REPORT

OF THE

REGISTER

OF THE

STATE LAND OFFICE,

NOVEMBER 16, 1863.

J. A. HARVEY, Register.

DES MOINES:
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REPORT.

STATE LAND OFFICE, IOWA,
DES MOINES, NOV. 16TH, 1863.

To His Excellency, Samuel J. Kirkwood, Governor of Iowa:

SIR:—In reporting the transactions of this office for the last two years, I would, for the sake of uniformity, be glad to observe the order adopted by my predecessor, but it seems more appropriate to take up the several subjects, as near as convenient, in the order in which they came into existence. I shall therefore observe the following order:

1st—The 500,000 Acre Grant.
2nd—The 16th Section Grant.
3rd—The University Grant.
4th—The Saline Lands.
5th—The Des Moines River Grant.
6th—The Swamp Land Grant.
7th—The Rail Road Grant.
8th—The Agricultural College and Farm.
9th—The Des Moines River—School Lands.
10th—Amity College.
11th—Mortgage—School Lands.

Although previous reports from this office give a synopsis of the important acts passed in reference to some of these Grants up to the date of those Reports, yet for the convenience of those desiring to examine these matters, I shall endeavor to give a sufficient (though brief) history of the several Acts, as well as the transactions under them, to convey a correct understanding of the previous legislation, and present condition of each of these subjects; believing that the increased utility and convenience of the Report will more than compensate for the additional labor and expense incurred.

1st—THE 500,000 ACRE GRANT.

The State upon her admission into the Union became entitled to these 500,000 acres land, by virtue of An Act of Congress approved September 4th, 1841. That Act grants to each State therein specified 500,000 acres of the public land for the purposes of internal improvement, and grants to each State subsequently admitted into the Union so much land as shall, together with what may have been granted to her while a Territory for such purpose, make the amount of 500,000 acres, to be selected within the limits of the State.

The Constitution adopted by the Convention that met in October, 1844, to frame a Constitution for the State of Iowa, provided that the proceeds of these lands, together with all other lands that might be granted by Congress for the benefit of schools, "shall be and remain a perpetual fund," for the support of schools throughout the State. Congress by the Act of March 3d, 1845, entitled "*An Act for the admission of the State of Iowa and Florida into the Union*, assents to this diversion of the Grant. But this Act of Admission having changed the boundaries of the State was rejected by the citizens at the ballot box. The second Constitution, adopted in 1846, makes the same provision in reference to these lands, and Congress in the Act of December 28th, 1846, "*An Act for the admission of the State of Iowa into the Union*" assents again to the diversion. And still later, by Act of March 2d, 1849, reiterate and expressly declare the assent of the United States to the diversion of these lands from internal improvement, to the support of schools.

The same provision is contained in the New Constitution, and the proceeds of this Grant together with that of the 16th Sections. The five per cent. fund and estates that escheat for want of heirs, constitute the permanent Common School fund of the State.

The General Assembly by An Act entitled "*An Act to provide for the management and disposition of the school fund*," approved Feb. 25th, 1847, attempted to provide for the selection of these lands, but the Act proving insufficient, was amended by "*An Act Supplemental to the Act of Feb. 25th*, 1847," approved January 15th, 1849.

The last mentioned Act appoints Commissioners to select the remainder of these lands under the instructions of the Commissioner of the General Land Office. The lands were thus selected, and although the Grant only contemplated and intended 500,000 acres, yet there were more selected, and by oversight the Department certified to the State, under it, 522,660,03 acres.

Upon discovering this error, His Excellency, Gov. Lowe, wrote a letter to the Department, releasing or attempting to release on behalf of the State, 13,918,25 Acres, being all of the excess that appeared upon an investigation then made, to be undisposed of by the State. This left 508,741,78 Acres certified still, and the difference was reconciled by the Government withholding of the five per cent. fund the amount of 8,741,78 Acres, at $1,25 per acre. This settlement results advantageously to the School Fund, as none of these lands were sold for less, and some of them much higher than $1,25. In —— the Commissioner of the General Land Office, not satisfied with the release made by Gov. Lowe, applied to Gov. Kirkwood for a formal release or Deed of re-conveyance of the 15,918,25, who, not feeling authorized to execute such conveyance without authority of the Legislature, laid the matter before the last regular session of the General Assembly, and thereupon an Act was passed, approved March 22, 1862, giving the Executive of the State full power to settle this matter with the General Government and execute the necessary conveyance. (Acts 1862, P. 58.) But I am unable to ascertain that this has ever been done. The Act of Jan. 15, 1849, placed the care and selling of these lands in the hands of the School Fund Commissioner under direction of Sup't. of Public Instruction. The Act of Jan. 25, 1855, required the School Fund Commissioner to offer and sell *all school lands* as therein prescribed, withdrawing it altogether from the direction of the Superintendent of Public Instruction. (Acts 1855, P. 200.) An Act of the 7th General Assembly, entitled "*An Act providing for the management of the School Fund and sale of the School lands*," approved March 23, 1858, abolished the office of School Fund Commissioner and required him to hand over all papers and make final settlement with the County Judge.

This Act also requires the Superintendent of Public Instruction to transfer to the Auditor of State all books, papers and documents relating to the School Fund, and to the State Land Office all books, papers and documents relating to the School and University Lands. And while it does all this, and expressly empowers the County

Judge and Township Trustees to control and sell the 16th sections, it confers neither on him nor any one else power to control or sell the lands of the 500,000 acre grant.—(*Laws* 1858, *Chap.* 158.)

This difficulty, however, was remedied by the Act of the Eighth General Assembly passed April 3d, 1860, placing these lands as well as the 16th sections under the control of the County Board of Supervisors, and authorizing them to sell the same as therein prescribed.—(*Rev.* 1860, *P.* 3482.)

The Supervisors still have control of these lands under this Act —the Clerk of the District Court issuing the certificates of Final payment, as contemplated by the Act.

The following table exhibits the number of patents issued, and the number of Acres of these lands conveyed during the several periods mentioned up to this time.

FROM	TO	NO. PATENTS.	NO. ACRES.
	November 15, 1861	3,208	323,757.95
November 15, 1861	January 5, 1863	288	24,527.00
January 5, 1863	November 15, 1863	395	25,066.78
Total,.....	.....	3,891	373,351.73

Deduct the total amount conveyed from 508,741,78, the whole amount of the Grant, and we have 135,390.05 Acres with the title yet in the State, though, doubtless much and perhaps all of this remainder has been sold.

2D—THE SIXTEENTH SECTION.

The Acts of Congress before cited, granting to the State 500,000 acres of land for Internal Improvement, also grant to the State the 16th section in every township in the State, and when that section is sold or otherwise disposed of, other lands of like amount in lieu thereof, for the use of Schools. There are of these sections in the State, according to an estimate furnished this office by Hon. M. L. Fisher, Superintendent of Public Instruction, and reported in 1857 by Mr. Parvin, fifteen hundred and eighty-two (1582), containing one million, twelve thousand four hundred and eighty (1,012,480) acres.

The General Assembly, in the Act of Feb. 25th, 1847, provide for the sale of these lands, and place them under the control of the School Fund Commissioners of the several counties.

They remained under the control and management of these Commissioners, in connection (at times) with the Township Trustees, till the office of School Fund Commissioner was abolished by the Act of March 23d, 1858. By that Act, these lands were placed in the hands of the County Judge, in connection with the Township Trustees. (*Chap.* 158, *Acts* 1858.)

The Act passed April 3d, 1860, entitled "*An Act providing for the management of the School Fund, and the sale of the School Lands*," took effect on the first Monday of January, 1861, and transferred the management and care of these lands to the Boards of Supervisors and the Township Trustees, and they remain under their control. (*Chap.* 86, *Rev.* 1860.)

The following table shows the number of acres of these lands patented by the State, and the number of patents issued therefor, during the periods designated up to the present:

FROM	TO	NO. PATENTS.	NO. ACRES.
	November 15, 1861	3,642	289,650.06
November 15, 1861	January 5, 1863...	295	19,159.80
January 5, 1863	November 15, 1863	328	41,876.75
Total,.....	.....	4,265	350,686.61

Deduct the total amount patented from the whole amount of this grant—1,012,480 acres, and we find yet remaining unpatented by the State, 661,793.39 acres; but what portion of this is sold by the officers having charge of the same in the different counties, we have no means of determining.

Before closing this part of my Report, I desire to call attention to the appraisement of this land. Never, under any of the previous aws, could either this or any other School Land be valued or purchased at less than $1.25 per acre. But under the law now in force, the Township Trustees, in appraising the 16th section lands, "*shall appraise each tract at what they believe to be its true value*," &c. There is no minimum for the valuation. (*See Chap.* 86, *Rev. Sec.* 1970.)

Under this law, some of the School Lands in Butler county have been appraised and sold as low as twenty-five cents per acre.

There is very little of the School Lands in this State, that is not worth at least $1.25 per acre, whilst the most of it is worth more; and the policy of permitting it to be sold for less, appears to me at least very doubtful.

3D—UNIVERSITY LANDS.

This grant of lands consists of two entire townships, or seventy-two sections, set apart under the Act of Congress, entitled "*An Act granting two townships of land for the use of a University in the Territory of Iowa*," approved July 20th, 1840, and is placed by law under the control and management of the "Board of Trustees of the Iowa State University," at Iowa City, to the benefit of which institution they are exclusively appropriated.

For Acts of the General Assembly upon this subject, see the Revision of 1860, page 342 to 347.

The following table shows the several counties in which these lands lie—the total amount—number of acres patented—number unpatented, and the number of patents issued in each, up to this date:

COUNTIES.	NO. PATENTS.	ACRES PAT'D.	UN-PATEN'D.	TOTAL.
Appanoose,	3	120.	520.	640.
Boone,	16	1,302.18	1,311.30	2,613.48
Davis,	2	80.	1,217.36	1,297.36
Dallas,	.....	.....	572.07	572.07
Decatur,	1	40.	2,520.	2,560.
Hardin,	58	3,731.	6,594.62	10,325.62
Iowa,	1	80.	566.65	646.65
Jasper,	2	200.	4,411.35	4,611.35
Jefferson,	2	200.	1,080.	1,280.
Lucas,	5	400.	4,145.44	4,545.44
Polk,	6	617.66	4,554.53	5,172.19
Scott,	3	405.16	240.	645.16
Story,	12	935.24	4,286.16	5,221.40
Union,	1	160.	478.20	638.20
Wapello,	1	40.	1,880.	1.920.
Warren,	13	1,200.	2,040.	3,240.
Total,	125	9,511.24	36,417.68	45,928.92

Add 29:02 acres, for fractional sections taken as full, and we have 45,957:94 acres certified to the State, leaving a deficit of 122:06 acres yet due the State on this grant.

The General Assembly, at its last regular session, by An Act entitled "*An Act to secure the remainder of the University Land Grant*," approved April 7, 1862, authorized the Governor to take the necessary steps to secure to the State this remainder, but I am not aware that any steps have been taken in the matter.

4TH.—SALINE LANDS.

Although the several Statutes enacted in reference to this grant of lands have been cited and to a considerable extent copied, in all the reports heretofore made from this office, yet in view of the fact that some additional legislation is necessary, to settle doubts existing as to who shall control these lands, it seems proper here to give a brief synopsis of all the acts passed in reference to this subject up to the present.

Congress passed but two acts:

1st.—The Act approved March 3d, 1845, granting to the State, under certain restrictions, the use of the Salt Springs in the State, not exceeding twelve in number, and six sections of land, the title thereto still remaining in the general government.

2d.—The Act of May 27th, 1852, relinquishing the right of the government and granting these lands to the State in fee simple.

Thus the 46,101.53 acres of land belonging to this grant were placed under the control of the General Assembly of this State, and the following several Acts have been passed by that body in reference thereto:

1. "An Act in relation to the Salt Springs granted to the State," Approved Feb. 24th, 1847, directing the method of selection.

2. "An Act to dispose of the Saline Lands belonging to the State, and to appropriate the proceeds thereof," passed Feb. 5th, 1851.

The second section of this act provides, "*That the sales* (of these lands) shall be made by the same officer, as though the lands formed a portion of those set apart for the improvement of the Des Moines River." This officer was the Register of the Des Moines River Improvement, and the fifth section provides, that "proceeds of the sales of said lands shall constitute a fund for founding and supporting a Lunatic Asylum."

Under this Act, however, it appears there were no sales made.

3. "An Act to dispose of the Saline Lands," approved January 22d, 1853.

This act provides that these lands shall be sold "by the same officer and under the same regulations as though they formed a part of the School Lands of the State," and it provides also for paying over to the Treasurer of State, the money arising from such sales. (*See Acts* 1853, *p.* 126.)

4. "An Act to amend Chapter 65 of the Code of Iowa, and to provide for the sale of Saline, School and University Lands." Approved January 25th, 1855."

By this Act it is made the duty of the person or persons having charge by law of Saline, School and University Lands to offer and sell the same in the manner therein prescribed.

This Act also requires the Board of Trustees of the State University to elect a Treasurer, and then provides: "SEC. 9. *It shall be the duty of the State Treasurer as soon as he may be called upon by the Treasurer elected under and by authority of this Act, to deliver over to the same all moneys, books, notes and all other papers that may be in his possession and belonging to said University or Saline funds, and shall take a receipt therefor, which shall be his voucher in his settlement with the State.* (*Chap.* 136, *Acts* 1855.)

5. "An Act for a further appropriation for the State Insane Asylum. Approved July 14th, 1856. (Extra session.)

By this Act the proceeds of these lands are again appropriated to the Insane Asylum. (*Acts Extra session* 1856, *p.* 90.)

6. "An Act to repeal Section 2 of An Act for a further appropriation for the State Insane Asylum, approved July 14th, 1856." Approved March 23d, 1858.

This Act repeals that part of the Act of 14th July, 1856, which appropriates the proceeds of the Saline Lands to the Insane Asylum. (*Acts* 1858, *p.* 263.)

7. "An Act to authorize the County Judge and County Treasurer to sell the Saline Lands." Passed March 26th, 1860.

This act confers on the County Judge and County Treasurer all the powers in relation to Saline Lands that were by the Act approved January 25th, 1855, vested in the School Fund Commissioner. (*Rev.* 1860, *p.* 345.)

8. "An Act appropriating the Saline Lands and Funds to the State University of Iowa." Passed April 2d, 1860.

The first section of this Act makes the Saline Lands and Funds a part of the permanent fund of the State University, and the second section reads as follows: "*That it is hereby made the duty of any officer who may now or hereafter have charge of any funds heretofore or hereafter arising from the sale of the Saline Lands, to pay the same over from time to time without delay to the Treasurer of the State University, who shall invest the same in the manner prescribed for the investment of the University fund.*" (*Rev.* 1860, *p.* 346.)

9. "An Act for extending the time for claimants to prove up and purchase certain Saline Lands." Chap. 83, Acts 1862.

This Act is amendatory of the Act March 26th, 1860, and extends the time for claimants to prove up and purchase certain specified tracts of Saline Lands; at the same time providing that the proving up and purchasing the same shall in all respects, except as to time, be governed by the provisions of the Act of March 26th, 1860.

Such is in brief the substance of the State legislation upon this subject; and in view of these numerous and apparently conflicting Statutes, it seems doubtful who has the right to control and sell these Lands, who is entitled to the possession of the notes and contracts of sales made by the School Fund Commissioner; and whose duty it is to issue the certificates of final payment upon these contracts. The Treasurer of the State University claims the right to issue these certificates; and has issued a great many, upon which patents have been issued. At the same time the Clerk of the District Court of Lucas county, has been exercising that privilege, and sending such certificates to this Office for patents.

It was the custom of my predecessors to issue patents upon both these classes of certificates.

Having great doubt as to whose duty it was to issue them, I concluded to follow the precedent. Finally a case arose requiring a determination of the question. A certificate of final payment, issued by the Tresurer of the State University, was received, asking a patent to a certain person for a certain tract of Saline Land, which tract had already been patented to another person upon a certificate issued by the Clerk of the District Court of Lucas county.

I then submitted the question to the Attorney General for his written opinion as to whose duty it is to issue these certificates.

On the 30th of October last, after a full investigation of the matter, he filed in this Office his opinion, deciding that it is the duty of the *County Judge*; and that neither the Treasurer of the State University nor the Clerk of the District Court has any legal authority to do it. Although it is contrary to the general impression upon this subject, I am now satisfied of the correctness of the opinion.

The County Judges—doubtless believing that the Saline Lands, and all matters connected therewith, have been withdrawn from their control and given to the Boards of Supervisors—have entirely ceased to have anything whatever to do with them.

But we can find no place in the Statutes giving the Supervisors any control over these Lands or funds. Again, the Act of March 26th, 1860, conferring upon the County Judge and Treasurer the power before vested in the School Fund Commissioner, to control and sell the Saline Lands, was passed after the Act of 22d March, 1860, creating the Boards of Supervisors, and defining their duties. (*See Rev.* 1860, *p* 48.)

We conclude from these facts that this matter was not placed under the control of the Supervisors.

Then the question is: Did the Act, passed April 2d, 1860, appropriating these Lands and Funds to the State University, transfer *all these matters* to the control of the Board of Trustees of that institution? Would it be sustained by a fair construction of the Act itself, and in view of the fact that it was passed at the same session—though a few days later—that the Act of March 26, 1860, giving to the County Judge the power to sell and control these lands was, and in view also of the Acts of 1863, Chap. 83?

Or is not this the better opinion: That the Act of April 2d, 1860, gives to the University the right to control and sell as University Lands under the regulations prescribed in the Act passed by the Board of Education, December 25th, 1858, all the Saline Lands remaining unsold; and the right also to the proceeds of all previously sold, as soon as the same could be collected and paid over?

I think the law sustains this view of the case, and we then have all the lands not sold by the School Fund Commissioners or County Judges, under the control of the University; and the County Judges in possession of all notes and contracts executed for lands previously sold and collecting the purchase money. But where is the authority vested to declare these contracts forfeited for non-payment and re-sell the land?

As soon as the opinion of the Attorny General was rendered, I notified the Treasurer of the State University, that no more patents would be issued for Saline Lands upon certificates issued by him or the Clerk of the District Court until the General Assembly has time to remove the difficulty by Legislation.

In view of the confusion and apparent uncertainty of the law upon this subject; and the consequent embarrassment both to this Office and the University, in the premises, I would suggest that you call the attention of the General Assembly to it, and earnestly recommend the passage of some Act removing the difficulty, by placing these Lands—the contracts of sales heretofore made and notes given therefor—and all matters connected therewith, under the control of the Board of Trustees of the State University, or some other proper Officer, and granting the power to declare contracts made for the purchase of these lands, forfeited in cases of failure to pay for the same according to the terms of sale; and making it the specific duty of some officer to issue certificates of final payment, and stating what facts these certificates must contain to justify the issuing of patents.

The several certificates of final payment issued by the Treasurer of the State University above mentioned, as well as those issued by the District Clerk of Lucas county, are doubtless all illegal.

Whilst there may be no one in a position to contest the validity of the patents issued on them, yet as the State is bound to maintain the validity of the title she conveys—at least to the extent of her interest in the land—I would respectfully submit, whether it would not be well to ask the General Assembly, to legalize these patents and confirm the title to the several grantees?

The following table shows the several Counties in which these lands lie, together with the number of acres patented—the number unpatented—and total amount in each; and the number of patents issued up to this date:

COUNTIES.	NO. PATENTS.	AM'T PAT'D	UNPAT'D	TOTAL AM'T
Appanoose, ...	34	2,551,96	10,307.32	12,859.28
Davis, ...	.....	.....	640	640
Decatur, ...	28	2,358.08	201.92	2,560
Lucas, ...	144	18,648.84	7,142.62	25,791.46
Monroe, ...	11	600	520	1,120
Van Buren, ...	14	640	.....	640
Wayne, ...	3	160	2,330.79	2,490.79
Total, ...	234	24,958,88	21,142.65	46,101.53

5th—THE DES MOINES RIVER LAND GRANT.

The conflicting claims and interests which have arisen as to the

lands falling within the limits of this grant, having become very serious and embarrassing, some legislative action will perhaps be had by the next General Assembly.

For the purpose of facilitating a full and comprehensive understanding of the present condition of this grant, and the positions of the several grantees, holding title under the patents of the State and now in possession of the lands, I have compiled the following synopsis of the laws of Congress and of the State, and the decisions of the General Land Office, relating to this grant.

This grant was made by act of Congress, approved August 8th, 1846, as follows:

"An Act granting certain lands to the Territory of Iowa to aid in the improvement of the navigation of the Des Moines River in said Territory."

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled*, That there be, and hereby is, granted to said Territory of Iowa, for the purpose of aiding said Territory to improve the navigation of the Des Moines River from its mouth to the Raccoon Fork, (so called,) in said Territory, one equal moiety, in alternate sections, of the public lands, (remaining unsold and not otherwise disposed of, incumbered or appropriated,) in a strip five miles in width on each side of said River, to be selected within said Territory by an Agent or Agents to be appointed by the Governor thereof, subject to the approval of the Secretary of the Treasury of the United States.

"SEC. 2. And be it further enacted, That the lands hereby granted shall not be conveyed or disposed of by said Territory, nor by any State to be formed out of the same, except as said improvement shall progress, that is, the said Territory or State may sell so much of said lands as shall produce the sum of thirty thousand dollars, and then the sales shall cease until the Governor of said Territory or State shall certify the fact to the President of the United States that one half of said sum has been expended upon said improvements, when the said Territory or State may sell and convey a quantity of the residue of said lands sufficient to replace the amount expended, and thus the sales shall progress as the proceeds thereof shall be expended, and the fact of such expenditure shall be certified as aforesaid.

"SEC. 3. And be it further enacted, That the said River Des Moines shall be and forever remain a public highway for the use

of the Government of the United States, free from any toll or other charge whatever, for any property of the United States or persons in their service passing through or along the same: *Provided, always*, That it shall not be competent for the said Territory or future State of Iowa, to dispose of said lands, or any of them, at a price lower than, for the time being, shall be the minimum price of other public lands.

SEC. 4. *And be it further enacted* That whenever the Territory of Iowa shall be admitted into the Union as a State, the lands hereby granted for the above purpose shall be and become the property of said State for the purpose contemplated in this Act, and for no other: *Provided* the Legislature of the State of Iowa shall accept the said grant for the said purpose." Approved Aug. 8th, 1846.

The State of Iowa, by Joint Resolution of the General Assembly, approved January 9th, 1847, did accept the grant for the purposes specified in the above act of Congress.

By an act entitled "an act creating the Board of Public Works, and providing for the improvement of the Des Moines River," approved February 24th, 1847, the General Assembly gave the control of the work to a Board consisting of a President, Secretary and Treasurer, to be elected by the qualified electors of the State, defined the nature of the improvement, and provided that the work should be paid for out of the funds to be derived from the sales of the lands, which the Board was authorized to sell, under the regulations adopted for the sale of United States Lands. This Board was elected August 2, 184', , and was fully organized September 22, 1847.

Agents were appointed by the Governor of the State, who selected the sections designated by "odd numbers" throughout the whole extent of the grant. The selections thus made included all of the sections of the public lands designated by odd numbers, (then remaining unsold, and not otherwise disposed of, incumbered or appropriated,) lying and being in said Territory or State of Iowa, within a strip of five miles in width on each side of said River Des Moines, from its mouth to its source. The selection by "odd numbers," was approved by the Secretary of the Treasury of the United States.

The Commissioner of the General Land Office wrote to the Board of Public Works, as follows:

GENERAL LAND OFFICE,
FEBRUARY 23, 1848.

"*Sir:*—Your communication of the 29th of November last, enclosing a copy of yours of the 22d September last, has been received and would have received an earlier response but for the erroneous and defective surveys along the Des Moines River, which prevented this office from submitting to the Secretary of the Treasury the selections made by the State of Iowa for the improvement of the navigation of that River, under the act of the 8th August, 1846. As these surveys have been corrected, action will be had on these selections as soon as possible, and when approved they will be certified to you.

"It is not usual to furnish more than a diagram of the grant in cases of this kind, with a certified list of the tracts granted as above mentioned; and these will, of course, be transmitted as they can be prepared.

