COMMUNICATION

FROM THE

ATTORNEY GENERAL

TO THE

SENATE AND HOUSE OF REPRESENTATIVES

OF THE

TENTH GENERAL ASSEMBLY,

IN RESPONSE TO RESOLUTIONS RELATIVE TO THE DES MOINES RIVER AND RAILROAD GRANTS.

DES MOINES:
F. W. PALMER, STATE PRINTER.
1864.

OFFICE OF ATTORNEY GENERAL,
DES MOINES, JANUARY 28TH, 1864.

To the Senate and House of Representatives of the State of Iowa :

I have the honor to acknowledge the receipt of resolutions from the Senate and House of Representatives respectively, requesting me to communicate my opinion as to what legislation is at this time necessary in order to do justice to the State, and all parties for whom she is interested as trustee in the lands granted to the State by Congress, in trust for the improvement of the Des Moines River, —to aid in the construction of Rail Roads within the State,—and also lands granted to the State for certain purposes of indemnity. To say what the law ought to be in regard to interests so important and conflicting as those involved in the subject of your resolutions, is to place upon me a very serious responsibility, and one perhaps hardly falling within the ordinary scope of my official duties. Nevertheless, in obedience to your request, I submit the following suggestions which occur to me as proper and just in the premises.

In order to understand what ought to be done to remedy the difficulties in which the State and its citizens have become involved, it becomes necessary, first, to fully understand the origin and nature of these difficulties.

By an act of the Congress of the United States, approved August 8th, 1846, there was granted to the then Territory of Iowa, in trust for the improvement of the Des Moines river, one equal moiety in alternate sections of the public lands not otherwise disposed of in a strip five miles in width on each side of the river.

The question in relation to this grant which has occasioned so much difficulty, is upon the *length* of the grant ; that is to say, whether or not it embraced the alternate sections within five miles of the river the entire length of the river, or the entire length of the river within the State, or whether it was limited the designated width below the Raccoon Fork of the river, where the work of improvement was directed to be made.

This difficulty has become the more serious, because of the claims

of certain Rail Road Companies who are asserting that they have acquired vested rights under a subsequent grant of Congress to the State for Railroad purposes. The claim asserted by them is this: By Act of Congress, approved May 15, 1856, there was granted to the State of Iowa, in trust for the construction of four designated lines of railway running East and West across the State, the alternate sections of land on the lines aforesaid for six sections in width except such as the United States had already sold or otherwise appropriated, and especially reserving from the operation of the act, all lands reserved by the United States or any other competent authority, for purposes of internal improvement.

One of these lines of Railroads crossed the Des Moines river at the Raccoon Fork, and two others crossed the river above that point. At the time the State of Iowa accepted of the trust and disposed of the grant of 1856, made for Railroad purposes, the Commissioner of the General Land Office of the United States had ceased to question the right of the State under the grant of 1846, to the alternate sections of land within five miles of the river up to the Northern boundary of the State.

The Commissioner had expressly reserved these lands from public sale or private entry for this work of internal improvement, and being, as was supposed, the competent authority within the meaning of the proviso to the Rail Road Grant of 1856, no one interested in the subject seemed at that time to contemplate any difficulty.

Hence in disposing of the grant of 1856 for Railroad purposes, the General Assembly of the State seems not to have anticipated the possibility of any conflict between the two grants. I can discover no mention of such question in the proceedings of either branch of the General Assembly during the extra session of 1856. If any such thing was thought of or contemplated by any one at that time, it appears to have been *carefully concealed.*

The act of the General Assembly of 1856 in granting the lands donated to the State in trust for Railroad purposes, uses very general and comprehensive words, granting to the Railroad Companies upon certain conditions all the rights conferred upon the State by the act of Congrees, approved July 15, 1856.

