

MAJORITY REPORT.

To the Senate:

The select committee to whom was referred the subject of Des Moines River Lands, and the propriety of the resumption thereof by the State from the grants to certain Railroads, have had the whole matter under consideration, and a majority of such committee beg leave upon that subject to report:—

That we regard the subject one of great difficulty, and of equally great importance. It is so complicated by conflicting interests that we cannot hope to arrive at perfect justice, nor even to fully satisfy ourselves that what we may recommend shall be the best possible course, but we have entered upon the investigation with the desire, and pursued it with the intention of arriving according to the best light we could obtain at the nearest possible approach to justice, attainable from the evidence within our reach. As the result of our investigations we present you the following:

We find that upon the 14th day of July, 1856, the State of Iowa supposed it possessed under the grant from Congress of Aug. 8th, 1846, the lands known as the Des Moines River Lands, being the sections designated by odd numbers on each side of the Des Moines river above the Raccoon Fork within five miles of said river, and extending north to the north bounds of the State; and that the State continued to so suppose until after the first of April, 1860, as evidenced by all the acts of the said State through her officers and the Legislature; for the facts on which such finding is based, in part, we refer to the reports of the majority and minority of a select committee of this body, found on pages 326 to 350, inclusive of the Senate Journal of 1862; and the Report of the Register of the Land Office, dated Nov. 16, 1863.

That Congress having by an act of the 15th of May, 1856, granted to this State, the lands designated by odd numbered sections extending in four lines across the State, for the purpose of assisting

in constructing four such Railroads, this State did, by its act of July 14, 1856, grant upon certain conditions the lands so received from Congress; that three of these four lines of Railroad crossed these Des Moines River Lands above the Raccoon Fork, and thus intersected the grant made for the Des Moines River Improvement, as then understood by the State, and the Railroad Companies. But your committee believe that no thought arose in the minds of the Legislators who made the grant of July 14, 1856, or in that of the Railroad Companies that the last named grant would in any manner interfere with the ownership of the Des Moines River lands then claimed by the State, or which the State had previously thereto sold to individuals who held her conveyances therefor.

That the State never had any interest in any of these lands up to this time, except as a trustee for certain specified purposes; that she had always maintained in all her dealings concerning them her fiduciary character, which was equally well understood.

That, of the lands above the Raccoon Forks, she sold, prior to 1859, about 271,000 acres, including what she authorized Governor Lowe to quit claim to the Des Moines Navigation and Railroad Company, all of which was done while her authorities had no doubt of her right to so sell, and before any claim had been put forth by any of the Railroad Companies to question her title to the Des Moines land.

That in 1859, a made case was presented to the Supreme Court of the United States, between a representative of the Des Moines N. & R. R. Co., and one representing the opposing interest to test the question in that tribunal whether the grant of Aug. 8, 1846, extended further up the Des Moines river than the Raccoon Forks. We are not fully advised how the suit was got up, but presume it to have been in good faith and properly presented. The result was that that eminent tribunal decided that such grant did not extend above such Forks, and the consequence followed that the State never had any title above the Forks, and thus all her conveyances for lands above that point were invalid; that they could convey nothing, as she had nothing to convey.

That then, as the grant of July 14, 1856, to the Railroad Companies was without restriction as to those lands, but on the contrary embraced these very lands in the express terms of the grant, the Railroad Companies now saw that it might be made to inure to

their advantage, as their claim would be paramount to any other. Accordingly they have severally made such claim and pressed it with great pertinacity, causing much trouble, dirtress, and consternation among those honest, hard working men who are *bona-fide* purchasers from the State, which has seriously threatened for a time to bring on civil war in the heart of our State.

Now we believe this claim on the part of these Companies was an after-thought; that up to the time of such suit they had acquiesced in the State's claim, and at the time of accepting the grant had not the most remote conception of making such a claim. They must have done so if they were honorable men, because it would have been dishonorable in the highest degree, knowing as they well did, that the State had sold for cash many of those lands to individuals who had moved on to them and were then making farms, and thereon investing their all. It would have been impossible for an honorable man to have known all this, and concealed his advantage in the grant, with the intention of subsequently either depriving the settler of his farm when improved, or of demanding of the State the value of these lands, when he was the recipient of the State's bounty in securing the other lands on the route.

We thus see that there is a direct conflict between claimants to these Des Moines River Lands—both grantees of the State—the settlers claiming them by conveyances made by the State when it had no title, but which it and its grantees both then supposed it had—the Railroad Companies claiming them by conveyances made by the State, when neither the State nor the Railroad Companies dreamed it was conveying, or they receiving these lands.

