George Nold testified: I am a conductor on the Rio Grande Western and had charge of train No. 6 out of this city last evening. A heavy snow storm was raging when we left the depot at 6:05. When we passed this crossing the fireman came back to me and said the engineer thought something had been struck. I walked back with him and found the man first. He was lying a little southeast of the buggy, and was not dead. I heard the bell ring and the whistle blow after leaving the depot. After the train was stopped we ran back six coach lengths.

Addison P. Angell testified: I was braking on No. 6, bound south, last night. We left at 6:05, and I heard the bell ring and the whistle blow for the crossings. I was inside the car when this accident occurred and still heard the bell. It was snowing so hard that I could not see more than twelve feet from the train. I was in the rear coach at the time.

After a brief consultation the jury rendered the following verdict:

TERRITORY OF UTAH,
COUNTY OF SALT LAKE.

An inquisition holden at 342 south Third West street, in the city of Salt Lake, on the 28th day of December, 1891, before T. E. Harris, coroner of said county, upon the body of Franklin M. Anderson, then and there lying dead, by the jurors whose names are hereunto subscribed.

The said jurors on their oaths do say, from the evidence presented, that the said Anderson came to his death on the evening of December 27th, 1891, at the Rio Grande Western Railway crossing on Tenth South street, through being struck by RioGrande Western passenger train No. 6, southbound, during a blinding snowstorm. We further find that the accident was not due to any negligence or duty upon the part of the railroad company or its employes on train No. 6.

In testimony whereof the said jurors as well as the said coroner have hereunto set their hands the day and year first above written.

C. C. CLIVE,
W. F. PATERSON,
E. G. IVINS,
Jurors.

T. E. HARRIS, Coroner.

LAND COMMISSIONER CARTER'S DECISION.

Commissioner Carter, of the Land Department at Washington, has sent to the Register of the Land Office in this city his opinion on the land contest dispute in regard to the entries on section 16, township 1 south, range 1 east, claiming the tracts filed on to be mineral lands because of clay deposits thereon. The decision is adverse to the claimants, and is as follows:

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
WASHINGTON, D. C., Dec. 17, 1891.

Contest No. 939, United States and Utah Territory vs. John C. Kennelly, mineral applicant, involving application for patent for the Cecelia, Agnes and Helen placer claims, comprising the N½ and SE¼ of section 16, township 1 south, range 1 east, Salt Lake meridian.

Register and Receiver, Salt Lake City, Utah:

Gentlemen.—On May 2, 1890, John C. Kennelly offered to file a mineral application for patent for the above named placer claims, claiming the same to be valuable for their deposits of brick and potter's clay.

On June 12, 1890, your office rejected the application for the reason that the land is not mineral in character, and not subject to entry under the placer mining law.

From this action the mineral claimant appealed to this office.

Upon consideration of said appeal, this office, by letter of October 27, 1890, directed that you cause a hearing to be held "to determine whether each legal subdivision of the ten acres of the claimed land contains such valuable deposits of mineral as to bring it within the class of lands subject to mineral entry," directing at the same time that all parties, including the Territorial authorities (the land being on a school section), be notified thereof.

The hearing was set for April 8, 1891, and continued for several days, the mineral claimant being represented by Messrs. Bird & Lowe, the Territory by J. S. Boreman, Superintendent of Schools, assisted by Messrs. Parks & Thompson.

Before the testimony was taken, the counsel for the Territorial authorities moved to dismiss the case on the ground and for the reason that there was no reservation or exception of mineral lands in the section of the organic act which reserved sections 16 and 36 for school purposes in Utah Territory, nor has there, in any of the States of the United States with respect to the reservation of such sections to the Territory of Utah, been any exceptions or reservations of any mineral lands or minerals which might be contained therein. In fact, that this reservation amounts to a grant, and vests title in the Territory, and that such being the case an application to patent any portion of said sections as mineral lands should be dismissed.

You overruled this motion; whereupon exception was noted. In their argument opposing the appeal of the mineral claimant, the counsel for the Territory request a decision by this office as to the correctness of your said ruling, refusing to dismiss the case, it being alleged in the argument that it appears of record that other placer locations were made by other persons than the mineral claimant in this case, concerning the same land in dispute, and that it is a well-known fact that nearly every school section in Salt Lake county, as well as in other parts of the Territory, are covered with so-called placer locations, made by land speculators in the hope of acquiring title to valuable lands to which there is no other way, at present, of acquiring title.

While it is not necessary for the purpose of reaching a decision in this case to pass upon the question thus presented, I will, nevertheless, quote the following from the decision of this office in the case of coal entry No. 58 of Henry Wood (Copp's L. O. Vol. X, p. 225), which is still adhered to, viz.; "Since then it appears settled that it was never the intention of Congress to grant to a State or Territory any mineral lands for school purposes, it follows *a portiori*, that it cannot be presumed to have been its intention to *reserve* any portion of them to be applied in future to such purposes." In the same decision (quoting from the decision in case of Consolidated Mining Company, 102 U. S., 167, in relation to public lands to the State of California by the act of March 3, 1853, for school purposes) it was said that it "was not intended to cover mineral lands, but such lands were excluded from the grant, as they were from all actions, by the settled policy of the government. See also 6 L. D. p. 71, Thomas Ecbatson, receiver.

Your ruling denying the motion to dismiss the case is therefore approved.

The testimony taken at the hearing is very exhaustive and touches on, on the part of the mineral claimant, every ten-acre subdivision of the entire tract of 480 acres. It is in evidence that a shaft or excavation, or several of them, have been sunk on each of said subdivisions, and that a substance claimed to be pottery clay, and valuable as such, was disclosed in each. It is endeavored to be shown that this material or substance subjects the land to mineral application for patent and entry, and to sustain this view the mineral claimant produces Benjamin and William Blake and Isaiah Faulkner, professional potters, who, as witnesses, submit specimens of ware made by them from this clay, and who state that the clay body in the bank is worth 25 cents per load, or cubic yard. It is claimed, accordingly, that at this valuation the clay bed having an average width of five feet, the land is worth $2016 per acre for mineral purposes. The clay bed is further claimed to be valuable for the production of the metal aluminum, it having been shown by different analyses, by chemists and assayers, to contain from 20 to 28 per cent. aluminum, being equivalent to from 9 to 18 or 20 per cent. of the metal aluminum. It is also testified that active work was commenced by the mineral claimants on November 1, 1889, and has continued ever since, and that the mineral claimants have improved the same by putting on it a lumber house, stable, well thirty feet deep and timbered, two clay mills, an iron-force pump, a road, 72,000 brick, tools, etc. The testimony on the part of the mineral claimants does not show, however, that much has been produced for market or general use in the way of pottery from the claim, nor that any attempt has been made to extract aluminum, for marketable or commercial purposes, nor that any of the clay has been sold at 25 cents per cubic yard or at any other price.

In opposition to the mineral claimants' showing, the Territory put upon the stand a number of witnesses, including James and Benson Eardley, professional potters, who like the Blakes learned the business in Derbyshire, England, and who apparently possessed the same advantages for acquiring a knowledge of it, and whose information on the subject must be considered equally trustworthy. Their testimony is to the effect that there is no special value in the clays in the tract in controversy; that the ware made from it is inferior in quality and practically unmarketable, and that in several places in the vicinity much better clay may be found. Several of the witnesses testify that they have farmed portions of