The Dubuque and Pacific Railroad Company, the Cedar Rapids and Missouri River Railroad Company, have asserted a claim to the lands heretofore treated and regarded by the authorities of this State and of the United States as belonging to the Des Moines river grant, or rather to all of said lands lying within fifteen miles of the contemplated route of their Roads. If their claims shall be recognized, it is fair to presume that the Mississippi and Missouri River Railroad Company will make the same claim. The Burlington and Missouri River Railroad Company have no interest in this question, as their road crosses the Des Moines river below the Raccoon Fork.

As the State has already sold and executed patents for 271,571 acres of land above the Raccoon Fork of the river, nearly all of which will come within this claim of the Railroad Companies, the success of their pretensions will involve the State either in the necessity of making good the title to that amount of land, a considerable portion of which is now well improved and under cultivation, or she must repudiate the titles executed by her and leave those who have purchased without any remedy.

In nearly if not all the legislation by the State in regard to the Des Moines river grant and in the Act authorizing the contract under which the agreement was made between the State and the Des Moines Navigation Company, there is contained a provision in substance that the State in her sovereign capacity shall not be charged with any liabilities assumed, but all such liabilities shall be chargeable upon and payable out of the remaining lands belonging to the Des Moines river grant.

This provision clearly pledges the faith of the State to appropriate the lands then supposed to belong to the grant, to the discharge of all the obligations thus incurred, provided she then had or has since secured the title thereto, or can in any proper manner control the same.

The State has not, however, pledged her faith to appropriate money out of her ordinary revenues to make good any of these obligations. Should the State, however, fail to redeem her pledge in regard to the appropriation, the claimants might perhaps justly ask of her such indemnity. Because of these provisions against State liability, it has been supposed that no obligation, either of a legal or equitable character, rests upon the State.

As to the matter of the liability of the State, this provision of the law makes no difference of legal right, as the State could in no event be made liable in a *suit* by the parties, for the reason that

the sovereign power cannot be sued. In denying to those who have received her patents a right of action against the State, the State has only denied to them what she denies to all of her citizens in any and every business transaction with them. The State as a sovereign power refuses to be sued upon the hypothesis that she is the fountain of justice, created by the will of the people for the very purpose of securing to individuals their rights of private property, of personal liberty and security, and is presumed to be incapable, in her sovereign capacity, of withholding or infringing these sacred rights.

It may be questionable whether popular legislation, subject as it is to be influenced by public clamor or private interests, will always justify this theory, yet those who have in their keeping the character and honor of the State, cannot too sacredly regard it. Let it be remembered that it is the will of the law making power, that in such cases creates the legal right, and the considerations which influence that *will*, are necessarily of a purely moral or equitable character.

In order that these considerations may be fully ascertained in the various interests involved, it becomes necessary to review at some length the acts of the State of Iowa, as the Trustee of the lands for the improvement of the Des Moines river.

By act of the General Assembly, passed in 1848, the State organized a board of public works, and authorized them to let contracts for the construction of locks and dams upon the Des Moines river, and the general improvement of the navigation of the same by means of slack water.

From this date to June, 1854, the improvement of the river was attempted by means of numerous contracts let to private persons for the construction of locks and dams, excavations and materials. The State also established an office for the sale of the lands of the improvement, in order to raise the means to carry on the work, and also authorized the issue of bonds upon the faith of the grant. The State and its officers are alone responsible for whatever of failure or misfortune attended this enterprise during this time.

During the six years the State controlled the work, 327,000 acres of land were sold, 58,830 acres of which were of those above the Raccoon fork of the river. An indebtedness estimated at $60,000, but in fact about $70,000, was incurred. But little pro-

gress was made in the enterprise, and many incidental and contingent liabilities and obligations were incurred. By reference to page thirty-five of the report of the Register of the State Land Office, made to the General Assembly now in session, you will find a tabular statement of claims against the Des Moines River Improvement, audited by a board of commissioners appointed by act of the General Assembly, approved March 3d, 1860. An explanation is necessary to understand the nature and origin of some of these claims. At the time of the organization of the board of public works, in 1848, a number of citizens had, under authority of the territorial legislature, erected locks and dams of a temporary character upon the Des Moines River, at their own private expense, for the purpose of creating a water power, and had put up mills and machinery adjacent thereto. In the act of 1848, the State authorized the board of public works to condemn and remove these locks and dams, and to locate works of a more permanent character, but also provided that compensation should be made for the injury thus done to the mill owners; and as a cheap method of compensating them, in part, recommended the granting of new leases for a term of years for water power at the new dams.

