

selfishness, active competition, and tempted by a door for oppression and wrong being left unclosed by law, become great powers for evil, against which no one citizen has the strength to offer successful resistance. And as these opportunities for oppression of the people along long lines of railways, often consolidated into through lines from coast to coast, passing through different States and localities, or leagued together by secret combination or conspiracy, are so numerous and difficult to detect and control by State legislation, and as to Congress has been delegated the power to regulate commerce with foreign nations, and among the several States, therefore,

Be it Resolved, That our Senators in Congress be instructed, and the Representatives from the State be requested, by votes and influence to assist in the speedy passage of general laws securing the lives of citizens from careless and negligent destruction in traveling in these public carriers, and securing a general uniformity impartially and in the rates of freight and passage graduated according to distance per mile, and prohibiting and punishing unjust discriminations and all violations of such laws by criminal proceedings, leading to the citizens the power of the government in self-defense in all cases of contest between them and such companies.

And that these protective measures be limited, and limited only at the point of equal justice to all, and unjust burdens upon or privileges to none, placing that control over railways which shall secure the rights of citizens from infringement the same as between man and man.

And be it further Resolved, That the Secretary of State be requested to transmit copies hereof to each Senator and Representative in Congress from this State.

REPORT

OF THE

HOUSE COMMITTEE

OF THE

FOURTEENTH GENERAL ASSEMBLY

ON HOUSE FILE No. 1.



DES MOINES:

G. W. EDWARDS, STATE PRINTER.
1872.

REPORT.

Mr. Speaker :

The undersigned Committee to whom was referred House file No. 1.

A Bill for

“An act authorizing the appointment of a Commissioner to examine and report upon the losses of settlers, and claimants upon Des Moines River Lands, by failure of title, and providing for applying to Congress for relief, “make the following report, to-wit:

August 8th, 1846 :

Congress granted to the Territory of Iowa, one half, in alternate sections, of the public lands, five miles wide on each side of the Des Moines River “to improve the navigation of the said Des-Moines River, from its mouth to the Raccoon Fork in said Territory.”

January 9th, 1847 :

By joint resolution, Iowa accepted the Grant.

February 24th, 1847 :

A “ Board of Public Works ” was formed by law, with authority to sell the lands.

February 23d, 1848 :

R. M. Young, Commissioner of the General Land Office, decided the grant extended the whole extent of the river in the limits of Iowa.

January 11th, 1849 :

The Commissioner of the General Land office, estimated the Grant at 900,000 acres.

March 2nd, 1849:

R. J. Walker, Secretary of the Treasury decided that the Grant extended to the source of the river.

April, 1850:

Thomas Ewing, Secretary of the Interior held that the Grant extended only to the Raccoon Fork at the present site of the city of Des Moines, reversing the former decision as to extent of the Grant.

July 19th, 1850:

Attorney-General Johnson decided that the Grant extended to the source of the river, so far as the river was in Iowa, at the time of the Grant.

October 9th, 1851:

Secretary Stewart recognized the claim of the State, and notified the Commissioner of the General Land Office of such recognition.

October 30th, 1851:

The Secretary approved above the Raccoon Fork, 81,707.93 acres, and

March 10th, 1851:

He approved 143,908.37 acres, and

December 17th, 1853:

Secretary McLellan approved 33,142.43 acres, and

December 30th, 1853:

He approved 12,813.41 acres above the Raccoon Fork, making an aggregate approved above that point of 271,572.34 acres.

January 19th, 1853:

The State authorized the Commissioners to sell all the lands.

June 9th, 1854:

The State made a contract with the Des Moines Navigation and Railroad Company to sell all the unsold lands for \$1,300,000 to pay the indebtedness of the improvement and go on with the *daming* of which had been commenced.

March 21st, 1856:

The Commissioners of the General Land Office decides that the Grant does not extend beyond the Raccoon Fork.

May 29th, 1856:

Attorney-General Cushing decides that the Grant was limited to the Raccoon Fork, but that what had been done by the officer representing the United States prior to that time, was final, so far as the lands had been actually certified and approved to the State, and recommended a settlement between the State and United States, by making the northern boundary of Iowa the point of compromise when the Grant should cease.

May 15th, 1856:

Congress made the Railroad Grants which crossed the certified River lands at Des Moines, Boone, and Fort Dodge; thus adding a new element of doubt and discord to this troublesome dispute.

July 14th, 1856:

The State accepted and disposed of the various land grants, to various Railroad Companies, without in any manner reserving the lands claimed and approved as a part of the grant to the River Company.

March 22d, 1858:

The Des Moines Navigation and Railroad Company settled with the State, by the State giving all these lands above the Raccoon Fork to that company to township 93 *east* of the river, and to township 89 *west* of the river, and at that settlement the State neglected to protect a large number of actual settlers who lived on these lands some of whom had settled on them as Government lands, and some as School lands.

April 15th, 1858:

The settlement was accepted by the company, May 3, 1858.

May 3d, 1858:

The Governor patented these lands to the Des Moines Navigation and Railroad Company.

June 10th, 1858:

The patents were recorded in the State Land Office.

March 22d, 1858:

The State gave the balance of the lands to the Keokuk, Fort Des Moines and Minnesota, now Des Moines Valley Railroad Company.

