

(R.S. § 2346.)

## REFERENCES IN TEXT

The first session of the Thirty-eighth Congress, referred to in text, was begun Dec. 7, 1863, and ended July 4, 1864, 13 Stat. 1 to 417, contain legislation passed at such session.

## CODIFICATION

R.S. § 2346 derived from Res. Jan. 30, 1865, No. 10, 13 Stat. 567.

**§ 51. Water users' vested and accrued rights; enumeration of uses; protection of interest; rights-of-way for canals and ditches; liability for injury or damage to settlers' possession**

Whenever, by priority of possession, rights to the use of water for mining, agricultural, manufacturing, or other purposes have vested and accrued, and the same are recognized and acknowledged by the local customs, laws, and the decisions of courts, the possessors and owners of such vested rights shall be maintained and protected in the same; and the right-of-way for the construction of ditches and canals for the purposes herein specified is acknowledged and confirmed; but whenever any person, in the construction of any ditch or canal, injures or damages the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage.<sup>1</sup>

(R.S. § 2339.)

## CODIFICATION

R.S. § 2339 derived from act July 26, 1866, ch. 262, § 9, 14 Stat. 253.

Section is also set out as the first par. of section 661 of Title 43, Public Lands.

## REPEAL; SAVINGS PROVISION

Provision of this section, "and the right-of-way for the construction of ditches and canals for the purposes herein specified is acknowledged and confirmed; but whenever any person, in the construction of any ditch or canal, injures or damages the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage." was repealed by Pub. L. 94-579, title VII, § 706(a), Oct. 21, 1976, 90 Stat. 2793, effective on and after Oct. 21, 1976, insofar as applicable to the issuance of rights-of-way over, upon, under, and through the public lands and lands in the National Forest System. Such repeal not to be construed as terminating any valid lease, permit, patent, etc., existing on Oct. 21, 1976, see section 701 of Pub. L. 94-579, set out as a note under section 1701 of Title 43, Public Lands.

## SUBMERGED LANDS ACT

Provisions of this section as not amended, modified or repealed by the Submerged Lands Act, see section 1303 of Title 43, Public Lands.

**§ 52. Patents or homesteads subject to vested and accrued water rights**

All patents granted, or homesteads allowed, shall be subject to any vested and accrued water rights, or rights to ditches and reservoirs used in connection with such water rights,<sup>1</sup> as may have been acquired under or recognized by section 51 of this title.

(R.S. § 2340; Mar. 3, 1891, ch. 561, § 4, 26 Stat. 1097.)

<sup>1</sup> See Repeal; Savings Provision note below.

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## CODIFICATION

R.S. § 2340 derived from act July 9, 1870, ch. 235, § 17, 16 Stat. 218.

Section is also set out as the second par. of section 661 of Title 43, Public Lands.

## REPEAL; SAVINGS PROVISION

Provision of this section, "or rights to ditches and reservoirs used in connection with such water rights," was repealed by Pub. L. 94-579, title VII, § 706(a), Oct. 21, 1976, 90 Stat. 2793, effective on and after Oct. 21, 1976, insofar as applicable to the issuance of rights-of-way over, upon, under, and through the public lands and lands in the National Forest System. Such repeal not to be construed as terminating any valid lease, permit, patent, etc., existing on Oct. 21, 1976, see section 701 of Pub. L. 94-579, set out as a note under section 1701 of Title 43, Public Lands.

## SUBMERGED LANDS ACT

Provisions of this section as not amended, modified or repealed by the Submerged Lands Act, see section 1303 of Title 43, Public Lands.

**§ 53. Possessory actions for recovery of mining titles or for damages to such title**

No possessory action between persons, in any court of the United States, for the recovery of any mining title, or for damages to any such title, shall be affected by the fact that the paramount title to the land in which such mines lie is in the United States; but each case shall be adjudged by the law of possession.

(R.S. § 910.)

## CODIFICATION

R.S. § 910 derived from act Feb. 27, 1865, ch. 64, § 9, 13 Stat. 441.

Section was formerly classified to section 690 of Title 28 prior to the general revision and enactment of Title 28, Judiciary and Judicial Procedure, by act June 25, 1948, ch. 646, § 1, 62 Stat. 869.

**§ 54. Liability for damages to stock raising and homestead entries by mining activities**

Notwithstanding the provisions of any Act of Congress to the contrary, any person who on and after June 21, 1949 prospect for, mines, or removes by strip or open pit mining methods, any minerals from any land included in a stock raising or other homestead entry or patent, and who had been liable under such an existing Act only for damages caused thereby to the crops or improvements of the entryman or patentee, shall also be liable for any damage that may be caused to the value of the land for grazing by such prospecting for, mining, or removal of minerals. Nothing in this section shall be considered to impair any vested right in existence on June 21, 1949.

(June 21, 1949, ch. 232, § 5, 63 Stat. 215.)

## SIMILAR PROVISIONS

Provisions similar to this section were contained in act June 17, 1949, ch. 221, § 2, 63 Stat. 201.