The board was also authorized to condemn the lands of private citizens adjacent to the location of the public dams, and to take the title to the State to sufficient lands for the proper use of the power to be created by their erection, and also to grant leases for water power on consideration, in part, for the lands, so taken and condemned.

In pursuance of these powers, the officers of the State entered into contracts for the lease of specific water power at various points upon the river, upon the faith of which the lessees constructed numerous and valuable mills and machinery.

These leases were unfortunately contracted before the water power was actually created by the completion of the dams, and an undue confidence was placed in the future progress of the work. It is unnecessary for me to write the chapter of accidents to which may be attributed the misfortunes of the State, and of those who relied upon the covenants of these leases. Suffice it to say, that the works at Croton, Bonaparte and Bentonsport were almost continually out of repair, whilst those at Keosauqua and Plymouth have never yet been completed.

The above is the origin and character of most of these claims, others are for work done by mill owners since the settlement between the Des Moines Navigation Company and the State, and others are for services of various kinds under contracts with the officers of the State, and a few of the small claims are, I think, for detention and injury to boats by reason of the condition of the locks and lock gates, during the time of navigation. As to the provisions made for the payment of these claims I shall have more to say hereafter.

In the year 1853, the work on the Des Moines River under the supervision of the officers of State, was nearly if not entirely suspended. As will be seen by the report of the Commissioner and Register made to the Governor in 1852, negotiations had been opened with various parties in St. Louis and New York, in order to obtain the means to pay off the existing debt, and to further prosecute the work. In that report the Commissioner says:

"It is now a clearly ascertained fact, about which a doubt can no longer exist that with the large debt, hanging over the work which should, and must be paid, and the slow sales of the lands, it is folly to expect to carry the Des Moines Improvement to a completion in many a long year, if ever. It is hardly too much to say that the work can never be completed unless some steps be taken by legislative enactment to infuse new life into it."

This report also contains a lengthy correspondence with Messrs. Page & Bacon of St. Louis, and a proposition on their part to undertake the work upon the terms afterwards substantially made in the contract with the Des Moines Navigation Company.

In consequence of the condition of affairs as set out in this report the General Assembly of the State by Act approved January 24, 1853, authorized the Commissioner, with two assistants, George G. Wright, of Van Buren County, and Uriah Biggs of Wapello county, to make a contract for the means to carry on the work and to pay off the indebtedness. After more than a year's effort and correspondence with various capitalists (Messrs. Page & Bacon of St. Louis having in the meantime declined the work altogether,) these Commissioners of the State made a contract with the Des Moines Navigation and R. R. Company, an association composed of capitalists, then residing principally in the State of New York, and incorporated under the laws of this State for the purposes of undertaking this contract. This contract was dated June 9th, 1854, and

from this date is the first connection of the Des Moines Navigation Company, with the affairs of the improvement.

In many respects this contract with the Des Moines Navigation Company did not differ from the contracts let for construction of dams before that time, to private parties. The State still controlled the character of the work by her Commissioner and Register, and the supervision of a State Engineer. The company received pay only for work done at specific prices set out in the contract. So much per perch for stone or masonry work, so much per foot for timber, and so much per pound for iron. The essential difference between this contract and the old ones was, that the State paid for the work in land at $1.25 per acre, instead of the money or the bonds of the Improvement. Another important stipulation of this contract was, that as a condition precedent to the contract, the Des Moines Navigation Company advanced $55,000 to pay the indebtedness then due upon the bonds of the improvement, and provided for the remaining indebtedness which they afterwards paid, to the amount, including the above of $68,953.57 which is exclusive of the additional $20,000 paid on the final settlement. At the date of this contract the Commissioner of the General Land office had certified to the State, as belonging to the State, for the purposes of the river improvement 271,572 acres of land located above the Raccoon fork of the river. Of this amount the State had sold to private parties 58,830 acres above the forks. Of the 321,537 acres approved and certified under the grant below the Raccoon forks but 53,367 acres remained. These lands below the Raccoon fork at the contract price would scarcely more than cover the $68,-953 of indebtedness paid for the State by the company under the contract.