Now, good faith on the part of the State requires its grantees, who bought in good faith and paid full value for these lands should be protected, not only in the amount paid for the original purchase, but for all their improvements; and we have no hesitation in saying it must be done. But shall we pay for these lands and improvements which we estimate would amount to a half million of dollars and over, and let these Railroad Companies have the benefit of such lands and improvements, when, as before said, they did not expect to get a dollar of it when they accepted the grant? In other words, shall this State not only give the Roads the lands they supposed they were getting when they accepted the grant, and in addition to such lands also give them a half million of dollars out of

the Treasury? We unhesitatingly answer, that every consideration of honesty, fairness and justice forbids it, *if* in our power to legally prevent it. The undersigned are of the opinion the State has now that power.

By the act of July 14, 1856, granting these lands to the several lines of Railroad, the express condition was made that if the said Companies failed in completing a certain distance of their several roads by certain specified times, the State should have power "to resume all the rights conferred by that act when 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." And in another act approved March 26th, 1860, granting to the Cedar Rapids & Missouri River Railroad Company a portion of these lands, (which had been resumed from the Iowa Central Air Line Railroad Company because of its having before that time made default,) a similar condition was inserted; so that if those Companies or any of them are in default, the State has the power to resume.

As to the facts of the several Companies being in default we refer to the Special Message of the Governor to the House of Representatives, dated the 2d instant, in which is shown that each and all of the said Companies are in default under the conditions of the grant. Indeed there has been no pretention before your committee that either of the said Companies had built the amount of road required by the acts granting the lands, and of course all, as a matter of course, are obliged to admit the breach of the conditions of the grant. It is true the Cedar Rapids & Missouri River Railroad Company insist that it has made default in but the completion of eight miles of the required distance, and that inclemency of weather hindered the completion of that; and we are glad to be able to say that we believe this Company has pushed forward their work with much vigor, and present a marked contrast with the other lines which have really done nothing worthy of notice for the last two years; but the fact remains as well against the Cedar Rapids Road as against the others, that it is in default, which of itself empowers the State to resume the lands.

We do not hesitate to say that the naked fact of the Companies not having fully complied with the conditions of the grants, would not induce us to exercise the power of resumption. On the con-

trary, we say that in consideration of the recent financial difficulties, the scarcity of labor, the extreme high price of both labor and material, we could not have expected the several Companies to so successfully carry on their work as was anticipated when the grants were made; and we should, if there was no other reason, unhesitatingly declare in favor of extending to them any reasonable indulgence; and we would now only exercise the power of *resumption*, solely for the purpose of first righting the wrong to the settlers on these Des Moines River lands, and other interests involved therein, and then conveying the remaining lands back to the same Companies on as favorable terms as they have heretofore held them, giving them as much as in our power, sufficient time to complete their roads from this time. To extend to them all the time they will require, it will be necessary that Congress should extend the time to the State, and we present a memorial to Congress asking such extension, and recommend its adoption by the General Assembly.

It will be seen above that we recommend the use of the *legal* power of the State, to do equity, because no other means are within its reach to effect this object. It may be asked if a release by the Railroad Companies, of these lands to the State, would not effect the end sought? We reply it certainly would, if the Companies have not already incumbered their interest in these lands by mortgage, judgment or otherwise; but whether such incumbrances exist it is not now worth while to inquire, as the fact that these Companies have steadily refused to *offer* even to do any act which would be a step towards the settlement of the difficulties. Two years ago the General Assembly magnanimously proposed to extend the time to the Dubuque & Sioux City R. R. Company, the successor of the Dubuque and Pacific, one year, on condition that that Company should release its claim to the disputed lands within the limits of its grant, and this was done at the earnest solicitation of the managers of that Road and its friends, as a substitute for the Act of Resumption, a bill for which was then pending. (See Acts of the 9th General Assembly, Chap. 153, page 177.) But such Company having thus secured the extension of time for the performance of its work, totally neglected, up to the sitting of this General Assembly, to do any act towards performing its part of the contract.

The action of that General Assembly in thus agreeing with the Dubuque & Sioux City Company, in granting the indulgence which was undeserved, for the sake of the release of the claim of the Railroad Company upon these disputed lands, was certainly sufficient to plainly indicate to the other Companies, the willingness on the part of the State to enter into any reasonable arrangement for the settlement of these disputes, yet no approach by either of the other Companies has ever been made for such a settlement. We are, therefore driven to the conclusion that there is no hope for any arrangement except such as the power of the State shall extort.