"A question has arisen as to the extent of the grant made to Iowa by the act of 8th August, 1846, and the opinion of this office has been requested on that point.

"By the terms of the law, the grant is of an equal moiety in alternate sections of the public lands remaining unsold, and not otherwise disposed of, incumbered or appropriated, in a strip five miles in width on each side of the River, to be selected within said Territory, &c., &c., and the proceeds are to be applied in the improvement of the navigation of that River, from its mouth to the Raccoon Forks. Hence the State is entitled to the alternate sections within five miles of the Des Moines River, throughout the whole extent of that River, within the limits of Iowa.

Very respectfully, Your obt. Servt.,
RICHARD M. YOUNG,
Commissioner.

CHARLES CORKERY, ESQ.,
Sec'y Board of Public Works, Fairfield, Iowa.

On the 19th June, 1848, a proclamation was issued, ordering into market some of the lands above the Raccoon Forks, and which would belong to the State under the rule laid down by the above letter of Mr. Young.

On the 18th September, 1848, the Board of Public Works wrote the Commissioner of the General Land Office remonstrating against any lands being sold as public lands, which he (the Commissioner) had already decided as included in the lands donated to the State of Iowa for the improvement of the Des Moines River by the act of August 8, 1846.

On the same day a protest against the sale of these lands, was sent to the local land office, at which the sale was ordered to take place.

On the 8th January, 1849, the Senators and Representatives of Iowa, then in Washington, addressed a letter to the Hon. R. J. Walker, Secretary of the Treasury, also remonstrating against the action of the Commissioner of the General Land office, in limiting the extent of the grant to the Raccoon Forks, which he had done negatively by issuing the proclamation of June 19th, 1848, although he had not formally promulgated any opinion different from that expressed in his letter of February 23d, 1848. In answer to this letter of the delegation from Iowa, the Secretary made the following response:

TREASURY DEPARTMENT, MARCH 2, 1849.

GENTLEMEN:—I have the honor to acknowledge the receipt of your communication of 8th January last, and accompanying papers, on the construction of the Act of Congress "granting lands to the Territory of Iowa to aid in the improvement of the navigation of the Des Moines River, in said Territory, approved 8th August, 1846. I concur with you in the views contained in your communication, and am of the opinion that the grant in question extends, as therein stated, *on both sides of the River from its source to its mouth*, but not to lands on the River in the State of Missouri. I have transmitted your communication and accompanying papers, with a copy of this letter, to the Commissioner of the General Land Office.

I have the honor, &c.,
R. J. WALKER,
Sec. of Treasury.

MESSRS. A. C. DODGE, and others.

On the 11th January, 1849, the Commissioner of the General Land office in his report to Congress, estimates the lands of the Des Moines River Grant to amount to 900,000 acres, which would extend the grant to the source of the river, the lands lying below the Raccoon Forks, within the limits of the grant, as shown by the certified lists, being less than 331,000 acres.

On the 1st June, 1849, the Commissioner of the General Land office, directed the Register and Receiver of the Land Office at Iowa City, "to withhold from sale all lands situated in the odd-numbered sections within five miles on each side of the Des Moines River above the Raccoon Forks," and "enclosed a diagram upon which the State selections above that point were colored yellow." The diagram extended to 83 N. 26 W. as far as the surveys had then progressed in that direction.

On the 19th December, 1849, the Commissioner of the General Land office wrote the Board of Public Works, in answer to its request "for lists of lands of the Des Moines River grant above the Raccoon Forks," saying "that the lists had not been furnished, for the reason that the posting of the land warrants in the Iowa City district was not completed in his office until recently," and adds, "the list is now in course of preparation, and will be ready for transmission at an early day."

On the 13th March, 1850, the Commissioner of the General Land Office submitted to the Secretary of the Interior, three lists of land, the first of which had the following heading:

"No. 1. Showing the tracts falling within the limits of the "Des Moines River grant, above the Raccoon Forks, &c., under "the decision of the Secretary of the Treasury, of March 2d, "1849."

On the 6th April, 1850, the Secretary of the Interior, (Mr. Ewing,) in a communication to the Commissioner of the General Land office, reversed the decision of Secretary Walker of March 2d, 1849, but directed the withholding the lands from sale, until an explanatory act could be passed by Congress.

The authorities of Iowa protested against this decision of Mr. Ewing, and appealed therefrom to the President. He referred the matter to the Attorney General, (Mr. Johnson,) who, on the 19th July, 1850, made his report, giving it fully as his opinion, that by the terms of the grant itself, it extended along the Des Moines River to its very source.

Previous to the publication of this opinion President Taylor died, and a new Cabinet was formed, before any further action was taken in the matter.

The question was submitted to the Attorney General, (Mr.

Crittenden,) who on the 30th June, 1851, decided that in his opinion the grant did not extend above the Raccoon Fork.

The Secretary of the Interior, (Mr. Stewart,) at first concurred in this opinion, but afterwards consented to bring the whole matter before the President and Cabinet, who made a decision favorable to the claim of the State.

On the 29th of October, 1851, Mr. Stewart directed the Commissioner of the General Land Office "to submit for his approval such lists as had been prepared, and to proceed to report for like approval lists of the alternate sections claimed by the State of Iowa above the Raccoon Forks, as far as the surveys have progressed, or may hereafter be completed and returned."

On the following day three lists of lands were prepared in the General Land Office,—the headings will show their purposes, and are as follows:

"List No. 1, showing the tracts falling within the limits of the Des Moines River grant above the Raccoon Fork of the Des Moines River, as far as the surveys have extended, under the decision of the Secretary of the Treasury of the 2d of March, 1849, that such grant extended to the North boundary of the State.

"List No. 2, showing tracts disposed of within those limits in the intervals between the date of one of the previous orders limiting the grant, and one of those extending it above the Fork.

"List No. 3, showing the lands vacant and subject to the claim of the State."

The third of these lists was submitted to the Secretary of the Interior for his approval, to which he appended the following statement:

DEPARTMENT OF THE INTERIOR,
OCTOBER 30th, 1851.

"The selections embraced in the within list (No. 3,) are hereby approved, in accordance with the views expressed in my letter of the 29th instant, to the Commissioner of the General Land Office, subject to any rights which may have existed at the time the selections were made known at the Land Office by the Agent of the State, it being expressly understood that this approval conveys to the State no title to any tract or tracts which may have been sold or otherwise disposed of, prior to the receipt by the Local Land Officers, of the letter of the Commissioner of the General Land

Office, communicating the decision of Mr. Secretary Walker, to the effect that the grant extended above the Raccoon Fork."

ALEX. H. H. STUART, Sec'y.

The lands approved and certified to the State of Iowa under this grant and *all* lying above the Raccoon Fork, are as follows:

By Secretary Stuart, Oct. 30, 1851,	81,707,93
March 10, 1852,	143,908,37
By Secretary McClellan, Dec. 17, 1853,	33,142,43
Dec. 30, 1853,	12,813,51
Acres,	271,572,24

The list which was approved by the Secretary of the Interior on the 17th of Dec., 1853, was headed as follows: "A list showing the vacant lands in the odd-numbered sections above the Raccoon Fork and within five miles of the Des Moines River, so far as the surveys have progressed, falling to the State of Iowa under the act of the 8th of August, 1846, as construed by the Secretary of the Treasury in his letter of the 2d of March, 1849, and of the Secretary of the Interior of the 29th of October, 1851, which have not been heretofore approved."

This list was approved in these words:

DEPARTMENT OF THE INTERIOR,
DECEMBER 17th, 1853.

"The selections in the within list are hereby approved to the State of Iowa, under the act of the 8th of August, 1846, without prejudice to the rights, if any there be, of other parties."

R. MCCLELLAN, Sec'y.

The words "without prejudice to the rights, if any there be, of other parties," were intended to protect locations of portions of odd-numbered sections along the Des Moines River, above the Raccoon Fork, which had been made prior to the receipt of Mr. Secretary Walker's decision of the 2d of March, 1849, by the District Land Office.

On the 6th of January, 1854, the Commissioner of the General Land Office wrote the Superintendent of Public Instruction of the State of Iowa, as follows:

GENERAL LAND OFFICE,
JANUARY 6th, 1854

"*Sir:*—Herewith I inclose a copy of a list of lands falling to the State of Iowa, under the act of August 8th, 1846, selected by

the State under the act of September 4th, 1841, and approved before the grant for the improvement of the Des Moines River was adjusted as far as the Township embraced by the list which was approved by the Secretary of the Interior on the 30th ultimo. The quantity of land thus approved under the act of the 8th of August, 1846, is 12,813,51 acres. These lands were selected on the 20th of July, 1850, and embraced by lists Nos. 49 to 54, inclusive, and in lieu thereof the State is entitled to select an equal quantity elsewhere. Be pleased to acknowledge the receipt of this communication. I am, your ob't. serv't.,

JOHN WILSON, Com'r.

THOMAS H. BENTON, JR., ESQ.

The above lands, 12,813,51 acres, had been selected as a portion of the 500,000 acre grant from among the odd-numbered sections lying within five miles of the Des Moines River and *above* the Raccoon Fork, and according to the constructions which prevailed when the above letter was written, this land, so selected as school lands, had been previously appropriated by Congress to the Des Moines River Improvement Fund. Hence the Superintendent of Public Instruction was directed to select other lands in lieu of this amount, which had been erroneously selected for school purposes.

The Commissioner and Register of the Des Moines River Improvement in their report to the Governor, made Nov. 30, 1852, estimate the lands of the Des Moines River Grant, including those then in possession of the State, and those to be surveyed and approved at nearly a million of acres as available for the future prosecution of the work of the improvement. They state the indebtedness then existing against the Des Moines River Fund, to be about $108,000—and estimate the work to be done to amonnt to $1,200,000.

The General Assembly, by Act approved January 19th, 1853, authorized the Commissioners "to sell all and any lands which have been, or may hereafter be granted" for not less than $1,300,000.

On the 24th January, 1853, the General Assemby provides for the election of a Commissioner by the people, and appoints George G. Wright of Van Buren county, and Uriah Biggs of Wapello county, Assistant Commissioners, with authority to make a con-

tract, selling the lands of the Improvement for $1,300,000, and, if necessary, to sell water-rents, tolls, &c.

Accordingly on the 9th June, 1854, the Commissioner, and Assistant Commissioner, made a contract with the Des Moine Navigation and Rail Road Company, agreeing to sell *all* the lands donated to the State by Act of Congress of August 8th, 1846, which the State had not sold prior to December 23d, 1853, for $1,300,000, to be expended on the improvement of the River, and in paying the indebtedness then due.

This contract was duly reported to the Governor and General Assembly, and may be found in the Appendix to the House Journal, 1855.

By act approved January 25, 1855, the General Assembly authorizes the Commissioner and Register of the Des Moines River Improvement, to negotiate with the Des Moines Navigation and Rail Road Company, for the purchase of lands in *Webster county* which had been sold by the School Fund Commissioner as School Lands, but which had been certified to the State as Des Moines River Lands, and had become the property of the Company, under the provisions of its contract with the State.

On the 21st March, 1856, the Commissioner of the General Land Office decided that the Des Moines River Grant was limited to the Raccoon Fork. The matter was then brought anew before the Secretary of the Interior, and was by him referred to the Attorney General.

The Attorney General (Mr. Cushing) delivered an elaborate opinion, which may be found in the appendix to the Iowa Senate Journal, 1857—p 108. In the course of this opinion, Mr. Cushing says : "In so far as regards selections already approved, whether by yourself or by Mr. Cushing, it is clear that the Government cannot undo that. What Mr. Stuart did in this respect with deliberation, what you did, without the questions involved being suggested to you, was, in each case, done by competent legal authority and binds the Government. One Secretary has no more lawful power to undo a thing lawfully done by his predecessors in a matter of grant, than in a matter of account ; no more right where a settlement is in favor of a third party than where it is in favor of the United States. When a thing is decided and done by the head of a Department, acting within the scope of his lawful

authority, it can be revised by his successor only on the ground of mistake in a matter of fact, or the discovery and production of material new testimony.

"If the acts of Mr. Stuart and yourself in this respect had undertaken (as they do not) to dispose of contending rights of third parties, the latter would have had their remedy at law. But what you have done is final, as respects the United States. But have you erred in continuing to follow the line of action which your predecessor had prescribed, and which the Commisioner of Public Lands assumed as settled, in presenting to you for approval, lists made out on the premises of the subsisting decisions of Mr. Stuart ? And if you erred (inadvertently) in thus approving selections made by the State above the Raccoon Fork, shall you now stop and change the rule of action which Mr. Stuart has prescribed to the Commissioner ? The answer to these questions is not included in the preceding conclusions. It is one thing to undo an act done, and quite another thing to cease to persevere in a previous line of action as to acts of a continuous nature.

"It might, with much plausibility be argued that while Mr. Walker's order was an opinion merely, and did not bind Mr. Ewing, so, what Mr. Stuart did, though final as to lands actually approved, was but a precedent when a new list comes up, and may be rejected by you as a precedent, though it cannot be reversed or annulled as an act ; that the disposition of the particular lands made by him is irrevocable, but the principle on which he did it is open to re-examination, as respects any other lands in the same right claimed by the State, and that in executing the same law, you are to execute it according to your own understanding of its force and effect. That may be so ; and yet the contingency is not exactly of the application of a precedent to a new case, for the grant of Iowa is one thing, although it be composed of parts, or of new sets of parcels appertaining to the general whole. Mr. Stuart decided to adopt the opinion of Mr. Walker, which carried the grant above the Raccoon Fork ; and he proceeded to execute, and did execute, that decision in part. And the true question is of the completion of the execution by you of what had been partially executed by Mr. Stuart. I think it must be a clear case of manifest illegality in the work commenced and half executed by one Secretary, to justify the abandonment of it by his successor. Is the present such a case

of palpable violation of law? That cannot be pretended in the face of the opinions of Mr. Walker and Mr. Johnson, and the administrative acquiescence in those opinions on the part of Mr. Stuart. In my judgment it is not for the good of the public service, while it is prejudicial, and sometimes grocely unjust, to private interests concerned, for the executive to break off things half done because of mere doubts of the legality of the decisions upon which commencement was made, or even the belief that, upon better reflection at the onset, a different decision would have been rendered. To indulge in such oscilliation of action, under the influence of ordinary causes of perturbation, is not seemly on the part of the Government."

"In the present case, of lands above the Raccoon Fork claimable by the State, within its limits, twenty-six fifty-sixth parts—nearly half—the United States have already recognized as belonging to the State. I think you may, if you choose, well consider that a determination of the question proper to be acquiesced in by you, as a settled fact of administration." * * * * *.

"I advise, therefore, that you propose to the State of Iowa, and its assigns, to acquiesce in and accept the decision of Mr. Stuart as final, and to approve selections accordingly, provided the State, or its assigns, will themselves agree to acquiesce in and accept that decision as final. If they refuse to treat that decision as final, they cannot expect you to do so. They should be bound if you are. If they consent to enter into satisfactory stipulations of contract to that effect, you can, with safety, award to them the residue of the claim, up to the northern boundary of the State."

The Secretary of the Interior, (Mr. R. McClelland,) in a letter to the Commissioner of the General Land Office, under date of the 9th June, 1856, said he had concluded to be governed by the advise of the Attorney General, and would approve the lists containing the lands as far as the northern boundary of the State, but directed the lists to be withheld until the contract suggested by the Attorney General, relinquishing all claims to lands in Minnesota, was filed by the State and its assigns.

The assignees of the State, the Des Moines Navigation & Railroad Company, filed its relinquishment, but the Agent of the State, the Commissioner of the Des Moines River Improvement, (Mr. Manning,) declined for want of authority.

The lands which had been certified, as well as those extending to the northern boundary, within the limits of the grant, were reserved by the General Land Office from sale and pre-emption, for the purpose of satisfying the grant of August 8th, 1846, and were considered as having passed to the State.

The State proceeded, from time to time, to sell and dispose of the lands, applying the proceeds to the improvement of the river, and prior to the making of the contract with the Des Moines Navigation & Railroad Company, on the 9th June, 1854, the State had sold about 327,000 acres of land, of which amount 58,830 acres were located *above* the Raccoon Fork.

The money derived from the sale of the lands was the only fund provided for carrying on the improvement of the river. The successful prosecution, and final completeness of the works, depended entirely on the lands of the grant. The State sold the lands, and applied the proceeds according to the provisions of the donating act, and in this way paid the United States for them.

Subsequent to June 9th, 1854, the Des Moines Navigation & Rail Road Company carried on the work under their contract with the State. As the improvement progressed, the State, from time to time, by its authorized officers, issued to the Company, in payment for said work, certificates for lands. These certificates were in the usual form of certificates issued for entries of public lands. The first one, dated May 14, 1855, certified 88,853.10 acres. The second, dated May 6, 1856, certified 116,636.54 acres. Together, 205,489.73 acres, and all located *above* the Raccoon Fork, excepting about 50,000 acres.

The General Land Office having ceased to certify lands under the act of August 8th, 1846—the last certificates bearing date 17th and 30th of December, 1853—and there being no other provision for paying for the improvement, and matters of disagreement and misunderstanding having arisen between the D. M. N. & R. R. Co. and the State, the General Assembly, for the purpose of making a final settlement with said Company, on the 22d March, 1858, passed the following Joint Resolution:

"*Joint Resolution containing propositions for a settlement with the Des Moines Navigation and Railroad Company.*

"WHEREAS, The Des Moines Navigation and Rail Road Company have heretofore claimed, and do now claim, to have entered into

certain contracts with the State of Iowa by its officers and agents concerning the improvement of the Des Moines River in the State of Iowa, and WHEREAS, disagreements and misunderstandings have arisen, and do now exist between the State of Iowa and said Company, and it being conceived to be to the interests of all parties concerned, to have said matters and all matters and things between said Company and the State of Iowa settled and adjusted, now therefore, *Be it resolved by the General Assembly of the State of Iowa*, That for the purpose of such settlement, and for that purpose only, the following propositions are made by the State to said Company: That the said Company shall execute to the State of Iowa, full releases and discharges of all contracts, agreements and claims with, or against the State, including rights to water rents which may have heretofore or do now exist, and all claims of all kinds against the State of Iowa and the lands connected with the Des Moines River Improvement, excepting such as are hereby by the State secured to the said Company, and also surrender to said State the Dredge Boat and its appurtenances, belonging to said improvement; and the State of Iowa shall by its proper officer, certify and convey to the said Company all lands granted by an act of Congress, approved August 8th, 1846, to the then Territory of Iowa, to aid in the improvement of the Des Moines River, which have been approved and certified to the State of Iowa by the General Government, saving and excepting all lands sold or conveyed or agreed to be sold or conveyed by the State of Iowa by its officers and agents, prior to the 23d day of December, 1853, under said grant, and said Company or its assignees shall have right to all of said lands so herein granted to them as fully as the State of Iowa could have, under or by virtue of said grant, or in any manner whatever, with full power to settle all errors, false locations, omissions or claims in reference to the same, and all pay or compensation therefor by the General Government, but at the cost and charges of said Company, and the State to hold all the balance of said lands, and all rights, powers and privileges under and by virtue of said grant, entirely released from any claim by or through said Company, and it is understood that among the lands excepted and not granted by the State to said Company are 25,487.87 acres lying immediately above Raccoon Forks, supposed to have been sold by the General Government, but claimed by the State of Iowa, and it is further agreed that said Company

release and convey to the State of Iowa, or its representatives, all materials of every kind and description, prepared for, or intended for the construction of locks or dams in said improvement, wheresoever the same may be, and the State shall take the existing contracts, but no other liabilities of any name or nature excepting as herein provided for, constructing or repairing the works on said improvement at Keosauqua, Bentonsport, Plymouth and Croton, and no other or different, with all liabilities and advantages arising upon said contracts and per centage retained thereon, excepting that the Company shall pay all estimates for work done or material prepared up to this date, beyond the per centage retained from the contractors under their agreements, and the said Company shall be discharged from all claims against the State or the said improvement or any of its officers or agents arising from or growing out of any agreement or liability prior to the 9th day of June, 1854, and said Company shall be discharged from all liability for the claims of the officers of the State for services or salaries. The said Company hereby agree to pay the State the sum of twenty thousand dollars, which sum shall be paid to the order of the Commissioner of the Des Moines River Improvement, as fast as he may require the same to liquidate existing liabilities against said Des Moines River Improvement, on thirty days' notice given to said Company at their office in the city of New York, and any bonds or certificates of indebtedness against said improvement not exceeding in amount the sum of eleven thousand dollars, which are now due and unpaid, are to be received in part payment of said sum of twenty thousand dollars, *Provided*, that no liabilities assumed by the State in this contract shall be a charge against the State in her sovereign capacity, but all such liabilities, if any, shall be chargeable upon and payable out of the remaining lands belonging to the Des Moines River Grant, and provided also, that if Congress shall permit a diversion of the lands of said Des Moines River Grant, or the title thereto shall become vested in the State, so as to become subject to grant, the said remaining lands, after the payment of all the liabilities as aforesaid, against said improvement and the completion of such locks and dams in the Des Moines River as the Legislature shall direct, shall be granted to the Keokuk, Fort Des Moines and Minnesota Rail Road Company, to aid in the construction of a Rail Road, up and along the Valley of the Des

Moines River, upon such terms, and in such manner as the Legislature may provide, one-fourth of which said lands shall be applied by said Company to aid in the construction of said road above the city of Des Moines, and provided further, that if the Des Moines Navigation and Rail Road Company shall ratify and accept these propositions for a contract by filing a written acceptance thereof in the office of the Secretary of State within sixty days from the passage of this Joint Resolution, then this contract shall be in force and bind both of the parties thereto.

Approved March 22d, 1858.

The Des Moines Navigation and Railroad Company ratified and accepted the above propositions, within the time and in the manner specified. The Company paid the State $20,000 in cash, and released and conveyed to the State the Dredge Boat and materials in the resolution named, and the State on the 3d day of May, 1858, executed to the D. M. N. & R. R. Co., fourteen deeds or patents in the following form, to-wit:

"This Indenture, made the third day of May, one thousand eight hundred and fifty-eight, by and between the State of Iowa, party of the first part, and the Des Moines Navigation & Railroad Company, parties of the second part, Witnesseth, that the party of the first part, for, and in consideration of one dollar, paid by the parties of the second part, and in pursuance of the contracts and agreements between the State of Iowa and the said Des Moines Navigation & Railroad Company, for the improvement of the navigation of the Des Moines River, in the State of Iowa, does hereby sell, grant, bargain and convey to the said Des Moines Navigation & Railroad Company, the following referred to and described lands, to-wit: &c. To have and to hold the above described lands and each and every parcel thereof, with all the rights, privileges, immunities and appurtenances of whatever nature thereunto belonging or appertaining, unto the said Des Moines Navigation & Railroad Company, their successors and assignees, forever in fee simple.

In testimony whereof, I, Ralph P. Lowe, Governor of the State of Iowa, have caused the Great Seal of the State of Iowa to be hereunto affixed. L. S.

Given under my hand at the City of Des Moines, the day and year first above written, and of the State of Iowa the 12th year.

RALPH P. LOWE.

By the Governor,

ELIJAH SELLS, Secretary of State.

This is to certify that the foregoing deed was received from the Governor June 10th, 1858, and recorded in Des Moines River Records, Book A, Pages ——, June 18th, 1858.

T. S. PARVIN, Register State Land Office.

By D. S. WARREN, Deputy.

All together, conveying to said Company 256,703.74 acres, and describing the same by section, town and range.

These deeds cover, or at least were intended to convey, all the lands of this grant certified to the State by the General Government, not previously sold.

And, as if for the purpose of covering any tracts or parcels that might have been overlooked or omitted in said deeds, the State, on the 18th of May, 1858, executed the following conveyance, to-wit:

"This Indenture, made this 18th day of May, 1858, by and between the State of Iowa, party of the first part, and the Des Moines Navigation and Rail Road Company, parties of the second part, witnesseth: That the said party of the first part, for and in consideration of one dollar paid by the parties of the second part, and in pursuance of the contracts and agreements between the State of Iowa and the Des Moines Navigation and Rail Road Company, for the improvement of the navigation of the Des Moines River in the State of Iowa; and in pursuance of a joint resolution of the General Assembly of the State of Iowa, approved the 22d day of March, 1858, does hereby sell, grant, bargain, and convey to the said Des Moines Navigation & Railroad Company, the following described lands, to-wit: All lands granted by an Act of Congress, approved August 8th, 1846, to the then Territory of Iowa, to aid in the improvement of the Des Moines River, which have been approved and certified to the State of Iowa by the General Government, saving and excepting all lands sold or conveyed, or agreed to be sold or conveyed by the State of Iowa, by its officers and agents, prior to the 23d day of December, 1853, under said grant, and said Company, or its assigns, shall have right to all of said lands so herein granted to them, as fully as the State of Iowa could have, under or by virtue of said grant, or in any manner whatever, with full power to settle all errors, false locations, omissions, or claims in reference to the same, and all pay or compensation therefor, by the General Government, but at the costs and charges of said Company; and the State to hold all the balance of said lands, and all rights, powers and privileges, under and by virtue of said grant, entirely released from any claim by or through said Com-

pany. And it is undersood that, among the lands excepted and not granted by the State to said Company, are 25,487.87 acres, lying immediately above the Raccoon Fork, supposed to have been sold by the General Government, but claimed by the State of Iowa. To have and to hold the above described lands, and each and every parcel thereof, with all the rights, privileges, immunities and appurtenances of whatever nature thereunto belonging or appertaining, unto the Des Moines Navigation & Railroad Company, their successors and assigns forever in fee simple.

{ L. S. } "In testimony whereof, I, Ralph P. Lowe, Governor of the State of Iowa, have caused the Great Seal of the State of Iowa to be hereunto affixed.

Given under my hand, at the City of Des Moines, the day and year first above written, and of the State of Iowa the 12th year.

By the Governor, RALPH P. LOWE.

ELIJAH SELLS, Secretary of State.

"This is to certify that the foregoing deed was received from the Governor June 10th, 1858, and recorded in Des Moines River Records, Book "A," pages 45 and 46, June 18, 1858.

T. S. PARVIN, Register State Land Office.

By D. S. WARREN, Deputy."

These deeds, fifteen in all, convey, it is claimed by the D. M. N. & R. R. Co., 266,108 acres, of which about 53,367 are *below* the Raccoon Fork, and the balance, 212,741 acres, *above* the Raccoon Fork.

In addition to the 212,741 acres, thus deeded to the D. M. N. & R. R. Co., the State has sold and deeded to individual purchasers above the Raccoon Fork, 58,830 acres, making in all deeded above said Fork, 271,571 acres; all of which had been certified and approved to the State by the General Government as Des Moines River Lands.

In pursuance of the act of the General Assembly, approved March 23d, 1858, patents have been issued for all Des Moines River Lands purchased of the State prior to June 9th, 1854, and all duly recorded in this office. A part of them have been delivered, and the balance are ready for delivery, upon the surrendering up of the proper certificates.

The General Assembly donated the remainder of this grant to the Keokuk, Fort Des Moines and Minnesota Rail Road Company by the passage of the following act, which was approved March 22, 1858, to-wit:

"An Act disposing of the Grant of Land made by an Act of Congress granting land to the Territory of Iowa to aid in the improvement of the navigation of the Des Moines River."

SECTION 1. *Be it enacted by the General Assembly of the State of Iowa*, That all the lands granted to the then Territory of Iowa by an Act of Congress, approved August eighth, eighteen hundred and forty-six, entitled an Act granting lands to the Territory of Iowa, to aid in the improvement of the navigation of the Des Moines River, in said Territory, and all lands and compensation which may be given in extension or in lieu of any portion thereof by the General Government, and also all stone, timber and other material turned over to the State by the Des Moines Navigation and Railroad Company in settlement with the State of Iowa, be and the same are hereby disposed of and granted to the Keokuk, Ft. Des Moines and Minnesota Railroad Company, a body corporate created and existing under the laws of the State of Iowa, to aid in the construction of a Railroad from the city of Keokuk, at the mouth of the Des Moines river, up and along the valley of said river by way of the city of Des Moines, to the northern line of the State, in the direction of the southern bend of the Minnesota or St. Peters river, excepting all the land belonging to said grant heretofore sold by the State of Iowa, or which may hereafter be conveyed to the Des Moines Navigation and Railroad Company by virtue of a settlement now pending between the State and said Company, and also so much of the said timber, stone and other material as may be used in the completion of the Locks and Dams at Croton, Plymouth, Bentonsport and Keosauqua; this grant to become operative as soon as Congress shall assent to or permit a diversion or the title thereto shall become vested in the State so as to be subject to grant.

SEC. 2. That the Keokuk, Ft. Des Moines and Minnesota Railroad Company, shall pay all liabilities against said Des Moines River Improvement, and against the State of Iowa, growing out of said improvement, whether by contracts between the State and other parties, or between the Des Moines Navigation and Railroad Company and other parties, or between any parties whatever which have been assumed by the State in consequence of the proposed settlement with the Des Moines Navigation and Railroad Company, as contained in the joint resolution passed at the present session of the General Assemby; and said Company shall also

complete the Locks and Dams at Croton, Plymouth, Bentonsport and Keosauqua, and fifty thousand acres of the lands which may hereafter be certified by the General Government to the State of Iowa, shall be set apart by the Register of the State Land Office, which said lands shall be held for the purpose of securing the payment of said liabilities and the completion of said Locks and Dams, and that whenever said Company shall pay thirty thousand dollars of said liabilities properly audited and allowed by the Register of the State Land Office, or shall do thirty thousand dollars' worth of work on said Locks and Dams, to be certified and allowed by an engineer to be apointed by the Governor to superintend said works, that then the Register of the State Land Office shall issue to said Company a certificate for ten thousand acres of said lands so set apart, for every thirty thousand dollars so paid or expended until said liabilities are paid, and said Locks and Dams are completed, and if any of said fifty thousand acres of land shall remain after the payment of said liabilities and the completion of said Locks and Dams, it shall be certified to said Railroad Company in the same manner provided in this act; *Provided*, That if the proceeds of said fifty thousand acres of land shall at any time be found insufficient to discharge existing contracts for constructing or repairing the works at Keosauqua, Bentonsport, Plymouth and Croton, and in all respects preserve the State harmless on account of any liabilities now existing against the State, or that have been assumed by the proposed settlement with the Des Moines Navigation and Railroad Company, or arising in any manner from the past improvement of the Des Moines river, or the payment of the officers or agents employed in and about said improvement, then the said Keokuk, Ft. Des Moines and Minnesota Railroad Company shall be liable to pay the State the amount of such deficiency.

Sec. 3. Whenerer the President and Chief Engineer of said Railroad Company shall certify under oath to the Register of the State Land Office that twenty miles of said Railroad in a continuous line from the town of Bentonsport up the valley of the Des Moines river have been completed and the cars running thereon, the Register shall issue to said Company a certificate for one hundred and twenty sections of land, to be taken as nearly as practicable in a body from the remaining lands nearest to the completed part of said Railroad, and the Governor shall upon presentation of

said certificate issued to said Company a patent for said lands, and so from time to time as twenty miles are completed until three-fourths of said lands are exhausted; *Provided*, That the lands hereby granted and so certified to said Company shall be exclusively applied in extending the construction of said Railroad in a continuous line above Bentonsport, and shall be applied to no other purpose whatever; and, provided also, that one-fourth in quantity of said land shall be applied by said Company in the construction of said road above the city of Des Moines; the said one-fourth to be certified in manner as herein provided from the completion of each twenty miles from the city of Des Moines up the valley of the Des Moines river.

Sec. 4. The grant aforesaid is made to said Company upon the express condition that in case such Railroad Company shall fail to have completed and equipped seventy-five miles of road up the valley of the Des Moines river, from the town of Bentonsport, within three years from the first day of December next, thirty-three miles in addition in each year thereafter, for five years, and the remainder of the whole line in three years thereafter, or on the first day of December, eighteen hundred and sixty-eight, then in that case it shall be competent for the State of Iowa to reserve all rights to the lands hereby granted, then remaining uncertified to said Company so failing to have the length of road completed in manner as aforesaid.

Sec. 5. That this grant is subject to all the provisions of an act of the General Assembly of the State of Iowa, approved July fourteenth, eighteen hundred and fifty-six, entitled an act to accept the grant and carry into execution the trust conferred upon the State of Iowa by an act of Congress entitled an act making a grant of lands to the State of Iowa in alternate sections to aid in the construction of Railroads in said State, approved May 15th, 1856, so far as the same are applicable and not inconsistent with the foregoing provisions of this act.

An Act of the Eighth General Assembly, approved March 3d, 1860, makes the following provisions:

Section 1. That the fifty thousand acres of land to be set apart by the Register of the State Land Office, under the second section of an Act of the General Assembly, approved March 22d, 1858, entitled, "An Act disposing of the grant of land made by an Act

of Congress granting land to the Territory of Iowa to aid in the Improvement of the Navigation of the Des Moines River," shall be taken from the lands next above those transferred by the State to the Des Moines Navigation and Railroad Company by the terms of settlement with that Company, authorized by Joint Resolution of the General Assembly, approved March 22d, 1858.

SEC. 2. That the uncompleted dams to be built by the Keokuk, Fort Des Moines and Minnesota Railroad Company, as provided by the said second section of the Act above referred to, shall be completed as follows: that is to say, the dam at Keosauqua shall be completed in one year after the lands granted to said Railroad Company by said Act shall have been certified by the General Government to the State of Iowa, or otherwise become the property of said Company, and the dam at Plymouth, and the other works within two years after the lands shall have been certified as aforesaid.

SEC. 4. That Geo. G. Wright, of Van Buren County, Edward Johnston, of Lee County, and Christian W. Slagle, of Jefferson County, be and they are hereby appointed a Board of Commissioners for the purpose of ascertaining all the liabilities whether in suit or otherwise, against said Des Moines River Improvement, and against the State of Iowa, growing out of said Improvement, and which are to be paid by the Keokuk, Fort Des Moines and Minnesota Railroad Company, as provided by the said second section of the Act of the 22d of March, 1858, above referred to.

SEC. 5. Said Commissioners, or a majority of them shall meet at the city of Keosauqua, in the county of Van Buren, within six months after the passage of this Act, or as soon thereafter as practicable; and shall organize the Board by taking an oath that they will well and truly discharge the duties imposed upon them by this Act.

SEC. 6. After having organized, said Commissioners shall give public notice of the time and place of their meeting, and the objects of the commission, by a general notice to all persons claiming to be entitled to be paid by the provisions of the said section of the said Act of March 22d, 1858, that unless they present their claims within six months after the time fixed in said notice for the meeting of the Board, they will not thereafter be received or acted upon, but forever barred; which notice shall be published for at least

four weeks in some newspaper published at the County Seat of Van Buren County, and a newspaper published in the city of Keokuk.

SEC. 9. For every three thousand dollars worth of work done on the locks and dams, and for every three thousand dollars of said audited liabilities paid by the said Keokuk, Fort Des Moines and Minnesota Railroad Company, in accordance with the second section of the said Act of March 22d, 1858, the Register of the State Land Office shall certify to said Company 1,000 acres from said 50,000 acres of land."

Under this act, as appears from the Reports of the Commissioners filed in this office, there have been thirty-two claims presented to them and settled, amounting in the aggregate allowed, to $85,-890.86, all of which are fully exhibited in the following table:

	CLAIMANT.	AMOUNT COLLECTED	FILED BEFORE COMMISSIONER.	WHEN ALLOWED.	AMOUNT ALLOW'D.	WHEN FILED IN LAND OFFICE.
1	Jas. J. Kinnersly,	$20,000 00	Aug. 29, 1860	Feb. 5, 1861	$9,000 00	June 22, 1861
2	Jonas Houghton,	5,000.00	Oct. 26, 1860	" "	3,904.80	" "
3	Adam Hine,	880.00	Dec. 12, 1860	" "	880.00	" "
4	Wm. Baker,	2,000.00	Feb. 18, 1861	Apr. 23, 1861	700.00	" "
5	R. Jackson for the heirs of A. Miller,	2,000.00	" "	Apr. 23, 1861	750.00	" "
6	Geo. C. Allender,	50,000.00	Aug. 29, 1860	Feb. 5, 1861	8,037.25	" "
7	Wm. Armstrong,	500.00	Feb. 18, 1861	Apr. 23, 1861	100.00	" "
8	Edwin Manning,	245.52	Aug. 29, 1860	" "	45.00	" "
9	John Parker,	1,000.00	Feb. 18, 1861	" "	400.00	" "
10	H. D. Steward,	300.00	Apr. 18, 1861	" "	100.00	" "
11	Van Buren Co.,	116.00	Dec. 11, 1860	" "	114.00	" "
12	Meek & Bros.,*	3,000.00	Aug. 29, 1860	Feb. 5, 1861	1,652.68	" "
13	Joseph Benning,	800.00	Feb. 18, 1861	Apr. 23, 1861	250.00	" "
14	George Gray,	2,000.00	" "	" "	700.00	" "
15	D. Kennedy,	1,500.00	" "	" "	700.00	" "
16	S. Dwight Eaton,	500.00	Feb. 5, 1861	" "	300.00	" "
17	Peter Tobie,	238.51	Nov. 1, 1860	Feb. 5, 1861	265.92	" "
18	Thos. H. Harlen,	1,000.00	Feb. 18, 1861	Apr. 23, 1861	550.00	" "
19	Guy Wells,	1,500.00	Dec. 12, 1860	" "	1,000.00	" "
20	Jas. A. Brown,	25,000.00	Aug. 29, 1860	Feb. 5, 1861	19,159.21	" "
21	J. P. Gray,	4,000.00	Feb. 18, 1861	Apr. 23, 1861	1,400.00	" "
22	Robt P. Gray,	2,000.00	" "	" "	700.00	" "
23	Felix Decker,	1,000.00	" "	" "	600.00	" "
24	John Stafford,	1,400.00	" "	" "	550.00	" "
25	Jo. Benning (adm.	500.00	" "	" "	100.00	" "
26	Wm. McCowan,	500.00	" "	" "	100.00	" "
27	Isaac P. Gray,	2,000.00	Aug. 29, 1861	" "	800.00	" "
28	Adam Hine,	300.00	Feb. 25, 1861	" "	300.00	Feb. 10, 1862
29	Gray & Co.,	25,000.00	Aug. 29, 1860	Feb. 5, 1861	10,215.00	" "
30	Wells, Chidester & Gray,	30,000.00	Nov. 27, 1860	Feb. 5, 1861	867.20	Feb. 10, 1862
31	Greene Bragg & Co	40,000.00	Aug. 29, 1860	" "	8,150.00	July 18, 1862
32	E. T. Coltan,	21.000.00	" "	" "	13,500.00	June 22, 186.

*To this claim, as reported by the Commissioners, is appended the following marginal note, to-wit: "With an additional allowance, in this case, of $250.00, provided the other *Lock Gate* shall be put in at Bonaparte within nine months, as agreed."

The 9th General Assembly by an Act entitled "*An act to provide for a full settlement of all claims, rights and liabilities between the State of Iowa and James A. Brown, and George C. Allender,*" approved March 20, 1862, provided for the settlement of the claims of said Brown and Allender, and also of Green, Bragg & Co., upon the terms set forth in said act, and for that purpose appropriated the sum of $30,142.63.—(*Acts* 1862, *P.* 45.) Said Brown and Allender have acceded to the terms and accepted the warrants drawn upon the Treasurer for the amount thus appropriated. These three claims amounting in the aggregate to $35,346.46, have been paid by the State as proposed in said Act, leaving unpaid of said claims in the aggregate $50,544.40. There are at present no lands available to meet any portion of these claims, and no other provision made for their satisfaction.

At the December Term of the Supreme Court of the United States, held in '59 and '60, a decision was made as to the limit of the Des Moines River grant. This decision limits the grant to the Raccoon Fork, and declares all certificates of lands *above* the Fork as issued without authority of law and void.

On the 3d of March, 1861, Congress passed the following Joint Resolution:

PUBLIC RESOLUTION NO. 5.

"Joint Resolution to quiet titles in the State of Iowa."

"*Resolved*, * * * That *all* the title which the United States still retains in the tracts of land along the Des Moines River, and above the mouth of the Raccoon Fork thereof, in the State of Iowa, 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."

By act of Congress, (in response to the Joint Resolution of the General Assembly of April 7, 1862,) it is enacted, "That the grant of lands to the then Territory of Iowa, for the improvement of the Des Moines River, made by the act of August 8th, 1846, is hereby extended so as to include 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; such lands

are to be held and applied in accordance with the provisions of the original grant, except that the consent of Congress is hereby given to the application of a portion thereof to aid in the construction of the Keokuk, Ft. Des Moines & Minnesota Railroad, in accordance with the provisions of the act of the General Assembly of the State of Iowa, approved March 22d, 1858. And if any of said lands shall have been sold or otherwise disposed of by the United States before the passage of this act, excepting those released by the United States to the grantees of the State of Iowa under joint resolution of March 2d, 1862, the Secretary of the Interior is hereby directed to set apart an equal amount of lands within said State to be certified in lieu thereof; *Provided*, That if the State shall have sold and conveyed any portion of the lands lying within the limits of this grant the title of which has proved invalid, any lands which shall be certified to said State in lieu thereof by virtue of the provisions of this act, shall inure to, and be held as a trust fund for the benefit of the person or persons respectively whose titles shall have failed as aforesaid."

Approved July 12, 1862.—(*U. S. Stat. at large*, 1862, *p*—.)

On the 11th September, 1862, Extra Session, the General Assembly by Joint Resolution, accepted the grant of lands donated by the above act of Congress.—(*Acts Ex. Ses.* '62, *p* 50.)

On the same day the General Assembly authorized the Governor to appoint one or more Commissioners to select the lands embraced in the above grant—the Commissioners to report their selections to the Register of the State Land Office, and directing that the lands be held for the purposes of the grant, and in nowise to dispose of the same until future legislation is had.—*Acts Ex. Sec.* 1862, *p* 48.

The Governor appointed D. W. Kilbourne, of Lee county, Commissioner to make the selections, and the General Land Office, on the 25th of April last, issued scrip authorizing the selection of 300,000 acres from the vacant public lands as part of the grant of July 12, 1862. Said Commissioner has made the selections as authorized in the Fort Dodge and Sioux City Land Districts, and has furnished this Office with a list of the lands selected. These lands have not yet been set apart to the State, and therefore the report of the Commissioner, as required by the second section of the act of September 11, 1862, has not been made.

When the full quantity accruing to the State under this Grant is determined by the Commissioner of the General Land Office, and the proper lists are approved and certified, the State will hold the lands in trust for the following purposes :

1st. For the benefit of any person or persons to whom the State has sold lands within the limits of the Des Moines River Grant, and whose title has failed, or may yet fail.

2d. For reimbursing the State for all moneys advanced, (and interest thereon) from the general revenue, to pay claims against the Des Moines River Fund, and all claims, audited or assumed by the State, but not paid, against said Fund, and which are on file in this Office.

3d. For paying the liabilities against the Des Moines River Fund, arising out of the contracts for the completion of the works on the Des Moines River Improvement, as provided by Acts of the General Assembly of March 22d, 1858, and March 3d, 1860.

4th. For the purpose of aiding in the completion of the Keokuk, Fort Des Moines & Minnesota Railroad.

There have been received at this Office, and are now on file, lists of lands approved and certified as Railroad lands under the Act of Congress of May 15th, 1856, granting lands for Railroad purposes, which include most, if not all, the lands located above the Raccoon Fork, heretofore approved and certified as Des Moines River lands—falling within the Railroad limits. These lands amount in the aggregate to over 270,000 acres, and have all been sold and patented by the State under the Des Moines River Grant. No other disposition has been made of them by the State.

Is it not advisable for the State, by some appropriate legislation to protect the integrity of these titles ? If the Railroad Companies are permitted to hold these lands, the patents issued by the State are void, and the purchasers must buy again of the Railroads or give up their lands and look to the State for indemnity. Aside from the damage and even ruin that would result in many cases from such a course, it would open up the way for much controversy and numerous applications to the State for relief.

If, on the other hand all these lands to the north line of the State, did pass to the State by the Des Moines River Grant, as the State has always asserted, and as the general Government often, and for a long time admitted, and as President Fillmore himself

decided, and that fact could be established by an appeal to the Courts, and the Railroads thus ousted of their right to these lands, and the titles from the State perfected, it would be bad policy for the State to pursue that course, for thereby she would lose all that land granted by the Act of Congress of July 12th, 1862, as indemnity for the lands within the limits of the Des Moines River Grant, otherwise appropriated. The State would by such a course lose at least lands equal in amount to the lands claimed as Des Moines River lands, which are now certified and held as Railroad lands. It would seem to be bad policy for the State in this way to seek to divest the Railroads of their title to these lands, or by her negligence to compel the Des Moines Navigation & Railroad Company to do it.

The best and most satisfactory (if not the only) way to relieve the State from the embarrassments and difficulty in which she has been placed by the vacillating and unjust course of the General Government in this matter it seems to me is : "To require the several Railroad Companies to release to the State their right to all these lands claimed by the State under the Des Moines River Grant ; and in lieu of so much thereof as has been or may be certified as Railroad lands, to take an equal amount of the land granted as indemnity by the Act of Congress of July 12th, 1862, 300,000 acres of which is now being selected and located, as before stated.

By this means the titles of the State to the purchasers of the Des Moines River lands would become good, and the State safe from further liability or trouble therefrom. And the Railroads would each receive the same amount of lands as if permitted to hold the same as certified by the Commissioner of the General Land Office.

I would therefore respectfully suggest that you recommend to the General Assembly the passage of an Act embodying the provisions above indicated for the settlement of this matter and the relief of the State and her grantees.

6TH.—SWAMP LAND GRANT.

The magnitude and importance of this Grant and the difficulty attending its settlement will justify as extensive and accurate a Report as the resources of this office can furnish.

Congress has passed the following Acts relative to this Grant :

1. "An Act to enable the State of Arkansas and other States to reclaim the Swamp Lands within their limits."

Be it enacted by the Senate and House of Representatives of the United States in Congress assembled, That to enable the State of Arkansas to construct the necessary levees and drains to reclaim the Swamp and overflowed lands therein, the whole of those Swamp and overflowed lands made unfit thereby for cultivation, which shall remain unsold at the passage of this act, shall be, and the same are hereby granted to said State.

SEC. 2. *And be it further enacted*, That it shall be the duty of the Secretary of the Interior, as soon as may be practicable after the passage of this Act, to make out an accurate list and plats of said lands described as aforesaid, and transmit the same to the Governor of the State of Arkansas, and at the request of said Governor, cause a patent to be issued to the State therefor; and on that patent the fee simple to said lands shall vest in the said State of Arkansas, subject to the disposal of the Legislature thereof; *provided, however*, that the proceeds of said lands, whether from sale or direct appropriation in kind, shall be applied, exclusively, as far as necessary, to the purpose of reclaiming said lands by means of the levees and drains aforesaid.

SEC. 3. *And be it further enacted*, That in making out a list and plats of the lands aforesaid, all legal sub-divisions, the greater part of which is "wet and unfit for cultivation," shall be included in said lists and plats; but when the greater part of a sub-division is not of that character, the whole of it shall be excluded therefrom.

SEC. 4. *And be it further enacted*, That the provisions of this Act be extended to, and their benefits be conferred upon, each of the other States of the Union in which Swamp and overflowed lands known and designated as aforesaid, may be situated.

Approved September 28, 1850.

2. "An Act for the relief of purchasers and locators of Swamp and overflowed lands."

Be it enacted by the Senate and House of Representatives of the United States in Congress assembled, That the President of the United States cause patents to be issued as soon as practicable, to the purchaser or purchasers, locator or locators, who have made entries of the public lands, claimed as Swamp lands, either with

cash, or with land warrants, or with scrip, prior to the issue of patents to the State or States, as provided for by the second section of the Act approved September twenty-eighth, eighteen hundred and fifty entitled "An Act to enable the State of Arkansas and other States to reclaim the Swamp Lands within their limits," any decision of the Secretary of the Interior, or other officer of the government of the United States to the contrary notwithstanding; *provided*, that in all cases where any State, through its constituted authorities may have sold or disposed of any tract or tracts of said land to any individual or individuals prior to the entry, sale or location of the same, under the pre-emption or other laws of the United States, no patent shall be issued by the President for such tract or tracts of land, until such State, through its constituted authorities, shall release its claim thereto, in such form as shall be prescribed by the Secretary of the Interior. *And provided further*, that if such State shall not within ninety days from the passage of this act, through its constituted authorities, return to the General Land Office of the United States, a list of all the lands sold as aforesaid, together with the dates of such sale, and the names of the purchasers, the patents shall be issued immediately thereafter, as directed in the foregoing section.

SEC. 2. *And be it further enacted*, That upon due proof by the authorized agent of the State or States, before the Commissioner of the General Land Office, that any of the lands purchased were Swamp Lands, within the true intent and meaning of the act aforesaid, the purchase money shall be paid over to said State or States, and when the lands have been located by warrant or scrip, the said State or States shall be authorized to locate a quantity of like amount, upon any of the public lands subject to entry, at one dollar and a quarter per acre or less, and patents shall issue therefor, upon the terms and conditions enumerated in the act aforesaid; *provided, however*, that the said decisions of the Commissioner of the General Land Office shall be approved by the Secretary of the Interior.

Approved, March 2, 1855.

3. "An Act to confirm to the several States the swamp and overflowed Lands selected under the act of September twenty-eight, eighteen hundred and fifty, and the act of the second of March, eighteen hundred and forty-nine."

Be it enacted by the Senate and House of Representatives of the

United States of America in Congress assembled, That the selection of Swamp and overflowed Lands granted to the several States by the act of Congress, approved September twenty-eight, eighteen hundred and fifty, entitled "An Act to enable the State of Arkansas and other States to reclaim the Swamp Lands within their limits," and the Act of the second of March, eighteen hundred and forty-nine, entitled "An Act to aid the State of Louisiana in draining the Swamp Lands therein," heretofore made and reported to the Commissioner of the General Land Office, so far as the same shall remain vacant and unappropriated, and not interfered with by an actual settlement under any existing law of the United States, be and the same are hereby confirmed, and shall be approved and patented to the said several States in conformity with the provisions of the act aforesaid, as soon as may be practicable after the passage of this law; *provided, however*, That nothing in this Act contained shall interfere with the provisions of the act of Congress entitled "An Act for the relief of purchasers and locators of swamp and overflowed lands," approved March second, eighteen hundred and fifty-five, which shall be and is hereby contained in force, and extended to all entries and locations of lands claimed as swamp lands made since its passage." Approved March 3, 1857.

4. "An Act to extend the provisions of 'An Act to enable the State of Arkansas and other States to reclaim the Swamp Lands within their limits,' to Minnesota and Oregon and for other purposes."

"*Be it enacted by the Senate and House of Representatives of the United States of America in Conyress assembled*, That the provisions of the Act of Congress, entitled "An Act to enable the State of Arkansas and other States to reclaim the Swamp Lands within their limits, Approved September twenty-eight, eighteen hundred and fifty, be and the same are hereby extended to the States of Minnesota and Oregon: *Provided*, That the Grant hereby made shall not include any lands which the Government of the United States may have reserved, sold or disposed of (in pursuance of any law heretofore enacted,) prior to the confirmation of title to be made under the authority of the said act."

"SEC. 2. *And be it further enacted*, That the selections to be made from the lands already surveyed in each of the States, including Minnesota and Oregon, under the authority of the Act aforesaid, and of the Act to aid the State of Louisiana in draining the

Swamp Land therein, approved March second, one thousand eight hundred and forty-nine, shall be made within two years from the adjournment of the Legislature of each State at its next session after this Act. And as to all lands hereafter to be surveyed, within two years from such adjournment at the next session, after notice by the Secretary of the Interior to the Governor of the State, that the surveys have been completed and confirmed."

Approved March 2, 1860.—(*U. S. Stat. at large*, 1859–60, *p.* 3.)

This act requires the State to complete its selections of Swamp land within two years from the adjournment of the next session of the General Assembly after the passage of the act.

The Extra Session of the General Assembly convened on the 15th of May, 1861, adjourned on the 29th of that month. If this session is considered in the construction of said act the time for the State to complete her selections expired on the 29th of May last. The *next regular session* was doubtless contemplated, and that adjourned April 8th, 1862, giving till April 8th, 1864, to make any additional selections that the State desires.

2. The following is a brief synopsisof State legislation upon this subject up to this time:

1. "An Act in relation to the Swamp Lands within this State." Passed February, 1851.

This Act authorizes the Commissioner of the State Land Office to take such steps as he may think necessary to secure to the State the lands granted by Act of Sept. 28, 1850, and to dispose of the same; the proceeds of such sales after defraying expenses of selecting, reclaiming, &c., to be paid into the State Treasury. And requires the Governor to discharge the duties enjoined therein on the Commissioner until such time as the Commissioner of the Land Office should be elected and qualified; and to discharge such other duties as he may think the interest of the State requires.

It also gives the County Surveyors authority to contract (subject to the approval of the Governor) for the making of levees and drains to reclaim the land. (*3d Session, Chap.* 69.)

2. "An Act to dispose of the swamp and overflowed lands within this State, and to pay the expenses of selecting and surveying the same." Passed January 13, 1853.

This Act grants these lands to the counties in which they lie;

provides for their selection by Agents, to be appointed by the County Courts in the several counties ; provides for the protection, sale and reclamation of said lands, and places them under the control and management of the County Court.—(*Acts* 1853 *p* 29.)

3. "An Act, supplemental to an Act, entitled : " An Act to dispose of the swamp and overflowed lands within this State, and to pay the expenses of selecting and surveying the same," approved January 13, 1853. Approved January 24, 1853.

This Act requires the selection agent to makes his report to the Secretary of State, and makes it the duty of the Secretary to forward the same to the Surveyor General.—(*Acts* 1853, *p* 116.)

4. " An Act providing for the collection of money due to the State of Iowa from the Government of the United States, arising from the disposition of the Swamp Lands, and for selecting the Swamp Lands, and securing the title to the same." Passed January 25, 1855.

This Act authorizes the Governor to draw from the United States any money accruing to this State on account of the disposition of any of the Swamp Lands, and makes it his duty to pay the same into the State Treasury. It provides that the Governor, Auditor and Secretary of State shall constitute a Board to ascertain how much of such money is due to each county, &c. And authorizes the Governor to adopt such measures as he thinks best to secure to the State the Swamp Lands, &c.—(*Acts* 1855, *Chap.* 138, *p* 261.

5. An Act to amend an act entitled " An Act to dispose of the Swamp and overflowed land within this State." Approved Jan. 13, 1853. Approved Jan. 25, 1855.

This Act forbids any of the Counties unorganized at the date of its passage from disposing of its Swamp Lands till the title thereto is perfected; requires the Counties to refund to the State expenses incurred in selecting the land with ten per cent. interest. And provides that in the then organized Counties where the Swamp Lands are irreclaimable, the proceeds thereof may be appropriated to the erection of public buildings after a submission to a vote of the people. It requires the Drainage Commissioner in such cases to pay over the proceeds of such land to the County Treasurer, and provides that Swamp Land shall not be sold at less than $1,25 per acre.—(*Acts* 1855, *p.* 173.)

6. " A Bill to prevent Trespass or waste on Swamp or other Lands in the State of Iowa and for other purposes." Approved Jan. 25, 1855.

This Act provides for preventing trespass and waste on Swamp Lands and also provides for the granting of pre-emption rights. (*Acts* 1855, *p.* 228.)

7. "An Act to amend An Act entitled An Act to dispose of the Swamp or overflowed lands within the State and pay the expenses of selecting and surveying the same, approved Feb. 2, (Jan 13) 1853." Approved July 15, 1856.

This act requires all moneys arising from Swamp Land to be paid into the County Treasury, and to be paid out only on orders from the County Judge and Swamp Land Commissioner. It provides also for loaning the Swamp Land fund. (*Acts Ex. Ses.* 1856, *p.* 83.)

8. "An Act in relation to the Swamp Lands of this State." Approved January 24, 1857.

This Act simply repeals all laws granting pre-emption-rights on swamp lands. (*Acts* 1857, *p.* 127.)

9. "An Act making an appropriation for Swamp Land purposes." Approved Jan. 27, 1858.

This Act authorizes the Governor to appoint an agent to go to Washington and effect a settlement of the Swamp Land business with the United States. Also two or more agents to complete the selections in unorganized counties.

It makes an appropriation for the expenses, and provides for refunding the same to the State with interest. (*Acts* 1858, *p.* 3.)

10. "An Act for the relief of Swamp Land pre-emptors." Approved March 22, 1858.

This Act only extends the time for persons to prove up and perfect their pre-emptions who had valid claims on the 5th of September, 1857. (The act repealing pre-emption rights took effect July 1, 1857.) *Acts* 1858, *p.* 198.)

11. "An Act to authorize the counties to use the Swamp Lands to aid in the construction of Railroads and Seminary buildings." Approved March 22, 1858.

This Act authorizes the counties to devote the proceeds of the Swamp Lands to the erection of buildings for educational purposes, building of Roads and Bridges and Railroads, after the question

has been voted on and carried by the citizens at an election. It provides also that counties may sell or dispose of their Swamp lands to any person for any of the objects above enumerated.—Such purchaser taking the same upon the conditions of the grant of September 28, 1850, and releasing the State and County from all liability thereunder. (*Acts* 1858, *p.* 256.)

12. This Act is amended by Chap. 77, Acts of 1862, authorizing the counties, in addition to the objects specified, to devote the proceeds of the swamp lands to the permanent school fund. (*Acts* 1862, *p.* 78.)

13. "An Act to authorize the Governor and Board of County Supervisors to appoint agents in regard to Swamp Lands belonging to the State of Iowa, and defining their duties." Approved April 8, 1862.

This Act provides:

SEC. 1. That the Governor may appoint agents to settle the Swamp Land matters with the Commissioner of the General Land Office.

SEC. 2. That when Scrip is issued to the State under act of Congress of March 2, 1855, it shall be deposited in the State Land office, &c., and when money is refunded under said act it shall be deposited in the State Treasury, subject to the order of the Board of Supervisors.

SEC. 3. That when the Scrip is received the Register shall notify the Governor who shall appoint an agent to locate it.

SEC. 4. That the Agent shall locate the Scrip and report to the State Land Office.

SEC. 5. That the Register shall file and record the report and send a certified copy of it to the General Land Office, and demand and receive a patent for the land, and shall notify the Governor when the patent is received, and that the Governor shall patent to the county.

SEC. 6. That the agents shall give bonds.

SEC. 7. That the agents shall act under instructions of the Governor and Register, but shall not receive any of the money from the government.

SEC. 8. That upon information that any of the money due the State can be obtained, the Register shall notify the Treasurer of that fact, and also to what county it belongs.

SEC. 9. That the Treasurer shall notify the county when any money due it is received, and the county shall appoint an agent and send with an order for the money, &c.

SEC. 10. That the agent shall give bond in double the amount of money to be drawn.

SEC. 11. That these agents shall receive $3,00 per day. to be paid by the counties.

SEC. 12. That the agents appointed by the Governor shall receive $4,00 per day, to be paid by the counties in proportion to the amount of money and lands received.

SEC. 13. That *special agents* may be appointed for the different counties desiring it, to make settlement with the Commissioner of the General Land Office, upon the recommendation or nomination of the Boards of Supervisors. That such agents may receive the proceeds of such settlement for their respective counties. The costs, expenses and compensation to be paid by the counties. (*Acts* 1862, *p.* 186.)

Under the Act of April 8, 1862, twenty-four of the counties have had special Swamp Land agents appointed, and other applications for appointment have been made that were rejected, and some not yet acted upon.

Besides these, there have been five general agents appointed and commissioned for certain districts together, covering the entire State. One of these General Agents, (Samuel Townsend,) is at Washington, where he has been for some time, attending to Swamp Land business. The several agents have no doubt labored earnestly to accomplish a settlement with the General Land Office, but have not met with the success that was anticipated.

The following table exhibits the number of acres of these lands selected, number patented, number certified as enuring to State, number certified as having been entered by land warrants, number certified as having been entered by cash prior to selections, cash and scrip indemnity settled and allowed by the Department, and number of acres for which indemnity scrip has been issued for each county, so far as shown by the records of this office. (The indemnity so far settled and allowed for the several counties shown in this table is furnished by a report of Samuel Townsend, S. L. agent at Washington, of date November 14, 1863.)

COUNTIES.	No. of acres selected.	No. acres certified as enuring to the State.	No. acres certified as entered by Land Warrants prior to selection.	No. acres certified as entered by cash prior to selection.	No. acres patented to State, and by State to the Counties.	Cash indemnity settled and allowed.	No. acres scrip indemnity settled and allowed.	No. acres for which scrip is issued.
Adair,	8,720.00	480.00	1,760.00	4,634.83	360.00	$8695 85	.....	.....
Adams,	640.00	3,680.00	80.00	937.78	3,680.51	4303 00	748.70	740.00
Alamakee,	25,740.00	13,449.34	6,723.11	4,917.24	12,484.60	.....	.....	.....
Appanoose,	.....	9,259.55	3,903.08	2,397.06	8,744.18	2475 00	3,880.92	.....
Audubon,	11,234.74	2,056.92	.....	.....	2,056.92	.....	3,572.04	3,500.00
Benton,	16,029.66	239.10	1,670.04	2,478.80	239.10	.....	.....	.....
Black Hawk,	.....	1,659.05	2,200.34	2,744.65	1,539.05	.....	.....	.....
Boone,	.....	11,212.63	1,116.08	2,578.47	18,166.69	.....	1,049.69	1,049.69
Bremer,	33.87	11,132.72	2,968.03	6.523.58	11,087.72	.....	.....	.....
Buchanan,	.....	560.00	960.00	1,182.22	560.00	.....	.....	.....
Butler,	14,393.29	1,316.07	5,808.49	6,782.14	1,276.07	.....	.....	.....
Buena Vista,	62,682.72	.....	.....	.....	.....	.....	.....	.....
Calhoun,	46,849.48	200.00	.....	.....	200.00	.....	.....	.....
Carroll,	36,460.00	.....	.....	.....	.....	.....	.....	.....
Cass,	29,567.24	1,687.08	.....	.....	1,607.78	.....	12,437.04	560.00
Cedar,	.....	598.50	920.00	137.88	518.50	.....	6,466.56	6,466,56
Cerro Gordo,	74,664.55	160.00	.....	.....	80.00	.....	.....	.....
Cherokee,	26,359.59	1,616.56	.....	.....	1,283.91	.....	.....	.....
Chickasaw,	44,280.00	718.80	19,916.16	26,144.25	440.00	.....	19,769.85	.....
Clark,	4,970.62	.....	.....	.....	.....	.....	.....	.....
Clay,	67,787.36	17,430.38	.....	.....	18,230.97	.....	.....	.....
Clayton,	.....	1,910.29	195.33	299.26	1,827.29	.....	.....	.....
Clinton,	.....	8,231.39	560.00	219.34	7,655.23	.....	600.00	600.00
Crawford,	25,337.51	.....	.....	.....	.....	.....	.....	.....
Dallas,	.....	5,285.98	200.00	1,200.00	5,405.98	.....	200.00	200.00
Davis,	11,776.13	.....	.....	.....	.....	.....	.....	.....
Decatur,	19,240.00	8,484.73	2,879.30	4,505.72	9,151.73	.....	.....	.....
Delaware,	19,720.00	199.33	2,246.86	4,921.00	119.33	.....	.....	.....
Des Moines,	.....	12,130.44	2,920.00	561.35	7,351.23	.....	2,920.00	2,920.00
Dickinson,	50,064.08	.....	.....	.....	.....	.....	.....	.....
Dubuque,	.....	31.70	2,795.98	300.17	31.70	.....	.....	.....
Emmett,	97,507.62	.....	.....	.....	.....	.....	.....	.....
Fayette,	.....	95.20	4,652.18	5,210.18	95.20	.....	.....	.....
Floyd,	10,199.71	40.00	4,791.43	5,252.76	.....	.....	.....	.....
Franklin,	22,489.94	.....	.....	.....	.....	.....	.....	.....
Fremont,	102,755.51	86,849.59	.....	.....	86,503.14	.....	1,904.88	.....
Guthrie,	11,760.00	400.00	4,594.37	3,160.40	360.00	.....	4,314.30	4,314.30
Grundy,	23,476.80	.....	.....	.....	.....	.....	.....	.....
Greene,	10,389.82	.....	.....	.....	.....	.....	.....	.....
Hamilton,*	.....	8,432.20	7,636.89	3,695.17	5,189.30	.....	.....	.....
Hancock,	.....	240.00	.....	.....	260.00	.....	.....	.....
Hardin,	12,979.24	.....	.....	.....	.....	.....	.....	.....
Harrison,	126,407.93	120,134.71	.....	.....	117,812.03	.....	600.00	600.00
Henry,	.....	.....	1,316.56	725.68	.....	.....	1,400.00	1,000.00
Howard,	22,796.68	6,545.16	8,457.51	4,534.21	6,754.21	.....	.....	.....
Humboldt,	.....	5,306.72	760.00	273.48	5,326.92	.....	.....	.....
Iowa,	.....	3,801.67	440.00	1,514.77	2,446.23	7,474.50	3,434.42	3,434.42
Ida,	.....	158.76	.....	.....	278.76	.....	.....	.....
Jackson,	.....	3,277.42	1,912.51	1,100.95	3,267.97	.....	.....	.....
Jasper,	.....	4,438.75	2,479.61	4,712.07	8,191.99	.....	2,239.61	.....
Jefferson,	.....	683.26	.....	76.10	683.46	.....	.....	.....
Johnson	.....	1,888.52	2,581.69	1,952.60	1,148.52	.....	.....	.....

*Hamilton, and a portion of Humboldt, are reported in selections of Webster county.

COUNTIES.	No. of acres selected.	No. acres certified as enuring to the State.	No. acres certified as entered by Land Warrants prior to selection.	No. acres certified as entered by cash prior to selection.	No. acres patented to State, and by State to the Counties.	Cash indemnity settled and allowed.	No. acres scrip indemnity settled and allowed.	No. acres for which scrip is issued.
Jones,.	....	1,495.93	4,513.16	4,292.67	742.25	$8168.74	6,222.07	6,222.07
Keokuk,	.....	8,333.09	3,943.91	3,860.84	8,186.36	6,006.93	4,895.24	4,895.24
Kossuth,	86,769.07	.....	.....	.....	.....	.....	.....	.....
Lee,*.	.....	399.23	.....	.....	.....	.....	.....	.....
Linn,.	.....	1,073.66	1,504.47	1,120.99	1,073.66	.....	.....	.....
Louisa,	.....	20,925.08	10,857.02	7,079.92	20,267.23	10,759.42	11,835.30	12,316.32
Lucas,	7,300.00	120.00	1,320.00	2,034.10	40.00	3,274.04	.....	.....
Madison,.	.....	.....	.....	.....	.....	.....	.....	.....
Mahaska,	.....	5,898.10	875.87	273.84	5,858.10	.....	833.62	833.62
Marion,.	.....	1,091.00	120.00	220.08	1,051.00	.....	120.00	120.00
Marshall,	.....	676.39	3,329.07	4,052.47	2,663.84	8,381.51	5,827.30	5,827.30
Mills,	.....	19,998.25	.....	.....	22,261.25	.....	.....	.....
Mitchell,	54,110.23	.....	.....	40.00	.....	.....	.....	.....
Monona,.	104,576.24	46,940.50	....	..... .	40,210.58	.....	10,313.67	10,413.67
Monroe,	3,855.10	435.10	280.00	560.00	355.10	.....	.....	.....
Montgomery,	19,320.00	1,392.95	.....	.....	1,232.93	9,851.51	4,740.00	4,740.00
Muscatine,	.....	3,144.47	1,174.98	307.20	2,980.67	.....	.....	.....
O'Brien,	23,192.76	520.00	.....	.....	520.00	.....	.....	.....
Oceola,	.....	.....	.....	.....	.....	.....	.....	.....
Page,.	20,910.46	9,891.43	.....	.....	9,891.43	4,292.39	600.00	600.00
Palo Alto	6,682.22	11,248.03	.....	.....	11,208.03	.....	.....	.....
Plymouth,	18,851.06	2,220.22	.....	.....	2,110.29	.....	.....	.....
Pocahontas,	75,140.77	6,679.19	.....	.....	6,679.69	.....	.....	.....
Polk,	.....	10,220.34	3,137.51	4,856.92	13,352.43	7,317.57	3,975.92	.....

*I think about same patented.

Pottawattamie,...	56,642.19	22,519.34	.....	.....	22,367.34	.....	.....	.....
Poweshiek,..... ...	.....	.....	.....	.....	.....	.....	.....	.....
Ringgold,.....	25,072.52	.....	.....	.....	.....	.....	.....	.....
Scott,.....	.....	2,462.35	120.00	3.23	2,446.13	.....	.....	.....
Sioux,.....	10,380.34	5,064.43	.....	.....	5,012.10	.....	.....	.....
Shelby, ...	23,898.76	2,610.35	.....	.....	2,530.35	.....	.....	.....
Story,.....	.....	3,845.97	1,537.78	1,296.61	7,517,48	.....	1,288.50	1,288.50
Sac,.....	33,752.14	3,801.55	.....	.....	3,861,55	.....	.....	.....
Tama,.....	.....	80.00	3,357.18	3,754.50	40.00	.....	1,032.04	1,032.04
Taylor,.....	12,940.00	1,934.08	1,039.96	3,262.86	1,794.08	.....	.....	.....
Union,.....	16,314.34	.....	.....	.....	.....	.....	.....	.....
Van Buren,....	.....	360.00	280.00	160.00	360.00	.....	.....	.....
Wapello,....	.....	.....	.....	.....	.....	.....	.....	.....
Warren,.....	30,834.33	.....	.....	.....	.....	.....	.....	.....
Washington,.....	.....	2,427.94	3,040.42	1,427.40	2,995.44	2.700.65	4,240.00	4,240.00
Wayne,.....	10,560.00	.40	1,188.59	4,456.11	40.00	.....	.....	.....
Webster,*....	75,320.00	16,535.16	4,689.00	3,656.45	15,702.06	.....	.....	.....
Winnebago,.....	47,434.90	4,420.32	.....	.....	4,222.02	.....	.....	.....
Woodbury,....	40,024.38	7,821.68	18,376.65	.....	6,268.12	.....	.....	.....
Winneshiek,.....	10,266.00	720.00	4,500.87	.....	6,035.59	.....	.....	.....
Worth,.....	35,485.00	.....	.....	.....	.....	.....	.....	.....
Wright,.....	17,862.92	.....	.....	.....	.....	.....	.....	.....
Total,.....	1,897,198.66	583,419.06	164,831.99	158,075.85	588,171.32	83.701.11	123,662.67	77,915.72

*This selection included that of Hamilton, and a portion of Humboldt.

The selections of some of the counties were reported directly to the Surveyor General, and, except in one or two instances such selections have not found their way to this Office, hence we are unable to give *all* the selections.

The General Land Office has changed its ruling and requires a different form to be observed for the affidavit or certificate of the Selecting Officer; one difficult if not impossible to comply with. The selections of O'Brien and some other counties, sworn to by the Selecting Officers in the form formerly recognized and received by the Department, have been rejected by the Surveyor General, under instructions of General Land Office of June 23, 1860. (Appendix No. 1.) The new form required (Appendix No. 2) has not been complied with in any instance; but the rejected reports have been returned to the Surgeon General, with a request to retain the same and await the result of an effort now being made to procure a modification of the form. The indemity scrip issued for Story county has been located; and the lands patented to the State amounting to 11,835,30 acres. The scrip for Louisa, Cass, Page, Monona, Adams, Montgomery and Audubon counties has been located, but the lands selected are not yet patented.