In addition to this the State received, under this contract, the salaries of its officers in charge of the improvement to-wit: The Commissioner and the Register and the Engineer, amounting to the further sum of $42,330. To which add the $20,000 paid to the State on the final settlement, and you have cash received from the Company, without any pay to them for the work, the sum of $131,283.

On the 24th day of December, 1856, Mr. Manning, the Commissioner for the State, made a settlement with the Des Moines Navigation Company, and the parties drew up and agreed upon a state-

ment of account between the State and the Company which was as follows:

Due the Des Moines Navigation Company for construction work to Dec. 1, 1856,.........	$185,947.46
State indebtedness paid by them,............	68,953.57
Salaries of State officers paid,...............	7,629.51
Engineer's salary paid,......................	34,700.00
Total,...................................	$297,230.54

PAID THE COMPANY BY THE STATE.

May 14th, 1855, acres of land,.........	88,853.19	
May 6th, 1856, " " "	116,636.54	
	305,489.73	
At $1.25 per acre amounts to..............		...$256,861.50
Leaving balance due Company,................		$40,369.04
To which as agreed should be added the 20 per cent. provided for in the contract. This is estimated at		$45,655.40
Making the amount then due,......		$86,024.44
On the 5th of August, 1857, the Commissioner certified as due the Company the further sum of...		$35,000.00
December 1857, the State Engineer estimated to the Company the further sum of..............		$38,258.43
Making a total due the Company,...............		$169,282.87

By an act of the General Assembly, approved January, 1857, the State attempted to repudiate the contract of June 9th, 1854. This act was passed by the votes of members of the General Assembly whose immediate constituents were the least interested in the work upon the Des Moines River and in opposition to the votes and earnest protest of the representatives of the people residing in the Des Moines Valley.

Under the law it became the duty of the officers of State to test the validity of the contract of June 9th, 1854, in the courts. A proceeding by mandamus was commenced by the Des Moines Navigation Company, against the Commissioner of the Des Moines River Improvement, and although the prayer of the petition was

refused and the application defeated yet the Supreme Court of the State affirmed the validity of the contract, and declared the act of the General Assembly approved January 24, 1857, to be of no practical force and effect.

By joint committee of the two houses of the 8th General Assembly, a settlement was agreed upon between the State and the Des Moines River Company, and formal propositions for a settlement were made by the State to the Company by act of the General Assembly approved March 22d, 1858, and afterwards accepted by them. At the date of this settlement as above set out, the State had already certified to the Company 205,489.73 acres of land, and of the lands certified and approved under the grant of 1846, only 60,619 acres remained. At the contract price these would amount to $75,774, which was nearly $83,500 less than the acknowledged indebtedness to the Company. The State, however, claimed that the Company had not complied with the contract, in point of time, and that the great object of the contract, to-wit: the navigation of the river, remained unaccomplished. Under these circumstances, the State claimed as a condition precedent to certifying these remaining 60,619 acres of land, or of issuing patents for the lands before certified, that the Company should pay to the State for the use of the improvement the further sum of $20,000, thus claiming as damages from the Company for its alleged failure to complete the work, the sum of about one hundred and three thousand five hundred dollars. The preamble to the act of 1858 waives any acknowledgment upon the part of any one as to where the fault of the various failures and misfortunes attending the work was justly chargeable. After a full investigation of the matters in controversy between them, the parties concluded the settlement, the State making the proposition in the form of a solemn act of the General Assembly, and the Company accepted the same by resolution of its Directors, and by paying over the money. In pursuance of this settlement deeds were issued by the State to the Company for all the remaining lands then certified to the State for the purposes of the improvement, including those certified by the State to the Company before the settlement, and amounting in all to 266,109 acres, 53,367 acres only of which, as before stated, are below the Raccoon Forks of the River.