The question will arise, what effect will resumption have upon the title to these disputed lands, when they shall be resumed by the State? We answer that the title will be then unconditionally in the State. It is true the grant of May 15, 1856, by Congress, was a trust only; and although the State then held the lands, it was for a specific object as a trust. It had no beneficial interest in it, and could not convey other than what it then had. But after the decision of the Supreme Court of the United States, Congress hastened to remedy the evil to the utmost of its power, and on the 3d of March, 1861, released *all title* which the United States retained in all these Des Moines lands to the State. And again, to make assurance doubly sure Congress, by an Act approved July 12, 1862, again conveyed to the State all these lands with others, with the avowed and explicitly expressed purpose of settling up this dispute. These acts, of course, vested the State with all the remaining interest of the United States in them, and by a familiar principle of law, the trust before then held by the State, was merged in the full title, leaving out of the State only the interest granted to these Companies. So that default having been made by the beneficiaries of the trust, by which the State was authorized to withdraw it, and it being so withdrawn, it will be as fully vested in the State as it would have vested in the United States if it had reverted on the breach of the conditions of the original grant.

Again it will be asked, if upon the title becoming perfect in the State, it will not enure to the benefit of its grantees, to-wit, the individual purchasers, and the Demoine Navigation & Rail Road Company? We answer that it will not necessarily do so, except by our Statute, a subsequently acquired title could only enure to

the benefit of the former grantees, when that former grant was by a warranty of title. By our Statute, Section 2210, Revision 1860, that rule is changed, so far as to provide that any subsequently acquired title should enure to the former grantee to the extent of title purporting to be conveyed by the former grant. But even under this statute, no title to the lands conveyed to the Demoine Navigation & Railroad Company, by the conveyance made by Governor Lowe (the conveyance dated March 18, 1858,—see Register's Report, 1863, page 29,) would enure, as we believe, to such Company, by reason of any after acquired title; because the authority for such conveyance was contained in the Joint Resolution of the General Assembly, approved the 22d March, 1858, and that resolution, even if it had the force of law, which is questioned, only authorized the Governor to convey to said Company the right to all the lands granted by the Act of August 8, 1846, (the Act making the Des Moines River Grant) "as fully as the State could have under said Grant." Now if the State then had *no* right to those lands as the Supreme Court of the U. S. say it did not have, then of course it could not convey the fee, and although the conveyance made by Governor Lowe, expresses a conveyance in *fee simple*, it is clear he thus far exceeded his authority, and all such excess must be void. The Company was bound to know and did know what the Agent's authority was, and of course can claim no more than such authority would give. It could get, then, no more than a bare quit claim, and as such, Governor Lowe's deed could only operate; and as such, that Company will take nothing by the title to these lands now becoming perfect in the State.

There is some difference of opinion between the undersigned as to the minor details, after resumption has been accomplished, but we have agreed to present to the Senate a bill for an Act, which accompanies this report, which substantially embodies our views, reserving to the individual members the liberty of differing on some of the details therein.

It will be seen that we recommend that the Demoine Navigation & Railroad Company, and its members, shall be excepted from the benefits of the Act. Some of the undersigned believe that that Company has already realized out of the proceeds of land sold, more than such Company ever expended for the good of the State.

They regard the settlement of matters expressed in the Resolution of March 22, 1858, as having been conceded by the Legislature as a finality, and for the purpose of putting at rest forever, the claims of said Company, and the conveyance then authorized as the price of getting rid of the unpleasant importunities to which successive Legislatures were subjected; and they are unwilling to now recognize any claim by such Company upon either the State or any funds in the hands of the State. They do not consider such Company a *bona fide* purchaser of the lands conveyed by the Governor, by authority of the Resolution of March 22, 1858. They are also informed and believe that a great part of the sales made by said Company since that day, have been made to individuals who were at some time members of said Company. They could not recognize such a transaction as dividing up the lands between the different members of the Company as in any sense a sale, and much less can they consider them *bona fide* purchasers. And they, therefore, favor the excluding of both the Company and the individual members from the benefits of resumption. But all the undersigned join in the propriety and justice of the State saving all innocent purchasers from said Company from loss, especially such as bought of said Company on the faith of the title purporting to be conveyed by the State.

We present a plan for ascertaining the lands held by *bona fide* purchasers, in the bill reported, thinking the same bill should dispose of the whole matter.

Your committee have no means of ascertaining how much of such land granted to the Companies remains "undisposed of" and do not think it in our province to inquire, nor the effect of an attempt to dispose of those lands situated more than twenty miles west from the points to which their roads were completed, leaving those questions to be settled when they necessarily arise.

All of which is respectfully submitted.

THERON W. WOOLSON,
WM. C. SHIPPEN,
A. H. McCRARY,
J. H. HATCH.

REPORTS

OF

MRS. ANNIE WITTENMYER,

STATE SANITARY AGENT;

ALSO,

SPECIAL MESSAGE

OF

GOVERNOR WM. M. STONE,

RELATIVE TO

SANITARY MATTERS.

DES MOINES:

F. W. PALMER, STATE PRINTER.
1864.