The indemnity (both cash and scrip) for Lucas county was delivered by the Commissioner of the General Land Office to Robert Cole, Special Agent for that county, and never came to this Office.

The following are the counties that have filed proof for indemnity in the General Land Office, together with the dates of their respective, several different filings, as appears from the report of Samuel Townsend, S. L. Agent at Washington, to-wit:

Appanoose, July 3, 1861; Adams, October 31 and November 6, 1861; Audubon, February 5, 1862; Adair, October 3, 1862; Allamakee, February 23 and May 16, 1863; Boone, September 22, 1860 and December 10, 1861; Bremer, February 21, 1863; Butler, February 21, 1863; Buchanan, July 11, 1863; Blackhawk, September 24, 1863; Clinton, August 27, 1860; Cedar, August 14, October 31 and December 19, 1860, and March 22, 1862; Chickasaw, August 1, 3, and 10, and June 2, 1862; Cass, September 17, 1862, July 15 and October 21, 1863; Clayton, January 12, 1863; Clark, October 21, 1863; Des Moines, July 8, 1861; Dallas, October 2, 1861 and January 30, 1862; Decatur, July 1, 1862; Dubuque, May 16, 1861; Fremont, October 31, 1861; Floyd, February 23, 1863: Fayette, January 12, 1862; Guthrie, February 5, 1862 and July 3, 1863; Greene, October 19, 1863; Harrison, August 15, 1861; Henry, October 2, 1861; Iowa, June 2, 1862; Jasper, November 23, 1860; Jones, December 28, 1861 and June 2d and 12, 1862, Johnson, July 9, 1862 and February 23, 1863; Keokuk, December 15, 1856; Lucas, June 23, 1860; Louisa, September 22, 1860; Marshall, December 19, 1860; Mahaska, March 6, 1861 and August 21, 1863; Monona, November 16, 1860 and May 23, 1863; Mills, October 21, 1861 and January 12, 1863; Montgomery, Oct. 31, 1861 and Jan. 12, 1862; Marion, Feb. 5, 1862; Polk, Feb. 22 and July 8, 1861; Page, Oct. 31, 1861; Pottawattamie, Dec. 28, 1861; Story, Sept. 22, 1860, and Jan. 12, 1863; Sac, Feb. 18, 1862; Shelby, Aug. 5, and Oct. 21, 1863; Tama, Aug. 14, 1860; Union, June 11, 1862; Washington, Oct. 31, 1860, and Jan. 26, 1861; Winneshiek, Feb. 18, 1863; Wright, July 11, 1863; Warren, Aug. 1, and Oct. 21, 1863; Wayne, Aug. 12, and Oct. 21, 1863. But few of the Counties sent their proof through this office. We are therefore unable to give the number of acres upon which proof has been offered.

The act of September 28, 1850, provides that the Secretary of the Interior shall make out lists of the swamp lands, and transmit them to the Governors of the States, &c.; but, notwithstanding this provision, the department gave to the States desiring to do so, the privilege of selecting their swamp lands. Iowa was one of those States, and proceeded to make her own selections, by agents appointed for that purpose, under her laws; and her right to make them, and the manner in which they have been made, have never been questioned by the United States.

Thirteen years have elapsed since the 28th September, 1850, and yet the administration of this grant is not completed, nor is the prospect for a speedy settlement as flattering as could be desired.

The legislation of the State has been extensive, and, in some particulars, unncessary; but the difficulty in the administration of the grant cannot be attributed to that fact, nor to anything done by the State in the premises. It is found in the course pursued by the Land Department at Washington—a course that seems marked by the most determined and persistent hostility to the interest of this State.

By reference to a few decisions and acts of that department,

(which it appears proper in vindication of the State in notice) it will become apparent that the State of Iowa is to lose a large amount of land and particularly a large claim for indemnity to which she is entitled under the Swamp Land grant, and comparatively to receive but little benefit, whereas other States and especially the Southern States have been fairly dealt by in the administration of this grant.

The original construction given to the Act of 28th September, 1850, was, that it was not a present grant and did not attach to nor effect the land till it was selected and reported to the proper officer, for approval, and that the title thereto did not vest in the State till the patent therefor was issued. This was the holding of the Department under the decision of Secretary Stuart, up to 23d December, 1851, when he reversed his decision and held that the Act of September 28, 1850 was a grant *in presenti*. This is the correct construction, as has been decided by our own Supreme Court in the case of Allison v. Halfacre, (11 *Iowa, p.* 450. *See opinion of Attorney General Black, Appendix No.* 3,) and has been acquiesced in by the Government to the present. The Act of 28th September, 1850 being a grant *in presenti*, conveyed to the State at the time of its passage, all lands coming within the description of the grant.

Notwithstanding that fact, the ordinary system of selling and locating the public lands at the various Government Land offices continued in full operation. The result was that thousands of entries and locations were made of lands that were afterwards selected and claimed as Swamp lands. Here arose a serious difficulty for the Government. Having parted with her right and title in the lands by the Act of 28th September, 1850, she had no right to dispose of them again and hence the titles she might make to these purchasers and locators would be void. It therefore became necessary to withdraw all the public lands from sale till the Swamp Land selections were completed, and to declare these entries and locations void or to provide some means for the relief of those purchasers and locators.

Congress provided relief by the passage of the Act of March 2, 1855, affirming those sales and locations and granting to the State the indemnity provided for in that act.

This act provides, *that upon due proof by the authorized Agent of the State before the Commissioner of the General Land office, that any of the lands purchased were Swamp lands within the true intent and meaning of the Act aforesaid,* (*Sept.* 28, 1850,) *the purchase money shall be paid over to the State, and where the lands have been located by warrant or scrip, the State shall be authorized to locate a like amount upon any of the public lands, &c.*

The form and substance of proof to be furnished by the State of Iowa to entitle her to indemnity under the provisions of said Act, were agreed upon in the year 1859, between his Excellency, Ralph P. Lowe, then Governor, and the Land Department at Washington. The State, at great expense, proceeded to furnish, through its agents, a large amount of proof in the form and substance agreed upon, showing the character of many of the lands selected as Swamp lands and disposed of by the Government since the 28th September, 1850, to be such as was contemplated by the Act of that date, but no sooner was this done and the instructions fully complied with in the premises, than the Department repudiated these proofs and prescribed a new and different form of proof with an evident design to render a compliance therewith impossible, for under these new instructions it is believed not one acre in ten already selected can be secured to the State. (*Appendix No.* 4 *and* 5.) This adverse decision was rendered on the 27th June, 1862, whilst many of the counties were getting up and forwarding proof according to the old form. At the interposition of our delegates in Congress, the Secretary reviewed and so far changed his decision as to receive and consider all proof for indemnity filed in the General Land office prior to 27th June, 1862, but all filed subsequent to that date must conform to the new instructions, thus making it necessary to retake a large amount of proof, at great expense to the counties.

But of all the adverse decisions of the Department, the one fraught with the greatest injury to the State of Iowa, is one cutting off all claim for indemnity in counties where the swamp land selections were made after the 3d of March, 1857. It is a notorious fact, that many of the counties were not in a condition to make their selections prior to that date; nor is there any thing in the grant, nor any subsequent act of Congress, making it necessary.

It seems that the Commissioner of the General Land Office called the attention of my predecessor (A. B. Miller) to this subject, as early as May 31st, 1862, by the following letter:

GENERAL LAND OFFICE,
MAY 31st, 1862.

"A. B. MILLER, ESQ., *Register State Land Office, Des Moines, Iowa:*—SIR:—Your letter of the 16th inst., addressed to the Hon. Secretary of the Interior, has been referred to this office, and as a reply thereto, I have to state, that no indemnity is provided to the States for swamp lands disposed of by the General Government, unless the lands shall have been duly selected and reported to this office as swamp lands, on or prior to the date of the act of March 3d, 1857.

Very respectfully, your obdient servant,

J. M. EDMUNDS, Commissioner.

This letter was followed by others to various State Agents of similar import. And it seems that the Hon. Commissioner has officially decided the question as indicated in the foregoing letter, in a case made up by the American Emigrant Company for Wright County, in this State.

Wright County made her selections since the 3d of March 1857, and the American Emigrant Company, assignees of Wright County, and standing in the position of the State of Iowa in the controversy presented to the Commissioner of the General Land Office proof made out in conformity with the recent and more strict instructions and form for indemnity for about 9,000 acres of swamp land located since the 28th of Sept., 1850.

The Indemnity was refused by the Commissioner, and the company have appealed to the Secretary of the Interior. They have prepared and printed an elaborate argument (a copy of which, furnished me by the Company, I herewith submit,) (see Appendix No. 6,) presenting this whole question and showing conclusively that under a fair construction of the acts relative to this Grant, the State is entitled to indemnity for all swamp lands disposed of by the Government since Sept. 28, 1850, whether the selections were made since or prior to the 3d of March, 1857.

Most of the Western and North-Western Counties and others nearly all over the State, made and reported their selections after that date, and if the theory of the Commissioner prevails, that Grant that has given so much to other States will confer upon this comparatively but little.

The total amount claimed by this State under the act of Sept.

28, 1850, does not exceed 4,000,000 acres, whilst Michigan received 9,000,000, and Illinois and the Southern States claiming much larger amounts, have all got their claims settled long since without difficulty. But notwithstanding that fact and that Iowa has expended enormous sums of money in making the selections, procuring proof, &c., and done all in her power to hasten a final and favorable settlement of the Grant, it seems to be the special design of the Department at Washington to thwart her efforts. And by decisions inimical to the Grant itself, and by every pretext to delay its administration and to curtail the advantages the State is entitled to receive therefrom.

If this policy of the Department cannot be changed, the State had better give up a large share of her claims under this Grant and avoid any further expense and trouble in reference thereto.

I would suggest that you recommend the General Assembly to call the attention of our Delegates in Congress to this matter, and by Joint Resolution to urge them to procure a change of this policy, and if necessary to procure the passage of an Act protecting the interest of the State, and securing to her indemnity for all swamp lands sold by the Government since Sept. 28, 1850.

Immediate action should be urged. It was through the efforts of our members of Congress in response to the memorial of the Legislature of July 12, 1856, and Joint Resolution of Dec. 18th, 1856, that the act of the 3d of March, 1857, was passed, and the State was saved from the fatal results following the then ruinous policy of the Department in permitting contests before the Land Officers, as to the character of land already selected and returned as Swamp Land. A similar, early and earnest effort may now prove of incalculable advantage to the State.

Early in the administration of this Grant, the Department seemed to receive the impression that Iowa was acting in bad faith;—that she had selected a large amount of dry lands,—and that, as if conscious of being in the wrong, and wishing to avoid difficulty with the General Government, she had transferred her interest to the counties, and the counties to private speculators and land-sharks, who, by means of this grant, are endeavoring to perpetrate a *gigantic fraud* upon the General Government. I say such seems to have been and still to be the impression at the Department at Washington; and to its prevalence in a great de-

gree, if not altogether, may be attributed the difficulty we there meet with.

Whilst I do not claim that *all* the lands selected are swamp land within the meaning of the Grant, I do say that neither the State nor the counties designed any fraud upon the Government; and that the amount of dry land selected is not sufficient in quantity to warrant any such opinion, or justify even a suspicion of unfairness. Many of these lands were selected in the years 1854 and 1855, immediately after several remarkably wet seasons, and it is not strange that the Agents then did select some as swamp and overflowed land which would not appear as such after a few succeeding dry seasons. And it is equally easy to account for the dry land (if any there be) in the later selections, consistently with good faith. The only act of the State that can be reasonably construed into a support of this false impression, is the Act of the General Assembly approved April 8, 1862, (*Chap.* 160.) That Act authorizes the appointment of a *special* Agent for each of the counties, to settle their claims under this Grant with the Commissioner of the General Land office. Many of the counties have had these Agents appointed, and in some instances parties, who for a mere private speculation, have purchased the interest of counties, get themselves appointed special Agents and go to Washington to press their claims before the Commissioner. Such cases, and the multitude of Agents thus brought in contact with the Department, each urging the claim of his own particular county or locality, without regard to the others, are calculated to rivet upon the mind of the Commissioner the erroneous impression previously received. My opinion is, that this Act, instead of expediting a settlement of this matter, has retarded it, and will continue in its operation to militate against the interest of the State. I would therefore recommend its repeal,—that no more Agents be appointed under it,—and the passage of an Act appointing some energetic and *competent* man as Agent, clothed with authority to transact all business on behalf of the State necessary to a settlement of this Grant, and making it his duty to proceed at once to the work, and to effect, as soon as the interests of the State will permit, a final settlement with the United States. We will thus have *one recognized Agent* through whom all this business will be done with the Department, (the special Agents and Assignees of counties acting in connection with and through him,) and will relieve the Land

Officers there of the vexation of the present system, and will, in my humble opinion, reach a more speedy and favorable termination in the administration of this Grant.

Some time after the first selections were made, numerous applications were made to the local Land Offices by persons desiring to enter parcels of the Swamp Lands, and offering to prove that they were not swamp lands. In such cases the General Land Office ordered a trial to be had before the local Land Officers, and if they should decide the land to be dry, the applicant was permitted to enter it, and the claim of the State was to be rejected.

Under this ruling, land claimed as dry, in many instances, came fully within the grant. In some cases, at least, it was claimed and proved to be dry and tillable, whereas, the applicant and his witnesses had rafted, and seen others raft, saw logs off of and across it during the high stages of water in the neighboring river, for seasons in succession!

In fact, an enterprise was set on foot by some speculators, to wrest from the counties a large amount of the swamp lands in the western part of the State. Affidavits were bought. Irresponsible and reckless men were found, who, for a few dollars for each affidavit, would testify to the character of land that they never saw. Applications multiplied here and elsewhere, until they reached, as stated by the Commissioner of the General Land Office, 3,000,000 acres, when the General Assembly, seeing the effect of the course pursued, called the attention of Congress to the matter, by the memorial and resolution above referred to, and urged the passage of an act confirming to the State all the lands selected as swamp land. The act of Congress of March 3d, 1857, was intended as a *full* and *complete* confirmation of all the selections, as claimed by the State under the act of September 28, 1850, and March 2, 1855, and designed to secure, without further difficulty, the patenting to the State of the same. Such as the General Government had already parted with her title to, and such as were interfered with by *actual settlement*, were excepted. The first exception was intended for those swamp lands disposed of by the General Government since the 28th September, 1850, and which were provided for in the act of March 2, 1855. It was right that this class of land should be excluded. It was already sold by the United States, and the title confirmed. It was *otherwise appropriated*, and not *vacant*,

and the State was to take the indemnity provided. The other exception was designed to protect persons having the right of pre-emption by settlement upon the public lands. But the Commissioner of the General Land Office holds that it is only a *qualified* confirmation of the selections. (*See his communication to the Secretary of the Interior, of October* 11, 1861—*Appendix No.* 7. And by this qualification it is sought to sustain the action of the department in rejecting the claim of the State to a large amount of these lands as swamp, and certifying them, under the act of 15th May, 1856. This brings me to the conflict between the swamp and railroad grants.

The Railroad Companies claim, under the Act of May 15, 1856, all Swamp Lands in odd numbered Sections within the limits of their several roads, and seem to tender several issues :

1st. They plant themselves on the first or original construction of the Grant of September 28, 1850 ; and insist that no title vests in the State to the Swamp Lands till she receives patents therefor. Hence if they can secure (as they have done) a rejection by the Department of the claim of the State under the Swamp Grant, and the recognition and approval of the lands under the Railroad Grant, they claim their title is secure.

2d. Provided they fail on the first issue: They claim the right to contest the swampy character of the lands ; and having procured the approval under the Act of 1856, they thus throw the burden of proof upon the State, expecting to hold all that is not shown affirmatively to be swamp.

3d. They claim that their right to these lands had attached prior to the Act of 3d March, 1857, and is not affected by it ; and further that their rights are protected by the exception contained in that Act.

We have already seen that the construction given to the Grant of 1850 by the General Government since December 1851 is that it was a *present Grant* and that no patent is necessary to convey the title. The patent is but the evidence of title, and therefore if a State is in such a situation to demand a patent, she has the title already vested.—(*See Att'y. Gen. Black's opinion, Appendix No.* 3.) This view of the Act is confirmed by the passage of the Act of March 2, 1855. If the title to the Swamp Lands did not vest in the States till the issuing of the patents, the sales thereof made by the

United States to individuals up to that time would be valid and there would be no necessity for the indemnity provided for by that Act.

These lands have been certified to the State under the Railroad Grant, pursuant to a decision of Secretary Thompson of February 8, 1860. (*Appendix No.* 8.) This decision requires the Commissioner to determine from the records and files of the General Land Office whether the land did pass by the Swamp Grant. In other words, to determine the question from the *field notes* of the *original surveys*. If they appeared from that record to be swamp and overflowed lands, they were to be certified as Swamp Lands, if not they must be certified as Railroad Lands.

The great error in this decision is apparent to every one familiar with the very loose and careless manner in which the public lands in the West have been surveyed.

The fact as to whether the land was dry or wet was considered immaterial. Very little attention was paid to it by the Surveyor. There was no interest or rights involved ; and hence thousands of acres of swampy, marshy and overflowed lands are not distinguished upon the Field Notes.

On the other hand the Agents of the State, in selecting lands under the Swamp Grant, act under oath, and with a *direct* reference to the character of the land. Great interests are to be determined by that *one* fact, and with a full knowledge of the importance of the issue, the Agents address themselves solely to the *one* point.

The selections thus made ought at least to have been considered *prima facie* Swamp Lands, and then unless the Railroad Companies show otherwise by clear and competent proof they should be patented under the Act of September 28, 1850.

This decision is manifestly unjust towards the States, and under it the Commissioner has certified thousands of acres to the State for Railroad purposes that come fully and completely within the Swamp Land Grant. The Secretary of the Interior refuses to review this decision—at leaet so far as to affect lands already certified.

The amount of Swamp Lands thus certified (as stated elsewhere in this Report) is 553,293.33 acres; and so far as these lands are concerned, on the part of the United States, the controversy is at

an end. But the Commissioner of the General Land Office, in issuing a patent, is but a *ministerial officer*, (*Arnold vs. Grimes et al.*, 2 Clarke, p. 1 to 20,) and his acts are not conclusive and binding, except upon the General Government. They are not conclusive as to the right of the State or other parties. These lands were selected under the Swamp Land Grant, long before the Act of May 15, 1856, and were granted by the State to the counties, which proceeded to sell and dispose of them, in many instances appropriating the proceeds, in accordance with the provisions of the Grant. Thus, some of the counties have expended enormous sums of money in reclaiming these very lands. In view of all these facts, and with a full knowledge of the disapprobation of the State, the Department has, under the decision aforesaid, rejected her claim, and certified the lands to the Railroads.

From the opinion of the Attorney General of this State, dated March 4, 1862, and submitted to the General Assembly, (see Appendix No. 9), and from a letter from the then Acting Commissioner of the General Land Office, of August 20, 1856, (Appendix No. 10), these Railroad Companies were not entitled even to *contest* the right of the State to these lands under the Swamp Grant.

When the Railroad Grant was passed, it was not expected nor intended that it should include any of the Swamp Lands; they were already disposed of by the Government; nor did the Railroad Companies at the time of their acceptance of the Grant, under Act of the General Assembly, expect to receive any of these lands, but finding the way opened by the rulings and decisions of the Department, adverse to the claim of the State, by their Agents acting in the name of the State, have procured the approval to them as aforesaid.

The General Assembly, by Joint Resolution, approved April 7, 1862, expressly repudiate the acts of the Railroad Companies in the premises, and disclaim any intention upon the part of the State to claim these lands under any other Grant than the Act of Sept. 28, 1850. (*See Acts* 1852, *p.* 248.)

If any Legislation can be devised by the General Assembly that will meet the case and compel the Railroad Companies to relinquish their claim to these lands, it ought to be immediately done. At all events, these lands should not be certified or transferred by the State to the Railroad Companies. So that if the several Counties are compelled to resort to the Courts to avert the impending damage and establish their rights, they may not have to contend against the Executive sanction of the State to the erroneous course and acts of the Land Department at Washington.

(In order to facilitate a more full and correct understanding of matters connected with this grant, I attach to this Report an Appendix containing the documents hereinbefore more particularly referred to.)

7TH—THE RAILROAD GRANT.

The act of Congress, approved May 15th, 1856, making a grant of lands to aid in the construction of certain Railroads, grants to the State of Iowa, and makes subject to the disposal of the Legislature under the restrictions contained in said act, for the sole purpose of aiding in the construction of said Roads, to-wit: 1st. One from Burlington, on the Mississippi River to a point on the Missouri River near the mouth of the Platte river. 2d. One from the City of Davenport via Iowa City and Fort Des Moines to Council Bluffs. 3d. From Lyons City north-westerly to the main line of the Iowa Central Air Line R. R. near Maquoketa, thence along said line near the 42d parallel to the Missouri River. 4th. From Dubuque to a point on the Missouri River near Sioux City, with a branch from the mouth of the Tete Des Morts to the nearest point on said road, every alternate section designated by odd numbers within six miles or for six sections in width on each side of the line of each of said roads, and provides that in case any of the lands thus designated have been disposed of by the General Government, the State may select in lieu thereof other unappropriated lands in odd numbered sections, not extending more than fifteen miles on either side from the line of said Roads.—(*See U. S. Stat. at large*, 1855–6, *p.* 9. *Rev.* 1860, *p.* 916.

On the 14th of July, 1856, the Legislature of the State of Iowa, in Special Session, passed an act accepting said grant, and making the following disposition of said lands, to-wit:

1st. Granting all the lands on the line from Burlington to the Missouri River, to the Burlington & Missouri River Railroad Co.

2d. The lands on the line from Davenport to Council Bluffs, to the Mississippi & Missouri River Railroad Company.

3d. The lands on the line from Lyons City, to the Iowa Central Air Line Railroad Company. And

4th. The lands on the line from Dubuque to Sioux City, to the Dubuque & Pacific Railroad Company, subject to all the conditions of the original grant, and certain restrictions and conditions specified in said act of the Legislature. (*Acts Extra Session* 1856, *p.* 5.)

All of said Companies accepted the grant, upon the conditions and under the restrictions in said acts imposed, and proceeded to locate their roads and select said lands.

The Iowa Central Air Line Railroad Company, having failed to comply with the requirements of said grants, the General Assembly, on the 17th of March, 1860, passed an act resuming to the State all the lands granted to that Company; and by an act approved March 26, 1860, granted the same to the Cedar Rapids & Missouri River Railroad Company.

This Grant was accepted by that Company.

The General Assembly, by Act, approved April 7, 1862, require the Dubuque & Sioux City Railroad Company (formerly Dubuque & Pacific Lailroad Company) to release to the State all Swamp Lands and certain River and School Lands falling within the fifteen mile limits of their road, before any land should be certified by the Governor to their Company.—(*See Acts* 1862, *p* 177.) (This Act has not in any respect been complied with by the Company.)

Such is in brief the substance of the legislation touching this Grant, (omitting the Act of January 28, 1857, authorizing said Companies to mortgage the lands.)

The following tables exhibit the number of acres of lands certified to the State by the General Goveenment for the benefit of the several Railroads up to the present time.

BURLINGTON & MISSOURI RIVER RAILROAD.

LAND DISTRICT.	Prior to Nov. 16, 1861.		Since Nov. 16, 1861.		TOTAL.
	6 mile limit	15 mile limit	6 mile limit	15 mile lim.	
Council Bluffs,	71,675.40	115,662.04	23,327.48	32,894.62	244.559.54
Chariton, ...	18,480.62	25,055.18	.....	.....	43,535.80

Aggregate number of acres for the B. & M. R. R., 287,095.34.

IOWA CENTRAL AIR LINE RAILROAD.

LAND DISTRICT.	Prior to Nov. 16, 1863.		Since Nov. 16, 1863.		TOTAL.
	6 mile limit.	15 mile limit.	6 mile limit	15 mile lim.	
Dubuque,....	1,809.74	3,998.57	.....	..... .	5,808.31
Ft. Dodge,...	576.00	59,072.60	.....	13,470.96	73,119.56
Ft. D. Moines,	12,824.01	22,887.74	46,898.73	49,397.16	132,007.64
Sioux City,..	132,911.18	137,641.84	.....	.....	270,553.02
Council Bluffs	100,588.07	193,377.59	.....	.....	293,965.66

Aggregate amount for the Cedar Rapids & Mo. R. R., 775,454.19.

DUBUQUE AND PACIFIC RAILROAD.

LAND DISTRICT.	Prior to Nov. 16, 1861.		Since Nov. 16, 1861.		TOTAL.
	6 mile limit.	15 mile limit.	6 mile limit	15 mile lim.	
Dubuque,... .	2,361.08	5,901.49	.....	.....	8,262.57
Ft. Dodge,...	103,341.61	210,722.48	56,473.32	21,061.91	391,599.32
Sioux City,..	344,225.20	480,929.21	1,382.42	.....	826,536.83

Aggregate amount for the Dubuque & S. C. R. R., 1,226,398.72.

MISSISSIPPI & MISSOURI RAILROAD.

LAND DISTRICT.	Prior to Nov. 16, 1861.		Since Nov. 16, 1861.		TOTAL.
	6 mile limit.	15 mile limit.	6 mile limit	15 mile lim.	
Council Bluffs	141,265.07	211,266.08	8,708.49	17,778.92	379,118.56
Chariton, .. .	.....	80.00	.....	.....	80.00
Ft. D. Moines,	17,627.16	17,162.39	16,266.37	44,519.88	95,575.80

Aggregate amount for the Mississippi & Missouri R. R., 474,774.36.

RECAPITULATION.

For the B. & M. River R. R., 287,095,34 acres.

For the C. R. & M. River R. R., 775,454, 19 acres.

For the D. & P. R. R., 1,226,398,72 acres.

For the M. & M. R. R., 474,774,36 acres.

A part of the land thus certified for Railroad purposes was selected by the State as Swamp and overflowed lands under the act of Congress of Sept. 28, 1850. The exact extent of the conflict under these two grants it is impossible to determine from the records of this Office, from the fact that some of the Counties never reported their selection to any State officer, and hence they are not in this Office. But the Commissioner of the General Land Office has reported a list of lands claimed by the State under the act of Sept. 28, 1850, and claimed by Railroad Companies also under the Railroad Grant, the claim to which under the act of Sept. 28, 1850

has been rejected by the Department at Washington, amounting to *Five hundred and fifty-three thousand two hundred and ninety-three and* 33-100 *acres.*

(*For further particulars as to this conflict, see Swamp Land.*)

These lands were granted, not to the *R. R. Companies* by Congress, but to the *State*, for the benefit of the Roads, and the State can dispose of or sell them only as specified in Sec. 4 of the Act of May 15, 1856, to-wit: The State was authorized to sell or dispose of to each of said Companies 120 sections of land to begin with, and when the first 20 miles of any one of said Roads was completed and that fact certified to the Secretary of the Interior by the Governor, she was authorized to sell to the Company or turn over for the benefit of that Road another amount *not over* 120 sections, and so on till the Road is built, provided it be done in ten years from the date of the Grant.

The Companies must therefore look to the State for their title to these lands.

The completion of every 20 miles according to the terms of the law, gives the Company the right to have that fact certified to by the Governor. But such certificate is no evidence of title to the Company. It does not even make it *obligatory* on the State to convey or certify 120 sections or any other definite amount, (except to the Cedar Rapids & Missouri River Road,) but simply authorizes the State to sell or turn over by conveyance of some kind, an amount *not to exceed* 120 sections. Same conveyance describing or referring to the particular land intended to be turned over or sold must be executed by the State before any title vests in the Company.

BURLINGTON & MISSOURI RIVER RAILROAD.

I am unable to find either in this Office or that of the Secretary of State any evidence that the State Executive has ever certified to the completion of any part of the B. & M. R. R. R. It is probable, however, that such certificates have been executed, from the fact his Excellency, Gov. Lowe, certified to said Company on the 9th of Nov., 1859, *commencing at the Missouri River*, 187,297 and 44-100 Acres, and on the 27th of Dec., 1859, 43,775,70 Acres of these lands by certificates under seal of the State in the following form, to-wit:

STATE OF IOWA, EXECUTIVE OFFICE,
DES MOINES, DECEMBR 27, 1859.

I, Ralph P. Lowe, Governor of the State of Iowa, do hereby certify that the foregoing is a correct list of lands enuring to the Burlington & Missouri River Railroad Company under the Act of Congress, approved May 15, 1856, entitled "An Act making a Grant of land to the State of Iowa in Alternate Sections to aid in the construction of certain Railroads in said State." And by virtue of the Act of the Legislative Assembly of the State of Iowa, approved July 14, 1856, entitled "An Act to accept the Grant and carry into effect the Trust conferred upon the State of Iowa by an Act of Congress, entitled 'An Act making a Grant of Land to the State of Iowa in alternate sections to aid in the construction of certain Railroads in said State, approved May 15, 1856.'" The same having been compared with the corresponding list certified to this Office by the Secretary of the Interior and the Commissioner of the General Land Office, and now on file in the Executive Department.

In witness whereof I have hereunto set my hand and caused the Great Seal of the State of Iowa to be hereunto affixed. Done at Des Moines the 9th day of November, A. D. 1859.

L. S.

(Signed) RALPH P. LOWE.

ELIJAH SELLS, Secretary of State.

The lists thus certified to the Company contain in the aggregate 231,073,14 acres, being all then approved to the State for the benefit of this road.

These are the only lands that have been certified by the State to this road so as to pass any title to the Company. The lands subsequently approved to the State, it is true, have all been certified to by the Governor ; but from the fact that they contain a large amount of land, claimed as Swamp Land, the certificates are carefully drawn so as to convey to the Company no title nor in any manner interfere with conflicting claims. These last certificates were not intended to, nor do they, in the slightest degree tend to perfect the title to the lands referred to, in the Company. The 231,073,14 acres, therefore above referred to, certified by Governor Lowe, may be considered all that have been certified or *sold* to the Company. Leaving of lands approved to the State, and not certified, 56,022,20 acres. But as there are conflicting claims to a large part of it, it is uncertain how much of this remainder will finally be made available for the construction of this Road.

CEDAR RAPIDS & MISSOURI RIVER RAILROAD.

It appears that there never has been any certificate issued by the Governor to the completion of any part of the Cedar Rapids & Missouri River Railroad.

A certificate of the Chief Engineer, dated December 20, 1861, stating that on the first of said month forty miles of said Road was

completed and in running order, according to law ; and that ten miles more of the grading was done, was filed with Secretary of State, January 21, 1862, and his affidavit of similar import sent to the Executive.

But the 6th section of the Act of the General Assembly approved March 26, 1860, granting to this Company the lands first granted to the Iowa Central Air Line Railroad, not being complied with, the certificate to the completion of the 40 miles of Road was refused.

There have therefore been no lands yet certified to this Company by the State.

DUBUQUE & SIOUX CITY RAILROAD.

There are on file in the Office of the Secretary of State certificates of the Governors of this State—the last one executed by his Excellency Gov. Kirkwood, April 25, 1861—showing the completion of "*five continuous twenty miles*" of the Dubuque & Sioux City Railroad according to the conditions and requirements of the Grant ; but no lands have been certified or conveyed by the State to the Company.

If the State is bound by her contracts with this Company to convey 120 sections for each of these five twenty miles, there is now due the Company 720 sections or 460,800 acres, which the Company is entitled to have certified. Leaving still unconsumed of the lands approved to the State for the construction of this Road 765,598.72 acres ; but as there are adverse claims to some of these lands, under the Des Moines River and Swamp Land Grants, it is uncertain what amount will eventually be applied for the benefit of the Road.

MISSISSIPPI & MISSOURI RIVER RAILROAD.

There are on file in the Secretary's Office two certificates, one by Governor Lowe, filed August 25, 1859, aud one by Governor Kirkwood, filed October 1, 1860, certifying to the completion of the Mississippi & Missouri River Railroad, from Davenport eighty miles westward, according to the conditions of the Grant. But there have been no lands certified or conveyed by the State to this Company. At the rate of 120 sections for each *twenty* miles, the Company is now entitled to 600 sections or 384,000 acres, leaving

unconsumed of lands already approved for this Road 90,774,36 acres which are subject to the conflicting claims before mentioned.

8TH—AGRICULTURAL COLLEGE AND FARM.

On the 22d of March, 1858, the General Assembly passed an Act establishing "*an Agricultural College and Model Farm*," under the management of a *Board of Trustees.* (See *Chap.* 91, *Acts of 7th General Assembly.*) The 11th section of this Act appropriates the proceeds of the five section grant—provided Congress should consent to the diversion—together with all lands that Congress might thereafter grant to the State for the purposes contemplated by the said Act for the benefit of said College.

On the 23d of March, 1858, said General Assembly passed a Joint Resolution asking the consent of Congress to such diversion of said five section grant. And in response thereto, Congress passed an Act approved July 11, 1862, removing the restrictions contained in said grant, and authorizing the General Assembly of the State to make such disposition of said lands as they shall deem best for the interest of the State. (See *U. S. Statutes at Large, p.* 556. By these Acts the three thousand two hundred acres of land in Jasper County, approved to the State under the Act of Congress approved March 3d, 1845, making a grant of lands to the State of Iowa to aid in the erection of public buildings, have been fully appropriated to the benefit of the "*Iowa State Agricultural College and Farm*," and the Trustees of said College have proceeded to take the control and management thereof, but as yet have reported no sales to this office. A book has been provided in this office for the recording of all lands granted or donated to said Institution, aud these lands are therein recorded as required by section 1 of chapter 67, Acts of the 8th General Assembly.

A list of lands in Story County donated to the Institution as individual subscriptions, amounting in the aggregate to six hundred and eighty-one acres, was filed in this office on the 14th day of this present month, which will be properly recorded. No other lands donated by individuals have been reported to this office.

COLLEGE GRANT.

Congress passed an Act donating public lands to the several

States and Territories which may provide Colleges for the benefit of Agriculture and the Mechanic Arts, which was approved July 2d, 1862, in the following terms:

Be it enacted by the Senate and House of Representatives of the United States in Congress assembled, That there be granted to the several States, for the purpose hereinafter named, an amount of the public land, to be apportioned to each State, a quantity equal to thirty thousand acres for each Senator and Representative in Congress to which the States are respectively entitled by the apportionment, under the census of eighteen hundred and sixty; *provided*, that no mineral lands shall be selected under the provisions of this Act.

SEC. 2. *And be it further enacted*, That the land aforesaid, after being surveyed, shall be apportioned to the Several States in sections or sub-divisions of sections, not less than one-quarter of a section; and whenever there are public lands in a State subject to sale at private entry at one dollar and twenty-five cents per acre, the quantity to which said State shall be entitled shall be selected from such lands within the limits of such State, and the Secretary of the Interior is hereby directed to issue to each of the States in which there is not the quantity of public lands subject to sale at private entry at one dollar and twenty-five cents per acre, to which said State may be entitled under this Act, land scrip to the amount in acres for the deficiency of its distributive share; said scrip to be sold by said States and the proceeds thereof to be applied to the uses and purposes prescribed in this Act, and for no other use or purpose whatever; *provided*, that in no case, shall any State to which land scrip may thus be issued, be allowed to locate the same within the limits of any other State, or of any Territory of the United States, but their assignees may thus locate said land scrip upon any of the unappropriated lands of the United States subject to sale at private entry at one dollar and twenty-five cents or less per acre; *and provided further*, that not more than one million acres shall be located by such assignees, in any one of the States; *and provided further*, that no such location shall be made before one year from the passage of this Act.

SEC. 3. *And be it further enacted*, That all the expenses of management, superintendence, and taxes from date of selection of said lands, previous to their sales, and all expenses incurred in the

management and disbursement of the moneys, which may be received therefrom, shall be paid by the State to which they may belong, out of the Treasury of said State, so that the entire proceeds of the sales of said lands shall be applied without any diminution whatever to the purposes hereinafter mentioned.

SEC. 4. *And be it further enacted*, That all moneys derived from the sale of the lands aforesaid by the States to which the lands are apportioned, and from the sale of land scrip hereinbefore provided for, shall be invested in stocks of the United States, or of the States, or some other safe stocks, yielding not less than five per centum upon the par value of said stocks; and that the money so invested shall constitute a perpetual fund, the capital of which shall remain forever undiminished, (except so far as may be provided in section fifth of this Act,) and the interest of which shall be inviolably appropriated, by each State which may take and claim the benefit of this Act, to the endowment, support and maintenance of at least one College, where the leading object shall be, without excluding other scientific and classical studies, and including Military Tactics, to teach such branches of learning as are related to Agriculture and the Mechanic Arts, in such manner as the Legislatures of the States may respectively prescribe, in order to promote the liberal and practical education of the industrial classes, in the several pursuits and professions of life.

SEC. 5. *And be it further enacted*, That the grant of land and land scrip hereafter authorized, shall be made on the following conditions, to which, as well as to the provisions hereinbefore contained, the previous assent of the several States shall be signified by legislative acts:

First, If any portion of the fund invested as provided by the foregoing section, or any portion of the interest thereon, shall, by any action or contingency, be diminished or lost, it shall be replaced by the State to which it belongs, so that the capital of the fund shall remain forever undiminished; and the annual interest shall be regularly applied without diminution to the purposes mentioned in the fourth section of this Act, except that a sum, not exceeding ten per centum upon the amount received by any State under the provisions of this Act, may be expended for the purchase of lands for sites or experimental farms, whenever authorized by the respective Legislatures of said States.

Second, No portion of said fund, nor the interest thereon, shall

be applied, directly or indirectly, under any pretense whatever, to the purchase, erection, preservation, or repair of any building or buildings.

Third. Any State which may take and claim the benefit of the provisions of this Act may provide, within five years, at least not less than one College, as described in the fourth section of this Act, or the Grant to such State shall cease; and said State shall be bound to pay the United States the amount received of any lands previously sold, and that the title to purchasers under the State shall be valid.

Fourth. An annual report shall be made regarding the progress of each College, recording any improvement and experiments made, with their cost and results, and such other matters, including State industrial and economical statistics, as may be supposed useful; one copy of which shall be transmitted by mail free, by each to all the other Colleges which may be endowed under the provisions of this Act, and also one copy to the Secretary of the Interior.

Fifth. When lands shall be selected from those which have been raised to the minimum price, in consequence of Railroad Grants, they shall be computed to the State at the maximum price, and the number of acres proportionably diminished.

Sixth. No State while in a condition of rebellion or insurrection against the Government of the United States shall be entitled to the benefit of this Act.

Seventh. No State shall be entitled to the benefit of this Act unless it shall express its acceptance thereof by its Legislature within two years from the date of its approval by the President.

SEC. 6. *And be it further enacted*, That land scrip issued under the provisions of this Act shall not be subject to location until after the first day of January, one thousand eight hundred and sixty-three.

SEC. 7. *And be it further enacted*, That the land officers shall receive the same fees for locating land scrip issued under the provisions of this Act as is now allowed for the location of military bounty land warrants under existing laws: *provided*, their maximum compensation shall not be thereby increased.

SEC. 8. *And be it further enacted*, That the Governors of the several States to which scrip shall be issued under this Act shall

be required to report annually to Congress all sales made of such scrip until the whole shall be disposed of, the amount received for the same, and what appropriation has been made of the proceeds. (*See U. S. Stat. at large*, 1861–2, *p.* 503.)

The Ninth General Assembly convened in Extra Session by Proclamation of the Governor, passed an Act, entitled "*An Act to accept of the Grant and carry into execution the trust conferred upon the State of Iowa by an Act of Congress entitled* "*An Act granting public lands to the several States and Territories which may provide Colleges for the benefit of Agriculture and Mechanic Arts, approved July* 2, 1863." Approved September 11, 1862, accepting the Grant upon the conditions and under the restrictions contained in said Act of Congress, and requiring the Governor to appoint an Agent to select and locate the land granted in said Act providing that no lands shall be selected under said Grant that are claimed by any of the counties as Swamp Lands; requiring said Agent to report to the Governor who shall lay the list of selections before the Board of Trustees of the Iowa State Agricultural College and Farm, at their next meeting, after the making of said Report, for their approval &c.; and appropriating $1,000 to carry out the provisions of the Act.—(*See Acts Ex. Ses.* 1862 *p* 25.)

At the time of the passage of said Act of Congress, the State of Iowa was entitled to six Representatives in Congress. It is true that according to the apportionment first made by Congress with reference to the census of 1860, we were entitled to but five; the sixth beiug added by Act of Congress, approved March 4, 1862. (*See U. S. Stat.* 1861–2 *p* 353.)

This Act becomes a part of the apportionment under the census of 1860, and entitles the State to 240,000 acres of land under the Act of July 2, 1862.

Under the Act of the General Assembly of Sept. 11, 1862, Peter Melendy, of Blackhawk county, was appointed to selcct and locate these lands; but the result of his labors under said appointment, has not been reported to this Office.

When these selections are made and certified to the State by the Secretary of the Interior, the State will hold, of lands granted and donated for the benefit of said Institution, as follows:

Under Act of Congress of July 2, 1862,.....240,000 acres.
Under Five Section Grant,..... 3,200 "
Donations by individuals,..... 681 "

Total,.....243,881 acres.

The individual donations not reported to this Office are not included in the above estimate.

9TH—DES MOINES RIVER SCHOOL LANDS.

John Tolman, former School Fund Commissioner of Webster county, having, under the direction of the Superintendent of Public Instruction, sold some of the Des Moines River Lands as School Lands of the 500,000 grant, the General Assembly, by an act entitled "*An Act making provisions for the settlement of all liabilities of the State, growing out of the sale of certain lands of the Des Moines River Improvement grant, as School land,*" approved April 2, 1860, provide that upon application therefor, and the proper showing to the Governor, any purchaser of such land shall be entitled to draw from the State Treasury, upon the warrant of the Auditor, the amount of money paid, whether of principal or interest, on the contract made for the purchase of said land with said School Fund Commissioner, with interest thereon from the time it was paid, at the rate of ten per centum per annum.

Under this act, five purchasers have made application for relief, and having presented full and satisfactory proof, have each received his warrant from the Auditor for principal and interest, as provided, to-wit: —— Goss, $100.56; Thos. G. Pierce, $321.90; Roscoe Royster, $107.18; E. H. West, $116.96; Wesley McKinney, $302.93. How may applications will yet be made we cannot determine.

10TH—AMITY COLLEGE.

The General Assembly, at its last regular session, passed an act entitled "*An Act for the relief of Amity College,*" approved April 8th, 1862, relieving said institution from certain contracts for the purchase of school lands entered into with the School Fund Commissioner of Page county, and requiring the Clerk of the District Court of said county to cancel said contracts, and deliver them to the Secretary of the Board of Trustees of said College; and also to

enter satisfied, certain judgments rendered in said Court against said Secretary on these contracts; and further providing that the College, in connection with the Clerk of said Court, might select three hundred and twenty acres of said school lands, to be patented in consideration of the money already paid, as part of the purchase money upon said contracts.

The certificate of said Clerk has been filed in this office, showing full compliance with this act, both upon his own part and that of the College, and thereupon the three hundred and twenty acres selected were patented to said Secretary for the benefit of said Amity College; thus completely carrying out and fulfilling said act.

11TH—MORTGAGE—SCHOOL LANDS.

The Ninth General Assembly by an act entitled "*An Act for the better protection of the School Fund,*" approved April 8th, 1862, provide "That the several Boards of Supervisors shall hold and manage the securities given to the School Fund in their respective Counties, and also all judgments and lands therein belonging to said Fund, for the use of said Fund," &c. Section six of said Act authorizes said Boards in case of non-payment on contracts made upon the sale of School Land or mortgages given to secure payment of money borrowed of the School Fund, to institute and prosecute Suits for the collection of the amount due thereon. And the 7th section provides, "*In case of sales of lands on execution founded on any such mortgage or contract, the Attorney for said Board, or other person authorized by said Board shall bid on behalf of the State for the use of said Fund, such sum as the interests of said Fund may require, and if struck off to the State, the same shall be held and disposed of in all respects the same as other lands belonging to said Fund, except as herein provided.*"

The exception made has reference to the manner of appraising and selling the lands again, provided for in the 11th section, which is different from the manner of appraising and selling other School Lands. This section authorizes the Clerk of the Board of Supervisors when application is made to purchase any of said land, and upon payment by the applicant of the cost of appraisement to appoint three disinterested and competent persons to appraise the land, "*who shall be sworn to appraise the land at such sum as they would appraise the same in payment of a just debt due from a sol-*

vent debtor." Said Clerk is then authorized to sell the land at the appraisement, &c.—(*Acts* 1862, *p.* 158.)

The lands mortgaged to the School Fund do not belong to any of the Grants, and become school lands under this act by being bid off by the State. It forms a new class of shool lands of which we have heretofore taken no account, in fact which did not before the passage of said Act exist by law. These lands are to be sold, and the certificates of Final payment issued by the Clerk of the *Board of Supervisors*, whilst the other school lands are sold and the certificates issued by the *Clerk of the District Court*, thus requiring different forms for certifying and patenting.

The necessary and proper blanks have been procured and a Record prepared in this office for recording these lands, and in July last a circular was sent to the Clerk of the Board of Supervisors in each County in the State, requesting them to report to this office the description and amount of all lands thus bid off by the State in their respective Counties, together with the name of each mortgagor, date and amount of Note, and Judgment, amount bid, &c., and furnishing them a form for the Report, and urging them to continue such Reports from time to time as occasion may require. If this circular is complied with we will have in this Office a full and correct Record of this class of land as fast as the title becomes invested in the State. Up to this date Reports have been received from thirty-five Counties, eighteen of which report lands and city and town lots sold and purchased under said Act.

The following table exhibits the number of acres and Town Lots reported in each of these counties, and also the No. patented by the State.

Counties.	Reported.		Patented.	
	No. Acres.	No. Lots.	No. Acres.	No. Lots.
Appanoose,	130	.....	.....	.....
Benton,	920	3	240	.....
Clinton,	120	6	.....	.....
Decatur,	1,767	12	.....	.....
Delaware,	2:80	3	.....	.....
Des Moines,	41:42	.....	.....	.....
Dubuque	130	8	.....	1
Hardin,	100	.....	.....	.....
Louisa,	649:54	3	.....	.....
Madison,	200	.....	.....	.....
Mills,	214	.....	.....	.....
Muscatine,	45	.....	45	.....
Poweshiek,	1,420	1	.....	.....
Ringgold,	470	.....	.....	.....
Scott,	210	5	.....	.....
Story,	225	4	40	.....
Washington,	737	.....	107	.....
Wayne,	2,312	16	20	2
Total,	9,970:96	61	492	3

EXPENSES OF THE STATE LAND OFFICE.

On the 1st of November, 1861, the close of the last fiscal year reported by my predecessor, there was in the Treasury a balance of the contingent fund for this Office of $627.23. An Act of the General Assembly approved April 8, 1862, appropriated for this Office $1200.00. Making in all $1827.23.

The expenditures from this fund have been as follows :

FROM NOVEMBER 1, 1861, TO JANUARY 1, 1863.

To Edwin Mitchell, regular clerk, 11 months,	$665,99	
To S. A. Ayres, regular clerk, 2 months,	118,33	
To H. N. Brockway, extra services,	6.00	
To S. A. Ayres, extra services,	8.00	
To L. J. Coulter, extra services,	8.00	$806.33.

FROM JANUARY 1, TO NOVEMBER, 1, 1863.

To Edwin Mitchell, regular clerk, 1 month,	$ 58.33	
To D. E. Jones, regular clerk, 9 months,	524.95	$583.28.
Total expenditures since Nov. 1, 1861,		$1389,60.
Leaving a balance of this fund undrawn of		$437.67.

Receipts for all amounts drawn have been taken and remain of record in this Office.

All of which is respectfully submitted.

J. A. HARVEY, Register.

APPENDIX.

NO. 1.

GENERAL LAND OFFICE,
JUNE 23d, 1860.

WARNER LEWIS, ESQ., *Surveyor General, Dubuque, Iowa:*—SIR: Referring to your letter of 15th inst., asking to be advised as to your duty in reporting swamp selections in *Iowa*, and in view of the act of 12th March last, a copy of which was furnished you in my letter of 31st ult., I will here set forth the principles which you are to apply to any selections now on your files, and to all others, also, which may hereafter be reported by the agents of the State.

1st. As the grant contemplates the inundation of extensive regions of country by such natural arteries as the Mississippi river, the land evidently intended to be granted as swamp are those, only, which by reason of their swampy character, and liability to overflow, are worthless in their natural condition, and whereon crops cannot be raised without reclamation by levees and drains. An overflow or inundation from casual cause, merely temporary in its effects, does not bring the land within the grant, and cannot be said, in any proper sense, to render them "unfit for cultivation." The law contemplates such long continued overflow or freshets, as would totally destroy crops, and prevent the raising of them without artificial means by levees, &c., such as are found on the Mississippi river.

2d. Bodies of land covered by shallow lakes or ponds, which may become dry by evaporation or other natural causes, do not come within the meaning of the swamp grant.

3d. Testimony now, after the lapse of nine years, to be available, must be explicit, resting upon the personal and exact knowledge of the localities claimed, and must relate to each quarter, quarter section, or other equivalent legal sub-division. This testimony must be made by parties having no interest, present or prospective,

course whereby the lands are submerged and rendered useless for arable purposes in their natural condition.

4th. I enclose herewith a blank form of proof which you will require from the State authorities, and if lists of land of this class are furnished you, accompanied with such evidence, you will report them to this office in the manner set forth in form "B," werewith, after making a careful examination of said proof, and rendering your own decision thereon, as to whether the several tracts are swamp or not, within the meaning of the grant.

5th. You will, as soon as your report is arranged and prepared for transmission to this office, send simultaneously a copy thereof to the local offices of the proper land districts, with instructions to them to enter the tracts in the usual form in their books, and to withhold them from sale or other disposition, unless otherwise especially directed by this office.

Be pleased to acknowledge the receipt hereof.

Very respectfully, your obedient servant,

J. S. WILSON, Commissioner.

NO. 2.

STATE OF IOWA, }
COUNTY OF..... }

I,....., Agent for the State of Iowa, duly appointed under an Act of the Legislature thereof, to select the Swamp and overflowed lands within the county of....., being duly sworn, depose and say: That I am well acquainted with the mode and manner of surveying and marking out the public lands; that I have made a personal examination on the ground of each of the several tracts herein described, to-wit:

HERE INSERT LIST OF LANDS.

And from such personal examination on the ground, have ascertained and know and hereby make oath that the greater part of each one of the quarter quarter sections of the foregoing tracts is "swamp and overflowed lands made unfit thereby for cultivation," and is in fact "unfit for cultivation," without necessary levees and direct or indirect, and must state *the name of the river or water*

drains to reclaim the same; that they are made such by reason of the overflowing

[HERE GIVE THE NAME OF THE RIVER, THE CAUSE OF THE OVERFLOW.]

in such a manner that no crops can be raised thereon, by reason of its overflowed and swampy condition; that they are not shallow lakes or ponds which by natural causes may become dry. And that such was the character thereof on the 8th September, 1850, the day of the passage of the Grant, that I have ascertained from the records of the Local Land office at ..... that they are vacant public lands, and are not in the granted Section within the six mile limits of any grant made by the General Government to the State of Iowa for Railroad purposes, nor embraced in any list of lands within the six and fifteen mile limits of such grants, heretofore approved by the Secretary of the Interior, and certified to the State by the Commissioner of the General Land Office; and further, that I have no interest, direct or indirect, present or prospective, in the issue or in any parcel of land herein described.

.....

Subscribed and sworn to before me this .....day of ....., 186...

....., J. P.

NO. 3.

ATTORNEY GENERAL'S OFFICE.

SIR:—By the Act of September 28th, 1850, Congress granted to the State of Arkansas all the swamp and overflowed land rendered unfit for cultivation thereby, within her limits, for certain purposes mentioned in the Act. On the 3d of October, 1856, the Surveyor General made a report, which was filed in the General Land Office, designating the overflowed lands which had been selected by the State under the grant. On the 9th day of February, 1853, Congress made another grant to the States of Arkansas and Missouri to aid in the construction of a Railroad, and under this grant a part of the lands previously granted to the State of Arkansas under the denomination of Swamp Lands, was included, and is now claimed for the use of the Railroad. The question upon which you ask my advice requires a comparison of the two laws, and the

acts done under them, so as to ascertain which of these is the better title.

Does the State take it under the first Grant, or was that Grant so imperfect that the subsequent disposition of it by Congress passes the right to the later Grantee?

Where there is a conflict between two titles derived from the same source, either of which would be good if the other was out of the way, the elder one must always prevail, *prior in tempore postior est in Jure.*

The difficulty, therefore, is solved, if the mere Grant, as you call it, gave the State a right to the land from the day of its date. That it did so there can be no doubt. In an opinion which I sent you on the 7th of June, 1857, concerning one of the same laws now under consideration, I said that a Grant by Congress does of itself *proprio vigore* pass to the grantee all the estate which the United States had in the subject matter of the Grant, except what is expressly excepted. I refer you to that opinion for the reasons and authorities upon which the principle is grounded. It is not necessary that the patent should issue before the title vests in the State under the *act* of 1850.

The Act of Congress was itself a present grant, wanting nothing but a definition of boundaries to make it perfect, and to attain that object the Secretary of the Interior was directed to make out an accurate list and plan of the lands, and cause a patent to be issued therefor.

But when a party is authorized to demand a patent for land, his title is vested as much as if he had the patent itself, which is but evidence of his title.

The authority given to the State Legislature to dispose of the lands upon the patent, does not make the grantee less the exclusive owner of them than she would be if those words were omitted. The object of that clause undoubtedly was to prevent the Legislature of the State from a premature interference with the lands, before they were so designated as to preclude mistake and confusion.

The subsequent grant by Congress to the State for the use of the *railroad*, could not have been intended to take away from the State the rights previously vested in her for other purposes. We are never to impute such intentions to the legislative department when any other construction can be given to the words of a statute.

Even if we could suppose that to be the meaning of Congress in this case, it would avail nothing to the latter grantee, since, in all cases of conveyance, a later grant must yield to an earlier. It has often happened that public grants, by mistake, have been so described in general words, that when they came to be located, they are found to lie afoul of each other. I believe it has never been thought that where this happens, they are not to be treated like inconsistent deeds made by private persons. There are cases in which grants are made under descriptions so vague and indefinite, that neither the grantee, nor any other person, can tell their locations or boundaries, until the grantee does some act which locates and defines them.

In such cases, if another right which is strictly defined intervenes, the first grantee may lose what he would have been entitled to, if his own grant had been descriptive and definite.

But that principle does not apply here, because the general description of all swamp and overflowed lands within the limits of Arkansas, is definite enough for purposes of notice.

Besides, the grant for the railroad was originally much more indefinite than the other, requiring the location of the road to be made before the locality of the lands could be known at all. The State proceeded to make her selections, and to fix the location of the lands definitely before the railroad did any such thing with its grant. The State therefore has the oldest and most definite title, and its lands were accurately located, and their boundaries particularly defined, agreeably to the act of Congress, before the same thing was done by the other claimants.

The oldest title is the most definite, and the first location will surely give her priority and preference over another grantee subsequent in title, less definite in the terms of the grant, and later in location.

I am, very respectfully, &c.,

J. S. BLACK.

HON. JACOB THOMPSON,
Sec'y of the Interior, Washington, D. C.

NO. 4.

GENERAL LAND OFFICE,
JUNE 30TH, 1862.

His Excellency, the Governor of Iowa, Des Moines, Iowa:

SIR:—On the 9th ult., and 12th inst., two reports for cash indemnity under Act of 2d March, 1855, for Swamp Lands in Louisa and Fremont counties, respectively, were submitted to the Hon. Secretary of the Interior for his approval of the decision made thereon as required by law, if satisfactory to him. These cases were returned on the 27th inst., with a communication of the same date, referring to his letter of the 25th April last, upon which the instructions of the 31st ult., addressed to you, were based.

The Secretary has made a re-examination of the subject, and has decided *that the proof submitted* IS INSUFFICIENT.

He says: "On the 25th of April last, in a communication to the Commissioner of the General Land Office, from this Department, a construction was given to the Act of Congress of March 2d, 1855. According to the views then expressed, the proof furnished in the cases now under consideration, is entirely insufficient. No Court of justice would be justified in the passing the title to the most insignificant piece of property, upon such evidence."

"Recurring to the communication of the 25th of April. The fact that these lands have been entered, is *prima facie* evidence that they are not Swamp, and 'unfit for cultivation,' and if they have since been cultivated, and without having been reclaimed by a systematic process of embanking and ditching, there can be no claim against the government on account of the sale of such lands."

"Each tract alleged to be swamp lands, must be described by witnesses, who can swear that they are acquainted with it, and if they say it is swamp, they must give such reasons for their statement that will convince the Commissioner of the General Land Office that they are correct in their conclusions. It is perfectly easy to describe these lands, no difference whether they are made swamp by being upon the low margins of overflowed rivers, upon the borders of marshy lakes, natural swamps, lands overflowed by beaver dams or lost creeks; all are alike within the Act, if thereby rendered unfit for cultivation without the aid of artificial means. It will readily occur to any one who shall attempt to make the proof, that by describing and giving the names of the timber, shrubs or plants found growing upon the lands alleged to be swamp, will in most cases go far to determine their character.

"But lands covered by temporary, shallow ponds, existing only in times of floods and storms, are not swamp lands. They *must* be so described that the Commissioner of the General Land Office

can judge whether the lands are so permanently swamp or overflowed, that they are absolutely unfit for cultivation, and that can be easily determined if the seasons and causes which it is supposed make the lands swamp, are set out. It is known to every one of common observation, that many prairie lands in their wild state, are covered with ponds, and timber lands with water, for a considerable portion of the year, but when cleared and tilled, become dry without ditches and levees. What is sought to be impressed is, that unless the proof shows affirmatively that the lands are swamp, the claim must be rejected.

"*A stereotyped form of proof will not answer.* The topography of the country adjacent to the tract should be described, and if it is found to be situated upon the margin of a river with low banks, or on the borders of a marshy lake, you will have the less difficulty in determining the question, but if it is found to be in a region where there is no apparent reason to cause them to be swamp or overflowed, the proof should be more circumstantial and the condition of the lands should be described for a considerable length of time, that you may be sure that the overflow is not temporary

"The certificate of the Register and Receiver of the District in which the lands are situated, amounts to nothing at all. It is no part of their duty, and it is suggested that they be directed to take no part in the matter, unless they shall be called upon by the Commissioner for information, for the purpose of detecting errors.

"I have therefore to state the following as the requirements of *this office*, in presenting claims for indemnity:

1st. Testimony in support of such indemnity awards, must be the affidavits of at least two disinterested and respectable persons, who have a personal and exact knowledge of the character of the land claimed, in its smallest legal subdivision, as it existed at the date of the Swamp Grant of Sept. 28th, 1850, which affidavits must state the causes of swamp or overflow, designating the proportion of each tract that is claimed to be swamp, and unfit for cultivation in its natural condition with a description of the timber, the names thereof, and the shrubs or plants growing on the land, the character and extent of the means employed in levees, embankments or drains, in order to make the land purchased as arable, really inhabitable as such, the contiguity of the land to rivers, water courses or lakes, with a general description of the surrounding tracts, whether the land is subject to overflow, and at what seasons and

extent, and whether by the removal of the timber or by plowing, the water disappears without ditching or draining.

2d. The proof should be the affidavit of the person who purchased the land of the United States, and also the affidavit of the present occupant. When the original purchaser is not resident of the State or had no knowledge of the character of the land in 1850 or at the date of the purchase, or where the occupant is in like manner uninformed, or the tract is unoccupied, the facts may be established by *two* respectable and disinterested persons, resident nearest the land, and in such cases the State Agent must file with the testimony his own affidavit to the effect of the absence, want of information of the principal witnesses, or of the non-occupancy of the land, and that the persons whose testimony is presented, are the nearest informed residents to the swamp premises, and are respectable, creditable and disinterested witnesses.

3d. The affidavits may be made before a magistrate authorized to administer oaths, or before a Notary Public, under a Seal. If by the former, his official character must be certified under Seal, and the character and credibility of the witnesses must also be certified by the officer administering the oaths.

The proof in the cases herein referred to, being similar to that submitted in other cases remaining on the files of this office, the Secretary's decision will apply equally to all, and they are *all*, therefore, rejected as insufficient.

These instructions are designed to supercede those of the 31st ult., and you will be pleased to acknowledge the receipt hereof.

With great respect, Your Obedient Servant,

J. M. EDMUNDS, *Commissioner.*

NO. 5.

INDEMNITY PROOF—NEW FORM.

(*Warrant Location.*)

STATE OF IOWA, } SS.
.....COUNTY, }

We.....and..... of the county of ....., and State of Iowa, being duly sworn on oath depose and say, That we have a personal and exact knowledge of the character of the following described tract of land in its small-

est legal sub-divisions, to-wit:.....of section .....in Township.....North of Range..... West of the fifth P. M. containing..... acres of land; and which was located on the.... day of.....18.. by..... with Bounty Land Warrant No....and for which he received certificate No.....: We further say that the greater part of each forty acre tract of said land was, on the 28th day of September, 1850, and still is, swampy, or subject to such regular periodical overflows, either at the planting, growing, or harvesting season as would materially injure or destroy a crop,—and as such rightfully enured to the State of Iowa under the provisions of an Act of Congress, approved September 28, 1850, entitled "An Act to enable the State of Arkansas and other States to reclaim the Swamp Lands within their limits:" That we know that at the time of said Grant all that part of the above described tract of land, to-wit:..... being at least.....acres of said tract was, and is unfit for use or cultivation in its natural state and condition, and not arable, or really inhabitable as such without the following or other artificial means being employed, to-wit:

[Here describe the means necessary to reclaim the land.]

That the swampy character of said land is caused by,

[State the cause of swampy character.]

That the same is not caused by showers or occasional fall or overflow of water so rarely as not to render said swampy land unfit for cultivation; but such swampy character is a permanent characteristic of said premises: that the water is frequently of the depth of ....on said swampy or overflowed portions, during such seasons of the year as prevents the growing of crops thereon, unless rendered fit for use in the manner above stated: that the water is frequently of the depth aforesaid during the.....season of the year: that the shrubs and plants usually growing on said land are

[Describe vegetation and timber.]

That neither the removal of the timber from said premises, nor the plowing thereof would render said land, or any part of it above stated, to be wet and swampy, fit for cultivation, without employing also the other artificial means above stated as necessary, or other like means: That the surrounding tracts near said premises are:

[Describe surrounding country.]

All of which, as well as reasons why we make this affidavit, will more fully appear by our several answers to the questions hereinafter contained, to-wit:

QUESTION 1. What is your age and occupation?

QUESTION 2. State fully your means of knowledge of the character of the lands above described.

QUESTION 3. What particular part of the land is overflowed or swampy?

QUESTION 4. What is the cause of such swampy or overflowed character?

QUESTION 5. What is the character of the shrubbery on this and surrounding tracts?

QUESTION 6. Give the topography of this and surrounding lands.

QUESTION 7. State the seasons, and depth of water, and the extent of said overflow or swampy character.

QUESTION 8. If any part of the land is under cultivation state which, and the means employed for reclaiming the same.

QUESTION 9. Would the water and swampy character of the land disappear by clearing off timber, or by cultivation of the premises without ditching, embanking or draining?

QUESTION 10. If the land is occupied by any person, state by whom, and where, if you know is the person who entered the land; and had he any knowledge of the character of the land at the time he entered the same?

QUESTION 11. State whether the country about is *thinly* or *thickly* settled, and why you are better acquainted with the land than those residing nearer, if such is the case?

ANSWERS TO ALL THE QUESTIONS IN THEIR ORDER.

Subscribed and sworn to before me by.....and.....in the County .....State of Iowa, on this.. .....day of ....186...

In testimony whereof, witness my hand and Seal of Office,

{L. S.}

..... Notary Public.

NO. 6.

Extracts from the Argument of the American Emigrant Company, on behalf of Wright County.

By that Grant, (Act 1850) all the estate, right and title which the United States had in the "swamp and overflowed lands" within its limits, passed to and became vested in the State of Iowa. It was a present grant; no patents were necessary; no selections needed to be made to pass the title. The act itself did it. The fee thus being in the State it must there remain until disturbed by the consent of the State—the grantee. This is held to be the effect of such a grant by the highest authority. (See Report of the Land Commissioner, Oct. 11, 1861, Appendix No. 7.) We refer, also, to the opinion of the late Attorney General Black, dated June 7th, 1857, on file in the Department, and to the cases he cited. We also refer especially to his opinion on the effect of this identical Grant, Nov. 10, 1858. * * * (Appendix No. 3.)

The State by an Act of the Fourth General Assembly granted all these lands, and claims for indemnity, to the counties respectively in which the same is situated; and the American Emigraut Company is the purchaser of the vacant lands, and the claims for scrip, in good faith, in Wright County, for the purpose of actual settlement, and have undertaken to make the improvements for which these lands and claims have been granted and set apart. The objects of the Company are legitimate, and they claim this indemnity in good faith. Notwithstanding the grant to the State, and of the State to the counties, the United States, prior to 1855, continued to dispose of the swamp and overflowed lands in Iowa, and other States, as if no such grant had been made. The lands in question in Wright County, as well as elsewhere, were disposed of to "locators," by warrants and scrip, as other lands not swamp and overflowed. In due time it was ascertained that the United States, having by grant, vested these lands in the State, could not give a good title to the locators and purchasers.

In this dilemma, one of two courses was to be pursued: 1st, To withdraw all the public lands in the State from market, canceling all sales of these lands, and wait until the swamp and overflowed lands could be selected and set apart from the list of other lands, which would have been regarded as a great public loss, and

would have broken up extensive arrangements made for selling. Or, 2d, To continue to locate and dispose of them as before the grant, as other public lands, and then to indemnify the States for what swamp land should be thus disposed of by the General Government. The latter course was preferred. The locations and sales were continued by the Department, and Congress, March 2d, 1855, passed the Act entitled "*An Act for the relief of purchasers and locators of swamp and overflowed lands.*" This Act, among other things, provided, "upon due proof by the authorized Agent of the State or States, before the Commissioner of the General Land Office, that any of the lands purchased were swamp lands within the true intent and meaning of the Act aforesaid, the purchase money shall be paid over to the said State or States; and when the land has been located by warrant or scrip, the said State or States shall be authorized to locate a quantity of like amount, upon any of the public lands subject to entry, at one dollar and a quarter per acre, or less, and patents shall issue therefor upon the terms and conditions enumerated in the Act aforesaid; *provided, however*, that the said decisions of the Commissioner of the General Land Office shall be approved by the Secretary of the Interior."

The State of Iowa, by various enactments, assented to this act of Congress. This assent completed a compact between the United States, as *grantor*, and the State, as *grantee*, binding on both relative to the lands in question. Under instructions issued to the Governor, and according to forms of a most stringent character prescribed by the General Land Office,—so stringent as to cut off almost all the grant to Iowa—the State proceeded, at its convenience, but as rapidly as circumstances would permit, to make selections, and to present to the Commissioner of the General Land Office due proof that the lands in question, and other lands, which had been located, or thereafter should be located, by warrants and scrip, were "swamp and overflowed lands" within the true intent and meaning of the grant. Thereupon the General Government also proceeded, as usual, to issue patents to the locators and purchasers of these lands, to make good their titles under and by authority derived from this act, (for there was and is no other,) to issue warrants and scrip to Iowa and other States, as an indemnity for the lands thus located and sold, as rapidly as proof conforming to the instructions to the Governor could be presented.

The United States could not then, and cannot hereafter, relieve the purchasers of swamp and overflowed lands by virtue of any other act. This act has provided, and still provides, ample and satisfactory indemnity to the State, and must continue to provide the only relief which the purchasers and locators of these lands can have; and, since the compact, it is the only indemnity the State can demand. As long as it gives the General Government power to issue patents for the lands which have been entered, located and sold, so long it provides for the indemnity due to the States, and no further legislation can be required by the United States, by the locators or purchasers, or by the States to whom these lands have been granted. It was not limited to any particular period, but provided for those emergencies whenever and wherever they should be proved to exist.

Prior to 1851, the General Land Office acted upon the assumption that the grants to the States were regarded as taking effect from the dates when the selections were *reported* to the proper officers for approval, and not from the date of the law. But in the latter part of 1851, that ruling was reversed, and it has since been held that the swamp and overflowed land grant vested the title in the States at the time of its passage, and was not dependent on the future act of any party whatever. The Land Office could *regulate*, but could not prevent.

We refer to a communication from the Land Office to the Secretary of the Interior, October 11th, 1861. (No. 7.)

* * * * The act of 3d of March, 1857, spoken of by the Commissioner of the General Land Office in this communication, is what its title imports: "An act to confirm to the several States the swamp and overflowed lands selected under the act of Sept. 28, 1850, and the act of 2d March, 1849." And among other things it provides: "That the selections of swamp and overflowed lands granted to the several States by the act of Congress, approved September twenty-eight, eighteen hundred and fifty, entitled "An act to enable the State of Arkansas, and other States, to reclaim the swamp lands within their limits," and the act of second of March, eighteen hundred and forty-nine, entitled "An act to aid the State of Louisiana in draining the swamp lands therein," heretofore made, and reported to the Commissioner of the General Land Office, so far as the same shall remain vacant and unappropriated,

and not interfered with by an actual settlement under any existing law of the United States, be, and the same are hereby confirmed, and shall be approved and patented to the said several States, in conformity with the provisions of the act aforesaid, as soon as may be practicable after the passage of this law; *provided, however*, that nothing in this act contained shall interfere with the provisions of an act of Congress, entitled "An act for the relief of purchasers and locators of swamp and overflowed lands," approved March the second, eighteen hundred and fifty-five, which *shall be and is hereby continued in force, and extended to all entries and locations of lands claimed as swamp lands, made since its passage.*"

Now, we respectfully submit that there is not one word in this act (3d March, 1857,) which repeals, or attempts to repeal, or limits, or attempts to limit, the provisions of the act of 2d March, 1855, so far as the indemnity to the States, or relief to the locators and purchasers are concerned; but, on the contrary, as if fearing its silence might be otherwise construed, it expressly continues its provisions in force, and extends them "to all entries and locations of lands, claimed as swamp lands, made since its passage."

The lands in Wright county had been located prior to the passage of the act of 3d March, 1857, and therefore came within its express provisions.

We repeat that the act of 2d March, 1855, notwithstanding the act of 3d March, 1857, is now in full force, giving the General Government power to issue patents for sales and selections made and reported since its passage, providing for indemnity to the States, and giving relief to locators and purchasers, as well as prior to that date.

The Act of the 3d March, 1857, don't say "*reported*" before that "date," nor does it exclude what is reported after that date. We cannot learn that the Secretary of the Interior has ever intimated that locators and purchasers of these swamp and overflowed lands, since 3d March, 1857, were not entitled to patents, or that the States were not entitled to indemnity according to the Act of 2d March, 1855, as held by the Commissioner of the General Land Office. If it has been repealed, or has expired by any limitation, we repeat, the United States, the locators and purchasers, and the States are without relief, and are in the same dilemma that existed at the time of its passage. If the Act of March 2d, 1855, is not

in full force with all its provisions, we would ask by what authority the United States can make good the title to any swamp land sold since 1857? If in force for one purpose, is it not for all? From its language we are bound to say it is prospective as well as retrospective, in its effects. It says, "who have made entries of the public lands," "claimed as swamp lands," "prior to the issue of patents to the State." It does not say who have made entries *heretofore* claimed as swamp lands. It was to provide for difficulties that must, in the course of events, happen thereafter and prior to the issuing of patents to the States, no matter how long the delay or time that might intervene. If statutes are not retrospective in terms, they will not receive that effect by construction.*

*1 *Kent*, 511, *and cases cited.* 3 *Denio*, 594, *Dauks v. Quakenbush.*
*10 *Smede & Marshall*, 599. *Hooker v. Hooker.*

In construing that Act, its intention will be inferred from the occasion and necessity of the law, as set forth in the document of Oct. 11, 1861, (No. 7,) the mischief felt and the object and remedy in view. 1 *Kent*, 521.

It was the purchaser that wanted relief, no matter at what time or where he had purchased, or should purchase;—these lands had been sold, the Government was selling others every day, and would continue to sell them until all the swamp lands were sold or patented to the States. (See No. 7). The mischief, if we may call it such, was a "continuing mischief," and could not be remedied by an act *retroactive* only in its effects. It is evident that Congress did not intend to leave the Land Department in a dilemma which would require a new act for relief as often as lands are located. * * If the lands granted could be patented to subsequent locators under warrants, and to purchasers from the United States, without indemnity to the States, the States could not reclaim them, and the object of the grant would be defeated.

The United States, in such cases, takes the purchase money, but the State, which is the owner, gets no consideration, except what is provided in this Act. If the Act was retroactive only, why did the Act of 3d March, 1857, confirming the swamp and overflowed land selections, expressly provide that "nothing in this Act contained shall interfere with the provisions of the Act of 2d March, 1855"? How could there be any interference with a law that was retroactive only?

* * In the Act of 12th March, 1860, extending the swamp land grant to Minnesota and Oregon, Congress again recognizes the existence, prospective nature and force of the Act of 2d March, 1855, for it limits the new grant to the *unsold* lands. Why this restriction, if under the law as it then stood—applicable to the other States—indemnity was not allowable for lands that had been selected and sold?

* * This Act of 12th March, 1860, prescribes a period then following, within which selections of swamp lands in Iowa and other States, to which the grant was first applied, shall be made. It gives this and other States several years from the date of the Act to make selections, not only of the unsold but of the sold lands.

If there was no indemnity then provided, why did it not restrict the States to select so much as had not been sold? Why permit, and authorize the States to continue making selections of land that had been located and sold, and to incur the expenditure of making the proof which the Department requires, if there was no indemnity provided? This act contains the only notice that the time for selections was ever to be limited. Not the least allusion is made to any time within which they were to be reported. The Secretary will look in vain * * for a word in any of the subsequent acts, except the act of 12th of March, 1860, as to selections; to limit the force of this fundamental act; and also, in vain for any subsequent act which does not recognize its ample authority and provision for indemnifying the States, as well as relieving the United States locators and purchasers.

Let us suppose, for the sake of argument, that the act of 2d of March, 1855, did of itself operate retrospectively. Then, it is plain that it is extended by act of 3d of March, 1857, to that date, and that it is further extended by the act of 12th of March, 1860, so that the benefits of the act of 28th of Sept., 1850, shall be extended to Minnesota and Oregon. * * Whenever a power is given by a Statute, every thing necessary to make it effectual is implied. 1. *Kent*, 524.

This act of 12th of March, 1860, gives to the States of Minnesota and Oregon the power to make selections of the unsold and the other States to make selections generally, as well of the *sold* as the unsold land. Therefore, this power to select swamp and overflowed land *sold*, carries with it the implied right to in-

demnity; for without indemnity the power to select would be useless. * * If it be said that this act of 1860 does not specify clearly, and in terms say, that the sold lands may be selected in all the States except Minnesota and Oregon, we answer: That it is a legal maxim, that "the expression of the one, is the exclusion of the other," that to say *vacant* land to Minnesota and Oregon, is to exclude that word *vacant* from any application to the other States. * * The effect is the same as if the rights were given to the old States in terms. We therefore submit that the State of Iowa is entitled to indemnity for all the land located by warrants and scrip in Wright County, though not reported till after 3d of March, 1857, for the following among other reasons:

1st. The letter of the act of 2d of March, 1855, makes it prospective as well as retroactive, and provides ample indemnity, and is without limitation as to time.

2d. The evil was a continuing one, and could not be remedied by a law retroactive only, and if we consider the object of the law we cannot construe it retroactive only.

3d. Any other construction is a diversion of the grant, and would defeat its object.

4th. The act of March 3d, 1857, is a concession that the act of 1855 was then in force. The act of March 12, 1860, is a concession that it was then in force. Both are confirmatory so far as indemnity is concerned.

5th. The U. S. are now patenting land for the "relief of purchasers" under the act of 1855, which cannot be done if it is retroactive only.

6th. Any other construction is more unjust to the U. S. than to the States. If the act of 1855 is retroactive only, Congress must re-enact the same law "for the relief of purchasers," with the risk that the States might not accept the indemnity instead of the land.

7th. Every part of the act of 1855 by our construction stands, though the 90 day clause expires by its own limitation.

8th. If the act of 1855 had been retroactive only, the act of 1860 extends it.

NO. 7.

GENERAL LAND OFFICE,
OCTOBER 11, 1861.

HON. CALEB B. SMITH, *Secretary of the Interior:*—SIR:—The

claims under the swamp grants of 1849 and 1850, have now reached in round numbers, nearly sixty millions acres, and as claims are still coming before us for such lands "*in place*," as well as for indemnity where sold or located by the United States, we have had the matter under examination, with a view to determine whether the existing rules, resting upon practice established under the direction of your predecessors, are sufficiently effective to secure the ends of justice.

The following are the laws relating to the swamp grant:

1st—The Act of March 2d, 1849.

2d—The Act of September 28th, 1850.

3d—The Act of March 2d, 1855.

4th—The renewed indemnity and confirmatory Act of March 3d, 1857.

5th—The Act of March 12th, 1860, limiting selections to lands not disposed of by the Government, and restricting the period in which selections are admissible.

The original construction given to the swamp grant by this office, was under date of Semtember 30th, 1851, in a letter addressed to the Secretary of the Interior, in which it was held as follows: "In view of the large amount of money and land involved in these applications, and others of like character that will be made by other States interested in this grant, I have carefully examined the subject, and am of the opinion, that these grants must be regarded as taking effect from the dates when the selections are reported to the proper officers and approved—and not from the date of the law. The act of 1849 states expressly, as you will perceive by the words underscored, that on the approval of the Secretary, the fee simple shall vest in the State; and the act of 1850 makes the fee to vest in the State on the issuing of the patent. The earliest period then, that this grant can be considered as attaching to the land, is that when the selections are made known as aforesaid and approved."

This was affirmed on the 2d October, 1851, by Secretary Stuart.

Subsequently, however, under date of 23d December, 1851, the same functionary reversed his first ruling, and held the swamp a grant "*in presenti.*"

The effect of this reversal and decision was to treat this Grant, necessarily indefinite until rendered certain by actual selection, as an effective, operative present title. The ordinary system of sell-

ing and locating lands, was of course, in full operation, sweeping over the public domain ; and under that system, individuals not discriminating, and the local officers not having the data in the absence of selections to discriminate, it followed that thousands of sales and locations were made, which afterwards, Agents representing the Swamp States, claimed to be Swamp Lands of prior date, and State property in virtue of the assumed *present* grant, by the Acts of 1849 and 1850 to those States.

The result was that the General Government was forced, either to annul all such sales and locations, or to legislate a direct reversal of said decisions, or provide other means of relief. Hence the indemnity Act of March 2, 1855, wes determined upon as the proper remedy ; although prior to its passage many such sales and locations had fallen to the ground.

The effect of this Act of 1855 was a general confirmation of all sales prior to its passage, and grant of indemnity to the States, in *cash* for the amount of such sales, and in *other lands* for the area covered by locations. Even prior to the passage of this Act of 1855, numerous individual applications reached this Office, denying, in specified cases, that the lands which had been selected as Swamp were really such, and offering to prove it ; and in the progress of events, such contesting applications under oath reached by estimate three millions of acres. So accordingly investigations were ordered, the papers coming in by bushels ; numerous selections were proven to be dry land and canceled. Pending these proceedings, Congress intervened, by the said Act of 3d March, 1857, qualifiedly affirming all past Swamp selections, and continuing indemnity to the States on account of prior sales, &c. ; finally, however, followed by said Act of March 12, 1860, forbidding the Swamp Grant from taking hold of any sold or located lands, and virtually affirming the principles of the aforesaid first decision of this office, dated September 30, 1851.

Now we return to the *practice* which has prevailed in respect to the mode of proof of the swampy character of lands. In regard to Michigan and Wisconsin the rule agreed upon by the authorities of those States and the Department has been this, that the descriptive notes connected with the surveys should control. If these notes describe lands as swamp, they were acknowledged as such. If not so described therein, they were not selected or recognized.

In the other States the selections were made by State Agents and filed in the office of the Surveyor General, where such office existed, and where not, with the Register and Receiver, accompanied by affidavits in accordance with the circular, * * dated November 21, 1850. In the progress of this business, it became apparent that great abuse had arisen in making such selections through individual speculation ; first, in the transfer by the States of their interest to Counties, thence to individuals who procure and file *ex-parte* proof. The proceedings of the Department show efforts to correct the same by more stringent regulations in that respect. The Act of March 3, 1857, withdrew, however, to a certain extent, a large class of selected lands from executive investigation, closing down upon the matter by a qualified recognition of the Swamp selections prior to that time. This office, however, exerted its power, to the extent of its subordinate ability, in subjecting such selections to as severe a scrutiny as the printed regulations allowed; and in furtherance of this object, laid down the stringent principles dated January 6, 1860. To this, the late Secretary of the Interior replied September 15th, 1860, holding as follows: "The principal point is this: Your instructions seem to have been framed upon that construction of the Act of September 28th, 1850, which regards that law as granting only such lands as were both Swamp and Overflowed, and by the overflow rendered unfit for cultivation. It would appear to be a consequence, that such lands could only be found in the vicinity of large streams, liable to long continued overflow, at seasons of the year rendering the overflowed land unfit for cultivation. This view I do not regard as just and liberal. Whilst that may have been the original and restricted aim of many friends of that law, who regarded it, after its passage, as so restricted in its effects, there were others who have always regarded that Statute as granting all lands, of which the greater part of any forty acre sub-division in its natural state, was wet and unfit for cultivation, either by reason of swamp or of the overflow of streams, and to reclaim which to cultivation the construction of levees or drains would be necessary. Either one of these causes singly, or both of them conspiring together to render lands wet and unfit for cultivation, in my opinion, brings the lands within the terms of the grant, and hence, there may have been prairie swamp lands granted by the law, as well as low, overflowed bottom

lands. Such was the construction placed upon that law immediately after its passage, and under that construction it has been, I believe, thus far administered and for this reason, if I regarded your views on this point as correct, I should not be willing to change the construction in that respect, after such lapse of time."

The practice which has since followed these instructions, in my judgment, should be amended by the adoption of further means, in order to place the character of all such selections beyond question or controversy. It is estimated that the quantity of land for which indemnity will be claimed in cash or other lands, will reach to 6,692,277.66 acres. Surely such immense interests should be subjected to the severest scrutiny. The States, as grantees, would not desire that their agents or assignees, under color of grant, should succeed in claims not clearly allowable by said grant. The United States, as grantor, has a right to demand at our hands the utmost vigilance and scrutiny, now pressed in these times of trial, as the Government is by other obligations, to the end that not a dollar should be paid, nor an acre granted, not clearly shown to be a legal and just obligation.

To this end, therefore, I recommend the adoption of, and a strict adherence to, the principles laid down in a letter from this office, of July 2, 1860, and where any case comes before the department, that it be brought to the test of these priuciples.

In connection with the foregoing, I now submit a report, No. 13,392, on a claim of the State of Iowa, for refunding $6,006.93 on account of lands claimed in said State as swamp, which have been sold by the United States as dry lands. The proof, in printed form, has been produced in support of this claim, under the old ruling and practice of the Department. * * * If the old rule prevails, the account should be approved; but if not, it should be subjected to the principles of the instructions of July 2d, 1860, which is recommended. It is suggested, if it shall be deemed necessary to clear the claim of all doubt, that this office have the power to remand the list, with orders for a special field examination, the expense to be paid out of the fund applicable to incidental expenses of district land officers.

With great respect, your obedient servant,

J. M. EDMUNDS, Commissioner.

NO. 8.

Decision of the Secretary of the Interior, in regard to the confliction of the Railroad and Swamp Land Grants.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, February 8, 1860.

SIR:—In reply to your communication of the 4th, and report of the 21st ultimo, relative to Swamp selections in Louisiana which conflict with Railroad grants, I have to state that it appears to me that my decision of the 23d of July last, furnishes a rule for the action of your office in cases of conflict wherein the Swamp selections had been made and reported to your office prior to the 3d of March, 1857.

It is true that in my letter of the 28th August, 1858, I approved the suspension of action upon cases of conflict in Louisiana where lands that had been embraced in Swamp lists that were on file on the 3d March, 1857, were found also to lie within railroad grants, which had vested prior to that date, until the General Land Office could determine whether such lands ought to be certified to the State, under the Railroad grant of 3d June, 1856, or the Swamp grant

This may have been regarded as looking to an investigation into the question of the swampy or dry condition of the land on the 28th Sept., 1850, or the 2d March, 1849, but as case after case arose and delay in carrying out the conflicting grants, appeared to threaten greater evils than those likely to arise from mistakes, in my letter of the 23d July last, I informed you in substance, in reference to swamp selections on your files on the 3d March, 1857, that if a title under the railroad grant had not vested prior to that date, my opinion was that Congress by the Act of that date, had decided that the title should pass under the swamp grant. On the other hand if the title under the railroad grant had vested prior to that date, the Land Office might proceed to decide as to the swampy character of the land upon the field notes of the surveys and the papers on file and of record on the 3d March, and if the claim of the State under the older grant was satisfactorily established, to affirm the title under that grant, but if the swamp claim was not satisfactorily sustained, to certify the title under the railroad grant.

The conflicts which existed on the 3d March, 1857, we were compelled to settle according to the law of that date, but that law is

retrospective only in its operation. Since that date we are left to administer the swamp and railroad grants, solely under the laws making them. And as the swamp selections are made under the direction and supervision of the Department, and approved by the Secretary of the Interior, it is clearly within our authority to adopt such a policy or course of action in the administration of the grants as will give effect to the laws of the United States, prevent embarrassments in conducting the business of the General Land Office, and most effectually do justice to the States interested.

Confining the following remarks to cases wherein the claim under the swamp grants is based on selections made and reported to the General Land Office on or subsequent to the 3d March, 1857, I would remark:

First. In cases in which the swamp land selections have been made and reported prior to the definite location of a railroad route, and the lands fall within the six miles limits of the line of road, your office should proceed in the usual and regular manner, and determine from the records and files of the General Land Office, whether the tracts did pass to the State under the swamp grant; should you decide in the affirmative, the title to the selected tracts should be completed under the swamp grants; but if you are not warranted in making such affirmative decision, the swamp claim may be rejected, and the title certified to the State under the later but more specific grant.

Second. In that class of cases in which a title to lands within the six miles limits of a railroad line has vested in a State under a railroad grant, the Surveyor General should not thereafter admit or report selections of the same tracts as swamp lands.

The swamp grant may indeed be the earlier, but the railroad grant is the more specific. The title under it has become fully vested; and it should be fully recognized, even if the land was of such description as to fall under the swamp grants of 1849 or 1850. The effect of the later grant is, at most, only to change the use for which the grantee receives the land. I will not call in question the power of Congress to make that change. Where the State accepts the later grant, and proceeds to complete her title under it, she has assented to the change, and both the grantor and grantee appear to be concluded by their voluntary, yet concurrent action.

Third. Where lands lie between the six and fifteen miles limits

of a located railroad, but have never been listed and approved to the State, under the provisions of the railroad grant so as to vest that title, and the same lands fall within the description granted in 1849 and 1850, for drainage and levee purposes, the State appears to have the right to claim title under either grant; and if she is so claiming under both, I think we may examine the claim under the older grant, and if that be satisfactory, approve and patent the lands; but if not satisfactory, reject the same and proceed under the later grant. After indemnity lists have been approved and transmitted to the State authorities, the lands therein are no longer liable to selection or report as swamp lands, and any selections that may have been made thereof, may be rejected.

Where the Department has fully executed one grant, its officers should cease all action under another grant of the same land to the same grantee.

And where lands between the six and fifteen miles limits of a railroad, which has been located, are, by Executive order, withheld from pre-emption and ordinary private entry, in order to facilitate the adjustment of a grant by a State for railroad purposes, I think that the State authorities, from respect to the action of the State, as well as that of the United States, ought to waive any right which she may have to make selections of the withheld tracts under the swamp grants.

Should any State persist in that policy, and bring thus upon your office the evils which were sought to be avoided by the withdrawal of the lands, it may be a question whether the withdrawal of such lands within her limits should not be removed, and the lands left in market whilst the adjustment of the railroad grant is progressing.

Very respectfully, your obedient servant,

J THOMPSON,
Secretary.

The Commissioner of the General Land Office.

NO. 9.

REPORT OF HON. C. C. NOURSE.

OFFICE OF ATTORNEY GENERAL,
DES MOINES, March 4th, 1862.

To the House of Representatives of the State of Iowa:

I have the honor to acknowledge the receipt of your resolutions

of the 27th ult., requesting my opinion in writing upon the following questions:

1st. Have any of the Governors of this State had any lawful authority at any time since the Swamp Lands were patented to this State, to certify any of said lands to the Railroad Companies of this State?

In reply to this, I would say that if any Governor of the State had made any such certificate, it would have been wholly unauthorized and void, and could not have affected the title to said land.

I am satisfied, however, from investigation, that none of the Swamp Lands for which patents have been issued to the State have ever been certified by the Governor to any of the Railroad Companies of the State. The only certificates of lands yet made by the Governor of this State, to any Railroad Company, are certain lists of land in favor of the Burlington & Missouri River Railroad Company, certified by the Department at Washington, and now on file in the office of the Register of the State Land Office. It is believed that these lists do not embrace any lands heretofore selected by the agents of this State, under the Act of 1850 as Swamp Lands. The conflict between the Railroad Companies and the Swamp Land selections, relate to lands not yet patented to this State by the General Government. For the particulars in regard to this conflict, I would refer you to the message of Ex-Governor Lowe to the Eighth General Assembly. (See title Swamp Lands.)

Since the date of that message, the General Government has not patented or certified to this State any swamp land selections upon the odd sections embraced within the limits of the Railroad grants.

In order to answer your enquiries fully, I submit the following statement in regard to these grants and the decisions and opinions of the Department of the Interior in relation thereto.

The swamp and overflowed lands within this State were granted to the State by Act of the Congress of the United States, approved Sept. 28th, 1850.

This Act was a present grant, and of itself "*proprio vigore*" vested in the State of Iowa an absolute title to all the swamp and overflowed lands within the State at that date. (See opinions of Attorney General Black, June 7th, 1857, and Nov. 10th, 1858.

Under this grant of 1850, lands were selected as swamp and

overflowed lands by the agents of some of the States embraced in the Act, the swampy character of which was called in question.

In order to settle the rights of the States to all the lands selected as aforesaid, the Congress of the United States by an Act approved March 3d, 1857, confirmed and granted to the States all lands which had been selected and returned as swamp and overflowed lands by the agents of the States at that date, provided the same remained vacant and unappropriated, and not interfered with by actual settlement under the laws of the United States.

The grant of Congress to this State for Railroad purposes was approved May 15th, 1856.

This grant did not, like the swamp land grant, by virtue of its own provisions, vest a title to any specific tract or parcel of land, but makes a present grant in the nature of a "float," which can take effect only when the lines of the Railroads have become fixed and located; and the plats are recorded as provided in the Act of 1856. (See opinion of Attorney General Cushing, Dec. 9th, 1856.

By an examination of the plats filed in the office of the Secretary of State of the State of Iowa, under and by virtue of the provisions of Section 6 of the Act of this General Assembly, approved July 14th, 1856, I find that the Mississippi & Missouri Railroad Company did not file a plat of the location of their Road until March 19th, 1857, and the Burlington & Missouri Railroad Company definitely located their Road upon a plat filed March 27th, 1857.

Under the decision, therefore, of the Department of the Interior, neither of these Railroad Companies can contest the character of the lands selected as swamp and overflowed lands by the agents of the State prior to the Act of Congress, of March 3d, 1857, which confirms the title of the State to all such selections within the limits of their grant.

The plat locating the Air Line Railroad was filed in the office of the Secretary of State of the State of Iowa, Sept. 13th, 1856.

The rights and privileges conferred upon this Company by the Act of 1856, have been resumed by the State, and granted to the Cedar Rapids Railroad Company. This latter Company has located another line of Railroad, but no plat of the same is on file in the office of the Secretary of State.

The grant to the Cedar Rapids Railroad Company having been

made by the State since the Act of Congress of March 3d, 1857, and the location of their road having also been made since that date, I can not believe that any claim, upon the part of that Company, can interfere with the swamp land selections confirmed to the State under said Act. I am not advised, however, of the view taken by the Department of the Interior, of this question, or that any opinion has been given upon it.

Where there is no contest, the Department of the Interior will, at once, certify the swamp land selections made prior to March 3d, 1857, without any inquiry as to the character of the land so selected and returned.

Where there is a contest in behalf of a Railroad Company whose rights were vested, and whose road was located definitely and certified prior to March 3d, 1857, the Commissioner of the General Land Office will enquire into the true character of the lands selected and returned by the swamp land agents, and will only certify to the State such lands as are shown to have been, in fact, swamp and overflowed lands at the date of the grant.

The plat of the location of the Dubuque and Pacific Railroad was filed in the office of the Secretary of State, Sept. 30th, 1856, and as at present advised, I believe this is the only road whose location presents any obstacle to the receipt by the State of all the lands heretofore selected as swamp and overflowed lands under the Act of 1850.

Your second question to me is, what would be the legal effect upon the rights of the State to swamp land selections if an Act of the General Assembly of the State was passed resuming the Railroad grants? To this question, it is impossible for me to give you any definite answer.

The legality of such resumption must depend upon a state of facts of which I have no official information.

In what light such an Act would be regarded by the Department of the Interior, and what action it might take in the premises, it is impossible for me to conjecture. Of the policy of such a law, the Legislative Department of the State must be the exclusive judge.

Very respectfully submitted,

C. C. NOURSE.

NO. 10.

GENERAL LAND OFFICE,
AUGUST 20, 1856.

To GEO. W. MCCLEARY, ESQ., *Secretary of the State of Iowa, at Iowa City:*

SIR:—I have the honor to acknowledge the receipt of your communication of the 12th inst., enclosing a certified copy of the act of the State Legislature, approved on the 14th July, 1856, to accept the grant and to carry into execution the trust conferred upon the State of Iowa by act of Congress making the grant of lands for railroad purposes, approved May 15th, 1856, which has been placed on the regular files in this office.

It is observed that the 6th Section of the law directs that "it shall be the duty of the Governor, after affixing his official signature, to file such map in the department having control of the public lands in Washington, *such location being considered final only so far as to fix the limits and boundary within which lands may be selected.*" The part which I have *Italicised* appears to me to conflict with the act of Congress, which contemplates that the route "shall be DEFINITELY FIXED"—and it is proper that I should through you, in this early stage of the business, call the attention of the State Executive and the Companies to the matter, and announce the opinion of this office, so as to prevent unnecessary delay.

A route merely for *fixing the limits of the grant*, will not be acted upon here,—it must be something *real and fixed;* the grant cannot be in ONE PLACE and the actual route in ANOTHER;—although slight variations on the line, such as are unavoidable in the progress of the construction of such works would be admissible, any MATERIAL CHANGES of route would be considered as acting in bad faith with the United States, and cannot be tolerated; for such would be a clear violation of the law, which proposes an indemnity to the United States for the lands granted away, by the enhanced value of the alternate sections remaining to the Government, near the route of the road; the route must therefore be first "*definitely fixed*" as required by the law of Congress, or no title rests.

In the above view it will be expected, that the certificate of the Governor on the maps returned to this Department will set forth

that such maps delineate the routes as "*definitely fixed*"—that is, are definite locations—before they can receive our action.

I am, respectfully, Your ob't servant,

JOSEPH S. WILSON,
Acting Commissioner.

ERRATUM.

On page 35—at the head of the second column in table—read "amount claimed" instead of "amount collected."