March, 23d, 1858:

The State authorized the Register of the State Land Office and the Governor of the State to issue patents to purchasers of Des Moines river lands.

March 17th, 1860,

The State resumed the lands granted to the Iowa Central Air Line Railroad Company.

March 26th, 1860:

The State granted the same lands resumed to the Cedar Rapids and Missouri River Railroad Company.

In 1860:

The Supreme Court of the United States, in the case of *Litchfield v. The Dubuque and Pacific Railroad Company*, decided that the grant only extended to the Raccoon Fork, thereby annulling all the acts of the State, and destroying the title under the State patents of 1858 for this vast body of lands, and as was then understood, (but since decided otherwise) on account of a railroad company being a party to the suit, giving the lands to the railroad companies holding the grants, crossing at Des Moines, Boone, and Fort Dodge.

And under that decision, the Supreme Court of Iowa, in the case of *Stockdale v. E. G. Morgan, Treas.*, held that these lands were taxable because the railroad companies were "entitled to the title," and in the case of *The Iowa Homestead Co. v. Webster County, et. al.*, and in the case of *Dubuque and Sioux City Railroad Co. v. Webster County, et. al.*, over ten thousand dollars of taxes were under the decision of the courts paid by these companies, on these lands held to be railroad lands, and not Des Moines river lands. The Legislature of the State, in the subsequent legislation of 1860 and 1862, acted under the same view of the case.

March 2d, 1861:

The title of the River Company and of its grantees, having failed, Congress passed a joint resolution providing,

"That all the title which the United States still retains in the tracts of land * * * which have been certified to said State improperly by the Department of the Interior, as part of the grant, by act of Congress, approved, August 8th, 1846, and which is now

held by *bona fide* purchasers under the State of Iowa, be, and the same is hereby relinquished to the State of Iowa."

July 12th, 1862:

Congress passed an act which granted to the State "the alternate sections (designated by odd numbers) lying within five miles of said river, between the Raccoon Fork and the Northern boundary of said State," and granted indemnity lands for these same lands, the title to which had failed, as decided by the case of *Litchfield v. D. & P. R. R. Company*, and other lands were selected by the State in place of these lands, and were patented by the State to the Des Moines Valley Railroad Company.

March 3rd, 1871:

Congress confirmed the title to these lands which had been selected under the act of 1862, in lieu of the lands which the State had patented in 1858, thereby up to that date March 3rd, 1871, treating the titles to these lands patented in 1858, as having failed and as belonging to the settlers who had pre-empted and entered them as government lands.

In 1866.

In two cases in the Supreme Court of the United States, viz.: *D. M. N. and R. R. Company v. Burr and v. Walcott*, that court held, that the title which had been obtained by the patents of the State of 1858, and the legislation of Congress of 1861 and 1862, of these lands above the Raccoon Fork was good, and thus, cutting off all those settlers who had patents, and pre-emption claims and homestead claims and titles through the railroad grant.

Your committee further report:

That after the decision of the Supreme Court in 1860, the Commissioner of the General Land Office treated these lands as Government lands, so far as to allow all settlers on these lands prior to the act of Congress of 1862, to homestead and pre-empt their homes, and that in a very large number of cases patents were issued to such settlers, and they held the most solid and best evidence of title known to our laws; yet

At the December Term, 1869,

Of the Supreme Court of the United States, in the case of *Wells v. Reily* brought from Webster county, against a widow who had

raised her family on these lands, and resided thereon for 15 or 16 years; had pre-empted the land as Government land; had made her proof; had paid her money, and received her patent, signed by Mr. Lincoln, President of the United States, held that her patent was void; that her long settlement could not protect her, and that the highest evidence of title—the patent of the United States—was of no avail whatever against one claiming title through the Des Moines Navigation and R. R. Company; and she, with her family, was, by the United States Marshal, ejected from her home.

By this decision the settlers on these lands all became subject to ejectment. Hundreds of suits were commenced by the River Company and their grantees, and about one thousand are now pending in the United States and State courts, to drive these citizens from their homes; which suits will doubtless result in the same way as the Wells-Reily case.

The State having, by the action of the Legislature, by the decisions of her courts, by accepting other lands in lieu of these lands, given this large class of citizens no protection, is, in honor bound to protect them. The United States, by the conflicting decisions of her officers, by the uncertain changing Legislation of Congress, and apparent, if not real conflicting decisions of the United States Courts, by the assurance and decisions of the officers in charge of the public lands, by the patents of the executive of the nation, having declared, over and over again, that these settlers should be protected in their property, is now bound to protect them. In honor, the State and the United States are bound to protect these unfortunate settlers, and your committee doubt not they will be protected.

They therefore recommend that sundry amendments which are incorporated in the bill herewith submitted, be adopted and the bill as amended with report of Committee lie on the table and printed.

All of which is respectfully submitted.

J. F. DUNCOMBE,
S. B. HEWETT, JR.,
C. J. A. ERICSON.
J. M. TUTTLE,

Committee.

REPORT OF SPECIAL COMMITTEE

ON METHOD OF CONSIDERING REVISION.

DES MOINES:

G. W. EDWARDS, STATE PRINTER,
1872.