In this connection it may, perhaps, be of interest to the members of the General Assembly to know who are now the owners

of the title thus made by the State, and what is the present condition of the lands.

It is perhaps well understood that the Raccoon Fork of the river is at the City of Des Moines, or rather that Des Moines is located at the Raccoon Fork.

As to the lands sold by the State, either to individuals or to the Des Moines Navigation Company, below this point, there is no trouble.

There are also 25,847.87-100 acres of land immediately next above this point, about which there is no trouble. These lands were sold and patented by the United States to individuals, prior to the Railroad grant of 1856, and though claimed by the State under the Des Moines River Grant of 1846; yet the State never claimed to interfere with the title of the purchasers, but merely to have lands in lieu thereof;—a moderation and propriety worthy of imitation by those who are now giving the State so much trouble.

Next above these lie the 58,830 acres sold by the Commissioner and Register, prior to the contract with the River Company. All these, of course, are in the hands of individuals, and upon them are some of the best improvements and finest farms in the Des Moines Valley.

The 212,742 acres above this point conveyed to the Des Moines Navigation Company, have passed into the hands of third persons, in the manner I shall presently explain. These lands with others before mentioned embrace nearly if not all the lands, within this five mile limits of the alternate Sections, lying between this point and Fort Dodge and some immediately above that point. An explanation is necessary in regard to the sale of these lands by the Des Moines River Company. In order to raise the means adequate to their undertaking the Des Moines Navigation Company issued and sold in the market the corporate bonds of the Company, secured by a trust deed binding all the lands of the Company, as fast as the same should be certified to them under their contract with the State.

At the same time they opened their land office in the State for the sale of these lands to private parties and actual settlers. And in order to make their titles good to purchasers, it was provided in the deed of trust that upon the payment by the Company to the Trustee of three dollars per acre upon any of the lands either in money or in the bonds for which the trust-deed was security, that

the Trustee should release the land from the operation of the trust-deed. During the years 1856 and 1857, the transactions in real estate became very active in our State and the Company disposed of large quantities of these lands by private sale in the manner before stated and very many of the purchasers have settled upon and improved their lands.

Some of the sales were made upon a partial credit, the Company retaining the legal title for the security of the unpaid portion of the purchase money and executing a contract of sale to the purchaser. Some of these contracts are still outstanding and are in various stages of completion.

After the settlement with the State in 1858, the Des Moines Company sold to its bond-holders all the remaining lands which had been deeded to them by the State and also sold their interest in the lands before contracted, reciting the contract in their deeds and thus making the individual bond-holder take the place of the Company in these contracts. Thus the bond-holders of the Company who advanced the money which paid the State indebtedness and also the money which was expended on the improvement now hold the legal title to these lands sold, but not entirely paid, for as the security for the payment of the balance due on these contracts of purchase.

I have made investigation of this question and present it here because a suggestion has been made that the State should make a distinction in regard to those who have dealt in these lands upon the faith of the title made by the State and should secure only the rights of actual occupants or settlers.

Aside from the doubtful morality of such an undertaking, I deem it, under the circumstances surrounding this case, as entirely impracticable. The inquiry into the merits of every purchase or transfer of this land, embracing as it does so many thousand acres, and numerous subsequent sales, and the attempt to adjust the nicely balanced equities of each individual, upon purely sympathetic considerations, is an undertaking which I would not recommend to the General Assembly.

After the settlement with the Des Moines Navigation Company, in 1858, the General Assembly attempted to provide for the completion of the locks and dams then in the course of construction at Croton, Plymouth, Bentonsport and Keosauqua, and to provide for

the payment of the liabilities existing and to be incurred, and then to give the balance of the grant, when obtained, to the Keokuk, Ft. Des Moines and Minnesota R. R. Company.

In the act of settlement with the Des Moines Navigation Company, the State took an assignment of four construction contracts then outstanding between private contractors and the Des Moines Navigation Company for the construction of the work at the four points above named. Upon these contracts there was unpaid what was called back per centage, that is 15 per cent. of the estimates of work done under the contract, which was reserved as security for the completion of the contract. This back per centage the State assumed and agreed to pay in the settlement with the Navigation Company. The State also took an assignment of said contracts with all advantages and liabilities arising thereon, and per centage, except the company were obliged to pay the estimates then due. By this covenant I understand that the State assumed to see that the Company should not be made liable for a failure to carry on the work in the future under the contracts thus assigned. Nothing has been done on these contracts since their assignment to the State, except by Messrs. Brown and Allender, who became assignees of the contract at Bentonsport, and completed their dam, and what has been done by the mill owners at Keosauqua and Croton, in order to preserve their water power.

The contractors at Plymouth notified the Governor that they were ready to proceed, but nothing was done for want of any lands or funds. These contractors have since recovered judgments against the Des Moines Navigation Company for the back per centage, and perhaps for damages by reason of this neglect.

In the act of 1858, diverting the lands which should thereafter be certified to the State under the Des Moines River grant, the State reserved 50,000 acres of land to be applied in the completion of the contracts for the four locks and dams at the points before named, and for the purpose of paying off the debts. The second Sec. of the act also provided that the Keokuk, Ft. Des Moines and Minnesota R. R. Company should pay off the remaining liabilities of the improvement, and complete the locks and dams at points aboved named, under the contracts assumed by the State, and should receive in installments, the 50,000 acres of land at $3 per acre as money was so paid or expended by them.

Since the date of said act the Commissioner of the General Land Office has refused to certify to the State any further lands of the grant of 1846, for the improvement of the Des Moines River. Consequently, the Keokuk R. R. Company not being able to derive the anticipated advantage from the act of the General Assembly of 1858, has refused to pay any money or do any work under the contracts for the construction of locks and dams assumed by the State.

In 1860, the General Assembly amended the law of 1858, designating the 50,000 acres of land reserved for the purposes aforesaid, as those next above the lands deeded to the River Company, and when obtained, authorized the Register of the State Land Office to dispose of them for the purposes for which they had been set apart in the act of 1858.

At the December term therof, 1859, the Supreme Court of the United States delivered an opinion in an agreed case of Litchfield against the Dubuque & Pacific Railroad Company, in the which it is decided that the grant of lands to Iowa in 1846, for the improvement of the Des Moines River, did not embrace any of the lands above the Raccoon Fork of the river, and that the acts of the Commissioner of the General Land Office, under the advice of the Attorney General of the United States, as well as the decision of the Secretary of the Treasury and of the President, did not confer upon the State of Iowa any title under the grant of 1846, to those lands.

Because of this decision, I have not presumed to discuss the question as to the proper construction of the act of 1846, regarding it as thus settled by the weight of authority until reversed. With all due respect, however, to that authority, I desire to say, out of regard for the reputation of my official position, that I do not wish to be understood as concurring in that opinion, in any particular whatever, and more particularly in its geographical and topographical statements upon the length and character of the Des Moines River. It may be that the opinion of the Supreme Court of the United States, that there is no Des Moines River above the Raccoon Fork, may make it so in contemplation of law—but those who are compelled by their daily observation to know the facts in relation to it, might find some difficulty in maintaining the respect due to the Court, if such experiments upon their credulity were too often repeated.

I have carefully examined this case, and although it does decide directly the extent of the original grant to the State for the improvement of the river, it does not by any means decide that the Dubuque & Pacific Railroad Company has any title. This question the Attorneys for the Railroad Company seem carefully to have avoided submitting to the Court. In the agreed statement of facts, the Dubuque & Pacific Railroad Company was stated to be in possession, and the fictitious action was so framed that the plaintiff's title was alone put in issue.

The question I have heretofore suggested whether or not these Des Moines river lands were not taken out of the operation ot the grant of 1856 by the clause excepting all lands set apart by any competent authority for works of internal improvement, and the fact that they had been so set apart and withheld from sale by the Commissioner of the General Land Office, does not appear to have been presented to the Court, and certainly is not passed upon by it.

Thts is a very important consideration with those who are in possession of land under the deeds of the State, to which these Railroad Companies claim title. The State has not yet issued to these Companies any deeds or certificates which are evidences of title to any of the lands in dispute under these conflicting grants, and my first recommendation on this point is that the General Assembly shall prohibit either the Governor or Register of the State Land Office from so doing, and shall also so amend the law defining what shall be evidence of title in the Courts of this State in actions of right or of trespass, as to exclude anything else than a deed duly executed by the State in such cases.

Since the opinion of the Supreme Court in the case of Litchfield against the Dubuque and Pacific Railroad Company, the Congress of the United States has passed several enactments for the purpose of correcting the evils which this decision was likely to entail upon the State. The first act, approved March 3d, 1861, relinquishes to the State the right of the United States to the lands which had been certified to the State above the Raccoon forks of the Des Moines river. This would make good the titles made by the State to all these lands, except so far as at that time the Railroad Companies whose lines crossed the lands had acquired a vested right thereto. The title made by the State to all the lands lying outside of or rather between the fifteen mile limits of the Railroad grant

became absolute by this act. The title also to all the lands deeded by the State lying outside of the six mile limits which had not been selected and approved and certified by the department in lieu of the disposed of lands within the six mile limits became perfect.

By act of Congress, approved July 12th, 1862, the grant of August 18th, 1846, was extended to the northern boundary of the State, and the State was authorized to select lands in lieu of those before disposed of by the United States for other purposes within the limits of the grants. In other words, in lieu of all alternate sections of lands sold by the United States or selected under Railroad or swamp land grants within the five mile limits up to the northern boundary of the State, the State should select of the public lands a like quantity any where within the State.

The Act also provides that if the State shall have sold and conveyed any portion of the lands lying within the limits of the grant, the titles to which have proved invalid, any lands which shall be certified to the State in lieu thereof by virtue of the provisions of the Act, shall enure to and be held as a trust fund for the benefit of the person or persons respectively whose titles shall have failed as aforesaid.

This Act also consents to the diversion made to the Keokuk, Ft. Des Moines and Minnesota Railroad Company as provided for in the act of the General Assembly of 1858.

This grant has been accepted by the State and 300,000 acres of indemnity lands selected under it, but these selections have not yet been approved and certified to the State. Neither has the Commissioner of the General Land Office yet certified to the State any land under this Act.

The Register of the State Land Office has in his Report recommended that the lands granted and selected by the State under this grant as indemnity lands be patented to the Rail Road Companies when received, acre for acre, as a consideration for the release by those Companies of any claim upon the lands selected by them within the five mile limits of the Des Moines River upon the alternate Sections. The justice and propriety of this proposition must strike every impartial mind, and if the Rail Road Companies have not already attempted to sell or disposed of these lands in such a manner as to leave a cloud upon the title, the State should insist in all good faith upon their acceptance of this

proposition. I have however but little faith in any amicable arrangement with these Companies. The very fact that they have persisted in a claim which, if successful, must involve a large class of our citizens in ruin and may occasion civil war in our midst and that too upon a technical claim of right, in violation of the intention of the State that has dealt so liberally with them, is to my mind conclusive evidence that no other considerations than those of interest can reach them. Fortunately perhaps, for the State, this consideration can be brought to bear upon them.

The 8th section of the act of the General Assembly, approved July 15, 1856, makes the grant to these Companies upon the express condition "that in case either of said Railroad Companies shall fail to have completed and equipped seventy-five miles of its road within three years from the first of December next, thirty miles in addition each year thereafter for five years, and the remainder of their whole line in one year thereafter, or on the first of December, 1855, then and in that case it shall be competent for the State of Iowa to resume all rights conferred by the act upon the Company so failing, and to resume all rights to the lands hereby granted and remaining undisposed of by the Company so failing to have the length of road completed in manner and time as aforesaid."

Nearly if not quite all of these Companies failed in the first condition above named, unless the road constructed by them before the grant was made, is counted as a part of the seventy-five miles. The Dubuque & Pacific Road has obtained a release of this forfeiture by acts of the General Assembly approved March 7 and March 26, 1860.

The second condition of the Grant which requires thirty additional miles of the road to be completed each subsequent year, I am advised, has not been complied with by any of these Railroad Companies. If these Companies, therefore, shall insist upon the law, let them have the full measure thereof until they shall be willing to do and accept of justice. The resumption of these grants will reinvest the State with all the title and right still remaining in the Railroad Company, and if any innocent purchasers or third persons have acquired any rights in these lands, the Act of resumption cannot affect their title.

The Railroad interests of the State are of great importance and

I would not recommend any wanton act of disfavor to them. After the State shall have resumed the lands it will be necessary to dispose of them during the present Session of the General Assembly or they will revert to the United States before the meeting of the General Assembly in 1866. This should be done on such terms as will be just to all the parties interested and as shall effectually secure the State against all trouble or liability either legal or equitable, growing out of any conflicting titles to any of the lands heretofore granted to her in trust.

If the State shall by this means succeed in accomplishing the recommendation of the State Register and have at her disposition the alternate sections of land upon the Des Moines River to the Northern boundary of the State, the titles to all the lands heretofore sold or deeded by the State to all parties, will be at once perfected. The title to the 50,000 acres set aside to meet the liabilities or debt, as hereinbefore set out, will also be made good, and the remaining lands as contemplated in the act of 1858, will go to the Keokuk Railroad Company.

Should the State however fail to complete the above arrangement, and shall fail to resume them, my first recommendation in regard to evidence of titles is the only remedy for the present, and the 300,000 acres of land selected as indemnity must be held by the State to meet any future contingencies arising.

I would also recommend a Commission to ascertain what further debts or liabilities have accrued against the improvement by reason of the undertaking of the State in assuming the contracts mentioned in the settlements with the Des Moines Navigation Company, carefully guarding against all claims which had otherwise matured at the date of the appointment of the last Commission and which were not presented to it.

With the exception of the claims of Brown & Allender, provided for by the last General Assembly, there is now no adequate provision of law for the liquidation of the claims audited by the Commission, under the act of 1860.

Of the amount audited to Jonas Houghton, I am unfortunately the owner of $500 by assignment to me for services as his attorney in procuring the judgment originally against the Commissioner of the improvement. Under these circumstances I cannot consistently assume to advise you in relation to these claims.

The only remaining interest to be considered inc onnection with this complex business is that of the Keokuk and Ft. Des Moines R. R. Company.

The diversion act of 1858 pledges the faith of the State to give them what is left of the Des Moines River Grant, after discharging the other obligations growing out of the connection of the State therewith. In other words this company is the residuary legatee of the Des Moines River Improvement deceased.

The legislation in relation to that Company will of course be somewhat dependent upon the other remedies adopted. The last Act of Congress, however, gives to the State beyond question the alternate sections of land within five miles of the river, and above the limits of the rail road grants. The indemnity lands as already explained can not be given to any other purpose until the titles to the land already deeded by the State above the Raccoon fork of the river is secured, to the grantees of the State. Aside from this, you only have the claims to provide for and the work assumed is under your control, as the Keokuk Railroad now declines the contract.

In conclusion, I ask the pardon of the Senate and House if I have made this communication tedious. Its length has been necessary because of the much legislation and numerous difficulties surrounding the subject. I may also repeat here that much that I have written may seem to be without the province of my official duties, but I have only written it because required by the language of your resolutions.

Very respectfully submitted.

CHARLES C. NOURSE.

SPECIAL MESSAGE

OF

GOVERNOR WILLIAM M. STONE,

TO THE

HOUSE OF REPRESENTATIVES

RELATIVE TO THE

RAILROAD LAND GRANTS.

DES MOINES:
F. W. PALMER, STATE PRINTER.
1864.