cherokee Outlet." (Feb. 28, 1891, c. 383, § 5, 26 Stat. 795.)

§ 372. **Ascertainment of heirs of deceased allottees; settlement of estates; sale of lands; deposit of Indian moneys.** When any Indian to whom an allotment of land has been made, or may hereafter be made, dies before the expiration of the trust period and before the issuance of a fee simple patent, without having made a will disposing of said allotment as hereinafter provided, the Secretary of the Interior, upon notice and hearing, under such rules as he may prescribe, shall ascertain the legal heirs of such decedent, and his decision thereon shall be final and conclusive. If the Secretary of the Interior decides the heir or heirs of such decedent competent to manage their own affairs, he shall issue to such heir or heirs a patent in fee for the allotment of such decedent; if he shall decide one or more of the heirs to be incompetent, he may, in his discretion, cause such lands to be sold: *Provided,* That if the Secretary of the Interior shall find that the lands of the decedent are capable of partition to the advantage of the heirs, he may cause the shares of such as are competent, upon their petition, to be set aside and patents in fee to be issued to them therefor. All sales of lands allotted to Indians authorized by any other Act shall be made under such rules and regulations and upon such terms as the Secretary of the Interior may prescribe, and he shall require a deposit of 10 per centum of the purchase price at the time of the sale. Should the purchaser fail to comply with the terms of sale prescribed by the Secretary of the Interior, the amount so paid shall be forfeited; in case the balance of the purchase price is to be paid on such deferred payments, all payments made, together with all interest paid on such deferred installments, shall be so forfeited for failure to comply with the terms of the sale. All forfeitures shall inure to the benefit of the allottee or his heirs. Upon payment of the purchase price in full, the Secretary of the Interior shall cause to be issued to the purchaser patent in fee for such land: *Provided,* That the proceeds of the sale of inherited lands shall be paid to such heir or heirs as may be competent and held in trust subject to use and expenditure during the trust period for such heir or heirs as may be incompetent as their respective interests shall appear: *Provided further,* That the Secretary of the Interior is authorized, in his discretion, to issue a certificate of competency, upon application therefor, to any Indian, or in case of his death to his heirs, to whom a patent in fee containing restrictions on alienation has been or may hereafter be issued, and such certificate shall have the effect of removing the restrictions on alienation contained in such patent: *Provided further,* That any United States Indian agent, superintendent, or other disbursing agent of the Indian Service may deposit Indian moneys, individual or tribal, coming into his hands as custodian, in such bank or banks as he may select: *Provided,* That the bank or banks so selected by him shall first execute to the said disbursing agent a bond, with approved surety, in such amount as will properly safeguard the funds to be deposited. Such bonds shall be subject to the approval of the Secretary of the Interior. (June 25, 1910, c. 431, § 1, 36 Stat. 855; Mar. 3, 1928, c. 122, 45 Stat. 161; Apr. 30, 1934, c. 109, 48 Stat. 647.)

See section 151 of this title.

§ 373. **Disposal by will of allotments held under trust.** Any persons of the age of twenty-one years having any right, title, or interest in any allotment held under trust or other patent containing restrictions on alienation or individual Indian moneys or other property held in trust by the United States shall have the right prior to the expiration of the trust or restrictive period, and before the issuance of a fee simple patent or the removal of restrictions, to dispose of such property by will, in accordance with regulations to be prescribed by the Secretary of the Interior: